

# STUDEBAKER | NAULT

EMILY R. STUDEBAKER, ESQ.  
11900 N.E. 1st Street, Suite 300  
Bellevue, WA 98005  
estudebaker@studebakernault.com

August 18, 2023

Department of Health  
Certificate of Need Program  
111 Israel Road S.E.  
Tumwater, WA 98501

*VIA E-MAIL: fslcon@doh.wa.gov*

Re: North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center  
Application for Certificate of Need Amendment

Ladies and Gentlemen:

Please find enclosed an electronic version of North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center's Certificate of Need Amendment Application seeking removal of Condition #3 on Certificate of Need #1785. A check from SCA Health in the amount of the \$20,427.00 review fee has been sent to the Department of Health via U.S. Mail. The check is dated August 10, 2023 and is check #3278842.

Per a May 6, 2021 email from the Department of Health Certificate of Need Program, it is our understanding that the Department no longer wishes to receive submissions in hard copy. If that is incorrect, please advise us. If you have any questions or need any additional information, please let us know. Thank you for your assistance.

Regards,

STUDEBAKER NAULT, PLLC



Emily R. Studebaker

Department of Health

August 18, 2023

Page 2

cc: Jamie Fowler, BHCA CASC, Chief Executive Officer

NORTH KITSAP AMBULATORY SURGERY CENTER, LLC

CERTIFICATE OF NEED AMENDMENT  
APPLICATION SEEKING REMOVAL OF  
CONDITION #3 ON CERTIFICATE OF NEED #1785

## Table of Contents

	<b>Page</b>
Application Form .....	1
Applicant Description .....	3
Project Description.....	4
Certificate of Need Review Criteria	
A. Need .....	7
B. Financial Feasibility .....	10
C. Structure and Process of Care .....	15
D. Cost Containment .....	18

## Table of Exhibits

	<b>Page</b>
Exhibit A: Letter of Intent.....	21
Exhibit B: Pro Forma Revenue and Expense Projections for Pacific Surgery Center .....	24
Exhibit C: Management Agreement by North Kitsap Ambulatory Surgery Center, LLC Between Surgical Care Affiliates, LLC and North Kitsap Ambulatory Surgery Center, LLC .....	27
Exhibit D: Amended and Restated Limited Liability Company Agreement of North Kitsap Ambulatory Surgery Center, LLC .....	76
Exhibit E: Medical Director Agreement Between Ron Wayne, M.D. and North Kitsap Ambulatory Surgery Center, LLC .....	133
Exhibit F: First Amendment to Commercial Lease Agreement Between Pacific Medical Building, LLC and North Kitsap Ambulatory Surgery Center, LLC.....	158
Exhibit G: Amendment No. 1 to Credit Agreement and Amendment No. 2 to Promissory Notes .....	190
Exhibit H: Contractor’s Estimate and Documentation of Project Costs .....	206
Exhibit I: Unaudited Financial Statement .....	208



**Table of Tables**

	<b>Page</b>
Table 1: North Kitsap Ambulatory Surgery Center, LLC Historical Utilization: 2020-2022 .....	9
Table 2: North Kitsap Ambulatory Surgery Center, LLC Projected Utilization: 2024-2026 .....	10

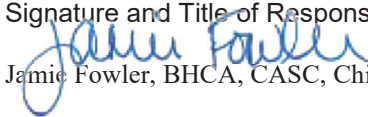


Date  
Stamp  
Here

Certificate of Need Application  
Ambulatory Surgical Facilities  
Ambulatory Surgery Centers

Certificate of Need applications must be submitted with a fee in accordance with Washington Administrative Code [\(WAC\) 246-310-990](#).

Application is made for a Certificate of Need in accordance with provisions in Revised Code of Washington [\(RCW\) 70.38](#) and [WAC 246-310](#), rules and regulations adopted by the Washington State Department of Health. I attest that the statements made in this application are correct to the best of my knowledge and belief.

Signature and Title of Responsible Officer:  Jamie Fowler, BHCA, CASC, Chief Executive Officer	Phone Number:  (360) 697-8822
Dated:  August 17, 2023	Email Address:  jamie.fowler@scasurgery.com
Legal Name of Applicant:  North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center	Number of Surgery Rooms requested – include operating room and procedure rooms:  Pursuant to Certificate of Need #1785 (“CN #1785”), Pacific Surgery Center’s application for a 4-operating room ambulatory surgical facility was approved on June 6, 2019. Pacific Surgery Center is not seeking approval for any additional ORs. It is seeking removal of Condition #3 on CN #1785.
Address of Applicant:  20669 Bond Road N.E., Suite 200 Poulsbo, WA 98370	Estimated Capital Expenditure:  \$0

Identify the Planning Area for this project as defined in [WAC 246-310-270\(3\)](#):

Kitsap County Secondary Health Services Planning Area

## **Applicant Description**

Answers to the following questions will help the department fully understand the role of applicants. Your answers in this section will provide context for the reviews under Financial Feasibility ([WAC 246-310-220](#)) and Structure and Process of Care ([WAC 246-310-230](#)).

1. Provide the legal name(s) and address(es) of the applicant(s)

Note: The term “applicant” for this purpose includes any person or individual with a ten percent or greater financial interest in the partnership or corporation or other comparable legal entity. WAC 246-310-010(6)

The applicant is North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center. Its address is 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370. The following physicians have a greater than 10% financial interest in North Kitsap Ambulatory Surgery Center, LLC and therefore are also applicants: Jon F. Hillyer, M.D. (11.1% interest); Michael C. Jungkeit, M.D. (17.3% interest); Paul A. Kremer (15.1% interest); James Lin, M.D. (15.9% interest); and David J. O’Morchoe (13.1% interest).

Pacific Surgery Center is seeking to amend Certificate of Need #1785 (“CN #1785”), which was issued on June 27, 2019 to remove Condition #3. CN #1785 authorized the expansion of its existing 3-OR ASF to a 4-OR ASF at 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370.

2. Identify the legal structure of the applicant (LLC, PLLC, etc.) and if known, provide the UBI number.

North Kitsap Ambulatory Surgery Center, LLC is a Washington limited liability company. Its UBI is 600 558 138.

3. Provide the name, title, address, telephone number, and email address of the contact person for this application.

Please direct questions regarding this application to the following:

Emily R. Studebaker, Esq.  
Studebaker Nault, PLLC  
11900 N.E. 1st Street, Suite 300  
Bellevue, WA 98005  
Tel: (425) 279-9929  
E-mail: [estudebaker@studebakernault.com](mailto:estudebaker@studebakernault.com)

4. Provide the name, title, address, telephone number, and email address of any other representatives authorized to speak on your behalf related to the screening of this application (if any).

Emily R. Studebaker, Esq.

Studebaker Nault, PLLC  
11900 N.E. 1st Street, Suite 300  
Bellevue, WA 98005  
Tel: (425) 279-9929  
E-mail: [estudebaker@studebakernault.com](mailto:estudebaker@studebakernault.com)

5. Provide an organizational chart that clearly identifies the business structure of the applicant(s) and the role of the facility in this application.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

### **Project Description**

Answers to the following questions will help the department fully understand the type of facility you are proposing as well as the type of services to be provided. Your answers in this section will provide context for the reviews under Need ([WAC 246-310-210](#)) and Structure and Process of Care ([WAC 246-310-230](#))

1. Provide the name and address of the existing facility.

The facility's name is North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center. Its address is 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370.

2. Provide the name and address of the proposed facility. If an address is not yet assigned, provide the county parcel number and the approximate timeline for assignment of the address.

N/A. The facility is already existing and operational.

3. Provide a detailed description of the proposed project.

CN #1785 was issued to Pacific Surgery Center on June 27, 2019 and authorized the expansion of its existing 3-OR ASF to a 4-OR ASF at 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370. Pacific Surgery Center is seeking removal of Condition #3 on CN #1785. Condition #3 states, "North Kitsap Ambulatory Surgery Center Inc. d/b/a Pacific Surgery Center will finance the project as stated in the application." As indicated in the Department's June 6, 2019 evaluation, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through Kitsap Bank. Instead, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through The Huntington National Bank.

Pacific Surgery Center will provide surgical services including gastroenterology, general surgery, gynecology, ophthalmology, otolaryngology, orthopedics, pain management, plastics, podiatry, radiology oncology, and urology.

4. With the understanding that the review of a Certificate of Need application typically takes at least 6-9 months, provide an estimated timeline for project implementation, below:

Event	Anticipated Month/Year
Design complete	September 2021
Construction Commenced	February 2020
Construction Completed	August 2023
Facility Prepared for Survey	August 2023
Project Completion	September 2023

5. Identify the surgical specialties to be offered at this facility by checking the applicable boxes below. Also attach a list of typical procedures included within each category.

- |   |   |   |
|---|---|---|
| <input checked="" type="checkbox"/> Ear, Nose, & Throat | <input type="checkbox"/> Maxillofacial            | <input checked="" type="checkbox"/> Pain Management |
| <input checked="" type="checkbox"/> Gastroenterology    | <input checked="" type="checkbox"/> Ophthalmology | <input checked="" type="checkbox"/> Plastic Surgery |
| <input checked="" type="checkbox"/> General Surgery     | <input type="checkbox"/> Oral Surgery             | <input checked="" type="checkbox"/> Podiatry        |
| <input checked="" type="checkbox"/> Gynecology          | <input checked="" type="checkbox"/> Orthopedics   | <input checked="" type="checkbox"/> Urology         |

☐ Other? Describe in detail: radiology and oncology

6. If you checked gastroenterology, above, please clarify whether this includes the full spectrum of gastroenterological procedures, or if this represents a specific sub-specialty: This includes the full spectrum of gastroenterological procedures.

☐ Endoscopy      ☐ Bariatric Surgery      ☐ Other: \_\_\_\_\_

7. For existing facilities, provide a discussion of existing specialties and how these would or would not change as a result of the project.

CN #1785 was issued to Pacific Surgery Center on June 27, 2019 and authorized the expansion of its existing 3-OR ASF to a 4-OR ASF at 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370. Pacific Surgery Center is seeking removal of Condition #3 on CN #1785. Condition #3 states, "North Kitsap Ambulatory Surgery Center Inc. d/b/a Pacific Surgery Center will finance the project as stated in the application." As indicated in the Department's June 6, 2019 evaluation, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through Kitsap Bank. Instead, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through The Huntington National Bank.

Pacific Surgery Center will provide surgical services including gastroenterology, general surgery, gynecology, ophthalmology, otolaryngology, orthopedics, pain management, plastics, podiatry, radiology oncology, and urology.

8. Identify how many operating rooms will be at this facility at project completion. Note, for certificate of need and credentialing purposes, “operating rooms” and “procedure rooms” are one and the same.

Pacific Surgery Center has four ORs.

9. Identify if any of the operating rooms at this facility would be exclusively dedicated to endoscopy, cystoscopy, or pain management services. [WAC 246-310-270\(9\)](#)

None of the ORs will be exclusively dedicated to endoscopy, cystoscopy, or pain management services.

10. Provide a general description of the types of patients to be served by the facility at project completion (e.g. age range, etc.).

Pacific Surgery Center offers and provides care to patients ages six months and older who require ambulatory surgery, are not expected to require hospitalization, and can be treated appropriately in an outpatient surgery setting.

11. If you submitted more than one letter of intent for this project, provide a copy of the applicable letter of intent that was submitted according to [WAC 246-310-080](#).

Please see [Exhibit A](#) for the Letter of Intent for the Amendment Application.

12. Provide single-line drawings (approximately to scale) of the facility, both before and after project completion.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

13. Confirm that the facility will be licensed and certified by Medicare and Medicaid, which is a requirement for CN approval. If this application proposes the expansion of an existing facility, provide the existing facility’s identification numbers.

ASF License #: ASF.FS.60100106

Medicare #: G000200402

Medicaid #: 7009293

14. Identify whether this facility will seek accreditation. If yes, identify the accrediting body.

Pacific Surgery Center is accredited by the Accreditation Association for Ambulatory Health Care.

15. **OPTIONAL** – The Certificate of Need program highly recommends that applicants consult with the office of Construction Review Services (CRS) early in the planning process. CRS review is required prior to construction and licensure ([WAC 246-330-500](#), [246-330-505](#), and [246-330-510](#)). Consultation with CRS can help an applicant reliably predict the scope of work required for licensure and certification. Knowing the required construction standards can help the applicant to more accurately estimate the capital expenditure associated with a project.

If your project includes construction, please indicate if you've consulted with CRS and provide your CRS project number.

The CRS project number is #61139767.

### **Certificate of Need Review Criteria**

#### **A. Need (WAC 246-310-210)**

[WAC 246-310-210](#) provides general criteria for an applicant to demonstrate need for healthcare facilities or services in the planning area. [WAC 246-310-270](#) provides specific criteria for ambulatory surgery applications. Documentation provided in this section must demonstrate that the proposed facility will be needed, available, and accessible to the community it proposes to serve. Some of the questions below only apply to existing facilities proposing to expand. For any questions that are not applicable to your project, explain why.

Some of the questions below require you to access facility data in the planning area. Please contact the Certificate of Need Program for any planning area definitions, facility lists, and applicable survey responses with utilization data.

1. List all surgical facilities operating in the planning area – to include hospitals, ASFs, and ASCs.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. In its evaluation dated June 6, 2019, the Department's application of the numeric methodology indicated a surplus of 0.84 outpatient ORs in 2022. However, the Department noted that WAC 246-310-270(4) allows flexibility to approve ORs absent numeric need. It noted that the surplus of mixed use ORs was less than one OR, and mathematically, the methodology identified a shortage of over nine outpatient ORs. It found that the surplus of mixed-use ORs did not negate the fact that there was an apparent shortage of outpatient ORs. Based on the consistent high historical utilization of Pacific Surgery Center, stated lack of scheduling flexibility, associated patient wait time, and lack of opposition from other planning area providers, the Department concluded the project was needed.

2. Identify which, if any, of the facilities listed above provide similar services to those proposed in this application.



Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. In its evaluation dated June 6, 2019, the Department's application of the numeric methodology indicated a surplus of 0.84 outpatient ORs in 2022. However, the Department noted that WAC 246-310-270(4) allows flexibility to approve ORs absent numeric need. It noted that the surplus of mixed use ORs was less than one OR, and mathematically, the methodology identified a shortage of over nine outpatient ORs. It found that the surplus of mixed-use ORs did not negate the fact that there was an apparent shortage of outpatient ORs. Based on the consistent high historical utilization of Pacific Surgery Center, stated lack of scheduling flexibility, associated patient wait time, and lack of opposition from other planning area providers, the Department concluded the project was needed.

3. Provide a detailed discussion outlining how the proposed project will not represent an unnecessary duplication of services.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. In its evaluation dated June 6, 2019, the Department's application of the numeric methodology indicated a surplus of 0.84 outpatient ORs in 2022. However, the Department noted that WAC 246-310-270(4) allows flexibility to approve ORs absent numeric need. It noted that the surplus of mixed use ORs was less than one OR, and mathematically, the methodology identified a shortage of over nine outpatient ORs. It found that the surplus of mixed-use ORs did not negate the fact that there was an apparent shortage of outpatient ORs. Based on the consistent high historical utilization of Pacific Surgery Center, stated lack of scheduling flexibility, associated patient wait time, and lack of opposition from other planning area providers, the Department concluded the project was needed.

4. Complete the methodology outlined in [WAC 246-310-270](#), unless your facility will be exclusively dedicated to endoscopy, cystoscopy, or pain management. If your facility will be exclusively dedicated to endoscopy, cystoscopy, or pain management, so state. If you would like a copy of the methodology template used by the department, please contact the Certificate of Need Program.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. In its evaluation dated June 6, 2019, the Department's application of the numeric methodology indicated a surplus of 0.84 outpatient ORs in 2022. However, the Department noted that WAC 246-310-270(4) allows flexibility to approve ORs absent numeric need. It noted that the surplus of mixed use ORs was less than one OR, and mathematically, the methodology identified a shortage of over nine outpatient ORs. It found that the surplus of mixed-use ORs did not negate the fact that there was an apparent shortage of outpatient ORs. Based on the consistent high historical utilization of Pacific Surgery Center, stated lack of scheduling flexibility, associated patient wait time, and lack of opposition from other planning area providers, the Department concluded the

project was needed.

5. If the methodology does not demonstrate numeric need for additional operating rooms, [WAC 246-310-270\(4\)](#) gives the department flexibility. WAC 246-310-270(4) states: “Outpatient operating rooms should ordinarily not be approved in planning areas where the total number of operating rooms available for both inpatient and outpatient surgery exceeds the area need.”

These circumstances could include but are not limited to: lack of CN approved operating rooms in a planning area, lack of providers performing widely utilized surgical types, or significant in-migration to the planning area. If there isn't sufficient numeric need for the approval of your project, please explain why the department should give consideration to this project under [WAC 246-310-270\(4\)](#). Provide all supporting data.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. In its evaluation dated June 6, 2019, the Department's application of the numeric methodology indicated a surplus of 0.84 outpatient ORs in 2022. However, the Department noted that WAC 246-310-270(4) allows flexibility to approve ORs absent numeric need. It noted that the surplus of mixed use ORs was less than one OR, and mathematically, the methodology identified a shortage of over nine outpatient ORs. It found that the surplus of mixed-use ORs did not negate the fact that there was an apparent shortage of outpatient ORs. Based on the consistent high historical utilization of Pacific Surgery Center, stated lack of scheduling flexibility, associated patient wait time, and lack of opposition from other planning area providers, the Department concluded the project was needed.

6. For existing facilities, provide the facility's historical utilization for the last three full calendar years.

**Table 1**  
**Historical Utilization**

	<b>2022</b>	<b>2021</b>	<b>2020</b>
Procedure Volumes	5,341	5,779	7,529

7. Provide projected surgical volumes at the proposed facility for the first three full years of operation, separated by surgical type. For existing facilities, also provide the intervening years between historical and projected. Include the basis for all assumptions used as the basis for these projections.

**Table 2**  
**Projected Utilization**

	2024	2025	2026
Procedure Volumes	7,770	8,003	8,243

8. Identify any factors in the planning area that could restrict patient access to outpatient surgical services. [WAC 246-310-210\(1\) and \(2\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

9. In a CN-approved facility, [WAC 246-310-210\(2\)](#) requires that “all residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.” Confirm your facility will meet this requirement.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

10. Provide a copy of the following policies:

- Admissions policy
- Charity care or financial assistance policy
- Patient Rights and Responsibilities policy
- Non-discrimination policy
- Any other policies directly related to patient access to care.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

## **B. Financial Feasibility (WAC 246-310-220)**

Financial feasibility of a project is based on the criteria in [WAC 246-310-220](#).

1. Provide documentation that demonstrates that the immediate and long-range capital and operating costs of the project can be met. This should include but is not limited to:

- Utilization projections. These should be consistent with the projections provided under “Need” in section A. Include the basis for all assumptions.
- Pro Forma revenue and expense projections for at least the first three full calendar years of operation. Include the basis for all assumptions.
- Pro Forma balance sheet for the current year and at least the first three full calendar years of operation. Include the basis for all assumptions.
- For existing facilities, provide three years of historical revenue and expense statements, including the current year. Ensure these are in the same format as the pro forma projections. For incomplete years, identify whether the data is annualized.

See Table 2, Projected Utilization, above. Please also see Exhibit B for the pro forma revenue and expense projections for Pacific Surgery Center.

2. Provide the following applicable agreements/contracts:

- Management agreement
- Operating agreement
- Medical director agreement
- Development agreement
- Joint Venture agreement

Note that all agreements above must be valid through at least the first three full years following completion of the project or have a clause with automatic renewals. Any agreements in draft form must include a document signed by both entities committing to execute the agreement as submitted following CN approval.

Please see the following exhibits:

- Exhibit C, Management Agreement by North Kitsap Ambulatory Surgery Center, LLC between Surgical Care Affiliates, LLC and North Kitsap Ambulatory Surgery Center, LLC dated December 1, 2021;
- Exhibit D, Amended and Restated Limited Liability Company Agreement of North Kitsap Ambulatory Surgery Center, LLC dated December 1, 2021; and
- Exhibit E, Medical Director Agreement between Ron Wayne, M.D. and North Kitsap Ambulatory Surgery Center, LLC dated May 1, 2023.

3. Certificate of Need approved ASFs must provide charity care at levels comparable to those at the hospitals in the ASF planning area. You can access charity care statistics from the Hospital Charity Care and Financial Data (HCCFD) website. Identify the amount of charity care projected to be provided at this facility, captured as a percentage of gross revenue, as well as charity care information for the planning area hospitals. The table below is for your convenience but is not required. WAC 246-310-270(7)

Planning Area Hospital 3-year Average Charity Care as a Percentage of Total Revenue	
Projected Facility Charity Care as a Percentage of Total Revenue	

CN #1785 addresses charity care at Condition #2. It states: “North Kitsap Ambulatory Surgery Center Inc. d/b/a Pacific Surgery Center will provide charity care in compliance with its charity care policies reviewed and approved by the Department of Health, or any subsequent policies reviewed and approved by the Department of Health. North Kitsap Ambulatory Surgery Center Inc. d/b/a Pacific Surgery Center will use reasonable efforts to provide charity care in an amount comparable to or exceeding the average amount of charity care provided by hospitals in Kitsap County. Currently, this amount is 0.45% gross revenue and 1.49% of adjusted revenue. North Kitsap Ambulatory Surgery Center Inc. d/b/a Pacific Surgery Center will maintain records of charity care applications received and the dollar amount of charity care discounts granted. The department requires these records to be available upon request.” Pacific Surgery Center is providing charity care consistent with Condition #2 and will continue to do so.

4. Provide documentation of site control. This could include either a deed to the site or a lease agreement for the site. If a lease agreement is provided, the terms must be for at least five years following project completion. The costs identified in these documents should be consistent with the Pro Forma provided in response to question 1.

Please see Exhibit F, First Amendment to Commercial Lease Agreement between Pacific Medical Building, LLC and North Kitsap Ambulatory Surgery Center, LLC dated May 31, 2023.

5. For new facilities, confirm that the zoning for your site is consistent with the project.

N/A. Pacific Surgery Center is not a new facility.

6. Complete the table below with the estimated capital expenditure associated with this project. Capital expenditure is defined under WAC 246-310-010(10). If you have other line items not listed below, please include the items with a definition of the line item. Include all assumptions used as the basis the capital expenditure estimate.

Item	Cost
a. Land Purchase	\$0
b. Utilities to Lot Line	\$0
c. Land Improvements	\$0
d. Building Purchase	\$0
e. Residual Value of Replaced Facility	\$0
f. Building Construction	\$1,000,000

g. Fixed Equipment (not already included in the construction contract)	\$88,339
h. Movable Equipment	\$42,722
i. Architect and Engineering Fees	\$161,000
j. Consulting Fees	\$35,000
k. Site Preparation	\$0
l. Supervision and Inspection of Site	\$0
m. Any Costs Associated with Securing the Sources of Financing (include interim interest during construction)	\$20,000
1. Land	\$0
2. Building	\$0
3. Equipment	\$0
4. Other	\$0
n. Washington Sales Tax	\$128,406
<b>Total Estimated Capital Expenditure</b>	<b>\$1,475,467</b>

7. Identify the entity or entities responsible for funding the capital expenditure identified above. If more than one entity is responsible, provide breakdown of percentages and amounts for all.

As indicated in the Department's June 6, 2019 evaluation, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through Kitsap Bank. Instead, Pacific Surgery Center intended to fund the project using a combination of cash on hand and debt financing through The Huntington National Bank. Please see Exhibit G.

8. Please identify the amount of start-up costs expected for this project. Include any assumptions that went into determining the start-up costs. If no start-up costs are needed, explain why.

See answer to Question #6 above. There are no additional start-up costs.

9. Provide a non-binding contractor's estimate for the construction costs for the project.

Please see Exhibit H for contractor's estimate.

10. Explain how the proposed project would or would not impact costs and charges to patients for health services. WAC 246-310-220

The proposed project would provide patients in the Kitsap County health services planning area the ability to obtain outpatient surgical services at an ASF, an outpatient surgical setting that is significantly more cost-effective for patients and payors.

11. Provide documentation that the costs of the project, including any construction

costs, will not result in an unreasonable impact on the costs and charges to patients for health services in the planning area. WAC 246-310-220

Please see Exhibit H for documentation of the project costs. Because freestanding ASFs are more efficient and cost-effective in comparison to hospital outpatient surgery departments, the contractual rates for purchasers in the Kitsap County health services planning area can be lower in a freestanding setting, which translates to cost savings to patients and payors.

12. Provide the projected payer mix by gross revenue and by patients using the example table below. If “other” is a category, define what is included in “other.”

Payer	Percentage by Patient	Percentage by Revenue
Medicare	54%	61%
Medicaid	6%	1%
Other Payers:		
Other Government Payors	5%	6%
Worker’s Compensation	1%	0%
Commercial Payors	33%	29%
Self-pay	1%	3%
Total	100%	100%

13. If this project proposes CN approval of an existing facility, provide the historical payer mix by revenue and patients for the existing facility for the most recent year. The table format should be consistent with the table shown above.

Pacific Surgery Center 2022 payer mix by gross revenue and by patients:

14.

Payer	Percentage by Patient	Percentage by Revenue
Medicare	54%	61%
Medicaid	6%	1%
Other Payers:		
Other Government Payors	5%	6%
Worker’s Compensation	1%	0%
Commercial Payors	33%	29%
Self-pay	1%	3%
Total	100%	100%

15.

16. Provide a listing of new equipment proposed for this project. The list should include estimated costs for the equipment. If no new equipment is required, explain.



Anesthesia Machine and Cart: \$42,722  
Surgical Lights/Equipment Boom: \$68,119

17. Provide a letter of financial commitment or draft agreement for each source of financing (e.g. cash reserves, debt financing/loan, grant, philanthropy, etc.). WAC 246-310-220.

Please see Exhibit G.

18. If this project will be debt financed through a financial institution, provide a repayment schedule showing interest and principal amount for each year over which the debt will be amortized. WAC 246-310-220

Please see Exhibit G.

19. Provide the applicant's audited financial statements covering the most recent three years. WAC 246-310-220

Pacific Surgery Center does not have audited financial statements available, however, it has provided unaudited financial statements attached as Exhibit I.

#### **B. Structure and Process of Care ([WAC 246-310-230](#))**

Projects are evaluated based on the criteria in [WAC 246-310-230](#) for staffing availability, relationships with other healthcare entities, relationships with ancillary and support services, and compliance with federal and state requirements. Some of the questions within this section have implications on financial feasibility under [WAC 246-310-220](#) and will be marked as such.

1. Identify all licensed healthcare facilities owned, operated by, or managed by the applicant. This should include all facilities in Washington State as well as out-of-state facilities, and should identify the license/accreditation status of each facility.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

2. Provide a table that shows FTEs [full time equivalents] by classification (e.g. RN, LPN, Manager, Scheduler, etc.) for the proposed facility. If the facility is currently in operation, include at least the last three full years of operation, the current year, and the first three full years of operation following project completion. There should be no gaps in years. All staff classifications should be defined.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.



3. Provide the basis for the assumptions used to project the number and types of FTEs identified for this project.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

4. Provide the name and professional license number of the current or proposed medical director. If not already disclosed under [WAC 246-310-220\(1\)](#) above, identify if the medical director is an employee or under contract.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

5. If the medical director is/will be an employee rather than under contract, provide the medical director's job description.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

6. Identify key staff by name, if known (e.g. nurse manager, clinical director, etc.)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

7. Provide a list of physicians who would use this surgery center, including their names, license numbers, and specialties. [WAC 246-310-230\(3\) and \(5\)](#).

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

8. For existing facilities, provide names and professional license numbers for current credentialed staff. [WAC 246-310-230\(3\) and \(5\)](#).

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

9. Describe your methods for staff recruitment and retention. If any barriers to staff recruitment exist in the planning area, provide a detailed description of your plan to staff this project. [WAC 246-310-230\(1\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

10. For existing facilities, provide a listing of ancillary and support services already in place. [WAC 246-310-230\(2\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

11. For new facilities, provide a listing of ancillary and support services that will be established. [WAC 246-310-230\(2\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

12. Identify whether any of the existing ancillary or support agreements are expected to change as a result of this project. [WAC 246-310-230\(2\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

13. If the ASF is currently operating, provide a listing of healthcare facilities with which the ASF has working relationships. [WAC 246-310-230\(4\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

14. Identify whether any of the existing working relationships with healthcare facilities listed above would change as a result of this project. [WAC 246-310-230\(4\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

15. For a new facility, provide a listing of healthcare facilities with which the ASF would establish working relationships. [WAC 246-310-230\(4\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

16. Provide a copy of the existing or proposed transfer agreement with a local hospital. [WAC 246-310-230\(4\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

17. Provide an explanation of how the proposed project will promote continuity in the provision of health care services in the planning area, and not result in an unwarranted fragmentation of services. [WAC 246-310-230\(4\)](#)

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

18. Provide an explanation of how the proposed project will have an appropriate relationship to the service area's existing health care system as required in [WAC 246-310-230\(4\)](#).

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

19. Identify whether any facility or practitioner associated with this application has a history of the actions listed below. If so, provide evidence that the proposed or existing facility can and will be operated in a manner that ensures safe and adequate care to the public and conforms to applicable federal and state requirements. [WAC 246-310-230\(3\)](#) and [\(5\)](#)
- a. A criminal conviction which is reasonably related to the applicant's competency to exercise responsibility for the ownership or operation of a health care facility; or
  - b. A revocation of a license to operate a healthcare facility; or
  - c. A revocation of a license to practice as a health profession; or
  - d. Decertification as a provider of services in the Medicare or Medicaid program because of failure to comply with applicable federal conditions of participation.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785. No facility or practitioner associated with Pacific Surgery Center has any history with respect to criminal convictions related to the ownership or operation of a health care facility, license revocation, or other sanction described in WAC 246-310-230(3) or (5).

**C. Cost Containment ([WAC 246-310-240](#))**

Projects are evaluated based on the criteria in WAC 246-310-240 in order to identify the

best available project for the planning area.

1. Identify all alternatives considered prior to submitting this project.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

2. Provide a comparison of the project with alternatives rejected by the applicant. Include the rationale for considering this project to be superior to the rejected alternatives. Factors to consider can include, but are not limited to: patient access to healthcare services, capital cost, legal restrictions, staffing impacts, quality of care, and cost or operation efficiency.

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.

3. Identify any aspects of the facility's design that lead to operational efficiency. This could include but is not limited to: LEED building, water filtration, or the methods for construction, etc. [WAC 246-310-240\(2\) and \(3\)](#).

Based on technical assistance received from the Department, this question is not applicable because this amendment application seeks only to remove Condition #3 from CN #1785.



## **Certificate of Need Program Revised Code of Washington (RCW) and Washington Administrative Code (WAC)**

Certificate of Need Program laws [RCW 70.38](#)

Certificate of Need Program rules [WAC 246-310](#)

### **Commonly Referenced Rules for Ambulatory Surgery Projects:**

<b>WAC Reference</b>	<b>Title/Topic</b>
<a href="#">246-310-010</a>	Certificate of Need Definitions
<a href="#">246-310-160</a>	Regular Review Process
<a href="#">246-310-200</a>	Bases for findings and action on applications
<a href="#">246-310-210</a>	Determination of Need
<a href="#">246-310-220</a>	Determination of Financial Feasibility
<a href="#">246-310-230</a>	Criteria for Structure and Process of Care
<a href="#">246-310-240</a>	Determination of Cost Containment
<a href="#">246-310-270</a>	Ambulatory Surgery

### **Certificate of Need Contact**

**Information:** [Certificate of Need Program Web Page](#) Phone: (360) 236-2955  
Email: [FSLCON@doh.wa.gov](mailto:FSLCON@doh.wa.gov)

### **Construction Review Services Resources:**

[Construction Review Services Program Web Page](#) Phone: (360) 236-2944  
Email: [CRS@doh.wa.gov](mailto:CRS@doh.wa.gov)

### **Licensing Resources:**

[Ambulatory Surgical Facilities Laws, RCW 70.230 Ambulatory Surgical Facilities Rules, WAC 246-330 Ambulatory Surgical Facilities Program Web Page](#)

### **Hospital Charity Care and Financial Data (HCCFD) Program Resources**

[HCCFD Web Page](#)  
Email: [CharityCare@doh.wa.gov](mailto:CharityCare@doh.wa.gov)

EXHIBIT A

LETTER OF INTENT



North Kitsap Ambulatory Surgery Center, LLC  
dba: Pacific Surgery Center

20669 Bond Road NE Ste 200  
Poulsbo, WA 98370

Phone: 360.779.6527  
Fax: 360.697.2743

May 26, 2023

Eric Hernandez, Manager  
Certificate of Need Program  
Department of Health  
111 Israel Road S.E.  
Tumwater, WA 98501

*Sent via email: eric.hernandez@doh.wa.gov; fslcon@doh.wa.gov*

Re: Letter of Intent  
North Kitsap Ambulatory Surgery Center, LLC

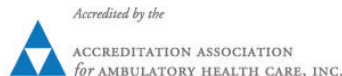
Dear Mr. Hernandez:

In accordance with WAC 246-310-080, North Kitsap Ambulatory Surgery Center, LLC d/b/a Pacific Surgery Center hereby submits this Letter of Intent proposing to operate a certificate of need approved ambulatory surgery center ("ASC") in the Kitsap County secondary health services planning area.

Pacific Surgery Center submits the following information:

1. *Description of proposed services:* Pacific Surgery Center was issued Certificate of Need #1785 ("CN #1785") to operate its four-operating room ambulatory surgery center. Pacific Surgery Center is requesting that the Department of Health amend CN #1785 to remove Condition #3 in order to allow Pacific Surgery Center to obtain alternative financing for the project, which project will provide surgical services including gastroenterology, general surgery, gynecology, ophthalmology, otolaryngology, orthopedics, pain management, plastics, podiatry, radiology oncology, and urology.
2. *Estimated cost of proposed project:* The estimated capital expenditure associated with the proposed project is \$0.
3. *Identification of service area:* The service area for the proposed project is the Kitsap County secondary health services planning area.

*"The Peninsula's Premier Surgical Center" Celebrating Over 20 Years of Service*





North Kitsap Ambulatory Surgery Center, LLC  
dba: Pacific Surgery Center

20669 Bond Road NE Ste 200  
Poulsbo, WA 98370

Phone: 360.779.6527  
Fax: 360.697.2743

Thank you for your assistance in this matter. If you have any questions, please contact our attorney, Emily R. Studebaker, at [estudebaker@studebakemault.com](mailto:estudebaker@studebakemault.com) or (425) 279-9929.

Sincerely,

A handwritten signature in blue ink that reads "Jamie Fowler".

Jamie Fowler, BHCA, CASC  
Chief Executive Officer

*"The Peninsula's Premier Surgical Center" Celebrating Over 20 Years of Service*





## EXHIBIT B

### PRO FORMA REVENUE AND EXPENSE PROJECTIONS FOR PACIFIC SURGERY CENTER

3 Yr Income Statement	Y1	Y2	Y3
	FCST	FCST	FCST
<b>Volume</b>	<b>7,770</b>	<b>8,003</b>	<b>8,243</b>
NPR	15,362,033	16,154,766	16,972,197
Other Income	14,671	14,965	15,264
<b>Revenue</b>	<b>\$ 15,376,705</b>	<b>\$ 16,169,731</b>	<b>\$ 16,987,461</b>
Clinical Labor	3,144,712	3,336,225	3,539,401
Non-Clinical Labor	716,174	737,659	759,789
All Other S&B	1,398,488	1,483,656	1,574,010
<b>SWB</b>	<b>5,259,374</b>	<b>5,557,540</b>	<b>5,873,200</b>
Implants	3,165,865	3,342,362	3,528,698
MSP (Med. / Surg. / Pharm.)	2,400,788	2,534,632	2,675,938
<b>Supplies</b>	<b>5,566,653</b>	<b>5,876,994</b>	<b>6,204,637</b>
<b>Variable Exp.</b>	<b>1,615,286</b>	<b>1,624,004</b>	<b>1,656,484</b>
Base Rent	451,586	451,586	451,586
CAM	176,382	181,673	187,124
<b>Lease Exp.</b>	<b>627,968</b>	<b>633,259</b>	<b>638,709</b>
Insurance	96,145	98,068	100,030
Tax	241,553	246,384	251,312
Fixed Exp.	337,699	344,453	351,342
Bad Debt	230,651	242,546	254,812
<b>EBITDAM</b>	<b>1,739,075</b>	<b>1,890,935</b>	<b>2,008,277</b>
Management Fees	605,255.30	636,488.79	668,695.40
<b>Total Operating Expenses</b>	<b>14,242,885</b>	<b>14,915,284</b>	<b>15,647,879</b>
<b>EBITDA</b>	<b>1,133,819</b>	<b>1,254,446</b>	<b>1,339,582</b>

**Growth Assumptions**

	2024	2025	2026
Case Volume	3%	3%	3%
NPR/Case	2%	2%	2%
Other Revenue	2%	2%	2%
SWB/Case	3%	3%	3%
Supplies/Case	2.50%	2.50%	2.50%
Variable Expenses/Case	2%	2%	2%
Rent	3%	3%	3%
Other Fixed Expenses	2%	2%	2%

**Fourth (New) Operating Room**

	2024	2025	2026
ENT	353	353	353
General Surgery	75	75	75
Pain Management	504	504	504
Podiatry	244	244	244
Gynecology	160	160	160
Plastics	156	156	156
Ophthalmology	141	141	141
Gastroenterology	238	238	238
Radiology/Oncology	60	60	60
	1,932	1,932	1,932

## EXHIBIT C

MANAGEMENT AGREEMENT BY NORTH KITSAP  
AMBULATORY SURGERY CENTER, LLC  
BETWEEN SURGICAL CARE AFFILIATES, LLC  
AND NORTH KITSAP AMBULATORY SURGERY  
CENTER, LLC

MANAGEMENT AGREEMENT

NORTH KITSAP AMBULATORY SURGERY CENTER, LLC

**THIS MANAGEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of December 1, 2021 (the “**Effective Date**”) by and between **SURGICAL CARE AFFILIATES, LLC**, a Delaware limited liability company (“**SCA**”), and **NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**, a Washington limited liability company (the “**Owner**”).

**RECITALS:**

**WHEREAS**, the Owner owns and operates an ambulatory surgery center located at 20669 Bond Road NE, Suite 200, Poulsbo, Washington 98370 known as “Pacific Surgery Center” (the “**Center**”); and

**WHEREAS**, the Owner and SCA each desire that the Owner engage SCA to provide certain non-medical management and administrative services to the Center, pursuant to the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises, which are hereby incorporated into this Agreement as an integral part hereof and not as mere recitals hereto, and of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. SCOPE OF ENGAGEMENT

1.1 Provision of Services. The Owner hereby retains SCA for the purpose of rendering certain management, administration, purchasing services and support (together, the “**Services**”), as described and set forth on the appendices attached hereto and incorporated herein by this reference (each, an “**Appendix**,” and together, the “**Appendices**”), subject to the goals, policies, objectives and directives established by the Owner, all of which shall be consistent with applicable state and federal law, as well as the requirements of any applicable accrediting bodies. SCA shall be responsible for providing only the Services described herein and set forth on the Appendices. SCA shall not be responsible for the provision of any other items or services; provided that if the Owner requests any additional items or services, and SCA agrees to provide such items or services, the Owner shall pay SCA a fair market value fee for such items or services, such fee to be determined by SCA in good faith and approved by the Owner.

1.2 Coding Services. The Owner may elect to engage SCA to provide coding services as described and set forth on Appendix 14. If the Owner does not engage SCA to provide coding services, then the Owner agrees to the following provisions in order to ensure that coding services are obtained for the Center in a manner that is consistent with SCA’s regulatory compliance program:

a. If the Owner engages a coding services provider other than SCA, then the Owner agrees to obtain SCA’s approval of such provider, which approval shall not be unreasonably withheld, based on SCA being assured that the provider has an effective regulatory compliance program and uses certified coders. Pursuant to the terms set forth on Exhibit C hereto, SCA and the Owner may agree for the Owner to obtain and pay for a commercially reasonable external audit of the external provider’s coding services at least annually, and more often if SCA has good reason for concern about the quality of the coding services.

b. If the Owner does not use an external provider and uses an in-house coder, such coder must be credentialed according to SCA’s policies. Pursuant to the terms as set forth on Exhibit C hereto, SCA and the Owner may agree for the Owner to obtain and pay for a

commercially reasonable external audit of the in-house coder's services at least annually, and more often if SCA has a good reason for concern about the quality of the coding services.

1.3 Standard of Performance. SCA shall perform all Services for the account of and as agent of the Owner. SCA shall perform the Services using commercially reasonable efforts. SCA's provision of the Services shall be subject to the control of the Owner, which shall have final authority in all matters relating to the Center's operations.

1.4 Exclusive Authority; Right to Subcontract. SCA shall have the exclusive right and authority to perform all of the Services described herein. The Owner shall not perform, or contract with any person or entity other than SCA to perform, any of the Services, or any services similar to the Services, on its behalf. SCA shall have the right to subcontract with any other persons or entities, including any affiliate of SCA, for the provision of any of the Services; provided, however, that SCA shall remain obligated to the Owner under this Agreement for any such subcontracted Services. Any third-party costs of additional services agreed to by the Owner (i.e., those services outside of SCA's obligations under this Agreement and outside of the services described on the exhibits hereto) shall be billed without mark-up and paid by the Owner.

1.5 Authority. SCA shall have the right to act as the agent of the Owner and/or the Center in the procuring of licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary, appropriate or useful to SCA in the carrying out of its duties as specified under this Agreement. SCA shall have the further authority, without approval of the Owner, to enter into any third-party contract on behalf of the Owner the expense of which is either (i) included in the Owner's budget; or (ii) not more than \$150,000 in the annual aggregate. SCA shall be authorized to make withdrawals from the Owner's operating account to pay all costs and expenses incurred in the operation of the Center, including payment of the Management Fee (as defined below), and to fulfill all other terms of this Agreement. For the sake of clarification, the parties acknowledge and agree that SCA shall (i) make all decisions on behalf of the Owner and the Center regarding the hiring, firing and compensation terms of the administrator of the Center, (ii) have the responsibility over the operating and capital budgets of the Owner and the Center, and (iii) generally supervise and oversee the day-to-day operations of the Owner and the Center.

1.6 Annual Budgets. SCA shall have the exclusive authority to prepare and adopt operating and capital budgets for the Owner and the Center each fiscal year. SCA shall prepare operating and capital budgets for the Owner each fiscal no later than sixty (60) days prior to the first day of the Owner's fiscal year. Each such annual budget shall cover both capital and operating expenditures, and shall include, at a minimum, the following: (i) a projected annual income statement on a month-by-month basis; (ii) a description of any proposed capital expenditures, including projected dates for commencement and completion of the foregoing; and (iii) a description of the proposed investment of any funds of the Owner which are (or are expected to become) available for investment. SCA shall not finalize and adopt any budget for the Owner without providing a draft to the Owner's board of managers at least thirty (30) days prior to SCA's implementation of such budget, and SCA agrees to consult with the Owner's board of managers regarding the contents of any such budget that SCA plans to implement.

1.7 Authority over Employees. SCA shall make available to the Owner the services of all employees reasonably necessary to staff and operate the Center (the "Employees"). SCA shall have the right to terminate the employment of an Employee and to hire such additional individuals as Employees as SCA determines is reasonably necessary from time to time. SCA shall have the right to control and direct the Employees as to the performance of duties and as to the means by which such duties are performed.

1.8 Legal Compliance; Licensing. The Owner and SCA shall comply with any and all applicable federal, state and local statutes, regulations, rules, orders or other requirements which affect the Center and/or its operations. The Owner (with the assistance of SCA if set forth in the Appendices) and SCA, on behalf of itself, shall obtain and maintain all licenses and accreditations as are necessary for the provision of medical and health care services and the operation of an ambulatory surgery center. If reasonably requested by SCA and approved by the Owner, the Owner hereby agrees to participate in compliance and validation audits by, or on behalf of, SCA. Such audits may include, but are not limited to, documentation reviews, interviews, observations, and onsite visits. The Owner shall promptly fund or, as appropriate, reimburse SCA for all expenses incurred by SCA in performing such audits. The Owner shall have the right to select the auditor.

1.9 Retained Authority. Nothing in this Agreement is intended to delegate to SCA any of the powers, duties or responsibilities vested exclusively in the Owner by applicable law.

1.10 Power of Attorney. The Owner hereby appoints SCA and any subcontractor designated by SCA, as its attorney-in-fact for the limited purpose of performing the functions described in this Agreement, including, without limitation, the authority to (i) take all steps necessary and appropriate to supervise and oversee the submission, processing and collection of all claims for payment from patients and third-party payors, including the Medicare and Medicaid programs, for professional services rendered by the Owner; (ii) endorse all checks made payable to the Owner in connection with the professional services rendered by the Owner; (iii) supervise and oversee the remittance of any collections from patients and third-party payors, including the Medicare and Medicaid programs; and (iv) participate in any proceeding before any governmental agency arising out of the operation of the Center. TERM

2.1 Term. The term of this Agreement shall commence as of the Effective Date and shall continue in full force and effect for an initial term of seven (7) years (the “**Initial Term**”). At the end of the Initial Term or any Renewal Term (as defined below), as long as SCA or one or more of its affiliates owns, directly or indirectly, any equity interest in the Owner, this Agreement shall automatically renew for successive five (5) year terms (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”). SCA shall have the option to terminate this Agreement upon ninety (90) days’ prior written notice to the Owner at any time that SCA or one or more of its affiliates ceases to own, directly or indirectly, any equity interest in the Owner.

2.2 Termination Upon Default. Upon ninety (90) days’ prior written notice, or ten (10) days’ prior written notice upon a payment default, either party (the “**Terminating Party**”) shall have the right to terminate this Agreement upon a material breach of this Agreement by the other party (the “**Breaching Party**”). In the event termination is for an alleged material breach other than a payment default, such notice shall describe in detail the basis upon which the Terminating Party believes such termination is justified. Upon receipt of such notice, the Breaching Party shall have ninety (90) days, or ten (10) days with respect to a payment default, during which to attempt to cure such alleged breach under this Agreement, and upon such cure being effected, the Terminating Party’s rights to terminate shall cease and this Agreement will continue in full force and effect; provided, however, that the Breaching Party shall only be entitled to cure two (2) payment defaults in any one (1) calendar year; provided, further, that in the event a Breaching Party has a third payment default in any one (1) calendar year, the Terminating Party shall be entitled to terminate this Agreement immediately upon written notice to the Breaching Party. Furthermore, if the Breaching Party has diligently attempted to effect such a cure of a breach, other than a payment default, within such ninety (90) day period but cannot complete such cure because of the failure of a third party (such as a governmental agency) to act within such period, then the Breaching Party shall have a reasonable time beyond such ninety (90) day period to complete its cure of the alleged breach.

2.3 Termination Upon Bankruptcy. Either party may terminate this Agreement immediately, upon written notice to the other party, (i) if the other party appoints or consents to the appointment of a receiver, trustee or liquidator of such party or of all or a substantial part of its assets, files a voluntary petition in bankruptcy, makes a general assignment for the benefit of creditors, files a petition or an answer seeking reorganization or arrangements with creditors or to take advantage of any insolvency law; or (ii) if an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating such party bankrupt or insolvent, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) days.

2.4 Payment Upon Termination. Upon termination of this Agreement, the Owner shall owe SCA the full amount of any fees owing and/or earned or accrued pursuant to the terms hereof, up through and including the date of termination, including all outstanding principal and interest of the Overdraft Line of Credit as set forth in Appendix 6, and any sums of money owed by the Owner to SCA, including expenses reimbursable hereunder, shall be paid immediately, and in no event more than three (3) business days after the effective date of termination. Subject to the right to withhold the Expense Reconciliation amount described below, SCA shall owe and pay immediately (and in no event more than three (3) business days after the effective date of termination) to the Owner the amount of the Company Fund Balance, if any, as set forth in Appendix 6. Upon termination hereof, SCA's obligations to perform services hereunder shall cease completely; provided, however, that the Owner and SCA shall perform such matters as are reasonably necessary, and requested in good faith by either party, to wind up the activities under this Agreement. The Owner acknowledges and agrees that some fees, reimbursable amounts and other expenses due and payable to SCA under this Agreement are not determinable with certainty upon the effective date of termination. The Owner acknowledges that up to five (5) days prior to the date of termination, SCA may provide the Owner with an estimate of amounts due to SCA upon the termination of this Agreement, including, but not limited to, any amounts due to Employees who may be terminated by SCA upon a termination of this Agreement (the "**Estimated Fees**"), and SCA may withhold all amounts available from the Company Fund Balance, up to the amount of the Estimated Fees, which would otherwise be due to the Owner upon termination. The amount of the Estimated Fees withheld from the Company Fund Balance shall be referred to as the "**Withhold Amount**". SCA shall provide the Owner with a reconciliation (the "**Expense Reconciliation**") showing any surplus or deficit between the Estimated Fees and the actual fees and expenses due to SCA under this Agreement (the "**Actual Fees**") within ninety (90) days after the effective date of termination (the "**Reconciliation Date**"), and any surplus or deficit shall be paid as follows:

a. To the extent the Estimated Fees exceed the Actual Fees, and the Withhold Amount retained by SCA was not less than the Estimated Fees, SCA shall remit to the Owner the excess amount of the Withhold Amount along with the Expense Reconciliation.

b. To the extent the Estimated Fees exceed the Actual Fees, but the Withhold Amount retained by SCA was less than the Actual Fees, the Owner shall remit any remaining amounts due to SCA necessary to reimburse or compensate SCA for the Actual Fees within fifteen (15) days of receiving the Expense Reconciliation.

c. To the extent the Actual Fees exceed the Estimated Fees and/or SCA pays an expense of the Owner after the Reconciliation Date, the Owner shall remit any remaining amounts due to SCA necessary to reimburse or compensate SCA for the Actual Fees within fifteen (15) days of receiving the Expense Reconciliation.

2.5 Suspension of Services. Notwithstanding the foregoing, SCA shall have the right to suspend the provision of services under this Agreement in the event that the Owner fails to pay any of the compensation, fees or costs payable or reimbursable pursuant to Article III as and when due, and such suspension of service shall not be considered a default under this agreement by SCA.



### 3. FEE FOR SERVICES

3.1 Reimbursement of Expenses. The Owner shall reimburse SCA for amounts paid by SCA during the Term of this Agreement to vendors on behalf of the Owner for supplies, equipment and services as set forth in the Appendices and reasonable out-of-pocket expenses incurred by SCA in connection with travel, lodging and meals of SCA personnel who make on-site visits to the Center. If the Owner requests that SCA provide services to the Owner or for the Center which are not described in the Appendices, SCA may charge a reasonable additional fee for such services.

3.2 Fees. In exchange for rendering the Services, the Owner shall pay SCA the fee set forth on Exhibit A attached hereto and incorporated herein by this reference (the “**Management Fee**”).

3.3 Terms of Payment. The Owner shall pay SCA the Management Fee and any expenses reimbursable hereunder monthly no later than the thirtieth (30th) day of the month following the month in which the Management Fee was earned or the applicable expense was incurred. All amounts payable to SCA pursuant to this Agreement that are not paid on or before the date such payments are due shall bear interest at a rate of one percent (1%) per month, unless waived by SCA in its sole discretion. Any payments that remain overdue for more than thirty (30) days shall bear interest at the highest monthly rate permitted by applicable law.

### 4. INDEPENDENT CONTRACTOR STATUS

Notwithstanding any provision contained herein to the contrary, each of the Owner and SCA understand and agree that the parties hereto intend to act and perform as independent contractors and that, therefore, neither the Owner nor SCA is an employee, partner, joint venturer, or, except as explicitly provided for herein, agent of the other.

### 5. OWNERSHIP OF INTELLECTUAL PROPERTY; ACCESS TO INFORMATION

5.1 Intellectual Property. During the Term of this Agreement, the Owner and its managers, employees and agents will have access to and become acquainted with confidential information, intellectual property and trade secrets of SCA, including, without limitation, information and data relating to payor contracts and accounts, clients, billing practices and procedures, business analytics, techniques and methods, strategic plans, operations and related data, program and scheduling systems, manuals, computer software and other information, in whatever form, provided by SCA in the performance of its obligations hereunder (“**SCA Intellectual Property**”), and SCA and its officers, directors, employees and agents may have access to proprietary information and intellectual property developed by or for the Owner (“**Owner Intellectual Property**”) (SCA Intellectual Property and Owner Intellectual Property may be referred to collectively herein as “**Intellectual Property**”). All Intellectual Property is the property of its original owner and shall be proprietary information protected under the Uniform Trade Secrets Act and other applicable state and federal law. Neither SCA nor the Owner shall disclose, and each shall cause their respective affiliates, employees, contractors, and any other agents not to disclose to any person or entity, directly or indirectly, either during the Term of this Agreement or at any time thereafter, any Intellectual Property, or use any Intellectual Property other than in the course of meeting such party’s obligations under this Agreement. Notwithstanding the foregoing, SCA shall have the right to use any technical or business expertise obtained during the course of its engagement hereunder in connection with its management of any other facility.

5.2 Social Security Act. To the extent required by Section 1861(v)(1)(i) of the Social Security Act, each party shall, upon proper request, allow the United States Department of Health and Human Services, the Comptroller General of the United States, and their duly authorized representatives access to

this Agreement and to all books, documents, and records necessary to verify the nature and extent of costs and services provided by either party under this Agreement, at any time during the Term of this Agreement and for an additional period of four (4) years after the last date services are furnished under this Agreement. If either party carries out any of its duties under this Agreement through a permitted subcontract or similar permitted agreement between it and an individual or organization related to it, that party shall require that a clause be included in such agreement to the effect that until the expiration of four (4) years after the furnishing of services pursuant to such agreement, and to the extent required by Section 1861(v)(1)(i) of the Social Security Act, the related organization will make available, upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or any other duly authorized representatives, all agreements, books, documents and records of said related organization that are necessary to verify the nature and extent of the costs of services provided by that agreement.

5.3 Access to Information. Subject to the confidentiality provisions herein, each party shall have access to all applicable records and information, including, but not limited to, documents prepared in connection with the performance of procedures at the Center hereunder (“**Records**”), in order to perform any necessary billing and collection activities, to conduct utilization review or quality assurance activities, or to prepare the defense of a lawsuit in which those Records may be relevant. Subject to the confidentiality provisions herein, SCA and its officers, directors, employees and agents, as necessary for their respective duties, will be given reasonable access to the Center and its records, offices and facilities, so that SCA and its representatives may carry out their obligations hereunder.

5.4 Privilege. The parties agree that any applicable attorney-client, accountant-client or other legal privilege shall not be deemed waived by virtue of this Agreement, and that no party shall have the right to access any attorney-client privilege communication of any other party.

## 6. INDEMNIFICATION

6.1 Indemnification by the Owner. The Owner hereby agrees to indemnify and hold SCA, its affiliates and owners, and their respective officers, directors, employees, agents, owners and affiliates (each, an “**SCA Indemnified Party**”) harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including, but not limited to, reasonable attorneys’ fees and other costs of investigating and defending any such claim or action (each, a “**Loss**,” and collectively, “**Losses**”), which may be asserted against any SCA Indemnified Party, in connection with (i) the operation of the Center and the Owner; (ii) the acts or omissions of the Owner, its medical staff, agents or employees, or the Employees (as defined in Section 1.6); and (iii) SCA’s provision of services to the Owner, including, without limitation, SCA’s performance of its duties hereunder during the Term of this Agreement, but excluding any Loss arising as a result of the gross negligence or willful misconduct of SCA or SCA’s breach of this Agreement.

6.2 Indemnification by SCA. SCA hereby agrees to indemnify and hold harmless the Owner, its affiliates and owners, and their respective officers, directors, employees, agents, owners and affiliates (each, an “**Owner Indemnified Party**”) from and against any and all Losses which may be asserted against any Owner Indemnified Party as a result of the gross negligence or willful misconduct of SCA in connection with the performance by SCA of its duties hereunder.

6.3 Acts of Employees and Medical Staff. Any omission or action taken by any employee of SCA working primarily at the Center, including, without limitation, the Employees, shall not constitute action taken or omitted by or on behalf of SCA for purposes of this Agreement, and the Owner Indemnified Parties shall not be entitled to indemnification for any Loss resulting from such act or omission. Further, in no event shall SCA be liable under this Agreement for any act of professional malpractice committed by any Medical Staff Physician (as hereinafter defined), or other member of the Center’s medical staff.

7. MEDICAL STAFF

The Owner shall admit physicians (the “**Medical Staff Physicians**”) to the medical staff of the Center to render surgical and other medical services at the Center, and the Owner shall be responsible for credentialing of all Medical Staff Physician applicants; provided, however, that SCA shall provide administrative support in connection with such credentialing process, including the application process, scheduling of meetings of the appropriate committees of the medical staff, and communicating with the applicants, as described in Appendix 12.

8. HIPAA

Each party agrees to comply with the Health Insurance Portability and Accountability Act of 1996 and the regulations set forth at 45 CFR Part 160 and Part 164 (collectively, “HIPAA”). Since SCA will provide services under this Agreement that involve the use and/or disclosure of individually identifiable health information relating to the Center’s patients (“Protected Health Information”) on behalf of the Center, SCA may be deemed a business associate of the Center under HIPAA. HIPAA requires the Center to have written contracts with all business associates incorporating assurances that the business associate will appropriately safeguard Protected Health Information. As a result, SCA and the Center agree to the provisions of the Business Associate Agreement set forth in Exhibit B, attached hereto and incorporated herein by reference.

9. NOTICES

All notices, demands, requests and other communications or documents required or permitted to be provided under this Agreement shall be provided in writing and shall be given to the applicable party at its address set forth below or such other address as the party may later specify for that purpose by notice to the other party:

If to SCA:	Surgical Care Affiliates, LLC 569 Brookwood Village, Suite 901 Birmingham, Alabama 35209 Attention: General Counsel
If to the Owner:	North Kitsap Ambulatory Surgery Center, LLC c/o Surgical Care Affiliates, LLC 569 Brookwood Village, Suite 901 Birmingham, Alabama 35209 Attention: General Counsel
With a copy to:	North Kitsap Ambulatory Surgery Center, LLC 20669 Bond Road NE, Suite 200 Poulsbo, Washington 98370 Attn: Administrator

Each notice shall, for all purposes, be deemed given and received: (i) if by hand, when delivered; (ii) if given by nationally recognized and reputable overnight delivery service, the Business Day on which the notice is actually received by the party; or (iii) if given by certified mail, return receipt requested, postage prepaid, five (5) Business Days after posted with the United States Postal Service.

## 10. MISCELLANEOUS

10.1 Authority. Each individual signing this Agreement warrants that he or she has been authorized to do so by the party for which he or she is signing. Additionally, the signing and performance of this Agreement has received all necessary approvals and complies with all applicable laws and regulations. The parties agree this Agreement is valid and enforceable.

10.2 Agreement. The parties agree that this Agreement is the only agreement between the parties with respect to its subject matter. This includes any term sheet or similar agreement or document relating to the transactions that the parties may have exchanged prior to signing this Agreement. No party, other than the parties to this Agreement, shall be entitled to benefits from this Agreement.

10.3 Governing Law. This Agreement shall be enforced in accordance with the laws of the State of Washington without regard to its conflicts of law principles.

10.4 Interpretation. Each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter. The term “**person**” means any individual, corporation, partnership, trust or other entity. No provision of this Agreement shall be interpreted for or against either party on the basis that such party drafted the provision. The parties agree that they both participated equally in the drafting of this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party based on the fact that such party drafted any of the provisions of this Agreement.

10.5 Headings. The headings used in this Agreement have been inserted for convenience, and no other purpose.

10.6 Counterparts; Electronically Transmitted Signatures. This Agreement may be executed in one or more counterparts, with the same effect as if all parties had signed the same document. All documents shall be combined together and constitute one agreement. Electronically transmitted signatures shall have the same force and effect as original signatures.

10.7 Amendments. This Agreement may be modified or amended only by a written document signed by both parties.

10.8 Waiver. If either party fails to enforce any of the provisions in this Agreement for any length of time, that party shall not be forbidden from enforcing those same provisions or other rights in this Agreement in the future. If a party wants to waive the enforcement of any provision of this Agreement, it may do so only in a signed, written document. If a party does waive a specific provision of this Agreement, this shall not be a waiver of any other provision of this Agreement, and no provision in this Agreement shall be considered a waiver of any right or remedy that the parties may have at law, in equity, or otherwise.

10.9 Business Days. If any due date contained herein falls on a Saturday, Sunday or legal holiday, the due date shall be deemed to be the following business day.

10.10 WAIVER OF JURY TRIAL. THE PARTIES AGREE THAT THEY WAIVE THEIR RIGHTS TO DEMAND ANY ACTION, CLAIM, OR OTHER PROCEEDING RELATED TO A DISPUTE THAT ARISES OUT OF THIS AGREEMENT TO BE TRIED BY A JURY. THE PARTIES FURTHER AGREE THAT THIS WAIVER WILL APPLY TO THEIR RIGHT TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE, INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE IN THE UNITED STATES, COMMON LAW, OR ANY APPLICABLE STATUTE OR REGULATION. EACH PARTY ACKNOWLEDGES IT

(I) UNDERSTANDS THE RESULT OF AGREEING TO THIS WAIVER; AND (II) IS VOLUNTARILY AGREEING TO WAIVE THEIR RIGHT TO DEMAND A TRIAL BY JURY.

10.11 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, the parties agree that (i) the unenforceable provisions will be disregarded from the Agreement; (ii) this Agreement will be enforced as if such illegal, invalid or unenforceable provision had never been included in the Agreement; (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by the fact that it is being disregarded from the Agreement; and (iv) in order to replace the illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to the provision that is being disregarded as may be possible.

10.12 Compliance with Laws. The parties agree to conduct their relationship in full compliance with all applicable state, federal and local laws and regulations, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)). The parties agree that no part of this Agreement shall be construed to induce or encourage the referral of patients or the purchase of health care services or supplies. The parties acknowledge that there is no requirement under this Agreement or any other agreement between SCA or any affiliate of SCA and the Owner that any party refer any patients to any health care provider or purchase any health care goods or services from any source. Additionally, no payment under this Agreement is in return for the referral of patients, if any, or in return for purchasing, leasing or ordering services from SCA or any of its affiliates. The parties may refer patients to any company or person providing services and will make such referrals, if any, consistent with professional medical judgment and the needs and wishes of the relevant patients.

10.13 No Conflict of Interest. The parties understand that SCA and its affiliated companies are currently in the business of owning and operating ambulatory surgery centers, hospitals and other healthcare facilities, and providing services to other entities apart from the services that SCA will provide to the Owner and Center under this Agreement. Nothing in this Agreement shall prohibit SCA or any of its affiliated companies from owning ambulatory surgery centers or other health facilities or from providing any services or other activities.

10.14 Survival. Articles V, VI, IX and X and the payment obligations under the terms of Section 2.4 shall survive the termination of this Agreement.

10.15 Changes in Law. The parties agree that if any changes are made in laws or regulations, or changes in the way in which they are interpreted by an appropriate court or regulatory authority, or if legal counsel advises of such changes that would require the parties to restructure their relationship, the parties shall negotiate in good faith to amend this Agreement and restructure their relationship in an appropriate manner.

10.16 Force Majeure. The parties agree that if either of the parties is delayed or prevented from performing its obligations under this Agreement by a cause that is reasonably out of its control, that party shall not be liable for its delay or failure to perform. The causes which the parties agree are beyond any party's control include, but are not limited to, an act of God, an act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation, epidemic, pandemic or public health emergency or any other act or omission beyond the reasonable control of a party.

10.17 Assignment. SCA may not assign this Agreement to any other person without the prior written consent of the Owner; provided, however, that SCA may assign this agreement without the written consent of the Owner under the following circumstances: (i) assignment to any person or entity directly or

indirectly controlling, controlled by or under common control with SCA or to any entity owned by SCA or its affiliates and, if applicable, SCA's health system investment partner; (ii) assignment to any entity that is, at the time of the assignment, succeeding to substantially all of the assets and liabilities of SCA; or (iii) assignment to any entity or such entity's affiliates that becomes the owner of SCA's or its affiliates' interest in the Owner. The Owner may not assign this Agreement without the prior written consent of SCA. The following circumstances will be considered an assignment by the Owner and will require the prior written consent of SCA: the sale of (i) fifty percent (50%) or more of the assets or equity of the Owner during the Term of this Agreement; or (ii) any assets or equity of the Owner to a hospital, surgery center or any other provider (or affiliate of a provider) that provides outpatient surgical services (or to any physician who is an employee, owner, joint venture partner or provider of any administrative, consulting or management services to such an entity). All of the provisions, covenants, conditions and obligations of this Agreement shall be binding on any party to which SCA or the Owner may assign this Agreement.

**[Signature Page Follows]**

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

**SCA:**

**SURGICAL CARE AFFILIATES, LLC**

By 2nd Mark \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**OWNER:**

**NORTH KITSAP AMBULATORY SURGERY  
CENTER, LLC**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



IE g ITE SPP g HSNSu Fyli n Wdss“ i dvn nxnb6lne li s“ A: onna nr h d“ fDhi n edln Dd“hd, fvn  
l oslhr.

**r n AO**

**r mXS gn AU n AXT AOOgUgANTrt UUn**

RwO\_\_\_\_\_

E da nOLdee g . Mddk

TslpmOV sbn 3 on“senr lyGnr nodpCf 6r “np& Pnbondow

**Bx KTXO**

**KBXNL , gNr Ae AH EmUANBXI r mXS TXI  
n TKNTXt UUn**

Rw  \_\_\_\_\_

E da nOu onr Pi spp

TslpmO on“senr h



## Exhibit A

### MANAGEMENT FEE

The Management Fee shall be an amount equal to four percent (4%) of the Center's Net Revenue (as defined below), plus (i) reimbursement of direct expenses incurred by SCA on behalf of the Center, and (ii) any additional fees as specified on the appendices attached hereto. "**Net Revenue**" shall mean total patient revenues and other operating revenue (including the proceeds of claims under business interruption insurance policies) minus contractual allowances, provision for bad debt, charity care, condemnation awards, proceeds of claims under casualty insurance policies, proceeds from a sale or debt refinancing, and other capital transactions outside the ordinary course of business, each as determined pursuant to generally accepted accounting principles ("**GAAP**"), as consistently applied by SCA, on an accrual basis of accounting. The allocable portion of the Management Fee and any reimbursable expenses hereunder shall be paid monthly in accordance with Article III of the Agreement.

## **Exhibit B**

### **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this “**Agreement**”) is entered into as of December 1, 2021 (the “**Effective Date**”) by and between **NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**, a Washington limited liability company (“**Covered Entity**”), and **SURGICAL CARE AFFILIATES, LLC**, a Delaware limited liability company (“**Business Associate**”) (individually, a “**Party**” and collectively, the “**Parties**”).

### **RECITALS**

**WHEREAS**, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “**Business Arrangements**”), pursuant to which Business Associate may provide services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law;

**WHEREAS**, Business Associate will create or receive from or on behalf of Covered Entity, or have access to, Protected Health Information (“**PHI**”) in the course of providing services (“**Services**”); and

**WHEREAS**, pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing administrative simplification regulations (45 CFR §§ 160-164) (“**HIPAA**”), Covered Entity is required to enter into this Agreement with Business Associate.

### **AGREEMENT**

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304, 164.402 and 164.501.
2. **Effect of Agreement.** The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.
3. **Business Associate Obligations.**

3.1 **Permitted Uses and Disclosures.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the this Agreement, provided that such use or disclosure would not violate HIPAA if made by Covered Entity or (2) as required or permitted by applicable law, rule, regulation, or regulatory agency or by any accrediting or credentialing organization to whom a Party is required to disclose such PHI. In addition,

3.1.1 Business Associate may use PHI, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

3.1.2 Business Associate may disclose PHI, if necessary, if the following requirements are met:

3.1.2.1 the disclosure is required by law; or

3.1.2.2 Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3.1.3 Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by HIPAA.

3.2 **Restrictions.** Business Associate shall not use or disclose PHI for any other purpose not described herein.

3.3 **Business Associate Agents.** Business Associate shall ensure that its agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate pursuant to this HIPAA Agreement with respect to the PHI and Electronic PHI.

3.4 **Appropriate Safeguards; Security.** Business Associate shall implement appropriate and commercially reasonable safeguards to prevent use or disclosure of PHI other than as permitted in this HIPAA Agreement. Effective as of the date Covered Entity is required to comply with 45 C.F.R. Part 164 Subpart C, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Integrity, Availability, and Confidentiality of the Electronic PHI. The Business Associate shall promptly report any Security Incident to Covered Entity of which it becomes aware.

3.5 **Government Access to Records.** Business Associate shall make its internal Centers, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA. Business Associate shall provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

3.6 **Reporting of Improper Use or Disclosure.**

3.6.1 The Business Associate shall, following the discovery of a breach of unsecured protected health information, notify the Covered Entity in writing of such breach.

3.6.2 For purposes of Section 3.6.1, a breach shall be treated as discovered by a Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the business associate. The Business Associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the Business Associate (determined in accordance with the federal common law of agency).

3.6.3 Except as provided in 45 CFR 164.412 (law enforcement delay), the Business Associate shall provide the notification required by Section 3.6.1 without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.

3.6.4 The notification required by Section 3.6.1 shall include, to the extent possible, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the breach.

3.6.5 The Business Associate shall provide the covered entity with any other available information that the Covered Entity is required to include in notification to the individual under 45 CFR 164.404(c) at the time of the notification required by Section 3.6.1 or promptly thereafter as information becomes available.

3.6.6 Business Associate shall also report, in accordance with Section 3.6.3, to Covered Entity in writing any use or disclosure of PHI of which it becomes aware that is not in compliance with the terms of this Agreement.

3.7 **Burden of Proof**. In the event of a use or disclosure in violation of HIPAA, the Business Associate, shall have the burden of demonstrating that all notifications required of the Business Associate were made or that the use or disclosure did not constitute a breach, as defined at 45 CFR 164.402, or was not in violation of this agreement.

3.8 **Mitigation**. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

3.9 **Availability of PHI**. To the extent that the Parties mutually agree in writing that PHI is part of a Designated Record Set, and that such Designated Record Set (or a portion thereof) is to be maintained by Business Associate, as set forth and agreed to in Schedule A, Business Associate shall within ten (10) days after a written request from Covered Entity:

3.9.1 provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to such PHI to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524; and

3.9.2 make amendments to such PHI as directed or agreed to by Covered Entity in accordance with the requirements of 45 CFR § 164.526.

3.10 **Accounting Rights**. Business Associate shall document such disclosures of PHI and information related to such disclosures and, within ten (10) days after Covered Entity's written request, shall provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Section, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

#### 4. **Covered Entity's Obligations**.

4.1 **Notice**. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any subsequent changes to the notice of privacy practices.

4.2 **Changes in Access by Individual**. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

4.3 **Restrictions on Use and Disclosure of PHI.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

4.4 **Notification to Individuals of Breaches.** The Covered Entity shall notify individuals of any breaches that are required to be made under 45 CFR 164.404(c).

5. **Term and Termination.**

5.1 **Term.** The Term of this Agreement shall be effective as of the date set forth above and shall terminate when Business Associate ceases to perform the Services as set forth above; provided, however, that certain obligations shall survive termination of this Agreement as set forth in Section 5.3.

5.2 **Termination for Cause.** Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement. In its sole discretion, Covered Entity may permit Business Associate the ability to cure or take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity.

5.3 **Return or Destruction of PHI.** Upon termination, if feasible, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associate still maintains in any form and shall retain no copies of such information. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of PHI infeasible. Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

5.4 **Termination of Business Arrangement.** Upon termination of all Business Arrangements, either party may terminate this Agreement by providing written notice to the other party.

6. **Miscellaneous.**

6.1 **Amendment to Comply with Law.** The Parties acknowledge that it may be necessary to amend this Agreement to comply with modifications to HIPAA, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. No later than sixty (60) days after the effective date of any such modifications, the Parties agree to use good faith efforts to develop and execute any amendments to this Agreement as may be required for compliance with HIPAA.

6.2 **Amendment.** This Agreement may be amended or modified only in writing signed by the Parties.

6.3 **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

6.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive law of the state of Washington without regard to conflicts of laws principles.

6.5 **Section Headings.** The section headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretations.

6.6 **Notice.** Any notice required by the Business Associate under the terms of this Agreement, including notifications of breach, should be made in writing and without unreasonable delay to the following:

**COVERED ENTITY:**

North Kitsap Ambulatory Surgery Center, LLC  
c/o Surgical Care Affiliates, LLC  
569 Brookwood Village, Suite 901  
Birmingham, Alabama 35209  
Attention: General Counsel  
Facsimile: (205) 970-2613

**BUSINESS ASSOCIATE:**

Surgical Care Affiliates, LLC  
569 Brookwood Village, Suite 901  
Birmingham, Alabama 35209  
Attention: General Counsel

7. **Indemnification.** The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of each other's workforce (collectively referred to as the "**Indemnified Party**"), against all costs suffered by the Indemnified Party, including but not limited to any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees), arising from or in connection with a material breach of this HIPAA Amendment by the Indemnifying Party. This provision shall survive the expiration or termination of this Agreement.

**[Signature Page Follows]**

gK x gNKTrr x L TXTBOyhi n 3 ddn“ i dvn nxnb6lme li s“ A: onna nr hd“ fDi n SIDbhsvn c dln.

n BVTXTC TKNgNI :

KBXNL , gNrAe AH EmUANBXI r mXS TXI  
n TKNTXt UUUn

Rv  \_\_\_\_\_

E da nOu onr Pi spp

TslmOß on“senr h

EmrgKTrr ArrBngANT:

r mXS gn AU n AXT AOOgUgANTrt UUUn

RwO \_\_\_\_\_

E da nOLdee g . Mdck

TslmOV sdn 3 on“senr lyGnr nodpCf 6r “np& Pnbantlow

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

**NORTH KITSAP AMBULATORY SURGERY  
CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

**SURGICAL CARE AFFILIATES, LLC**

By 2nd Mark \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary



**Schedule A**

**IDENTIFICATION OF DESIGNATED RECORD SET**

As contemplated in Section 3.9, the Parties agree to the provision marked below:

- ☐ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements constitutes a Designated Record Set (or a part thereof), and such Designated Record Set (or portion thereof) shall be maintained by Business Associate.
- ☒ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements DOES NOT constitute a Designated Record Set (or a part thereof), and NO such Designated Record Set (or portion thereof) shall be maintained by Business Associate.

## **Exhibit C**

### **CODING AUDIT**

Pursuant to Section 1.2. of this Agreement, in the event that the Owner engages an external coding provider or uses an in-house coder, SCA and the Owner may mutually require the Owner to obtain and pay for a commercially reasonable external audit of the external provider's or in-house coder's services. In either case, the following guidelines apply:

- The audit must examine at least two percent (2%) of the Center's volume (cases performed) for the prior six (6) month period, which must be no less than one hundred (100) accounts.
- The external provider or in-house coder must meet an accuracy rating of ninety five percent (95%) or higher for Owner to continue to use the external provider or in-house coder.
- If accuracy falls below 95%, Owner will be subject to an additional coding audit the following month of 10% of the previous month's volume.
- If the second audit does not reach the expected 95% accuracy rate, then the parties agree that Owner will be required to replace its current provider with either SCA or another external coding services provider approved by SCA, which approval shall not be unreasonably withheld, based on SCA being assured that the provider has an effective regulatory compliance program and provides certified coders.

## **APPENDICES**

<b>Accounting Services .....</b>	<b>Appendix 1</b>
<b>Human Resources\Staffing Services .....</b>	<b>Appendix :</b>
<b>Supply Chain Services .....</b>	<b>Appendix 3</b>
<b>IT Systems Services.....</b>	<b>Appendix 4</b>
<b>Clinical Support Services .....</b>	<b>Appendix 5</b>
<b>Treasury\Cash Management Services.....</b>	<b>Appendix 6</b>
<b>Tax Services .....</b>	<b>Appendix 7</b>
<b>Risk Management\Insurance Services .....</b>	<b>Appendix 8</b>
<b>Compliance Services .....</b>	<b>Appendix 9</b>
<b>Payer Engagement Services.....</b>	<b>Appendix 10</b>
<b>Physician Recruitment\Business Development Services.....</b>	<b>Appendix 11</b>
<b>Credentialing Services .....</b>	<b>Appendix 1:</b>
<b>Financial Operations Services.....</b>	<b>Appendix 13</b>
<b>Revenue Cycle and Coding Services.....</b>	<b>Appendix 14</b>

## Appendix 1

### ACCOUNTING SERVICES

#### **SCA Full Suite of Accounting Services**

SCA will provide accrual based financial statements and general ledger reporting and review, inclusive of detailed analytics.

Services	Included in Management Fee	Not Included in Management Fee
<b>Financial Statements</b>		
Financial Statement Compilation	✓	
Financial Statement Analytics w/ Subledger Detail	✓	
<b>Accrual Accounting Services</b>		
Revenue		
Automated Financial Package	✓	
Financial Package Review	✓	
Automated Unbilled Revenue Accrual	✓	
Contractual Adjustments: Actuals	✓	
Contractual Adjustments: Historically Based	✓	
Run-Off Model Preparation and Review	✓	
Automated Bad Debt	✓	
Expenses		
Prepaid Expenditure Testing, Review, and Amortization	✓	
Inventory Adjustments	✓	
Automated Payroll General Ledger Activity	✓	
Recording of Variable Expenses	✓	
Variable Expense: Subledger Review	✓	
Automated Expense Accruals	✓	
Recording of Fixed Expenses	✓	
Invoicing: Intercompany Expenses	✓	
Balance Sheet		
Account Reconciliation	✓	
Distributions	✓	
Debt and Equity Transactions	✓	
Internal SCA Service Lane: Issue Research and Resolution	✓	
Cash Tool Access w/ Full Detail and Visibility	✓	
<b>Supporting Service Lanes</b>		
Cash		
Bank Reconciliations	✓	
Asset Management		
SmartSystem CER Processing	✓	
Front-End Asset Management	✓	
Fixed Asset Management and General Ledger Maintenance	✓	
Reporting for outside audit requests	✓	

Services (Continued)	Included in Management Fee	Not Included in Management Fee
Accounts Payable		
Onboarding Services <sup>1</sup>	✓	
SmartSystem Reporting	✓	
Invoice Reconciliation	✓	
Daily Check Run (SmartSystem)	✓	
New Vendor Set-up	✓	
Concur Expense Report Management	✓	
1099 Reporting	✓	
AP Helpdesk / Smart Platform Training	✓	
KPI Reporting Availability	✓	
Front-End Management <sup>2</sup>		✓
SmartSystem Training <sup>2</sup>	✓	
SCA Corporate Credit Card Services	✓	
Lease Management		
Timely Payment of Lease Obligations		✓
Management of Critical Dates		✓
Search for Cost Savings and Cost Avoidances		✓
Lease Database Management		✓
Subtenant Lease Management, Invoicing, and Payment Collection		✓
Compliance Support		✓

<sup>1</sup> Onboarding in this instance is defined as the first four-month period where services are provided by SCA upon a new facility's introduction to full SmartSystem. This includes one SmartSystem AP training, vendor set-up in PeopleSoft, one SmartSystem Report & Reconciler training, assistance through the transition period, one training and review session on KPI metrics, and one additional training where needed. Any training and reporting requests above and beyond within the onboarding period will result in additional fees.

<sup>2</sup> Front End management is defined by the full payables process, including invoice entry, being managed by the Owner. This process includes, but is not limited to, invoice reconciliation to purchase order, KPI analysis with reconciliation of outages, full approval of invoices within SmartAP facilitated by the Owner). This service is available at SCA's current hourly fee.

## Appendix :

### HUMAN RESOURCES STAFFING SERVICES

#### SCA Teammate Employment

Services	Included in Management Fee	Not included in Management Fee
<b>Human Resources</b>		
Leave Management consultation	✓	
Leave Management administration	✓	
Unemployment claims administration <sup>1</sup>	✓	
Service Awards <sup>2</sup>	✓	
SCA Rewards <sup>3</sup>	✓	
Job benchmarking analysis <sup>4</sup>	✓	
Incentive plan documentation and administration <sup>5</sup>	✓	
Job descriptions <sup>6</sup>	✓	
Administration of annual merit increase process	✓	
Teammate handbook	✓	
Teammate relations consultation <sup>7</sup>	✓	
Teammate disciplinary actions consultation <sup>7</sup>	✓	
RIF, layoff, reorganizations consulting	✓	
Performance management processes <sup>8</sup>	✓	
Retention strategies <sup>9</sup>	✓	
Teammate engagement survey and benchmarking <sup>10</sup>	✓	
SCA Career Site	✓	
Background checks, drug screens, SSN trace, E-verify provider management <sup>11</sup>		✓
Recruitment services <sup>12</sup>		✓
Applicant tracking system <sup>13</sup>	✓	
Onboarding services <sup>14</sup>		✓
Consultancy for federal and state employment regulations	✓	
I-9 compliance assistance <sup>15</sup>	✓	
Compliance training <sup>16</sup>	✓	
Policies and Procedures <sup>17</sup>	✓	
Teammate reporting	✓	
Payroll and Time Keeping services <sup>18</sup>		✓

<sup>1</sup> SCA provides advice and guidance on form completion. Owner incurs cost to outsource.

<sup>2</sup> SCA provides standard service awards.

<sup>3</sup> SCA provides online total reward statement and tool.

<sup>4</sup> Job analysis is available for standard facility roles.

- <sup>5</sup> SCA provides development and administration of standard SCA annual incentive plans.
- <sup>6</sup> Repository of standard job descriptions is available.
- <sup>7</sup> SCA provides advice and guidance. Time and travel for onsite investigations to be paid for by Owner.
- <sup>8</sup> Tools, templates, and timelines are provided
- <sup>9</sup> SCA provides advice and guidance upon request.
- <sup>10</sup> SCA provides teammate engagement survey, benchmarking, and action planning tools.
- <sup>11</sup> SCA provides tools, templates, and 3<sup>rd</sup> party vendor to facilitate screening. Owner pays cost of pre-employment screening of new hires.
- <sup>12</sup> Outsourced recruitment support is available through vendor. Owner pays recruiting fees.
- <sup>13</sup> Owner pays admin fee to post jobs.
- <sup>14</sup> This is an optional service provided by a 3<sup>rd</sup> party vendor to initiate and manage new hire process. Owner pays onboarding fee.
- <sup>15</sup> SCA provides templates and forms. I-9 compliance is responsibility of Owner.
- <sup>16</sup> SCA provides administration of required corporate training.
- <sup>17</sup> SCA provides standard policies and procedures (e.g., Staffing, Compensation, Regulatory, Compliance).
- <sup>18</sup> The cost of this service is allocated back to Owner monthly on a per person basis.

### Appendix 3

#### SUPPLY CHAIN SERVICES

##### **SmartSystem**

SCA will make its proprietary SmartSystem application (“**SmartSystem**”) available to Owner for use in connection with SCA’s purchasing program. SCA will (i) assist Owner to implement SmartSystem, and (ii) make its Supply Chain Help Desk reasonably available to Owner for user questions or for assistance in monitoring and resolving vendor discrepancies. Owner acknowledges that the failure to utilize SmartSystem may limit or adversely affect the availability, quality or effectiveness of reporting tools made available by SCA as well as the general functionality of SCA’s purchasing program and certain benefits available to Owner as a result of participating in SCA’s purchasing program. Owner agrees to abide by the obligations set forth in this Appendix 3.

Services	Included in Management Fee	Not Included in Management Fee
Access to GPO/SCA Contracts <sup>1</sup>	✓	
Vendor Set Up	✓	
Pre-Loaded Catalog of Supplies	✓	
Automated Item Master	✓	
Electronic Ordering/Invoicing	✓	
Price Discrepancy Management	✓	
Item Adds/Updates	✓	
Mobile App	✓	
Automated 3-Way Match	✓	
Automated Accruals	✓	
Supply Chain Real Time Insight Reporting	✓	
Help Desk Support	✓	
Electronic Implant Log		✓
Perpetual Inventory Tool		✓
Full Case Costing		✓
Electronic Pref Card Management		✓
Supply Chain Field Support	✓	
Initial ECO Training <sup>2</sup>		✓
Additional Training (if desired) <sup>3</sup>		✓
Building Management Services		✓
Equipment Planning		✓
General Consulting <sup>4</sup>		✓

<sup>1</sup> Owner may be required to execute a written agreement with a group purchasing organization that SCA has selected to provide access to vendors, and will be required to abide by the requirements of any contract between SCA and its vendors and group purchasing organizations.

<sup>2</sup>The initial training period shall last fifteen (15) weeks and shall include planning, item master build, preference card build, consumption training and physical inventory count.

<sup>3</sup>If Owner desires additional training, beyond the initial training, these services will be provided at SCA’s current hourly fee. Owner shall be responsible for reimbursement of any travel expenses (airfare, car rental, hotel and meals).

<sup>4</sup>General consulting will be available at SCA’s current hourly fee.

##### **Obligations of Owner.**

- **Ordering System and Reporting.** Owner shall request, approve, order, receive and process invoices for all supplies and services using SmartSystem. Owner shall provide SCA with electronic reports detailing its purchasing and vendor payment data as reasonably requested by SCA. Reports shall



include all information reasonably requested by SCA as necessary to monitor the Center's purchasing and vendor payment data for purposes of performing the services contemplated in Section 1 above. If Owner fails to utilize SmartSystem, Owner shall provide electronic reports in such format and in such frequency as reasonably required by SCA.

- Use of SCA Confidential Information. Owner shall not use Confidential Information obtained in connection with this Agreement for purposes of communicating or negotiating with third parties or for purchasing supplies, equipment or other items from third parties outside of SCA's purchasing program. In addition, Owner shall not manually or electronically transmit any SCA purchasing program data (including supplier information, item information, pricing) to or through any third parties without express written consent from SCA.
- Contract Compliance. Owner shall make best efforts to purchase at least 80% of all of the supplies, equipment and other items used in connection with the operation of the Center through SCA's preferred supplier contracts. Owner acknowledges and agrees that the failure to adhere to any minimum purchasing requirements may limit or adversely affect SCA's purchasing program and certain benefits available to Owner as a result of participating in SCA's purchasing program, and may also cause damages to SCA and its affiliates.
- Ordering Personnel. Owner shall provide appropriate staff to manage the various processes required under SmartSystem or under any acceptable alternative ordering software program utilized by Owner.
- Payments by Owner. Owner acknowledges that the failure by Owner to pay timely any amounts owed to vendors and group purchasing organizations accessed through SCA's purchasing program under this Agreement could have an adverse impact on the purchasing activities of SCA and its affiliates, and Owner agrees that it shall pay all amounts due to vendors and group purchasing organizations accessed through SCA's purchasing program in accordance with the applicable payment terms thereof. If Owner fails to pay any such amounts in a timely manner, SCA shall be permitted to make payment on Owner's behalf and Owner shall reimburse SCA immediately for such amounts upon receipt of an invoice from SCA, and shall be liable to SCA for any expenses incurred in connection with collecting such amounts from Owner (including reasonable attorneys' fees).
- Exclusivity. SCA shall be the exclusive third-party provider of supply chain management services to Owner for the Center.

## Appendix 4

### IT SERVICES

#### **SCA Provides IT Managed Services**

SCA will provide the IT services defined below. For all services identified as Not Included in Management Fee, SCA will allocate the respective fees and expenses monthly.

The respective fees and expenses will be assessed and baselined by SCA and the Owner on an ongoing basis, but at least annually, throughout the Term of this Agreement. Such fees and expenses are dependent on the variable historical and expected consumption of IT services that factor into the costs to provide such services (e.g., number of employees, number of computers, number of servers).

Services	Included in Management Fee	Not Included in Management Fee
IT Relationship Manager <sup>1</sup>	✓	
SCA Insight <sup>2</sup>	✓	
DR / BCP Planning Assistance <sup>3</sup>	✓	
IT Consultation <sup>4</sup>	✓	
Corporate Systems <sup>5</sup>		✓
IT Security & Monitoring <sup>6</sup>		✓
IT Service Desk <sup>7</sup>		✓
Desktop Management <sup>8</sup>		✓
Email <sup>9</sup>		✓
Server Management <sup>10</sup>		✓
Network Management <sup>11</sup>		✓
App Development (if desired) <sup>12</sup>		✓
Project Management (if desired) <sup>12</sup>		✓
Computer Purchases <sup>13</sup>		✓

<sup>1</sup>The IT Relationship Manager will serve as the Owner's primary liaison for engaging and utilizing SCA IT services; day-to-day support issues and standardized requests should be directed to the IT Service Desk.

<sup>2</sup>SCA Insight is SCA's proprietary data analytics tool that provides the Owner with dashboards, analysis and support tools that provide visibility into operations and performance.

<sup>3</sup>Disaster Recovery / Business Continuity Planning Assistance is available to the Owner to ensure appropriate controls and processes are in place to ensure business continuity.

<sup>4</sup>SCA will provide consulting expertise for the broader SCA community on preferred applications (e.g. Patient Accounting Systems, Electronic Medical Records) and specific to the Owner for scoping and validation of IT solutions against SCA IT security standards and implementation.

<sup>5</sup>Corporate Systems include applications that streamline operational efficiency between Owner and SCA, such as SharePoint and custom developed applications to streamline financial reporting.

<sup>6</sup>IT Security & Monitoring includes services leveraged to protect Owner's and SCA's data and business operations.

<sup>7</sup>IT Service Desk is operational twenty-four (24) hours per day, seven (7) days per week and supports all SCA IT systems.

<sup>8</sup>Desktop Management includes services to automatically manage, secure and update desktop and laptop computers.

<sup>9</sup>Email accounts are mandatory for all SCA employees.

<sup>10</sup>SCA will provide remote management for all servers locally hosted within Owner's premises; services requiring on-site presence will be provided at SCA's current hourly fee.

<sup>11</sup>SCA will provide remote management for all network infrastructure within Owner's premises; services requiring on-site presence will be provided at SCA's current hourly fee.

<sup>12</sup>SCA can provide on-demand application development and project support, and these services are available at SCA's current hourly fee.

<sup>13</sup>Technology purchases, including but not limited to computers, are the responsibility of the Owner and Owner shall participate in SCA's purchasing program.

**The services provided under this Appendix 4 – shall not exceed the rates defined below within the first fiscal year in the Term of the Agreement.** All rates are set annually in alignment with the calendar year and in alignment with the SCA annual budgeting process. SCA must communicate to the Owner any adjustments in rates or services no less than three (3) months before the end of each calendar year.

SCA IT Service Pricing							
Service Category	Service	Service Description	Unit of Measure	Unit Price	Quantity	Extended Monthly Cost	Extended Annual Cost
Systems and Security Support	Corporate Systems	Includes corporate applications leveraged across all facilities, such as: OSCAR, Web FinPack and Cash Visibility Tool.	Facility	\$ 70.64	1	\$ 70.64	\$ 847.68
	IT Security & Monitoring	Includes software and tools to protect each center's data, such as: web filtering, intrusion detection, data loss prevention and firewall monitoring.	Facility	\$ 303.55	1	\$ 303.55	\$ 3,642.60
Workplace Support	Service Desk	Includes 24x7x365 telephone support for IT requests and issues.	Teammate	\$ 5.94	0	\$ -	\$ -
	Desktop Management	Includes the software and support to maintain each laptop and desktop: Microsoft licensing, device encryption, anti-virus and device management tools.	Computer	\$ 20.69	0	\$ -	\$ -
Email & Collaboration	Administrator License (E3)	The ideal license for teammates that use Outlook and Office extensively. Includes online and desktop versions of Office Suite, SharePoint access, email encryption and administration.	Mailbox	\$ 29.50	0	\$ -	\$ -
	Clinician License (F3)	The ideal license for teammates that do not have a dedicated workstation. Includes only the online version of the Office Suite, SharePoint access, and email access.	Mailbox	\$ 15.56	0	\$ -	\$ -
Network & Server Management	Facility-Hosted Server Support	Provides 24x7x365 monitoring support for each locally-hosted server (both virtual and physical): Microsoft Server licensing, monthly patching, information security solutions (such as anti-virus) and backups.	Local Server	\$ 141.44	0	\$ -	\$ -
	Meraki Licensing	Provides licensing for Meraki security devices located at the facility. Covers wireless access points, network switches, and firewalls.	Meraki Device	\$ 11.63	0	\$ -	\$ -
	Remote Access (VPN Client)	Provides teammates remote access (i.e. VPN access) to SCA applications and resources. This is required for facilities that are not on the SCA network or for teammates that need the ability to access SCA applications from their home.	VPN User	\$ 12.32	0	\$ -	\$ -
	Telecom Expense Management	Provides automated billing for facilities' internet and telephony expenses, variance reporting and analysis to control costs and covers support for SCA-owned network equipment at each facility.	Facility	\$ 41.78	1	\$ 41.78	\$ 501.36
						\$ 415.97	\$ 4,991.64
						Monthly	Annually

### Obligations of Owner.

- Establish Network Connectivity with SCA. SCA and the Owner will establish direct network connectivity of the Owner's premises to the SCA network. This connectivity is required to provide the above suite of services.
- Maintain Compliance to SCA IT Minimum Standards. The Owner, with assistance from SCA, must meet the SCA Minimum Standards provided below and may be required to attest to the Owner's compliance with such requirements.

## SCA IT Minimum Standards 2021

### Network

Hardware	Equipment	Model
	Firewall	Cisco Meraki MX84
	Router	n/a
	Switch	Cisco Meraki MS210 48 port switch
	Wireless Access Point	Cisco Meraki MR52 Wireless AP
	Network managed UPS	No specific model requirement but must be network managed
<b>Internet Circuit*</b>	<b>Circuit Guidelines</b>	<b>Circuit Speed</b>
	Less than 50 users	25 MB
	More than 50 users less than 200 users	50 MB
	More than 200 users	100 MB
	RBO / CBO / Corp office	At least 50 MB
<i>* If cost difference is minimal, order higher speed circuit.</i>  <i>When possible, request network usage for current internet service to determine if center has reached capacity bandwidth.</i>	<b>Other Considerations that may require higher bandwidth</b>	Heavy wireless use, clinical device integration (uploading images to PACS or other external systems), or VOIP
		Accessing virtual servers in the SCA data center for high bandwidth systems like Provation.
		EMR systems, like eChart
		Backing up > 3 local servers
	<b>Circuit Termination</b>	Internet circuit may terminate in ISP router or SCA firewall
<b>VLANs</b>	<b>Media</b>	Fiber only - Coax should be avoided
	<b>Separate VLANs Required</b>	Wired
		Corporate network
		VOIP/Voice network
		Medical device network
		PCI network (credit card)
		HVAC
		Servers
		HIPAA
		Wireless
		Corporate network
		Physician network
		Lobby network
		Medical device network
	<b>Security</b>	Firewalls should be configured to permit the minimum access needed

<b>Remote (off network) Access</b>	<b>VPN Tunnel Port Configuration</b>	Block unnecessary traffic between VLANs, block torrent traffic, etc.
		If using a non-standard VOIP solution, the VOIP system must be on a non-SCA network segment (needs separate data connection)
		Configured to the minimum number of necessary ports
		Port access limited to subscribed services only
		SCA traffic must come over as internal traffic with header files on ports 80 and 443
		Include local Wireless Network in VPN Tunnel configuration
	<b>Cisco AnyConnect VPN Client</b>	Teammates must be enrolled in SCA Multi-Factor Authentication (MFA)
	<b>Citrix</b>	Teammates must be enrolled in SCA Multi-Factor Authentication (MFA)
	<b>Security</b>	3rd party connections must be approved by Change Approval Board on a center case-by-case basis to limit port access traffic
		VPN security settings must match minimum specifications provided by SCA
<b>Wireless Network</b>	<b>Device Configuration</b>	All Guest traffic should be on separate SSID and VLAN for Physician Practices VLANs
		All SSIDs should be at least WPA2
<b>Security and Monitoring</b>	<b>Security</b>	Network cannot be shared with any other entity
		Firewall must be configured to permit the minimum access needed
	<b>Monitoring/Logs</b>	Actively monitor logs from all networking devices
<b>Network Closets</b>		
<b>Environment</b>	<b>Power</b>	Closets must have sufficient power
		Smart UPS with monitoring must be available
	<b>Ventilation</b>	Closets must have sufficient ventilation and climate control

Security	Physical Security	All network closets or cabinets must be locked
		Network closet/cabinet must not be shared with any other entity
		All keyholders must be known and documented. All users accessing the closet / cabinet should be logged with each date/time of entry.
Servers		
Hardware and OS	OS	Minimum Windows 2012 R2 (fully patched)
	Remote Console Access	iDrac or iLO
	Warranty	Must be under warranty
Applications and Databases	Applications	Cannot be more than one version behind
	Databases	Minimum SQL 2012 (and supported patch level)
Backups	Backups	All servers must have a HIPAA compliant data backup created daily
		Minimum of one week’s backup data must be retained
Security, Monitoring, and Patching	Physical Security	The server must be physically secured in a locked data room
		All key holders must be known and documented
	Security	All servers must be running current anti-virus, anti-malware, web filtering, and firewall products
		Anti-virus solution must be either commercially available with regularly updated signature files or a behavior-based solution
	Monitoring	Actively monitor logs from all servers
	Patching	Servers must be patched a minimum of every 90 days
		Exceptions must be approved through Change Approval Board
Workstations		
Hardware and OS	Hardware	Business Class Machine
		TPM chip to allow Bitlocker device encryption
	Processor	Prefer i5 or greater
	RAM	Prefer 8 GB
	Operating System	Windows 10+

	<b>Age</b>	Must be less than 4 years old
<b>Applications</b>	<b>MS Office</b>	Minimum Office 2013
		Prefer Office 365 with Pro Plus
	<b>Browser</b>	Chrome IE11+ Required for OSCAR and SCA Citrix applications
<b>Security and Patching</b>	<b>Security</b>	Current and updated anti-virus, anti-malware, web filtering
		All devices must have remote wipe/lock/tracking capabilities
		Password enabled screensaver that activates after 15 minutes of inactivity.
		DLP solution to prevent data copying to USB
		Wipe and reimage workstations/laptops between users
		256-bit AES encryption; Windows with no-pin mode is acceptable
	<b>Security Banner</b>	Title: SCA Surgery Information Security Policy Acceptance Message: Prior to obtaining access to any SCA Surgery system, all employees, vendors, contractors, etc. must read and agree to the SCA Surgery Information Security Policy. By clicking the "OK" button below you are acknowledging that you have read and agree to abide by the provisions set forth in the policy relating to password security, proper internet usage, wireless devices, etc. For information on how to access the policy, please contact your supervisor
	<b>Patching</b>	Workstations are patched monthly
<b>Telephones</b>		
<b>Solution</b>	<b>VOIP</b>	8x8 is the preferred VOIP partner for new VOIP installations; one network jack is required at each desk and we can "daisy chain" the computer and phone. 8x8/TMR will support the phone system and SCA/Optum will support the network connection and voice quality. Run 8x8 assessment tool prior to ordering.

		Any other VOIP solution chosen by the center must be documented, meet the following criteria and approved through Change Approval Board: - Voice and data must be segregated. The phone system must run on a separate VLAN on a separate switch and can leverage the data internet circuit. - There will need to be 2 data jacks at each desk to separate phones on the VLAN from devices on SCA network. - A separate vendor must be engaged to provide support for the phone system, system updates, network connectivity and voice quality.
	Analog/POTS	Leave in place for fax, etc.
Mobile Devices		
Personal Cellular Devices	Personal Cellular Devices	Permitted for use by staff to access SCA Office 365 provided by the facility
		Device passwords must be enabled and the device must automatically lock
		If SCA email is available, must have remote wipe/lock/tracking capabilities
		Any required SCA Apps (e.g., MFA)
Email, Access, Website		
Email	SCA Email	SCA email license is required for each payroll teammate
	External Email	Any external email solution must have: Malware scanning tools High Trust compliant HIPAA compliant Phishing attack prevention Data Loss Prevention (DLP)
User Accounts and Passwords	User Accounts	Each teammate must have a unique user ID assigned which is used only by themselves (never shared)
		SCA login is required for any teammate accessing SCA systems and / or intranet
	Passwords	Must be reset a minimum of every 90 days
		Cannot be reused for 1 year
Website		Complexity must be turned on
		Meet the WCAG minimum guidelines.



<b>Security &amp; Business Continuity</b>		
<b>Security and Compliance</b>	<b>HIPAA Compliance</b>	Complete yearly HIPAA Risk Assessments and take action with remediation based on results
	<b>Asset Register</b>	Maintain a local asset register documenting all devices purchased or in use and by whom
	<b>Network Closet Physical Security</b>	Network closet must be locked with all key holders known and documented
	<b>3rd Party Vendors</b>	All 3rd party vendors must sign a Business Associates Agreement (BAA) to protect PHI
<b>BC/DR Plan</b>	<b>BC/DR Plan Options</b>	<p>All affiliate partners are required to define, maintain and test a contingency plan designed to meet HIPAA requirements by either:</p> <ol style="list-style-type: none"> <li>1.) Participation the SCA's Business Continuity Management (BCM) program, or</li> <li>2.) Self-management program*</li> </ol> <p>* If the facility chooses not to participate with SCA, a copy of their business continuity and disaster recovery plan must be provided to the BC/DR Team</p>

## **Appendix 5**

### **CLINICAL SUPPORT SERVICES**

SCA will provide Clinical Support Services.

Services	Included in Management Fee	Not Included in Management Fee
Clinical Dashboards with Benchmarking Quality Data <sup>1,3</sup>	✓	
Regulatory and Accreditation Survey Preparation <sup>2</sup>	✓	
Policy and Procedure Resources	✓	
OR Efficiency Performance <sup>3</sup>	✓	
Patient Satisfaction Survey Ongoing <sup>4</sup>		✓
Patient Safety Culture Survey & Analysis <sup>1</sup>	✓	
Patient Satisfaction Survey Analysis and Benchmarking <sup>4</sup>	✓	
Talent and Professional Development <sup>5</sup>	✓	
Electronic Variance Reporting <sup>6</sup>		✓
Electronic P&P Templates and System <sup>7</sup>		✓

<sup>1</sup> Must be on SCA supported System.

<sup>2</sup> Support available at Owner's expense.

<sup>3</sup> Must be on SCA Supported Patient Accounting Systems.

<sup>4</sup> Must utilize SCA endorsed vendor and have a local facility contract in place. Expense of survey administration is passed to Owner.

<sup>5</sup> This excludes travel expenses and incidental costs, which shall be allocated back to the Owner.

<sup>6</sup> Please review the SCA Management Agreement – Additional Fees page for pricing.

<sup>7</sup> Please review the SCA Management Agreement – Additional Fees page for pricing.

## Appendix 6

### TREASURY CASH MANAGEMENT SERVICES

#### **Standard Bank and Cash Management**

SCA will provide the Owner with its full suite of Treasury Services and SCA Treasury Department assistance. The Owner's bank account is set up at a standard bank (i.e., any financial institution where SCA maintains a ZBA relationship and contracted pricing), and Owner's cash is "swept" daily via automated system and concentrated into a master account maintained by SCA in which funds of SCA and other entities owned by SCA will be held. There are no monthly invoices to reconcile and Owner's excess cash earns interest income for Owner.

Services	Included in Management Fee	Not Included in Management Fee
Bank account management – inclusive of account opening/closing	✓	
Treasury assistance in converting from existing bank to standard bank	✓	
Contracted bank account pricing	✓	
Cash Visibility Tool access and support <sup>1</sup>	✓	
Treasury Department support <sup>2</sup>	✓	
Remote Deposit <sup>3</sup> service setup and support	✓	
Owner debt consultation and acquisition <sup>4</sup>	✓	
Automated invoice payment	✓	
Daily Banking Transactions access <sup>5</sup>	✓	
Interest earned on positive cash balances <sup>6</sup>	✓	

<sup>1</sup> This tool provides visibility into monthly cash receipts and disbursements by category.

<sup>2</sup> Treasury team is available by phone/email to assist with bank account, debt, and cash visibility.

<sup>3</sup> This provides the ability for facilities to deposit checks on-site.

<sup>4</sup> SCA provides assistance in debt acquisition process including access to national lenders.

<sup>5</sup> This application provides Owner daily banking transactions similar to what is seen on banks' online banking platforms.

<sup>6</sup> Facilities are paid interest on any "swept" deposited funds that remain after all monthly fees and disbursements are paid by SCA on behalf of the Owner. The rate is equal to the rate SCA is provided by its banking relationships.

#### **Additional Provisions.**

- **Records of Accounts.** SCA shall maintain records of all transfers made from the Owner's bank account to one or more SCA bank accounts and all disbursements made from each SCA bank account on the Owner's behalf, such that SCA can readily track and account for the Owner's funds. Except for the rare occasion involving error or fraud, the books and records of SCA shall be final and definitive with respect to the amounts of such transfers, disbursements, and the balance of the Owner's funds remaining after any payment.
- **Authorization and Transfers.** The Owner hereby authorizes SCA to conduct the banking activities described in this Appendix 6 on behalf of the Owner, which includes opening and closing bank accounts in the name of the Owner and contracting for banking services. The Owner agrees to sign such authorizations and follow such procedures that may be required by SCA or its depository institutions from time to time to facilitate transfers or set up access or services.

- Application of Funds. Upon the closing of the financial books of the Owner each month, SCA agrees use the funds from the Owner's bank account to pay balances owed to SCA by the Owner for payment of operating expenses of the Owner, including the payment of the Management Fee, interest expense under the Overdraft Line of Credit, any reimbursements contemplated under the Agreement, any other amount owed to SCA pursuant to this Agreement or any other fees or expenses that are properly allocable to the Owner.
- Overdraft Line of Credit. SCA may, in its sole discretion and on the terms described below, provide the Owner with an interest-bearing line of credit for working capital requirements up to a maximum borrowing line established by SCA from time to time (the "**Overdraft Line of Credit**").
  - Manner of Borrowing. In the event the Owner has balances due that exceed the amount of the Owner's funds, SCA shall pay such balances and charge the Owner interest for such payment.
  - Method of Payment. Payments to SCA of outstanding amounts under the Overdraft Line of Credit shall be made (a) upon the closing of the financial books each month to the extent of the Owner's account has a positive balance; provided, however, that all outstanding amounts under Overdraft Line of Credit shall be immediately due and payable upon the termination of this Agreement or (b) within thirty (30) days of a written demand for such payment delivered to the Owner.
  - Security. To secure payment and performance of any and all obligations of the Owner to SCA under the Overdraft Line of Credit and any costs and expenses incurred by SCA to enforce the security interest granted herein, the Owner hereby grants to SCA a continuing security interest in and lien upon all of Owner's rights, title and interest in, to and in (a) the Owner's bank accounts, (b) any funds in the Owner's bank accounts, (c) accounts, including contract rights, (d) general intangibles, and (e) all cash and non-cash proceeds and products thereof (collectively, the "**Collateral**"). The Owner authorizes the filing of one or more financing statements covering the Collateral in form satisfactory to SCA, and without the Owner's signature where authorized by law. The Owner agrees to take such other actions, at the Owner's expense, as might be requested for the perfection, continuation and assignment, in whole or in part, of the security interests granted herein and to assure and preserve SCA's intended priority position.
  - Events of Default. In addition to the termination provisions contained in Article II of this Agreement, SCA may also, by notice to the Owner, declare the Overdraft Line of Credit and all interest thereon to be due and payable and may, without notice to the Company, terminate immediately the Overdraft Line of Credit if any of the following events occur: (i) the Owner fails to pay the principal of, or interest on, any borrowings under the Overdraft Line of Credit; (ii) the Owner is unable to, or admits in writing its inability to, pay its debts as such debts become due; (iii) a creditor files a petition or application with a court of competent jurisdiction claiming that Owner is bankrupt or insolvent; (iv) one or more judgments, decrees or orders for the payment of money in excess of Twenty-Five Thousand Dollars (\$25,000) in the aggregate is rendered against the Owner; or (v) either Owner or SCA have given the other party notice of its intention to terminate this Agreement.

## Appendix 7

### TAX SERVICES

#### **SCA Full Scope of Tax Services | SCA Partnership Representative**

SCA will serve as the Partnership Representative for tax purposes, and the Owner has opted for SCA's full scope of accounting services as set forth on Appendix 1 – Accounting Services and Appendix 3 – Supply Chain Services.

SCA will provide all tax services listed below, however these services are not included in the Management Fee. The fee for tax services is allocated directly to Owner based on actual cost.

Services	Service Provided	Included in Management Fee	Not Included in Management Fee
<b>Unclaimed Property</b>			
Payee Correspondence	✓		✓
Escheatment Filing	✓		✓
<b>Sales/Use Tax</b>			
Taxability Determinations	✓		✓
Return Filing and Liability Payment	✓		✓
Correspondence	✓		✓
Audits	✓		✓
Tax Accrual & Balance Sheet Reconciliation	✓		✓
<b>Property Tax (Real and/or Personal)</b>			
Return Filing and Liability Payment	✓		✓
Correspondence	✓		✓
Audits	✓		✓
Tax Accrual & Balance Sheet Reconciliation	✓		✓
<b>Income Tax</b>			
Federal + State/Local (where applicable)	✓		
Return Filing and Liability Payment	✓		✓
Correspondence	✓		✓
Audits	✓		✓
Tax Accrual & Balance Sheet Reconciliation	✓		✓

## **Appendix 8**

### **RISK MANAGEMENT AND INSURANCE SERVICES**

#### **SCA Full Scope of Risk Management and Insurance Services**

SCA shall obtain on behalf of the Owner commercially reasonable insurance coverages on commercially reasonable terms and conditions, all at the Owner's sole cost and expense. SCA shall evaluate, on an ongoing basis, the professional liability, general liability, and other insurance needs of the Owner, Center and SCA, taking into consideration coverage customarily maintained by similar enterprises, healthcare requirements, and general availability of coverage in the market. The insurance shall cover the operations of the Center as set forth below under the Provided Coverages (set forth below).

Service	Included in Management Fee	Not Included in Management Fee
Insurance Program Oversight, Consultation, Claim Coordination, and Administration <sup>1</sup>		✓

<sup>1</sup> Pass through expense included in premium allocation; unusual expenses such as mediation or trial attendance will be billed to Owner.

#### **Provided Coverages.**

- Workers' compensation coverage with statutory limits and Employer's Liability coverage with minimum limits of \$1,000,000 per accident for bodily injury by accident, \$1,000,000 policy limit by disease, and \$1,000,000 per employee for bodily injury by disease;
- Professional and comprehensive general liability insurance covering the Owner, SCA, and the employees in an amount at least equal to \$1,000,000 per occurrence, \$3,000,000 in the annual aggregate and upon commercially reasonable terms and conditions, and excess insurance above professional and comprehensive general liability insurance in an amount equal to at least \$4,000,000 per occurrence and \$4,000,000 in the annual aggregate; and
- Any other insurance deemed necessary insurance by SCA. SCA may provide certificates of insurance and other evidence of insurance coverage on behalf of the Owner

## Appendix 9

### COMPLIANCE SERVICES

**SCA will provide all Compliance Services.**

Service	Included in Management Fee	Not Included in Management Fee
Corporate Compliance Training <sup>1</sup>	✓	
Compliance policies & procedures	✓	
Audit & Monitoring Program <sup>2</sup>	✓	
HIPAA Compliance <sup>2</sup>	✓	
Isolated investigations <sup>3</sup>		✓
RCL Program <sup>4</sup>	✓	
Policy Management System <sup>5</sup>	✓	
Anti-Kickback/Stark Law Management <sup>6</sup>	✓	
Hotline Monitoring and Reporting <sup>7</sup>	✓	
Excluded Party Software <sup>8</sup>	✓	
HIPAA Audit Program <sup>9</sup>	✓	
Coordination of Outside Counsel and Fair Market Value Valuations <sup>10</sup>		✓

<sup>1</sup> This includes compliance & HIPAA training.

<sup>2</sup> This includes breach investigation guidance and tools, and also Federal & State reporting requirements.

<sup>3</sup> Costs will be charged back to Owner including any outside counsel fees.

<sup>4</sup> SCA will provide tools and management of compliance lead at the facility level.

<sup>5</sup> This includes access to corporate policies only. Owner can opt in to facility policy management for additional charge.

<sup>6</sup> This includes review of contracts and marketing with referral sources. Violations and disclosure cost of reporting will be allocated back to the Owner (i.e., outside counsel assistance).

<sup>7</sup> SCA will provide access to third party managed hotline.

<sup>8</sup> This includes account access to SCA's sanctioned screening tools and resources.

<sup>9</sup> Owner will have access to monthly HIPAA reviews to ensure compliance.

<sup>10</sup> If necessary, SCA will assist in the coordination of obtaining a fair market value ("FMV") valuation for special positions. Also, if necessary, SCA will assist in the coordination of outside counsel for business ventures or proposals that are outside the scope of the ordinary course of SCA business to review compliance concerns. Owner will be responsible for paying any fees associated with a FMV valuation or outside counsel.

## **Appendix 10**

### **PAYER ENGAGEMENT SERVICES**

#### **SCA Full Scope of Payer Engagement Services**

SCA will review and assess contract performance, negotiate FFS and value-based contracts with payers, provide detailed reporting to assess impact and opportunity, negotiate rates, submit proposal to payor, and notify center/ RCO of effective date.

Services	Included in Management Fee	Not Included in Management Fee
Health Plan Contract Negotiations	✓	
Payer Engagement & Growth Strategy Support <sup>1</sup>	✓	
Contract Maintenance & Administration <sup>2</sup>	✓	
Facility Charge Master Maintenance <sup>3</sup>	✓	
Payer Engagement Yearly Guidance (Budget) <sup>4</sup>	✓	
Health Plan Credentialing <sup>5</sup>		✓

<sup>1</sup> SCA ensures contracts support strategic service growth opportunities. SCA provides subject matter expertise on health plan market trends. SCA monitors opportunities for participation in new products and networks. SCA actively communicates Owner's value-proposition and identify growth opportunities for value-based contracting partnerships.

<sup>2</sup> SCA monitors and executes contract optimization for current services, provides quarterly reporting & analysis to assess contract performance and opportunities for improvement, and provides access to contract administration system and business office tools to ensure revenue cycle accuracy. This includes fee schedule updates, coding changes, and pre-auth changes. SCA will obtain all approvals and signatures.

<sup>3</sup> SCA maintains CDM to ensure charge optimization and defensibility.

<sup>4</sup> SCA develops annual contracting strategy and provide financial guidance for contracting change impacts.

<sup>5</sup> SCA will coordinate credentialing. Owner is responsible for maintaining current credentialing with all payers.

#### **Additional Provisions.**

- Payer Engagement team does not load contracts into the Payer Contract Database, or map contracts to payer IDs in patient accounting systems.
- If Owner opts out of an SCA supported system option, the services above will be limited by the data that SCA has access to. The Owner will be expected to provide detailed data extracts (claims, contract models, etc.) to support payer engagement functions. Additionally, Owner's participation in value-based initiatives will be hindered



## **Appendix 11**

### **PHYSICIAN RECRUITMENTBUSINESS DEVELOPMENT SERVICES**

SCA will not provide physician recruitment / business development services.

**Appendix 1:**

**CREDENTIALING SERVICES**

SCA will provide credentialing services; however, these services will be provided under a separate, independent agreement.

## Appendix 13

### FINANCIAL OPERATIONS SERVICES

**SCA will provide Operations Services**

Services	Included in Management Fee	Not Included in Management Fee
Capital spend ROI analysis and financing guidance	✓	
Partner with regional leadership to drive improved financial performance	✓	
Create and Adopt Operating & Capital budget	✓	
Monthly operating reviews with facility leadership	✓	
Monitor key performance indicators for action items to improve performance	✓	
Create presentations for partnership meetings	✓	
Analysis of monthly financial statements and cost controls	✓	
Prepare distribution calculation	✓	
Analysis of Accounts Receivable and monitoring cash collections	✓	
Case costing analysis	✓	
Generate re-syndication proforma and share price valuation	✓	
Implement financing of term loans and lines of credit	✓	
Provide finance and accounting education to facility leadership and partnership	✓	
Coordination of Extension of Practice Process <sup>1</sup>		✓
Coordination of syndication process via SCA's broker/dealer department <sup>2</sup>		✓

<sup>1</sup> This service is provided through coordination with SCA's broker/dealer team. Please review the SCA Management Agreement – Additional Fees page for pricing.

<sup>2</sup> This service is provided through coordination with SCA's broker/dealer team. Please review the SCA Management Agreement – Additional Fees page for pricing.

## **Appendix 14**

### **REVENUE CYCLE SERVICES AND CODING SERVICES**

SCA can provide revenue cycle services and coding services, however these services will be provided under a separate, independent agreement.

## EXHIBIT D

### AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF NORTH KITSAP AMBULATORY SURGERY CENTER, LLC

THE MEMBERSHIP INTERESTS ISSUED UNDER THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (“**33 ACT**”) OR UNDER ANY STATE SECURITIES ACT, AS AMENDED (“**STATE ACT**”), AND MAY BE OFFERED OR SOLD BY A PURCHASER OF THE MEMBERSHIP INTERESTS ONLY (1) UPON REGISTRATION OF THE MEMBERSHIP INTERESTS UNDER THE ‘33 ACT AND THE STATE ACT OR PURSUANT TO AN EXEMPTION THEREFROM, AND (2) AFTER COMPLIANCE WITH ALL RESTRICTIONS ON TRANSFER OF MEMBERSHIP INTERESTS IMPOSED BY THIS AGREEMENT.

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF  
NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**

## TABLE OF CONTENTS

	<u>Page</u>
I. DEFINITIONS.....	1
II. ORGANIZATION .....	7
2.1 Formation.....	7
2.2 Name .....	7
III. PRINCIPAL PLACE OF BUSINESS .....	7
3.1 Principal Place of Business.....	7
3.2 Registered Office .....	7
3.3 Registered Agent.....	7
IV. BUSINESS.....	8
V. TERM .....	8
VI. CAPITAL CONTRIBUTION AND CAPITAL ACCOUNTS OF MEMBERS .....	8
6.1 Capital Contribution of the SCA Member .....	8
6.2 Capital Contributions of the Other Members.....	8
6.3 Additional Capital Contributions.....	8
6.4 Limited Liability .....	9
6.5 Role of Members.....	9
6.6 Withdrawal of Capital Contributions.....	9
6.7 Assessments and No Negative Capital Account Make-up .....	9
6.8 Creation and Maintenance of Capital Account.....	9
6.9 Admission of Additional Members.....	9
6.10 Issuance of Replacement Units.....	10
6.11 Redemption of Units from the SCA Member .....	10
VII. EXPENSES OF THE COMPANY .....	10
7.1 Fees Receivable By An Affiliate of the SCA Member.....	10
7.2 Loans.....	10
7.3 Other Arrangements with Affiliates.....	11
VIII. ALLOCATION OF INCOME AND LOSS; CASH DISTRIBUTIONS .....	11
8.1 Profits.....	11
8.2 Losses.....	11
8.3 Compliance with Treasury Regulations.....	11
8.4 Nonrecourse Deductions.....	12
8.5 Gross Income Allocation .....	12
8.6 Corrective Allocations .....	12

# TABLE OF CONTENTS

## (cont'd)

	Page
8.7 Allocations in Event of Recharacterization or Imputed Interest Transactions .....	12
8.8 Allocations Upon Liquidation.....	12
8.9 Tax Allocations: Code Section 704(c).....	13
8.10 Distributions of Available Cash Flow.....	13
8.11 Distributions of Sale Proceeds .....	13
8.12 Consequences of Distributions .....	13
8.13 Tax Credits.....	13
8.14 Member Admission Date .....	13
8.15 Allocation of Profits, Losses and Distribution In Respect of Units Transferred .....	13
8.16 Offsets to Distributions .....	14
IX. RIGHTS, POWERS AND OBLIGATIONS OF THE BOARD OF MANAGERS .....	14
9.1 Establishment of Board of Managers.....	14
9.2 Powers.....	14
9.3 Independent Activities .....	15
9.4 Duties .....	16
9.5 Certain Limitations .....	16
9.6 Board of Manager Meetings .....	16
9.7 Resignation, Removal and Replacement of a Manager .....	17
9.8 Partnership Representative.....	17
9.9 Officers .....	21
9.10 Medical Executive Committee.....	22
X. TRANSFER OF UNITS .....	22
10.1 In General.....	22
10.2 Right of First Refusal.....	23
10.3 Substitute Members .....	23
10.4 Rights of Assignees.....	23
10.5 Buy/Sell Events.....	24
10.6 Notice.....	25
10.7 Purchase Option.....	26
10.8 Benefit Plan Investors .....	26
10.9 Additional Option to Purchase Units Held by Assignee.....	26
10.10 Closing of Purchase of Withdrawing Member's Unit(s) and Payment Terms .....	27
10.11 Effect of a Buy/Sell Event Related to an Interest Holder of an Entity Member.....	28
10.12 Effect on Withdrawing Member's Interest .....	29
10.13 No Dissolution or Termination .....	29



# TABLE OF CONTENTS

## (cont'd)

	Page
10.14 Liquidated Damages .....	29
10.15 SCA Member Put Right .....	30
XI. DISSOLUTION AND WINDING UP OF THE COMPANY .....	30
11.1 Dissolution of the Company .....	30
11.2 Winding Up of the Company .....	31
XII. BOOKS OF ACCOUNT, ACCOUNTING, REPORTS, FISCAL YEAR, BANKING AND TAX ELECTION .....	31
12.1 Books of Account .....	31
12.2 Financial Reports .....	31
12.3 Fiscal Year .....	32
12.4 Tax Election .....	32
12.5 Tax Returns .....	32
XIII. POWER OF ATTORNEY .....	32
13.1 Appointment of Attorney-in-Fact .....	32
13.2 Effect of Power .....	32
XIV. AMENDMENTS AND VOTING .....	32
14.1 Amendments .....	32
14.2 Meetings and Means of Voting .....	33
14.3 Voting Rights .....	33
XV. DUTIES OF COVERED PERSONS .....	34
15.1 Covenants of Covered Persons .....	34
15.2 Medical Malpractice Insurance .....	35
15.3 Non-Discrimination .....	35
15.4 Certification .....	36
15.5 Physician Interest Holder Eligibility Requirements .....	36
15.6 Confidentiality .....	37
XVI. BOARD OF MANAGERS' TRANSACTIONS AND LIABILITY .....	38
16.1 Permitted Transactions of the SCA Member .....	38
16.2 Liability of the Managers to the Members and the Company .....	38
16.3 Exculpation .....	38
16.4 Indemnification .....	39
16.5 Return of Capital Contribution .....	39
XVII. MISCELLANEOUS .....	39
17.1 Notices .....	39
17.2 Section Captions .....	40
17.3 Severability .....	40

**TABLE OF CONTENTS**  
**(cont'd)**

	<b>Page</b>
17.4 Right to Rely Upon the Authority of the Board of Manager .....	40
17.5 Governing Law .....	40
17.6 Waiver of Action for Partition .....	40
17.7 Counterpart Execution .....	40
17.8 Parties in Interest.....	40
17.9 Construction of Pronouns .....	40
17.10 Integrated Agreement.....	41
17.11 Force Majeure .....	41
17.12 Schedules and Exhibits .....	41
17.13 Benefit/Assignment.....	41
17.14 Waiver .....	41
17.15 Business Day .....	41
17.16 Waiver of Jury Trial.....	41
17.17 Language Construction .....	41

**AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT  
OF  
NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**

This Amended and Restated Limited Liability Company Agreement, made and entered into as of December 1, 2021 (the “**Effective Date**”), by and among those persons who are or may become Members under the terms of this Agreement and each Interest Holder, amends and restates, in its entirety, that certain Limited Liability Company Agreement of the Company, dated November 24, 2021.

The parties hereto agree as follows:

**I. DEFINITIONS**

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

1.1 “**Act**” means the Washington Limited Liability Company Act, as amended from time to time.

1.2 “**Admission Date**” for a Member means the date he, she or it was admitted as a Member and for a Physician Entity Owner means the later of the date he or she became a Physician Entity Owner or the date the applicable Physician Entity was admitted as a Member.

1.3 “**Adverse Buy/Sell Event**” means each Buy/Sell Event listed in Section 10.5(b).

1.4 “**Adverse Event Purchase Price**” means fifty percent (50%) of the Fair Market Value Transfer Price.

1.5 “**Affiliate**” of a specified Person or entity shall mean a Person or entity that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person or entity specified. As used in this definition, the term “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such specified Person or entity, whether through ownership of voting securities, by contract or otherwise.

1.6 “**Agreement**” means this Amended and Restated Limited Liability Company Agreement, as amended from time to time.

1.7 “**Assignee**” means a transferee of Units or any successor to a Member by operation of law, who has not, in either case, been admitted as a substitute Member.

1.8 “**Assignee Purchase Notice**” has the meaning set forth in Section 10.9 hereof.

1.9 “**Assignee Units**” has the meaning set forth in Section 10.9 hereof.

1.10 “**Available Cash Flow**” means all cash funds of the Company on hand at the end of each calendar quarter less (a) provision for payment of all outstanding and unpaid current cash obligations of the Company at the end of such quarter (including those which are in dispute); (b) provision for reserves and working capital for reasonably anticipated cash expenses and contingencies (which may include debt service on Company indebtedness and fees payable to the SCA Member or its Affiliates) as determined by the Board of Managers in its sole discretion; (c) provisions for payment of any outstanding balance under the Overdraft Line of Credit; (d) proceeds from the sale of the Units; and (e) Sale Proceeds.

1.11 “**Benefit Plan Investor Ownership Limitation**” means Benefit Plan Investors own, in the aggregate, a twenty-five percent (25%) or greater interest in the Company without regard to any interest owned by the SCA Member and its Affiliates, or the ownership interest of any other Person who has discretionary control with respect to the assets of the Company or who provides investment advice to the Company for a fee.

1.12 “**Benefit Plan Investors**” shall have the meaning set forth in the ERISA Regulation set forth in 29 C.F.R. §2510.3-101(f)(2), as amended, or any successor regulation thereto.

1.13 “**Board of Managers**” means the Managers, collectively, of the Company.

1.14 “**Board Votes**” has the meaning set forth in Section 9.6(a) hereof.

1.15 “**Buy/Sell Event**” has the meaning set forth in Section 10.5 hereof.

1.16 “**Buy/Sell Notice**” has the meaning set forth in Section 10.6 hereof.

1.17 “**Capital Account**” means, with respect to any Member, the capital account maintained by the Company for such Member in accordance with Section 6.8 of the Agreement.

1.18 “**Capital Call**” has the meaning set forth in Section 6.3 hereof.

1.19 “**Capital Contribution**” in respect of any Member or transferee of such Member means all property, tangible or intangible, contributed by such Member to the capital of the Company.

1.20 “**Center**” means the ambulatory surgery center known as “Pacific Surgery Center” located at 20669 Bond Road NE, Suite 200, Poulsbo, Washington 98370.

1.21 “**Certificate**” has the meaning set forth in Section 2.1 hereof.

1.22 “**Closing**” has the meaning set forth in Section 10.10 hereof.

1.23 “**Closing Payment**” has the meaning set forth in Section 10.10(b) hereof.

1.24 “**Code**” means the Internal Revenue Code of 1986, as amended, or any corresponding provisions of succeeding law in effect at such time.

1.25 “**Company**” means the limited liability company formed pursuant to this Agreement.

1.26 “**Company Percentage**” means, in the case of any Member, a fraction, stated as a percentage, with a numerator equal to the number of Units held by such Member and a denominator equal to the number of Units held by all Members.

1.27 “**Company Return**” means the U.S. Return of Partnership Income of the Company.

1.28 “**Competing Facility**” has the meaning set forth in Section 15.1 hereof.

1.29 “**Confidential Business Information**” has the meaning set forth in Section 15.6 hereof.

1.30 “**Covered Person**” means each Interest Holder, and each Member other than the SCA Member and its Affiliates.

1.31 “**Disability**” means inability or other failure of a Physician Interest Holder, as determined by the Board of Managers, because of ill health, incapacity or physical or mental impairment, to be able to actively be engaged in the full-time practice of surgery or anesthesia in substantially the same manner as at the time he or she first acquired Units (a) for a period of at least sixty (60) consecutive business days during any twelve (12) consecutive calendar months during the term of this Agreement, or (b) for a total of at least ninety (90) business days during any twelve (12) consecutive calendar months during the term of this Agreement, whether consecutive or not, or (c) as evidenced by the Physician Interest Holder’s receipt of benefits from a long term disability insurance policy.

1.32 “**EBITDA**” (a) means earnings before interest, taxes, depreciation and amortization for the applicable period, calculated as follows: the Net Income of the Company, plus the following, each determined in accordance with GAAP, without duplication and to the extent deducted from Net Income: (i) interest expense, (ii) federal, state and local income tax expense, (iii) depreciation and (iv) amortization of intangible assets and other non-cash charges; and (b) shall be calculated without regard to (i) any extraordinary gain or loss or (ii) any non-recurring or non-operating items related to activities outside the ordinary course of business.

1.33 “**Effective Date**” has the meaning set forth in the first paragraph of this Agreement.

1.34 “**Entity Member**” means a professional association, professional corporation, partnership, limited liability company, corporation, trust, benefit plan or other such entity, other than the SCA Member or its Affiliates, that is a Member. All Interest Holders of an Entity Member must be Physicians who meet the Physician Interest Holder Eligibility Requirements.

1.35 “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

1.36 “**Estimated Purchase Price**” has the meaning set forth in Section 10.10(b) hereof.

1.37 “**Extension of Practice Requirements**” has the meaning set forth in Section 15.4(b).

1.38 “**Fair Market Value Transfer Price**” as of any date means the amount calculated according to the following formula: the product of EBITDA for the twelve (12) month period ending on the last day of the immediately preceding month as of such date multiplied by three (3), less any Interest Bearing Debt as of the last day of the immediately preceding month of such date.

1.39 “**Final Purchase Price**” has the meaning set forth in Section 10.10(b) hereof.

1.40 “**Fiscal Year**” means the period designated as such in Section 12.3 hereof.

1.41 “**Force Majeure**” has the meaning set forth in Section 17.11 hereof.

1.42 “**GAAP**” means generally accepted accounting principles, as consistently applied by the Board of Managers.

1.43 “**Health Care Program Adverse Event**” means the suspension, debarment, exclusion or termination of a Physician Interest Holder from the Medicare or Medicaid programs or other federal or state health care programs, or the imposition of any civil monetary penalties or other punishment by a government program against a Physician Interest Holder.

1.44 **“Interest Bearing Debt”** means the principal amount of any notes payable or other indebtedness of the Company, provided that such indebtedness is reflected on the balance sheet of the Company.

1.45 **“Interest Holder”** means a Person who (a) is a member, shareholder, partner or other owner (either directly or indirectly) of an Entity Member or (b) created, is a beneficiary or grantor of, or is the trustee of a trust that is a Member.

1.46 **“Interest Holder’s Proportionate Units”** means the number of Units held by an Entity Member that is attributable to an Interest Holder based on such Interest Holder’s (direct or indirect) ownership percentage interest in the Entity Member, which in the case of an Interest Holder described in (b) of Section 1.45 shall be deemed one hundred percent (100%) unless a lesser percentage is approved by the Board of Managers.

1.47 **“Manager”** means the Person or Persons so named as part of or elected to the Board of Managers pursuant to this Agreement.

1.48 **“Medical Executive Committee”** has the meaning set forth in Section 9.10 hereof.

1.49 **“Member”** means each Person designated as a Member of the Company on Schedule A hereto as of the Effective Date, including the SCA Member, or any other Person admitted as a Member of the Company in accordance with this Agreement or the Act. **“Members”** refers to such Persons as a group.

1.50 **“Net Book Value Purchase Price”** means fifty percent (50%) of the Tangible Net Book Value.

1.51 **“Net Income”** means net income (or loss), calculated in accordance with GAAP, which shall include a deduction of the annual management fees, and shall not include extraordinary and nonrecurring items (and corresponding tax consequences) and income or loss attributable to discontinued operations.

1.52 **“Non-Adverse Buy/Sell Event”** means any Buy/Sell Event that is not an Adverse Buy/Sell Event.

1.53 **“Non-Contributing Member”** has the meaning set forth in Section 6.3 hereof.

1.54 **“Non-SCA Members”** means the Members other than the SCA Member.

1.55 **“Note”** has the meaning set forth in Section 10.10(a).

1.56 **“Outpatient Surgical Procedures”** has the meaning set forth in Section 15.4(b).

1.57 **“Overdraft Line of Credit”** has the meaning set forth in Section 7.2 hereof.

1.58 **“Partnership Representative”** (i) for taxable years beginning on or prior to December 31, 2017, has the meaning of a “Tax Matters Partner” set forth in Code Section 6231 and any comparable provisions of foreign, state and local income tax laws, and (ii) for taxable years beginning after December 31, 2017, and to which the Revised Partnership Audit Procedures apply, has the meaning of a “partnership representative” set forth in Section 6223(a) of the Code and any comparable provisions of foreign, state and local income tax laws.

1.59 “**Person**” means an individual, trust, estate, corporation, partnership, limited partnership, limited liability company, unincorporated association or other entity or association.

1.60 “**Physician**” means a Person defined as set forth in 42 U.S.C. §1395x(r) who is licensed to practice medicine in Washington.

1.61 “**Physician Interest Holder**” means (a) a Member who is a Physician or (b) an Interest Holder who is a Physician.

1.62 “**Physician Interest Holder Eligibility Requirements**” has the meaning set forth in Section 15.5(b).

1.63 “**Profits**” and “**Losses**” means, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, 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 Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.63 shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this Section 1.63 shall be subtracted from such taxable income or loss;

(c) If the book value of property is adjusted pursuant to Regulations Sections 1.704-1(b)(2)(iv)(f) or (e), such adjustment shall be taken into account as gain or loss from the disposition of an asset and, in lieu of depreciation as calculated for federal income tax purposes, subsequently such deductions shall be computed in accordance with Regulations Sections 1.704-1(b)(2)(iv)(g)(3) or 1.704-3(d)(2), as the case may be. Subsequent calculations of gain or loss resulting from the disposition of an asset for federal income tax purposes shall be computed by reference to its book value as reflected in Members’ Capital Accounts rather than its adjusted tax basis;

(d) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or 743(b) is required to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member’s interest in accordance with Regulations Section 1.704-1(b)(2)(iv)(m)(4), the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of the asset and shall be taken into account for purposes of computing Profits and Losses; and

(e) Any items which are specially allocated pursuant to Section 8.3, Section 8.4, Section 8.5 and Section 8.6 hereof shall not be taken into account in computing Profits or Losses.

The amounts of items of Company income, gain, loss, and deduction available to be specifically allocated pursuant to Section 8.3, Section 8.4, Section 8.5 and Section 8.6 hereof shall be determined by applying rules analogous to those set forth in Subparagraphs (a) through (e) above.

1.64 “**Purchase Agreement**” has the meaning set forth in Section 8.16 hereof.



- 1.65     **“Purchase Agreement Termination”** has the meaning set forth in Section 10.15(a) hereof.
- 1.66     **“Purchase Notice”** has the meaning set forth in Section 10.7 hereof.
- 1.67     **“Put Notice”** has the meaning set forth in Section 10.15(a) hereof.
- 1.68     **“Put Notice Date”** has the meaning set forth in Section 10.15(a) hereof.
- 1.69     **“Put Right”** has the meaning set forth in Section 10.15(a) hereof.
- 1.70     **“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).
- 1.71     **“Regulatory Allocations”** has the meaning set forth in Section 8.6 hereof.
- 1.72     **“Repurchase Failure Notice”** has the meaning set forth in Section 10.11 hereof.
- 1.73     **“Repurchase Period”** has the meaning set forth in Section 10.11 hereof.
- 1.74     **“Responsible Party”** has the meaning set forth in Section 16.3 hereof.
- 1.75     **“Restricted Period”** means (a) in the case of a Member, the period commencing on the date he or she becomes a Member and ending on the later of (i) the second (2<sup>nd</sup>) annual anniversary of the date such Member is no longer a Member or (ii) the fifth (5<sup>th</sup>) annual anniversary of the date such Member was admitted to the Company, and (b) in the case of an Interest Holder that is not directly a Member, means the period commencing on the date that he or she becomes an Interest Holder in an Entity Member and ending on the later of (i) the second (2<sup>nd</sup>) annual anniversary of the date such Interest Holder ceased to be an Interest Holder of the Entity Member, (ii) the second annual anniversary of the date such Entity Member ceased to be a Member or (iii) the fifth (5<sup>th</sup>) annual anniversary of that he or she becomes an Interest Holder in such Entity Member.
- 1.76     **“Retirement”** shall mean when a Physician Interest Holder ceases to practice medicine and publicly announces such retirement or, if he or she does not publicly announce such retirement, the Board of Managers shall have determined that such person no longer practices medicine (including, but not limited to, performing ambulatory surgical procedures) on at least a substantially full-time basis (i.e., at least thirty-five (35) hours per week for at least forty (40) weeks per year).
- 1.77     **“Revised Partnership Audit Procedures”** means the provisions of Subchapter C of Subtitle F, Chapter 63 of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto including amendments made by P.L. 114-113, the Consolidated Appropriations Act of 2015), Treasury Regulations promulgated thereunder, and published administrative interpretations thereof, and any similar procedures established by a state, local, or non-U.S. taxing authority.
- 1.78     **“Sale Proceeds”** means all proceeds of any sale, exchange, foreclosure, abandonment, financing or refinancing of capital assets of the Company, or from condemnation awards or casualty insurance claims, less applicable expenses and any debt paid or prepaid with the proceeds of or in connection with such transaction occurring outside the ordinary course of business.
- 1.79     **“SCA”** means Surgical Care Affiliates, LLC, a Delaware limited liability company and the indirect owner of the SCA Member, and any successor entity.



1.80 “**SCA Managers**” has the meaning set forth in Section 9.1 hereof.

1.81 “**SCA Member**” means SCA Pacific Surgery Holdings, LLC, a Delaware limited liability company, and any successor entity.

1.82 “**Supermajority of the Members**” means a vote requiring the approval of (i) the SCA Member and (ii) the Members holding at least fifty percent (50%) of the Units then held by all Members other than the SCA Member.

1.83 “**Tangible Net Book Value**” means the net assets of the Company, less current and long-term liabilities and less any intangible asset that appears on the Company’s balance sheet, including, without limitation, goodwill, each determined in accordance with GAAP.

1.84 “**Transfer**” (and its derivations) means any involuntary or voluntary sale, lease, pledge, assignment, grant of a security interest, subcontract, dividend, merger, consolidation, gift or other disposition, direct or indirect, by operation of law or otherwise.

1.85 “**Unit**” means an interest as a Member in the capital and profit and losses of the Company. The Board of Managers, in its sole discretion, may increase the number of Units. Units may be offered and sold in fractional increments.

1.86 “**Withdrawing Member**” has the meaning set forth in Section 10.6.

1.87 “**Withdrawing Member’s Units**” has the meaning set forth in Section 10.10 hereof.

## II. ORGANIZATION

2.1 Formation. The Company was previously converted from a Washington corporation into a Washington limited liability company under and pursuant to the Act, by filing articles of conversion and a certificate of formation (the “**Certificate**”) with the Secretary of State of Washington. The parties desire to cause the Company to continue in effect in accordance with the terms of this Agreement. The Board of Managers shall cause any amendments to the Certificate to be filed of record and in such places as required by the Act to protect the status of the Company as a limited liability company doing business in Washington and as otherwise required by law.

2.2 Name. The name of the Company is North Kitsap Ambulatory Surgery Center, LLC. The business of the Company may be conducted under such other name as the Board of Managers may determine.

## III. PRINCIPAL PLACE OF BUSINESS

3.1 Principal Place of Business. The principal place of business of the Company shall be located at the Center, or at such other place as the Board of Managers may from time to time designate.

3.2 Registered Office. The registered office of the Company shall be the address designated by the Board of Managers.

3.3 Registered Agent. The Registered Agent of the Company shall be CT Corporation.

#### IV. BUSINESS

The business to be conducted by the Company shall be to own and operate the Center, and to carry on any and all activities necessary, proper, convenient, or advisable in connection therewith.

#### V. TERM

The Company shall be perpetual, unless terminated earlier pursuant to Article XI of this Agreement.

#### VI. CAPITAL CONTRIBUTION AND CAPITAL ACCOUNTS OF MEMBERS

6.1 Capital Contribution of the SCA Member. The SCA Member, or its respective predecessors in interest, has previously made a Capital Contribution to the Company in exchange for its Units or has acquired its Units from another Member. The number of Units held by the SCA Member as of the Effective Date is set forth on Schedule A.

6.2 Capital Contributions of the Other Members. The Members other than the SCA Member, or their respective predecessors in interest, have previously made a Capital Contribution to the Company in exchange for Units or have acquired their Units from another Member. The number of Units held by each of the Members other than the SCA Member as of the Effective Date is set forth on Schedule A.

6.3 Additional Capital Contributions. In the event that the Board of Managers determines at any time (or from time to time) that additional funds are required by the Company for or in respect of its business or to pay any of its obligations, expenses, costs, liabilities or expenditures (including, without limitation, any operating deficits), then the Board of Managers may, in its discretion, and with the approval of a Supermajority of the Members in accordance with Section 9.5(b) of this Agreement, require the Members to contribute additional capital to the Company in proportion to their Company Percentage (“**Capital Call**”). If any Member fails to contribute his, her or its pro rata share of any Capital Call within ten (10) days of receipt of written notice from the Board of Managers (a “**Non-contributing Member**”), the SCA Member may, if it has made its additional contribution hereunder make the additional contribution that such Non-contributing Member has failed to make in exchange for Units. Under such circumstances, the Board of Managers shall adjust the Company Percentage and Unit ownership of the Members to the extent necessary in accordance with the following formula: Each Member’s adjusted Units shall be determined by multiplying the total outstanding Units times each Member’s adjusted Company Percentage. Each Member’s adjusted Company Percentage shall be equal to the quotient of (a) the sum of (i) the fair market value of the Company, as determined by the Board of Managers in good faith immediately prior to the applicable Capital Contribution, multiplied by each Member’s Company Percentage at the time of the additional Capital Contribution, plus (ii) the amount, if any, of such Member’s additional Capital Contribution actually contributed, divided by (b) the total fair market value of the Company, as determined by the Board of Managers in good faith immediately after the applicable Capital Contribution. The formula set out in the paragraph is summarized below for illustration purposes.

Total Outstanding Units × ((FMV Pre-contribution × each Member’s Company Percentage) + each Member’s Capital Contribution)/FMV Post-Contribution.

The Board of Managers is hereby authorized to amend Schedule A to reflect the number of Units held by each Member in accordance with the terms of this Section.

6.4 Limited Liability. A Member shall not be bound by, or personally liable for, the expenses, liabilities or obligations of the Company, except as provided in the Act or as otherwise provided by

applicable law. Notwithstanding the foregoing, in the event that SCA or a third party commercial lender requires a Member to guarantee the Company's obligations under a loan as a condition of financing and the Member agrees to do so, the Member shall be liable under the guaranty according to its terms.

6.5 Role of Members. Except as otherwise provided in this Agreement, no Member shall take part in or interfere in any manner with the conduct or control of the business of the Company and shall have no right or authority to act for or bind the Company.

6.6 Withdrawal of Capital Contributions. No Member shall have the right to withdraw or reduce his, hers or its Capital Contribution without the prior written consent of the Board of Managers. No Member shall have the right to demand or receive property other than cash in return for his, her or its Capital Contribution, and no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to profits, losses or distributions.

6.7 Assessments and No Negative Capital Account Make-up. Other than as set forth in Section 6.3 hereof, Members will not be subject to additional assessments for contributions to the capital of the Company. Notwithstanding any other provision in this Agreement or any inference from any provision in this Agreement, no Member shall have an obligation to the Company, to the other Members or to third parties to restore a negative Capital Account balance during the existence of the Company or upon the dissolution or termination of the Company.

6.8 Creation and Maintenance of Capital Account. The Company shall establish and maintain a Capital Account for each Member for the full term of the Company. The Capital Account shall be increased by such Member's Capital Contribution and allocations of Profits and items thereof to such Member and decreased by distributions and allocations of Losses and items thereof to such Member and otherwise maintained in accordance with the capital account maintenance rules of Regulations Section 1.704-1(b)(2)(iv). Upon occurrence of any of the events specified in Regulations Section 1.704-1(b)(2)(iv)(f)(5), the Partnership Representative in its sole discretion may require the Board of Managers to revalue all Company assets and adjust the Capital Accounts to reflect such revaluation if the Partnership Representative determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; further, all of the rules of Regulations Section 1.704-1(b)(2)(iv)(f) shall be complied with upon any such revaluation and Capital Account adjustment. In the event the Partnership Representative shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Partnership Representative may require the Board of Managers to make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member upon the dissolution of the Company. The Board of Managers shall make appropriate modifications required by the Partnership Representative in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

6.9 Admission of Additional Members. The Company may admit additional Members upon the approval of, and on terms determined by, the Board of Managers in its sole and absolute discretion. Each additional Member shall deliver to the Board of Managers (a) a written agreement by the additional Member to be bound by all the terms and conditions of this Agreement, as amended from time to time, and (b) pay any additional capital that such additional Member has agreed to contribute. The Members acknowledge and agree that it is their intention that the SCA Member's Company Percentage will at all times be fifty-one percent (51%) or greater. In the event that admission of additional Members would result in the SCA Member's Company Percentage falling below fifty-one percent (51%), the SCA Member shall have a pre-emptive right (on the same terms and conditions as the additional Members, including price) to purchase such number of additional Units as will maintain the SCA Member's Company Percentage at fifty-one percent (51%).

6.10 Issuance of Replacement Units. In the event that the Company purchases the Units of any Member, such Units shall not cease to exist but shall remain available for the Company to resell. During the period after such Units are purchased by the Company and until they are resold, such Units shall not be deemed to be outstanding under this Agreement for any purposes (i.e., voting, receipt of distributions, etc.).

6.11 Redemption of Units from the SCA Member. In the event the Company redeems Units from the SCA Member in connection with an offering of Units to other Persons, the redemption price shall be equal to the gross proceeds received by the Company from the sale of Units in the offering.

## VII. EXPENSES OF THE COMPANY

7.1 Fees Receivable By An Affiliate of the SCA Member. The Company may contract with others, including Affiliates of the SCA Member, to perform services. Any such arrangements with Affiliates will be on terms that the Board of Managers believes to be fair and reasonable to the Company and generally not materially less favorable than could reasonably be realized with unaffiliated persons. In addition, Affiliates of the SCA Member will receive from the Company on the terms and conditions hereinafter set forth certain fees, which shall be in addition to the interest of the SCA Member in the Profit and Loss and Available Cash Flow of the Company. As of the Effective Date of this Agreement, arrangements with Affiliates of the SCA Member include, but are not limited to a management agreement by and between SCA and the Company dated December 1, 2021 (the “**Management Agreement**”), pursuant to which SCA will provide (i) management services and provide staffing for the Center in exchange for the consideration set forth therein and (ii) certain cash management services to the Company. SCA may also charge the Company for all direct expenses incurred by it in connection with the Company’s business, including legal, accounting, record keeping and data processing services. SCA, or an Affiliate of the SCA Member, (i) shall employ the employees, including, but not limited to, one or more administrators, assigned to the Center as set forth in the Management Agreement, (ii) shall have the right (A) to terminate the employment of any employee, including, but not limited to, any administrator, and (B) to hire such additional individuals as employees as SCA determines is reasonably necessary from time to time, and (iii) shall have the power to direct, in its sole discretion, all employees, including the administrator. Each Member hereby approves, consents to, and ratifies all the foregoing arrangements. The SCA Member shall cause SCA to consult with the Board, including specifically the non-SCA appointed Managers prior to hiring or firing any administrator.

7.2 Loans. SCA or a financial institution affiliated with SCA may from time to time provide the Company with loans to finance working capital for the purchase of equipment, leasehold improvements or other capital expenditures as set forth in the Management Agreement. SCA or an Affiliate may provide the Company with an interest-bearing line of credit for working capital requirements up to a maximum borrowing line established by SCA from time to time (the “**Overdraft Line of Credit**”) if the Company does not have sufficient funds available for payment of its expenses, including management fees and interest, if any. Whether and to what extent the Company will borrow funds under the Overdraft Line of Credit will be within the sole and absolute discretion of the SCA Member. The Company will participate in SCA’s cash management system in accordance with the Management Agreement. No distributions of Available Cash Flow or Sale Proceeds will be made if the Company’s outstanding indebtedness under the Overdraft Line of Credit exceeds the Company’s cash on hand, net of reserves. However, if the Company incurs indebtedness under the Overdraft Line of Credit for a special purpose, such as to finance construction, distributions of Available Cash Flow may be made while a balance is outstanding at the sole discretion of the SCA Member. The Members acknowledge and agree that the terms of the Overdraft Line of Credit as described in the Management Agreement are fair and reasonable to the Company. Neither SCA nor any other Affiliate of the SCA Member is required to provide the Overdraft Line of Credit and the availability of the Overdraft Line of Credit will be determined by SCA or any other Affiliate of the SCA Member in its sole discretion.

7.3 Other Arrangements with Affiliates. The Company may enter into agreements with Affiliates of any Member, including, without limitation, the foregoing, and may extend, renew, amend, or modify such agreements in any respect, provided such actions are commercially reasonable and generally on such terms not materially less favorable than could reasonably be obtained with an unaffiliated third person. Any agreement with a Member or an Affiliate that is approved by the Board of Managers and Members holding an aggregate Company Percentage of greater than fifty percent (50%) shall be conclusively presumed to meet the requirements of this Section.

## **VIII. ALLOCATION OF INCOME AND LOSS; CASH DISTRIBUTIONS**

8.1 Profits. After giving effect to the special allocations set forth in Sections 8.3 through and including 8.8 for each Fiscal Year, Profits for each Fiscal Year shall be allocated as follows:

(a) First, to the Members in proportion to and to the extent of the amount equal to the remainder, if any, of (i) the cumulative Losses allocated to each such Member (or such Member's predecessor in interest) pursuant to Section 8.2(b) for all prior Fiscal Years, over (ii) the cumulative Profits allocated to each such Member (or such Member's predecessor in interest) pursuant to this Section (a) for all prior Fiscal Years.

(b) Second, in accordance with the Members' Company Percentages.

8.2 Losses. After giving effect to the special allocations set forth in Sections 8.3 through and including 8.8 for each Fiscal Year, Losses for each Fiscal Year shall be allocated as follows:

(a) First, in accordance with the Members' Company Percentages.

(b) Second, the Losses allocated pursuant to Section 8.2(a) shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have a deficit balance in such Member's Capital Account at the end of any Fiscal Year except as allowed by Regulations Section 1.704-1(b)(2)(ii)(d). All Losses in excess of the limitation shall be allocated to the other Members in proportion to the Members' Company Percentages.

8.3 Compliance with Treasury Regulations. The provisions of this Article VIII are intended to comply with Regulations Sections 1.704-1(b), 1.704-2, 1.704-3 and any successor regulations, and shall be defined and interpreted consistently with this intention and the Partnership Representative shall make such special allocations determined necessary by the Partnership Representative for the allocations of income and loss to be respected for federal income tax purposes pursuant to Regulations Section 1.704-1(b) and 1.704-2. This Article VIII is specifically intended to comply with the "alternate test for economic effect" under Regulations Section 1.704-1(b)(2)(ii) and thus all of the requirements necessary to comply with such test, including a qualified income offset, are incorporated herein by reference. In addition, the provisions in Regulations Section 1.704-2 pertaining to minimum gain chargebacks and non-recourse deductions are incorporated herein by reference.

8.4 Nonrecourse Deductions. Nonrecourse Deductions (as such term is defined in Regulations Section 1.704-2(b)) shall be specially allocated to and among the Members in accordance with their Company Percentages.

8.5 Gross Income Allocation. In the event a Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is treated as being obligated to contribute subsequently to the capital of the Company as determined under Regulation Section 1.704-1(b)(2)(ii)(c), if any, and (ii) the amount such Member is deemed to be obligated to restore in accordance



with the next to last sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specifically allocated items of Company income and gain in the amount of such excess as quickly as possible. An allocation made in accordance with this Section 8.5 shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article VIII have been made.

8.6 Corrective Allocations. The allocations provided in Sections 8.3, 8.4 and 8.5 above (the “**Regulatory Allocations**”) are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations may be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, or deduction pursuant to this Section 8.6. Therefore, notwithstanding any other provision of this Article VIII (other than the Regulatory Allocations), the Partnership Representative may make such offsetting special allocations of Company income, gain, loss, or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Sections 8.1, 8.2, 8.7, and 8.8, or as otherwise necessary to eliminate the economic distortions created by such Regulatory Allocations. In exercising its discretion under this Section 8.6, the Partnership Representative shall take into account future Regulatory Allocations under the minimum gain chargeback and partner minimum gain chargeback incorporated into this Agreement by Section 8.3 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Section 8.4 and under the allocation of partner nonrecourse debt incorporated herein by Section 8.3.

8.7 Allocations in Event of Recharacterization or Imputed Interest Transactions. In the event that any otherwise deductible payment made by the Company to a Member or an Affiliate of a Member is recharacterized as a distribution from the Company, then the Member which is deemed to have received the distribution shall be allocated items of Company income or gain for such Fiscal Year (and, if necessary for subsequent Fiscal Years) in an amount equal to the distribution. In addition, if, pursuant to the Code or Regulations, a Member recognizes imputed interest income as a result of a transaction between such Member and the Company, such Member shall be allocated any related Company deduction for such imputed interest.

8.8 Allocations Upon Liquidation. After giving effect to any allocations required by Sections 8.3, 8.4, 8.5, 8.6, and 8.7 upon the liquidation of the Company, all items of income, gain, loss, and deduction shall be allocated among the Members to cause the ending Capital Account balance of each Member to equal, as near as reasonably practicable, an amount equal to the distribution that is anticipated to be distributed to each such Member under Sections 8.10 and 8.11. Such allocations shall be made among the Members according to the following ratio: (i) the difference between each Member’s Capital Account and the amount of the anticipated distribution under Sections 8.10 and 8.11 over (ii) the sum of such differences for all Members. Thereafter, all remaining items of income, gain, loss and deduction shall be allocated among the Members in accordance with their Company Percentages.

8.9 Tax Allocations: Code Section 704(c). Income, gain, loss and deduction as computed for income tax purposes with respect to Company property subject to Code Section 704(c) shall be allocated in accordance with said Code Section and/or Regulations Section 1.704-1(b)(4)(i), as the case may be, using any reasonable method permitted under Regulations Section 1.704-3 that is selected by the Partnership Representative. Allocations pursuant to this Section 8.9 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any person’s Capital Account or share of Profits and Losses, other items, or distributions pursuant to any provision of this Agreement.

8.10 Distributions of Available Cash Flow. Subject to Article VII, the Company shall distribute the Available Cash Flow to the Members in accordance with their Company Percentages. Such distributions shall be made in quarterly installments within forty-five (45) days after the end of each calendar quarter or at such other time or times as the Board of Managers shall deem practicable. If a distribution is in connection with the liquidation of the Company, such distribution shall be made in accordance with the penultimate sentence of Section 11.2.

8.11 Distributions of Sale Proceeds. Subject to Article VII, the Company shall distribute any Sale Proceeds less provision for reserves and working capital for reasonably anticipated cash expenses and contingencies (which may include debt service on Company indebtedness and fees payable to SCA, the SCA Member or any of their Affiliates) as determined by the Board of Managers in its sole discretion. Such distribution shall be made in accordance with each Member's Company Percentage. Such distribution shall be made as soon after the receipt by the Company of Sale Proceeds as the Board of Managers deems practicable. Notwithstanding anything to the contrary above, in the event that the Company sells its assets for a combination of cash and notes, the Members, including the SCA Member, shall be entitled to (a) their proportionate share of the remaining cash required to be distributed under this Section, and (b) an undivided interest in each note received by the Company and shall be paid their proportionate share of principal and interest on such notes as the purchaser pays such amounts. If a distribution of Sale Proceeds is in connection with the liquidation of the Company, such distribution shall be made in accordance with the penultimate sentence of Section 11.2.

8.12 Consequences of Distributions. Upon the determination to distribute funds in any manner expressly provided in this Article VIII, made in good faith, the Board of Managers shall not incur any liability on account of such distribution, even though such distribution may have resulted in the Company retaining insufficient funds for the operation of its business which insufficiency resulted in loss to the Company or necessitated the borrowing of funds by the Company.

8.13 Tax Credits. Tax credits for any Fiscal Year shall be allocated among the Members in accordance with the Members' Company Percentages. Such allocations shall not be taken into account in computing any Member's Capital Account balance.

8.14 Member Admission Date. A purchaser of Units shall become a Member (a) with respect to Units sold by the Company on the date that both (i) his, her or its Capital Contribution is received by the Company, and (ii) the Board of Managers accepts such purchaser's subscription or (b) with respect to substitute Members purchasing Units in accordance with Article X hereof, on the date that the Board of Managers consents in writing to such transfer of Units.

8.15 Allocation of Profits, Losses and Distribution In Respect of Units Transferred. If one or more Units are transferred or issued during any Fiscal Year of the Company, items of income, gain, loss, deduction and credit attributable to such Unit(s) for such Fiscal Year shall be divided and allocated between the transferor and the transferee based on the time each such party was, according to the books and records of the Company, the owner of record of the Unit(s) transferred during the year in which the transfer or issuance occurs. For this purpose, the transferor shall be deemed not to be a Member as of the date the transfer actually occurs, and the transferee shall, for these purposes, be deemed to be a Member as of the like day. Distributions of Available Cash Flow in respect of Units shall be divided between the transferor and the transferee for the quarter in which such transfer occurs based on the time during such quarter each such party was, according to the books and records of the Company, the owner of record of the Unit(s) transferred during the period in which the transfer occurs. All other distributions by the Company shall be distributed to the Persons holding Units on the date of the distribution. As in the case of allocations, the transferor shall be deemed not to be a Member as of the date the transfer actually occurs, and the transferee shall, for these purposes, be deemed to be Member as of the like day. The Managers and the Company

shall incur no liability for making distributions in accordance with the provisions of the preceding sentence whether or not the Managers or the Company have knowledge or notice of any transfer of ownership of any Unit(s).

8.16 Offsets to Distributions. Notwithstanding any other provisions of this Agreement, each Member hereby acknowledges and agrees that the Company may offset against such Member's future distributions of profits from the Company in an amount necessary to satisfy any indemnification obligations or working capital obligations of such Member to any other Member under that certain Membership Interest Purchase Agreement dated as of December 1, 2021 between the SCA Member and certain of the Members (the "**Purchase Agreement**"), and pay the amount so offset to the Member entitled to such amount; provided, however, that no such offset shall be applied to the extent that a Member has disputed in good faith his, her or its obligation to provide indemnification under the Purchase Agreement, in which case the amount to be offset shall be retained by the Company and shall not be distributed until the dispute has been resolved.

## IX. RIGHTS, POWERS AND OBLIGATIONS OF THE BOARD OF MANAGERS

9.1 Establishment of Board of Managers. The Company shall be "manager-managed" as defined in the Act and the business and affairs of the Company shall be managed by the Board of Managers. The number of Managers on the Board of Managers shall six (6). Three (3) Managers shall be appointed by the SCA Member (the "**SCA Managers**") and three (3) Managers shall be appointed by the Non-SCA Members holding an aggregate Company Percentage that is in excess of fifty percent (50%) of the aggregate Company Percentage held by all of the Non-SCA Members (the "**Physician Managers**"). A Manager is not required to be a resident of any particular state. Unless authorized to do so by this Agreement or the Board of Managers, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose. The Managers shall only act collectively as the Board of Managers and no individual Manager shall have the right or authority to act independently on behalf of the Company unless prior approval or authorization has been given by the Board of Managers. The initial SCA Managers shall be Oren Shill, William Pethick, and a third to be appointed Manager, and the initial Physician Managers shall be Michael C. Jungkeit, M.D., Paul A. Kremer, M.D., and Sarah Neitzel, D.P.M.

9.2 Powers. Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waiveable provisions of applicable law, the management and control of the Company and its business and affairs shall rest exclusively with the Board of Managers, which shall have all the rights and powers which may be possessed by a "manager" pursuant to the Act, and such additional rights and powers as are otherwise conferred by law or are necessary, advisable or convenient to the discharge of its duties under this Agreement. Without limiting the generality of the foregoing, the Board of Managers may, at the cost, expense and risk of the Company:

- (a) Spend the capital and Net Income of the Company in the exercise of any rights or powers possessed by the Board of Managers hereunder;
- (b) Prepare and approve ordinary and capital budgets of the Company for each Fiscal Year;
- (c) Operate the Center, acquire leasehold improvements at the Center, and enter into agreements containing such terms, provisions and conditions as the Board of Managers in its discretion shall approve;



(d) Purchase from or through others contracts of liability, casualty and other insurance which the Board of Managers deems advisable for the protection of the Company or for any purpose convenient or beneficial to the Company;

(e) Incur indebtedness for a Company purpose;

(f) Sell or otherwise dispose of, upon such terms and conditions as the Board of Managers may deem advisable, appropriate or convenient, any of the assets of the Company;

(g) Invest in short-term debt obligations (including obligations of federal and state governments and their agencies, commercial paper and certificates of deposit of commercial banks, savings banks or savings and loan associations) and “money market” mutual funds, such funds as are temporarily not required for the purposes of the Company’s operations;

(h) Delegate all or any of its duties hereunder and, in furtherance of any such delegation, appoint, employ or contract with any Person (including Affiliates of the SCA Member) for the transaction of the business of the Company, which persons may, under the supervision of the Board of Managers, act as consultants, accountants, attorneys, brokers, escrow agents or in any other capacity deemed by the Board of Managers necessary or desirable, and pay appropriate fees consistent with fair market value for such services to any of such persons;

(i) Amend this Agreement or any other document or record of the Company from time to time to reflect the withdrawal or admission of Members and any changes in the number of or types of Units or any changes in Company Percentage held by any Member arising from the increase in the number of Units, admission of new Members, transfer of any Units to or by such Member, any conversion of Company debt to Units and any changes in the amounts contributed or agreed to be contributed by a Member;

(j) Offer and sell additional Units and increase the number of Units on terms determined by the Board of Managers, which shall include at least one Physician Manager, in its sole and absolute discretion;

(k) Approve the Transfer of Units by a Member other than the SCA Member; and

(l) Admit new Members of the Company in accordance with Section 6.9.

9.3 Independent Activities. A Manager may, notwithstanding the existence of this Agreement, engage in whatever activities such Manager chooses, whether or not the same may be competitive with the Company, without having or incurring any obligation to offer any interest in such activities to the Company or any party hereto, and, as a material part of the consideration for the Manager’s execution hereof and for the admission of such Member, each Member hereby waives, relinquishes and renounces any such right or claim of participation.

9.4 Duties. Each Manager shall manage and control the Company and its business and affairs to the best of such Manager’s ability and shall use commercially reasonable efforts to carry out the business of the Company in accordance with applicable laws and regulations. Each Manager shall devote himself or herself to the business of the Company to the extent that he or she, in his or her discretion, deems necessary for the efficient carrying on thereof. Each Manager shall act as a fiduciary with respect to the safekeeping and use of the funds and assets of the Company.

#### 9.5 Certain Limitations.

(a) The Board of Managers shall not do or authorize any act which the manager of a limited liability company is prohibited from doing under Washington law.

(b) Notwithstanding the rights provided in Section 9.2 above, the Board of Managers shall not, without obtaining the approval of a Supermajority of the Members, take any of the following actions:

(i) Sell or transfer all or substantially all of the Company's assets, provided that the Board of Managers may grant a security interest in the Company's assets;

(ii) Liquidate or dissolve the Company as long as the Company is operating the Center;

(iii) Require any Member to make any additional Capital Contributions; or

(iv) Substantially change the nature of the Company's business.

#### 9.6 Board of Manager Meetings.

(a) Place; Waiver of Notice. Meetings of the Board of Managers may be held at such place or places as shall be determined from time to time by resolution of the Board of Managers. At all meetings of the Board of Managers, business shall be transacted in such order as shall from time to time be determined by resolution of the Board of Managers. Attendance of a Manager at a meeting of the Board of Managers shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(b) Notice of Meetings. Regular meetings of the Board of Managers shall be held at such times and at such places as shall be designated from time to time by resolution of the Board of Managers. Notice of such meeting shall not be required so long as members of the Board of Managers receive copies of each resolution pursuant to which the time and place of such meetings are set. Special meetings of the Board of Managers may be called on at least forty-eight (48) hours' Notice to each Manager by any other Manager. Such Notice need not state the purpose or purposes of, nor the business to be transacted at, such meeting, except as may otherwise be required by law or provided for in this Agreement.

(c) Voting. The Board of Managers shall collectively have 100 votes (the "**Board Votes**"). The SCA Managers shall vote together as a block, whereby the votes of all of the SCA Managers shall be deemed to be cast in accordance with the vote of two (2) of the three (3) SCA Managers. The SCA Managers shall collectively be entitled to the number of Board Votes equal to 100 multiplied by the SCA Member's Company Percentage. Each Non- SCA Manager shall each be entitled to a number of Board Votes equal to (x) 100 (y) multiplied by the collective Company Percentages of the Non-SCA Members, and (z) divided by the number of Non-SCA Managers then in office. Any action authorized by this Agreement may be taken at a meeting at which the Managers holding a majority of the Board Votes, which must include a majority of the SCA Managers, are present; provided, that for purposes of calculating the number of Board Votes present at a Meeting, all of the SCA Managers' Board Votes shall be presumed to be present at a meeting if at least two (2) of the three (3) SCA Managers are present at such meeting. The affirmative vote of the Managers which are entitled to vote on the matter, which are present at a

properly called meeting, and which collectively hold a majority of the Board Votes shall constitute the act of the Board of Managers, unless a greater vote is required under this Agreement, by the Certificate or by law.

(d) Action by Written Consent or Telephone Conference. Any action permitted or required by the Act, the Certificate or this Agreement to be taken at a meeting of the Board of Managers may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by the number of the Managers required to approve such action under the Act, the Certificate or this Agreement. Notice of any such consent shall be given to all Managers. Such consent shall have the same force and effect as a vote at a meeting and may be stated as such in any document or instrument filed with any public official, public office or other state authority, and the execution of such consent shall constitute attendance or presence in person at a meeting of the Board of Managers. Subject to the requirements of this Agreement for notice of meetings, the Managers may participate in and hold a meeting of the Board of Managers by means of a conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

9.7 Resignation, Removal and Replacement of a Manager. A Manager may at any time resign as a Manager of the Company by providing written notice to the other Managers. Any SCA Manager may be removed by the SCA Member in its sole discretion, and any Non-SCA Manager may be removed by the Non-SCA Members holding an aggregate Company Percentage that is in excess of fifty percent (50%) of the aggregate Company Percentage held by all of the Non-SCA Members. In the event of such resignation or removal, (i) if the Manager was an SCA-Manager, the SCA Member shall designate and appoint a replacement Manager as soon as reasonably practicable after such resignation or removal, or (ii) if the Manager was a Non-SCA Manager, a replacement Manager shall be appointed as soon as reasonably practicable after such resignation by the Non-SCA Members holding an aggregate Company Percentage that is in excess of fifty percent (50%) of the aggregate Company Percentage held by all Non-SCA Members.

#### 9.8 Partnership Representative.

(a) The SCA Member shall serve as the Partnership Representative. In the event that the Revised Partnership Audit Procedures require that an individual be designated to act on behalf of a partnership representative that is an entity, the SCA Member shall designate the individual to serve in that capacity (the “**Designated Individual**”). The Designated Individual may be removed by the SCA Member at any time permitted by the Revised Partnership Audit Procedures. In the event the Designated Individual resigns or is removed, a replacement Designated Individual shall be designated by the SCA Member if so required.

(b) For all Company taxable years beginning on or prior to December 31, 2017, the Partnership Representative shall have the following duties, along with any other duties of a “tax matters partner” as required by the Code, to the extent and in the manner provided by the Code:

(i) Furnish the name, address, profits interest and taxpayer identification number of each Member to the IRS;

(ii) Keep each Member informed of the administrative and judicial proceedings for the adjustment of any item required to be taken into account by a Member for income tax purposes; and

(iii) Within thirty (30) days of receiving a notice of a Company audit by the IRS, forward a copy of such notice to the Members.

(c) The Partnership Representative is hereby authorized, but not required, in its capacity as “tax matters partner” under the Code, to:

(i) Enter into any settlement with the IRS with respect to any tax audit or judicial review, in which agreement the Partnership Representative may expressly state that such agreement shall bind the other Members, except that such settlement agreement shall not bind any Member who (within the time prescribed pursuant to the Code and regulations thereunder) files a statement with the IRS providing that the Partnership Representative shall not have the authority to enter into a settlement agreement on the behalf of such Member;

(ii) If a final administrative adjustment of a Company item required to be taken into account by a Member for tax purposes is mailed to the Partnership Representative, seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court, the District Court of the United States for the district in which the Company’s principal place of business is located, or the United States Claims Court;

(iii) Intervene in any action brought by any other Member for judicial review of a final adjustment;

(iv) File a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, file a petition for judicial review with respect to such request;

(v) Enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item;

(vi) File a petition as contemplated in Sections 6226(a) and/or 6228 of the Internal Revenue Code; and

(vii) Take any other action on behalf of the Company (or the Members with respect to the Company) in connection with any administrative or judicial tax proceeding to the extent permitted by applicable law or regulations.

(d) For all Company taxable years beginning after December 31, 2017, the following provisions shall apply:

(i) Except to the extent specifically required under applicable law or Section 9.8(d)(ii) below, the Partnership Representative shall have complete and exclusive power and authority to act for or on behalf of the Company with regard to tax matters and the Revised Partnership Audit Procedures, including the authority to make (or decline to make) any elections available under the Revised Partnership Audit Procedures.

(ii) Prior to (x) making an election under Code Section 6226 to push out the effects of a Company audit to the persons that were Members in the reviewed year or (y) agreeing with the IRS to settle an issue arising in a Company audit which would have a material adverse effect on the Company or any Member, the Partnership Representative shall notify the Board of Managers of the Partnership Representative's proposed course of action (the "**Audit Procedures Notice**"). In the event the Board of Managers disagrees with the Partnership Representative's proposed course of action, then within fifteen (15) days of delivery of the Audit Procedures Notice, the Board of Managers may direct the Partnership Representative to take such action (or refrain from taking such action) as the Board of Managers may determine. If no such affirmative direction is given by the Board of Managers to the Partnership Representative within fifteen (15) days of delivery of the Audit Procedures Notice, the Partnership Representative shall be authorized to proceed as proposed in the Audit Procedures Notice.

(iii) Each Member hereby agrees (i) to take such actions as may be required to effect the Partnership Representative's designation as partnership representative, (ii) to cooperate by providing any information or taking such other actions as may reasonably be requested by the Partnership Representative in order to determine whether any imputed underpayment amount may be modified pursuant to Section 6225(c) of the Code, and (iii) upon the request of the Partnership Representative, to file any amended U.S. federal income tax return and pay any tax due in connection with such tax return in accordance with Section 6225(c)(2) of the Code. It shall be the responsibility of each Member to provide the Partnership Representative with a complete explanation of any defenses such Member may have to the imposition of an "imputed underpayment" (within the meaning of Proposed Treasury Regulation 301.6241-1(a)(3)) proposed by the IRS. The Partnership Representative may raise any such defenses in its sole and absolute discretion. A Member's obligation to comply with this Section (iii) shall survive the transfer, assignment or liquidation of such Member's interest in the Company.

(iv) For any taxable year of the Company with respect to which the Company or the Partnership Representative chooses to make an election for which the Company is eligible under Section 6221(b) of the Code to have Subchapter C of Chapter 63 of the Code (i.e., the Revised Partnership Audit Procedures) not apply to the Company for such taxable year, the Members shall promptly take any actions and shall provide the Company with all documentation or information necessary to make the election in a timely manner. Any Member whose act or failure to act prevents the Company from filing a timely election under this Section 9.8(d)(iv) shall indemnify the Company for, and hold it harmless from, any costs (including taxes, interest, penalties and attorneys' fees and expenses) the Company may incur that the Company would have avoided had the election been timely made.

(v) For any taxable year of the Company for which an election under Section 9.8(d)(iv) is not in effect or in which the Company receives a statement issued to the Company under Section 6226(a) of the Code by another entity (pushing out the effects of a partnership audit to the entity's partners, including the Company), the following provisions shall apply:

(A) Promptly after the Partnership Representative receives notice or has knowledge of an audit or other proceeding under the Revised Partnership Audit Procedures, the Partnership Representative shall notify each current Member and each Person who was a Member during the reviewed year of the audit or other



proceeding. To the extent, if any, permitted by the Revised Partnership Audit Procedures, each Member may engage at such Member's sole expense a tax advisor of its own choosing to participate in, but not direct, the prosecution or defense of the audit or proceeding to the maximum extent, if any, permitted by the Revised Partnership Audit Procedures. A former Member who is not presently a Member of the Company shall not have a right to participate, or engage a tax advisor to participate, in the prosecution or defense of the audit or proceeding. Subject to limitations that may be imposed by the Revised Partnership Audit Procedures, the Partnership Representative shall make commercially reasonable efforts to facilitate the participation by a Member's tax advisor that desires to so participate.

(B) If the Partnership Representative elects the application of Section 6226 of the Code with respect to a notice of final partnership adjustment under Section 6231(a)(3) of the Code, the Partnership Representative shall furnish each Member with the statement required by Section 6226(a) of the Code at such time and in such manner as may be provided in the Revised Partnership Audit Procedures.

(C) If the Company is obligated to pay any amount of tax, penalty, interest, or other charges determined under the Revised Partnership Audit Procedures (a "**Company Level Tax**"), each Member or former Member to which the assessment or payment relates (an "**Indemnifying Member**") shall indemnify the Company for, and pay, the Indemnifying Member's allocable share of the Company Level Tax. Each Indemnifying Member's allocable share of the Company Level Tax shall be determined in good faith by the Partnership Representative. Promptly upon notification by the Partnership Representative of the Indemnifying Member's obligation to indemnify the Company, an Indemnifying Member shall make a payment to the Company of immediately available funds, at the time and in the amount and manner directed by the Partnership Representative. Amounts paid to the Company under this Section 9.8(d)(v)(C) by an Indemnifying Member who is not a Member of the Company at the time such payment is made shall not be treated as a Capital Contribution.

(D) The Members' obligations under this Section 9.8 shall survive the termination, dissolution, liquidation, and winding up of the Company, and shall survive the Transfer of all or any part of a membership interest in the Company by any Member. The Company may pursue and enforce all rights and remedies it may have under this Section 9.8 against a Member or former Member, or its assignee or successor, including instituting a proceeding governed by the applicable terms of this Agreement to collect such payments with interest at the then current prime rate quoted in The Wall Street Journal plus 2%.

(vi) Notwithstanding anything to the contrary in this Agreement, the Board of Managers may propose, and the Members shall reasonably agree to, any amendment to the provisions of this Agreement required to appropriately reflect the promulgation of Treasury Regulations implementing the Revised Partnership Audit Procedures, or any amendment thereof, or regulations, notices or other guidance issued thereunder.

(e) The Company shall indemnify and reimburse the Partnership Representative for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred

in connection with any administrative or judicial proceeding with respect to the tax liability of the Members and against any and all loss, liability, cost or expense, including judgments, fines, amounts paid in settlement and attorneys' fees and expenses, incurred by the Partnership Representative in any civil, criminal or investigative proceeding in which the Partnership Representative is involved or threatened to be involved solely by virtue of being Partnership Representative, except such loss, liability, cost or expense arising by virtue of the Partnership Representative's fraud or illegal act. The payment of all such expenses shall be made before any distributions are made. The taking of any action and the incurring of any expense by the Partnership Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Partnership Representative and the indemnification rights set forth in this Agreement shall be fully applicable to the Partnership Representative in its capacity as such.

#### 9.9 Officers.

(a) Number. The Company may have officers with such duties and responsibilities as the Board of Managers may determine from time to time. Any such officer serves at the pleasure of the Board of Managers. Any two (2) or more offices may be held by the same person. The officers need not be Members or residents of the State of Washington. Oren Shill shall serve as the initial President of the Company and Bill Pethick shall serve as the initial Vice President of the Company.

(i) The Company shall have a Chief Administrative Officer. Such officer shall have the authority and responsibility to prepare and/or oversee the preparation of the facility's licensure and certification filings with the appropriate regulatory agencies and have the signature authority to enter into agreements and such other documents as may be required and are solely related to any licensure requirements with regard to the Company. Initially, Jamie Fowler shall serve as the Company's Chief Administrative Officer unless removed in accordance with this Section 9.9.

(b) Term of Office. Each officer shall hold office until the earlier of his or her death, removal or resignation.

(c) Removal and Resignation. An officer serves at the pleasure of the Board of Managers and the Board of Managers may remove an officer at any time with or without cause. The Board of Managers may also eliminate any officer position at any time. The removal of an officer is without prejudice to the contractual rights of the officer, if any. Any officer may resign at any time and for any reason. In the event of a vacancy in any office because of death, resignation or removal, the Board of Managers shall elect a successor to such office.

(d) Delegation. An officer may delegate some or all of the duties and powers of his office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

(e) Standard of Conduct. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the Company and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. In discharging his or her duties, an officer is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared

or presented by one or more officers or employees of the Company whom the officer reasonably believes to be reliable and competent in the matters presented or legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not acting in good faith if he or she has actual knowledge concerning the matter in question that makes reliance otherwise permitted unwarranted. An officer is not liable for action taken as an officer, or any failure to take any action if he or she performed the duties of his or her office in compliance with this subsection. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated is considered an officer for purposes of this section.

9.10 Medical Executive Committee. The Company shall also have a medical executive committee (the "**Medical Executive Committee**") comprised of one or more Physician Interest Holders who are members of the Center's medical staff and selected by a majority vote of the Physician Interest Holders who are members of the Center's medical staff. The exact number of individuals serving on the Medical Executive Committee shall be determined by the Board of Managers from time to time. The Medical Executive Committee shall be responsible for the general supervision of the Center's medical staff and making recommendations to the Center's governing body regarding patient care as described in the Center's medical staff bylaws as amended from time to time.

## **X. TRANSFER OF UNITS**

10.1 In General. A Member, other than the SCA Member, may not Transfer any or all of the Units owned by him, her or it, or any interest in a Unit, unless he, she or it offers the SCA Member the right of first refusal set forth in Section 10.2 and complies with the following conditions:

(a) The Board of Managers' consent, which may be withheld in the Board of Managers' sole discretion, is required for the Transfer of a Unit or of an interest in a Unit, other than a Transfer by the SCA Member or pursuant to Sections 10.2, 10.7 or 10.9. The Board of Managers will not consent to any Transfer of any Unit or of an interest in a Unit or to the admission of any Person as a substitute Member if, in its opinion, such consent and/or substitution would result in (i) a violation of any applicable federal or state law pertaining to securities regulation, (ii) the admission of a Member who has been, or an Entity Member having any Physician Interest Holder who has been, subject to a Health Care Program Adverse Event, (iii) Benefit Plan Investors owning an aggregate interest in the Company in excess of the Benefit Plan Investor Ownership Limitation, or (iv) a violation of 42 U.S.C. §§1320a-7b(b).

(b) The transferring Member and his, her or its purchaser, assignee or transferee must execute and deliver to the Board of Managers such instruments of transfer and assignment with respect to such transaction as are in a form and substance satisfactory to the Board of Managers.

Any attempt to Transfer all or any part of a Member's Units that does not comply with the terms and conditions of this Agreement shall be void. In the event the Company is required to recognize a Transfer of all or any part of a Member's Units, the transferee of such Units shall have only those rights of an Assignee as described more fully in Section 10.4 hereof and shall have no right to become a Member of the Company or to exercise the assigning Member's governance rights unless such Assignee is admitted as a substitute Member in accordance with Section 10.3 of this Agreement.

10.2 Right of First Refusal. Each Member, other than the SCA Member, agrees that at least thirty (30) days prior to any Transfer of a Unit, such Member will give written notice thereof to the SCA Member, including the name of the proposed transferee, all of the terms, conditions and other material details of such Transfer and an executed copy of the offer. The SCA Member shall have a right of first



refusal for thirty (30) days in which to elect to acquire such Unit itself on the same terms and conditions, provided that if any portion of the consideration provided in the offer is not cash, the SCA Member shall have the option of substituting cash in an amount equal to the fair market value of the non-cash consideration as determined by the SCA Member and provided, further, the SCA Member may, in its sole discretion, pay the entire purchase price by delivery of the Note in an amount equal to the purchase price. The SCA Member shall have the right to assign its right of first refusal in this Section 10.2 to an Affiliate or to other Members of the Company. If the SCA Member fails to exercise its right of first refusal by delivering written notice of its intent to do so within such thirty (30) day period, the Member shall have thirty (30) days in which he, she or it may consummate such Transfer to such named transferee on such terms and conditions as were specified in the notice, provided that the conditions in Section 10.1 are satisfied. If the Member does not consummate the Transfer during such thirty (30) day period, such Unit shall again be subject to the right of first refusal contained herein. If the SCA Member does so acquire the Unit, it may resell such Unit on whatever terms and conditions it deems appropriate to any Person that it deems advisable, provided that such resale is on terms consistent with fair market value, as reasonably determined by Board of Managers.

10.3 Substitute Members. A purchaser, assignee or transferee of a Unit from a Member (other than the SCA Member) shall become a substitute Member within the meaning of the Act if:

(a) The Board of Managers consents in writing to such person becoming a substitute Member; and

(b) Such person executes and acknowledges such other instruments as the Board of Managers may deem necessary or advisable to effect the admission of such person as a substitute Member, including, without limitation, the written acceptance and adoption by such person of the provisions of this Agreement.

The Board of Managers shall take all other steps which, in the opinion of the Board of Managers, are reasonably necessary to admit such person as a substitute Member under the Act. Notwithstanding the foregoing, a purchaser, assignee or transferee of a Unit from the SCA Member shall become a Member upon compliance with Section 10.3(b) above and no further action or approval shall be required.

10.4 Rights of Assignees. Except as otherwise provided in this Agreement, the only rights which an Assignee shall have are those rights associated with the right to receive distributions and allocations of Profits and Losses with respect to the Units held by the Assignee. The Assignee shall have no right to become a Member except as provided in Section 10.3. Any voting rights formerly incident to the Units held by an Assignee shall lapse unless and until the Assignee is admitted as a substitute Member under Section 10.3, and all computations of voting power for matters reserved to the Members shall be made only with respect to the Units held by Members.

10.5 Buy/Sell Events. If any of the buy/sell events listed in this Section 10.5 (each, a “**Buy/Sell Event**”) occurs in relation to a Covered Person, the Board of Managers may require the affected Member to transfer his, her or its Unit(s) to either the SCA Member or the Company. If the Buy/Sell Event occurs in relation to an Interest Holder of an Entity Member, the Board of Managers may require the Entity Member to repurchase the interest of the affected Interest Holder or to Transfer Units in accordance with the terms of Section 10.11.

(a) Non Adverse Buy/Sell Events

(i) The Disability, death, or judicial determination of incompetence or incapacity of a Covered Person;

(ii) Upon the Board's good faith determination, taking into account such facts and circumstances as the Board deems relevant, including, without limitation, the certification provided by the Physician Interest Holder pursuant to Section 16.4 (when determining compliance with the Extension of Practice Requirements), that the Physician Interest Holder no longer uses the Center as an extension of his or her medical practice;

(iii) Upon a determination by the Board of Managers, following consultation with experienced health legal counsel that (i) under state or federal regulations or laws, or any legal developments thereunder, as applied to the continued direct or indirect ownership and operation of ambulatory surgical centers generally, continued ownership by a Covered Person would adversely affect (or potentially adversely affect), in a manner reasonably deemed substantial by the Board of Managers, the operations of the Company; or (ii) under state or federal regulations or laws, or any legal developments thereunder, as applied to the specific Units of any Covered Person, continued direct or indirect ownership by any Covered Person would adversely affect (or potentially adversely affect), in a manner deemed substantial by the Board of Managers, the operations of the Company or any affected Covered Person;

(iv) Any dissolution, insolvency, or the filing of a petition or suit under the bankruptcy laws by or against a Covered Person that is not dismissed within sixty (60) days;

(v) The Retirement of any Physician Interest Holder;

(vi) The relocation of a Physician Interest Holder's medical practice to a location which is twenty (20) miles or more from the Center; or

(vii) Benefit Plan Investors owning an interest in the Company equal to or greater than the Benefit Plan Investor Ownership Limitation.

(b) Adverse Buy/Sell Events

(i) Any purported voluntary or involuntary Transfer of all or any part of (i) a Member's Units, or any withdrawal by a Member, except as otherwise permitted by this Agreement, or (ii) an Interest Holder's ownership interest in an Entity Member;

(ii) Any material breach of this Agreement by a Covered Person, including, without limitation, (i) a breach of Section 15.1; (ii) a Physician Interest Holder's failure to continue to comply with the Physician Interest Holder's Eligibility Requirements (other than the Extension of Practice Requirements) or (iii) a Covered Person's failure to comply with the certification requirements in Section 15.4;

(iii) The failure of a Physician Interest Holder to obtain and maintain medical staff privileges at the Center; notwithstanding anything contained herein to the contrary, this Section 10.5(b)(iii) shall not be applied if the failure to maintain medical staff privileges is the result of events that are Non-Adverse Buy/Sell Events;

(iv) A Covered Person's default under a loan or other instrument in which the Covered Person has or granted a security interest in, or lien upon, such Covered Person's Units;

(v) A Covered Person's gross misconduct that in the reasonable opinion of the Board of Managers adversely affects the Company or the operation of the Center (including, but not limited to, a Covered Person's mistreatment of employees or staff at the Center), which is not corrected within ten (10) days of written notice from the Board of Managers, or a Covered Person's failure to adhere to the Company's policies and procedures, which is not corrected within ten (10) days of written notice from the Board of Managers;

(vi) The voluntary, involuntary, temporary, and/or permanent, suspension, restriction, revocation, termination, cancellation, or limitation of a Physician Interest Holder's license to practice medicine in the State of Washington;

(vii) The voluntary, involuntary, temporary, and/or permanent suspension, revocation, or non-renewal of a Physician Interest Holder's controlled substance registration certificate issued by the Drug Enforcement Administration;

(viii) The conviction of a Covered Person of a felony or crime of moral turpitude;

(ix) The occurrence of a Health Care Program Adverse Event with respect to a Covered Person;

(x) The failure of an Entity Member to cause all of its Interest Holders to execute a joinder to this Agreement;

(xi) The possession of a direct or indirect ownership interest in an Entity Member by an Interest Holder who is not a Physician who meets the Physician Interest Holder Eligibility Requirements; or

(xii) The dissociation of a Member from the Company as contemplated by the Act.

10.6 Notice. Upon the occurrence of a Buy/Sell Event, the Member to whom such Buy/Sell Event has occurred (the "**Withdrawing Member**") or his, her or its legal representative shall give notice of the Buy/Sell Event (the "**Buy/Sell Notice**") to the Board of Managers and the SCA Member. If such an event has occurred with respect to an Interest Holder of an Entity Member, the Entity Member shall be responsible for issuing the notice required by this Section 10.6. If the Withdrawing Member or Entity Member fails to give the Buy/Sell Notice, the Board of Managers or the SCA Member may give the Buy/Sell Notice to the Withdrawing Member or the Entity Member. The issuance of a Buy/Sell Notice shall commence the procedures related to a Buy/Sell Event provided for in this Article X.

10.7 Purchase Option. The SCA Member shall have the option to elect either to purchase all of the Withdrawing Member's Units from such time as the Buy/Sell Event occurs until sixty (60) days following the SCA Member's receipt of the Buy/Sell Notice. If the SCA Member does not elect to purchase such Units within such time period, the Company shall have the option to elect to purchase all of the Withdrawing Member's Units, which option may be exercised during the thirty (30) day period following the earlier of (i) the expiration of the SCA Member's option under this Section 10.7 or (ii) thirty (30) days from and after the date the SCA Member provides written notice to the withdrawing member and the Board of Managers that the SCA Member will not exercise its option under this Section 10.7. The decision to cause the Company to exercise its option shall be made by the Board of Managers. To exercise an option to purchase such Units, the SCA Member or the Company, as the case may be, must give the Withdrawing

Member notice of its decision to purchase a Unit or Units (the “**Purchase Notice**”) pursuant to this Section 10.7, which Purchase Notice shall specify (a) a summary of the basis for such determination, and (b) a detailed description of the calculation and payment of the purchase price for such Unit(s) (pursuant to Section 10.10). Unless agreed otherwise by the parties, the terms of the purchase shall be those set forth below in Section 10.10. The SCA Member shall have the right to assign the option to purchase the Withdrawing Member’s Units to an Affiliate or to other Members of the Company. If the Buy/Sell Event has occurred to an Interest Holder of an Entity Member, the provisions of Section 10.11 shall apply. All of the Members and Interest Holders acknowledge and agree that the rights granted to the SCA Member and the Company hereunder shall not expire after the occurrence of any Buy/Sell Event and the delay in exercising the rights provided for hereunder shall not prejudice such rights in any way. Moreover, the decision to not exercise the rights provided hereunder after one Buy/Sell Event shall not be deemed a waiver of any rights relating to such Buy/Sell Event or any subsequent Buy/Sell Event.

10.8 Benefit Plan Investors. Upon the occurrence of a Buy/Sell Event resulting from Benefit Plan Investors owning an interest in the Company in violation of the Benefit Plan Investor Ownership Limitation, the number of Units subject to the Buy/Sell Event shall be that number of Units necessary to cause the Benefit Plan Investor’s ownership in the Company, in the aggregate, to not exceed the maximum permitted ownership as set forth in the Benefit Plan Investor Ownership Limitation. The Board of Managers, in its sole discretion, shall select the number of Units to be purchased from each Benefit Plan Investor to cause the ownership of Benefit Plan Investors to be less than the Benefit Plan Investor Ownership Limitation.

10.9 Additional Option to Purchase Units Held by Assignee. In the event a Buy/Sell Event occurs but neither the SCA Member nor the Company purchases the Member’s Units pursuant to Section 10.7 and as a result of the Buy/Sell Event an Assignee holds the Units subject to such options, then until the Assignee is admitted as a substitute Member pursuant to Section 10.3 the SCA Member and the Company shall have the continuing option to purchase the Units held by such Assignee (the “**Assignee Units**”). Either the SCA Member or the Company may exercise its rights under this Section by providing notice (the “**Assignee Purchase Notice**”) to the Assignee of its election to purchase the Assignee Units, which notice shall include (a detailed description of the calculation of the purchase price for such Assignee Unit(s) (as determined pursuant to Section 10.10 as if the Assignee were a Withdrawing Member as a result of a Non-Adverse Buy/Sell Event). Any purchase of Assignee Units pursuant to this Section shall be completed pursuant to the terms of Section 10.10 as if the Assignee were a Withdrawing Member as a result of a Non-Adverse Buy/Sell Event. The SCA Member shall have the right to assign the option to purchase the Assignee Units to an Affiliate or to other Members of the Company.

10.10 Closing of Purchase of Withdrawing Member’s Unit(s) and Payment Terms. If the Company or the SCA Member are purchasing the Unit(s) of a Member (the “**Withdrawing Member’s Unit(s)**”) pursuant to Section 10.7 or 10.9, the closing (the “**Closing**”) of the purchase of such Unit(s) shall take place on the date agreed upon by the parties to the transfer. If the parties do not reach agreement on the date of Closing, the Company or the SCA Member, as applicable, shall set a date of Closing which shall occur no later than thirty (30) days after the Withdrawing Member’s receipt of the Purchase Notice. The Board of Managers shall, at its sole option, determine the purchase price for the Unit(s) being sold utilizing one of the calculation methods specified in this Section which shall be calculated and paid as follows:

(a) Except for a purchase covered by paragraph (c) below, if the purchase of Units is triggered by a Non-Adverse Buy/Sell Event, the purchase price shall be the Board of Manager’s determination of the Fair Market Value Transfer Price set forth in the Purchase Notice (or the Assignee Purchase Notice, if applicable) multiplied by the Withdrawing Member’s Company Percentage. The SCA Member or the Company, as the case may be, shall pay the Fair Market Value Transfer Price in immediately available funds in one final payment at the Closing, or at

Company's or SCA Member's option, by delivery of a promissory note bearing interest at the prime rate of interest as published in The Wall Street Journal, plus one percent (1%) with sixty (60) equal amortizable payments of principal and interest (the "**Note**"); or

(b) In lieu of paying the Fair Market Value Transfer Price as of the date of Closing as set forth in Section 10.10(a) above, the Board of Managers may determine an initial estimated purchase price as of the date of the Closing (the "**Estimated Purchase Price**") by (i) determining the Fair Market Value Transfer Price as of the date of Closing and (ii) multiplying such Fair Market Value Transfer Price by the Withdrawing Member's Company Percentage. The SCA Member or the Company, as the case may be, shall pay at the Closing, in cash or immediately available funds, an initial payment equal to twenty percent (20%) of the Estimated Purchase Price (the "**Closing Payment**") to the Withdrawing Member. The Board of Managers shall then determine a final purchase price as of the date of the first annual anniversary of the Closing (the "**Final Purchase Price**") by (i) determining the Fair Market Value Transfer Price (except that the period used in the calculation of the purchase price shall be the twelve (12) month period subsequent to the Closing), and (ii) multiplying such Fair Market Value Transfer Price by the Withdrawing Member's Company Percentage as of the date of Closing. The SCA Member or the Company, as the case may be, shall pay, in cash or immediately available funds, the Final Purchase Price less the Closing Payment to the Withdrawing Member which shall be payable in one final payment within thirty (30) days after the determination of the Final Purchase Price or at the Company's or SCA Member's option by delivery of the Note in an amount equal to the Final Purchase Price less the Closing Payment. Aggregate payments to be made in connection with a Buy/Sell Event by the Company shall not exceed seven and one half percent (7.5%) of the Company's annual operating income for the then current Fiscal Year. If payments are so restricted, payment shall be made in proportion to amounts owed to all Members as a result of Buy/Sell Events and the balance of that Fiscal Year's payment obligations shall be deferred to the following Fiscal Year or Years, until such amounts can be paid without violating such limitation with respect to any such Fiscal Year or Years. Within thirty (30) days following the end of each Fiscal Year, the Company shall make an adjusted payment to the former Members if and to the extent that actual aggregate collections during the prior Fiscal Year (or relevant portion thereof) have exceeded the anticipated amount.

(c) If the purchase of Units is triggered by a Non-Adverse Buy/Sell Event set forth in Sections 10.5(a)(iv)-(vi) that occurred at any time that is less than three (3) years after the Withdrawing Member's Admission Date, the purchase price for the Withdrawing Member's Units shall be determined as of the last day of the month preceding the Purchase Notice and shall be equal to fifty percent (50%) of the Fair Market Value Transfer Price multiplied by the Withdrawing Member's Company Percentage. The Company or the SCA Member, as the case may be, shall pay the purchase price to the Withdrawing Member, in immediately available funds in one payment within thirty (30) days after the determination of the purchase price or, at the Company's or the SCA Member's option, by delivery of a Note in an amount equal to the purchase price.

(d) Notwithstanding anything contained herein to the contrary, when calculating the Final Purchase Price, the Board of Managers shall exclude any and all expenses or revenues attributable to cases referred to the Center by the Withdrawing Member from the calculations of the Final Purchase Price.

(e) In connection with the purchase of Unit(s) pursuant to an Adverse Buy/Sell Event, other than a breach of Section 15.1, the purchase price shall be determined as of the last day of the month preceding the Purchase Notice and shall be the Adverse Event Purchase Price multiplied by the Withdrawing Member's Company Percentage. The Company or the SCA Member, as the case may be, shall pay the purchase price to the Withdrawing Member, in immediately available funds



in one payment within thirty (30) days after the determination of the purchase price, or at the SCA Member's or the Company's option, by delivery of the Note in an amount equal to the purchase price.

(f) In connection with the purchase of Unit(s) pursuant to breach of Section 15.1 the purchase price shall be determined as of the last day of the month preceding the Purchase Notice and shall be the Net Book Value Purchase Price multiplied by the Withdrawing Member's Company Percentage. The Company or the SCA Member, as the case may be, shall pay the purchase price to the Withdrawing Member, in immediately available funds in one payment at Closing, or at the Company's or the SCA Member's option, by delivery of the Note in an amount equal to the purchase price.

(g) Except as otherwise provided in Section 10.5(b)(iii), in the event a Buy/Sell Event qualifies as both an Adverse Buy/Sell Event and a Non Adverse Buy/Sell Event, the Buy/Sell Event shall be deemed to be an Adverse Buy/Sell Event.

(h) At the Closing, the Withdrawing Member shall execute and deliver such assignments and other instruments as may be reasonably necessary to evidence and carry out the transfer of such Unit(s) to the Company or the SCA Member, as the case may be. The Board of Managers shall be entitled to adjust the Fair Market Value Transfer Price from time-to-time, at its reasonable discretion, if it is advised by an independent third party healthcare appraiser and that such revisions will more closely align the Fair Market Value Transfer Price with the fair market value of interests of other healthcare entities of comparable size and function.

(i) Notwithstanding the foregoing, all obligations of the Withdrawing Member to the Company shall become immediately due and payable upon purchase of the Withdrawing Member's Unit(s). To the extent not previously taken into account pursuant to this Section 10.10, the purchase price shall be reduced by the amount of any such obligations.

**10.11 Effect of a Buy/Sell Event Related to an Interest Holder of an Entity Member.** If a Buy/Sell Event occurs regarding an Interest Holder of an Entity Member, the Board of Managers may, in its sole and absolute discretion, require the Entity Member to repurchase the Interest Holder's interest in the Entity Member pursuant to the terms of an Entity Member's Owners' Agreement (or similar agreement) of the Entity Member. If the Entity Member fails to repurchase the Interest Holder's interest in the Entity Member within sixty (60) days (the "**Repurchase Period**") of the Board of Managers' written demand, the SCA Member and the Company shall have the option to purchase from the Entity Member the Interest Holder's Proportionate Units for an amount attributable to the Interest Holder's Proportionate Units and calculated in accordance with the applicable provisions of Section 10.10. The SCA Member shall have the first option to purchase the Interest Holder's Proportionate Units and if the SCA Member does not elect to purchase such Units, the Company shall have an option to purchase the Interest Holder's Proportionate Units. If the Entity Member fails to repurchase the Interest Holder's interest in the Entity Member within the Repurchase Period, the Board of Managers shall provide notice (the "**Repurchase Failure Notice**") to such Entity Member and the SCA Member of the Entity Member's failure to repurchase the Interest Holder's interest in the Entity Member, which notice shall include (a) the calculation of the Interest Holder's Proportionate Units and (b) a detailed description of the calculation of the purchase price for such Unit(s) (as determined pursuant to Section 10.10 as if the Interest Holder were a Withdrawing Member). The SCA Member may exercise its option by providing notice of its election to the Entity Member within the sixty (60) day period following the receipt of the Repurchase Failure Notice. If the SCA Member does not elect to purchase the Interest Holder's Proportionate Units, the Company may exercise its option to purchase the Interest Holder's Proportionate Units by providing notice of its election to the Entity Member within the thirty (30) day period following the expiration of the SCA Member's option under this Section. Notwithstanding the

foregoing provisions of this Section 10.11 to the contrary, (a) if a Buy/Sell Event occurs and the failure of the Entity Member to repurchase such Interest Holder's interest in the Entity Member would result in the Company being (i) subject to a Health Care Program Adverse Event or (ii) in violation of applicable law, as determined by the Board of Managers, then either the Company or the SCA Member shall have the option to repurchase all Units owned by the Entity Member for an amount equal to the Net Book Value Purchase Price multiplied by the Entity Member's Company Percentage and (b) if the Company and an Entity Member have executed an Entity Member's Owner's Agreement and the terms of this Agreement conflict with the terms of the Entity Member's Owner's Agreement, the terms of the Entity Member's Owner's Agreement will govern. In addition, each Entity Member shall give the SCA Member written notice of any change in its Interest Holders.

**10.12 Effect on Withdrawing Member's Interest.** From the date of the exercise of an option to purchase following the occurrence of a Buy/Sell Event until the date of Closing, the Withdrawing Member shall have no right to vote his, her or its Units under this Agreement and the Withdrawing Member's Units will be excluded from any calculation of aggregate Units for purposes of any approval required of the Members under this Agreement. Without limiting the generality of any other provision of this Agreement, following Closing, the Withdrawing Member will have no rights in, or against, the Board of Managers, the Company or any Member other than the right to receive payment for his, her or its Units in accordance with this Article X.

**10.13 No Dissolution or Termination.** The admission, addition, removal, withdrawal, substitution or bankruptcy of any Member shall not dissolve or terminate the Company or otherwise be treated as a change of ownership or the formation of a new limited liability company. No Member shall have the right to have the Company dissolved or to have his, her or its Capital Contribution returned except as provided in this Agreement.

**10.14 Liquidated Damages.** The Members agree that in each of the circumstances where the purchase price to be paid for Units pursuant to this Agreement is less than the fair market value of the purchased Units, that the Company and the SCA Member have been damaged by the circumstance giving rise to the less than fair market value purchase and that such difference between the fair market value and the purchase price is intended to compensate the party sustaining the damage, in part, for the damage sustained. The Members further agree that it is inherently difficult to determine with precision the amount of damages arising in such circumstances and that it is for this reason that the Members have provided for a specific dollar amount calculated as the difference between the fair market value of the Units and the purchase price to compensate the damaged party, in part, for the damages sustained. This provision is not intended to limit the damaged party's ability to recover the damages it receives as a result of the circumstance giving rise to the purchase hereunder.

**10.15 SCA Member Put Right.**

(a) The SCA Member shall have the right (but not the obligation) to sell all of the Units then held by the SCA Member or any of its Affiliates to the Company, on the terms and subject to the conditions described in this Section 10.15 (the "**Put Right**"), in the event that the Purchase Agreement is terminated prior to the Phase II Closing (as that term is defined in the Purchase Agreement) (the "**Purchase Agreement Termination**"). The SCA Member may exercise the Put Right by delivery of written notice to the Company at any time within sixty (60) days after the date of the Purchase Agreement Termination (the "**Put Notice**"), and the Company shall be obligated to purchase such Units in accordance with the terms of this Section 10.15. The date of the Put Notice shall be referred to as the "**Put Notice Date**."

(b) The purchase price of Units purchased pursuant to the Put Right will be an amount equal to the greater of (i) the fair market value of such Units as determined by an independent third party valuation company chosen by a majority vote of the Board of Managers, or (ii) (x) \$14,705,882, (y) multiplied by the Company Percentage of the SCA Member, and (z) less the Outstanding Company Debt as of the Phase I Closing (as those terms are defined in the Purchase Agreement), multiplied by the Company Percentage of the SCA Member. If the Managers cannot agree on a valuation company, the Physician Managers and the SCA Managers each shall select a valuation company and such valuation companies shall together unanimously select a neutral valuation company who will conduct the valuation. Each of the Members shall bear the fees and expenses of its valuation company, chosen by its representative Managers, and the Company shall bear the fees and expenses of the final valuation company. In conducting the valuation of Units held by the SCA Member and its Affiliates pursuant to this Section 10.15, the valuation company shall: (i) value the Units held by the SCA Member and its Affiliates as a controlling interest in the Company; and (ii) not apply any discounts for lack of marketability or other similar discounts. The closing of any purchase of Units pursuant to the Put Right shall take place no later than sixty (60) days following the Put Notice Date, or at a time and place mutually agreed to by the Members. At such closing, the SCA Member or its Affiliate, as applicable, shall execute and deliver an assignment of Units to effect a transfer of the SCA Member's or its Affiliate's Units to the Company, and the Company shall pay the purchase price in full to the SCA Member or its Affiliate in cash. Each of the SCA Member and the Company shall bear its own legal fees related to the Put Right.

## **XI. DISSOLUTION AND WINDING UP OF THE COMPANY**

11.1 Dissolution of the Company. In no event shall the death of any Member result in dissolution of the Company. The Company will be dissolved upon the following events:

(a) All or substantially all of the assets of the Company are sold, exchanged or otherwise transferred (unless a Supermajority of the Members have elected to continue the business of the Company, in which event the Company will continue until the Members elect to dissolve the Company);

(b) As determined by the Board of Managers and a Supermajority of the Members;

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

(d) The determination by the Board of Managers that state or federal regulations or laws, or any legal developments thereunder, as applied to the Company or to the Units of the Members, would adversely affect (or potentially adversely affect), in a manner deemed substantial by the Board of Managers, the operations of the Company or the Members;

(e) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act; or

(f) The determination by the Board of Managers that the Center has not been operating for more than forty-five (45) consecutive days.

11.2 Winding Up of the Company. Upon the dissolution of the Company, the Board of Managers shall take full account of the Company's assets and liabilities, and the assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof. The proceeds therefrom, to the extent sufficient therefor, shall be applied and distributed as provided in the Act and this Agreement; provided,



however, that after payment of or creating adequate reserves to provide for all Company debts, obligations and liabilities, the remaining Company assets, notwithstanding anything contained in this Agreement to the contrary, shall be distributed to the Members in accordance with their ending positive Capital Account balances after all allocations and any other Capital Account adjustments for the Fiscal Year are made. All Company assets shall be distributed by the later of (i) the last day of the tax year of the liquidation as defined in Regulations Section 1.704-1(b) or (ii) ninety (90) days after the liquidation; provided, however, if the Company creates reserves or holds installment obligations owed to Company, such amounts will be distributed as soon as practicable and in proportion to the Members' ending positive Capital Account balances.

## **XII. BOOKS OF ACCOUNT, ACCOUNTING, REPORTS, FISCAL YEAR, BANKING AND TAX ELECTION**

12.1 Books of Account. The Company's books and records (including a current list of the names and addresses of all Members) and an executed copy of this Agreement, as currently in effect, shall be maintained at the principal office of the Company, and each Member shall have access thereto at all reasonable times. The books and records shall be kept by the Board of Managers using an appropriate method of accounting consistently applied and shall reflect all Company transactions and be appropriate and adequate for the Company's business. The Board of Managers shall also keep adequate federal income tax records using an appropriate method of accounting applied on a consistent basis.

12.2 Financial Reports. As soon as reasonably practicable after the end of each Fiscal Year, but not later than March 31 of the next succeeding year, an unaudited balance sheet of the Company as of the last day of such Fiscal Year and unaudited statements of income or loss of the Company for such year shall be made available to each Member. In addition, the Company will make available to the Members unaudited quarterly summaries of its operations. All such financial statements shall be prepared on an accrual basis of accounting in accordance with GAAP, consistently applied. The Company shall also furnish to each Member not later than March 31 of each year whatever information may be necessary for Members to file their federal income tax returns. The Company will also make available to each Member upon request a copy or summary of all federal, state and/or local tax returns which are filed by the Company. The Company will make available to the Members any audited balance sheet of the Company, if one has been prepared.

12.3 Fiscal Year. The "**Fiscal Year**" of the Company shall be the calendar year.

12.4 Tax Election. Upon the transfer of an interest in the Company or in the event of a distribution of the Company's property, the Company may, but is not required to, elect pursuant to Code Section 754 to adjust the basis of the Company's property as allowed by Sections 734(b) and 743(b) thereof. The Partnership Representative shall have the sole authority and discretion to make such an election. There shall be no requirement that the Partnership Representative make such an election.

12.5 Tax Returns. The Board of Managers shall, for each Fiscal Year, file on behalf of the Company with the Internal Revenue Service a Company Return within the time prescribed by law (including any extensions) for such filing. The Board of Managers shall also file on behalf of the Company such state and/or local income tax returns as may be required by law.

## **XIII. POWER OF ATTORNEY**

13.1 Appointment of Attorney-in-Fact. Each Member hereby makes, constitutes and appoints any Manager, and any officer of the Company, with full power of substitution and re-substitution, his, her or its agent and attorney-in-fact to file for record, and to sign, execute, certify, acknowledge, and file for

record any other instruments which may be required of the Company or of the Members by law, including, but not limited to, amendments to or cancellations of this Agreement, including any amendments necessary to substitute or add a Member or a Manager pursuant to this Agreement, or of the Certificate. Each Member authorizes such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary or advisable in connection with the foregoing, hereby giving such attorney-in-fact full power and authority to act to the same extent as if such Member were himself personally present, and hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. Notwithstanding anything to the contrary, the foregoing power of attorney does not authorize or empower any Manager to take any action that would otherwise require the approval of the Members.

13.2 Effect of Power. The power of attorney granted pursuant to Section 13.1 of this Agreement:

- (a) Is a special power of attorney coupled with an interest, is irrevocable, and shall survive the death, dissolution, insanity, or incapacity of the granting Member; and
- (b) May be exercised by such attorney-in-fact for each Member by listing all of the Members executing any agreement, certificate, instrument or document with the single signature of such attorney-in-fact as attorney-in-fact for all of them; and
- (c) Shall survive the delivery of an assignment by a Member of the whole or a portion of his interest in the Company, except that where the purchaser, transferee or assignee thereof is to be admitted as a substitute Member, the power of attorney shall survive the delivery of such assignment for the sole purpose of enabling such attorney-in-fact to execute, acknowledge and file any agreement, certificate, instrument, or document necessary to effect such substitution.

#### **XIV. AMENDMENTS AND VOTING**

14.1 Amendments. Amendments to this Agreement may be proposed by the SCA Member or by Members holding an aggregate Company Percentage of greater than fifty percent (50%).

- (a) A proposed amendment shall be adopted and effective as an amendment to this Agreement upon the approval of a Supermajority of the Members.
- (b) In addition to any amendments otherwise authorized herein, the Board of Managers may, without obtaining the consent of the Members, amend this Agreement from time to time:
  - (i) To cure any ambiguity, to correct or supplement any provision in this Agreement which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement or the Certificate, as the case may be, which will not be inconsistent with the provisions of this Agreement or the Certificate as the case may be, provided that such amendment does not adversely affect the interests of the Members;
  - (ii) As necessary in the opinion of counsel to the Company for the allocations of taxable income and loss contained herein to be respected for federal income tax purposes, provided that no such amendment shall materially increase the obligations of the Members hereunder or materially dilute their rights under this Agreement;

(iii) To evidence the admission of additional or substitute Members admitted in accordance with the terms of this Agreement;

(iv) Upon advice of counsel that the operations of the Company are in violation of law, to cause this Agreement to comply with law; provided, however, such amendments shall not alter materially the economic objectives of the Company and, further, provided that any amendment to or deletion of any provision shall not in the opinion of the Board of Managers materially reduce the economic return to the Members; or

(v) Such that the SCA Member and SCA will be able to consolidate the financial results of operations and financial condition of the Company with the financial results of operation and financial condition of its ultimate parent under applicable requirements of GAAP, consistently applied, as such may change from time to time, as determined in the reasonable opinion of SCA's independent certified accountants.

**14.2 Meetings and Means of Voting.** Meetings of the Members may be called by the Board of Managers, the SCA Member or by Physician Interest Holders holding at least two-thirds (2/3) of the Units then held by all Physician Interest Holders. The call for any meeting called under this Section 14.2 shall state the nature of the business to be transacted. Notice of any such meeting shall be delivered by the Board of Managers within ten (10) days of its calling to all Members in the manner prescribed in Section 17.1 of this Agreement and such meeting shall be held not less than fifteen (15) days nor more than sixty (60) days after such notice. Members may vote in person or by proxy at any such meeting. Whenever the vote or consent of Members is permitted or required under this Agreement, such vote or consent may be given at a meeting of Members or may be given in writing. For purposes of obtaining a written vote, the Board of Managers may require response within a specified time, but not less than thirty (30) days from the date notice is deemed to have been given, and failure to respond shall constitute a vote which is consistent with the Board of Managers' recommendation with respect to the proposal.

**14.3 Voting Rights.** Except as otherwise required by the Act, this Agreement does not grant to any Member the right to vote upon any matter not specifically provided for in this Agreement. The Board of Managers of the Company has complete right and power to control all management functions and decisions of the business and affairs of the Company.

## **XV. DUTIES OF COVERED PERSONS**

**15.1 Covenants of Covered Persons.** During the Restricted Period, each Covered Person agrees not to and, in the case of an Entity Member, shall cause each of its Interest Holders not to, (a) serve as an officer, director or employee or consultant of, or (b) hold or acquire any direct or indirect ownership interest in, or manage, lease, develop or otherwise have any financial interest (through a corporation, partnership, trust or other entity in which the Covered Person owns or has a beneficial interest, or through the Covered Person's spouse or children under the age of twenty-five (25) or through a shareholder, partner, member or other (direct or indirect) equity owner of an Entity Member) in, any business or entity which develops, owns, manages, leases or provides property to, a facility or business that performs outpatient surgery, including an ambulatory surgery center, hospital or physician practice within a fifteen (15) mile radius of the Center (a "**Competing Facility**"), or any business or entity that is under common control with or otherwise affiliated with a Competing Facility; provided, however, that no Covered Person shall be prevented from (i) serving as a member of the board of trustees or medical staff, or holding any position on the medical staff, of any hospital; (ii) performing surgical procedures through his or her group practice that do not require a separate license or monitored anesthesia and which if performed in a licensed ambulatory surgery center would not generate a technical or facility fee, (iii) performing pain procedures through his or her group practice that do not require a separate license or monitored anesthesia, (iv) performing surgical

procedures through his or her group practice that are approved by the Board of Managers; or (v) owning less than one percent (1%) of the voting stock of a publicly-held company which owns or operates one or more healthcare facilities. Breach of the covenants in this Section 15.1 will result in material damages to the Company and the SCA Member and shall entitle the Company or the SCA Member to recover damages in addition to the other remedies and rights provided herein. This Section shall continue to apply during the Restricted Period to a Person who ceases to be a Covered Person.

(a) Equitable Remedy. Each Covered Person acknowledges that the restrictions contained in this Section 15.1 are reasonable and necessary to protect the legitimate interests of the Company and that any violation of such restrictions would result in irreparable injury to the Company. In addition to any other remedy or remedies to which the Company may be entitled in law or in equity, the Company shall be entitled to preliminary and permanent injunctive relief for a violation or threatened violation of this Section 15.1 without having to prove actual damages or to post a bond, and the Company shall also be entitled to an equitable accounting of all earnings, profits and other benefits arising from such violation. Each Covered Person hereby waives any objections on the grounds of improper jurisdiction or venue to the commencement of an action in the State of Washington and agrees that effective service of process may be made upon him or her by mail under the provisions of Section 17.1.

(b) Judicial Determination. If a court should hold that the restrictions set forth in Section 15.1 are unenforceable because they are unreasonable, then to the extent permitted by law, the court may prescribe the longest duration for the Restricted Period and/or the largest radius or area for the restricted area that is reasonable and the parties agree to accept such determination subject to their rights of appeal. Nothing herein stated shall be construed as prohibiting the Company from pursuing any other remedy or remedies available for such breach or threatened breach, including recovery of damages from the Covered Person or injunctive relief.

(c) Extension of Restricted Period. If a Covered Person is in violation of Section 15.1 at any time, then the Restricted Period shall be extended for a period of time equal to the period during which said violation or violations occurred. If the Company seeks injunctive relief from said violation in court, then the running of the Restricted Period shall be suspended during the pendency of said proceeding, including all appeals. This suspension shall cease upon the entry of a final judgment in the matter, not subject to further appeal.

(d) Return of Purchase Price. In the event a former Covered Person violates the provisions of Section 15.1 after the date on which he, she or it has, directly or indirectly, Transferred his, her or its Units (which shall include a Transfer by an Interest Holder of his, her or its interest in an Entity Member), and the Company or the SCA Member purchased the Units or Interest Holder's Proportionate Units related to such former Covered Person, such Covered Person shall pay to the Company or the SCA Member, as the purchaser of such Units or Interest Holder's Proportionate Units as follows:

(i) If the former Covered Person was a Member, such former Covered Person shall pay the Company or the SCA Member, as applicable, an amount equal to the difference between (A) the greater of the purchase price received upon the Transfer of his, her or its Units or the fair market value of the Units on such date, as determined by the SCA Member and (B) the Net Book Value Purchase Price multiplied by the Withdrawing Member's Company Percentage as of the date of such Transfer;

(ii) If the former Covered Person was an Interest Holder, the Entity Member shall pay or shall cause such Interest Holder to pay the Company or the SCA Member, as

applicable, an amount equal to the difference between (A) the greater of the purchase price received upon the Transfer of the Interest Holder's Proportionate Units related to such former Covered Person or the fair market value of the Interest Holder's Proportionate Units on such date, as determined by the SCA Member and (B) the Net Book Value Purchase Price multiplied by the portion of the Entity Member's Company Percentage attributable to the Interest Holder's Proportionate Units as of the date of such Transfer.

(e) Grandfathered Relationship. Notwithstanding the foregoing, it is acknowledged and agreed that if any Covered Person has an ownership, compensation or other relationship in a Competing Facility that would otherwise violate this Section 15.1 and such relationship existed prior to such time that the Covered Person became a Member or an Interest Holder, such Covered Person shall not be in violation of this Section 15.1 as a result of such relationship as long as (i) such relationship has been disclosed to the Board and a description of such relationship is listed on Schedule B to this Agreement, (ii) the Covered Person complies with any non-competition provisions set forth in the governing documents of the Competing Facility, and (iii) the Covered Person does not expand the relationship with the Competing Facility. In the event all three (3) criteria for a grandfathered relationship is not met at any time during the applicability of this Section 15.1, the Covered Person shall be in violation of this Section 15.1 and the remedies set forth herein shall apply.

15.2 Medical Malpractice Insurance. Each Physician Interest Holder shall maintain and each Entity Member shall cause its Physician Interest Holders who are physicians on the medical staff of the Center to maintain medical malpractice insurance in accordance with the Center's medical staff bylaws.

15.3 Non-Discrimination. Each Physician Interest Holder shall treat, and each Entity Member shall cause its Physician Interest Holders to treat, the Center's patients receiving medical benefits or assistance under any Federal health care program in a nondiscriminatory manner.

15.4 Certification.

(a) In order to assist the Board of Managers in determining whether each Physician Interest Holder is using the Center as an extension of his or her practice, each Physician Interest Holder shall certify in writing to the Company at such times as requested and in the then current written form as may be required by the Board of Managers, with respect to the preceding twelve (12) months: (i) whether such Physician Interest Holder satisfied the Extension of Practice Requirements; (ii) whether such Physician Interest Holder has been subject to a Health Care Program Adverse Event; (iii) whether all patients referred to the Center by the Physician Interest Holder were fully informed of the Physician Interest Holder's ownership interest in the Company; and (iv) whether such Physician Interest Holder maintains medical malpractice insurance in accordance with the requirements set forth in the Center's medical staff bylaws. In addition, each Covered Person shall certify in writing to the Company at such times and in the current written form as may be required by the Board of Managers, with respect to the preceding twelve (12) months (i) whether such Covered Person has complied with the terms of this Agreement; (ii) whether such Covered Person is subject to a Buy/Sell Event and (iii) if an Entity Member, whether there have been any changes in its Interest Holders or the percentage of equity owned by the Interest Holders in the Entity Member within the previous twelve (12) month period. In addition to the written certification described above, the Board of Managers, or SCA on behalf of the Board of Managers and in its capacity as manager under the Management Agreement, may request additional information it deems reasonable in order to verify that a Physician Interest Holder is in compliance with the Extension of Practice Requirements. The failure to provide such additional



information in a timely manner may be considered as an admission that a Physician Interest Holder is not in compliance with the Extension of Practice Requirements.

(b) “**Extension of Practice Requirements**” means the requirements that a Physician: (i) derives at least one-third (1/3) of his or her annual medical practice income (from all sources) from performing Outpatient Surgical Procedures, or procedures requiring an ambulatory surgery center or hospital operating room setting, or from providing anesthesia in connection with such procedures, and (ii) performs at least one-third (1/3) of his or her Outpatient Surgical Procedures or anesthesia procedures as applicable at the Center. For purposes of this definition, “**Outpatient Surgical Procedures**” shall mean those surgical procedures on the list of Medicare covered procedures for ambulatory surgery centers under applicable Medicare regulations in effect at the time a procedure is performed. The intent of the Extension of Practice Requirements is to ensure that each Physician Interest Holder is not serving as an indirect referral source with respect to the Center and that each Physician Interest Holder actively performs services at the Center. The Extension of Practice Requirements are intended to establish general standards for physicians based upon the Office of Inspector General safe harbors for surgery centers. The Board of Managers, acting in its sole discretion, may waive a Physician Interest Holder’s compliance with all or a portion of the Extension of Practice Requirements if the Board of Managers reasonably believes that a Physician Interest Holder is acting in good faith to comply with the applicable statutes, including 42 U.S.C. §1320a-7b, and the Board of Managers reasonably believes that the Company will not be in violation of applicable law if such Physician Interest Holder continues to have a direct or indirect ownership interest in the Company.

#### 15.5 Physician Interest Holder Eligibility Requirements.

(a) All Physician Interest Holders must:

- (i) Be licensed to practice medicine in the State of Washington;
- (ii) Obtain and maintain medical staff privileges at the Center and at least one local hospital in Kitsap County, Washington;
- (iii) At all times, be in compliance with paragraphs (A) through (C) of this subsection and affirm in writing, in connection with the initial acquisition of his or her Units and, thereafter, at such times and in the written form as may be then be required by the Board of Managers from time to time:

(A) the Physician Interest Holder agrees to fully inform each patient referred to the Center by the Physician Interest Holder of his or her ownership interest in the Company;

(B) the Physician Interest Holder satisfies the Extension of Practice Requirements (or, if a new Physician Interest Holder, he or she satisfies component (i) of the Extension of Practice Requirements and expects to satisfy component (ii) of the Extension of Practice Requirements at the Center each year); and

(C) the Physician Interest Holder has treated patients receiving medical benefits or assistance under any federal health care program (including Medicare and Medicaid) in a non-discriminatory manner.

(b) The criteria set forth in Section 15.5 (a), as well as the requirement to make representations regarding compliance with the criteria in the form and pursuant to the time intervals set forth above, are referred to as the “**Physician Interest Holder Eligibility Requirements.**”

(c) An Entity Member may become a Member in accordance with the terms of this Agreement only if each of its Physician Interest Holders satisfies the Physician Interest Holder Eligibility Requirements.

(d) The SCA Member may require any Member that is not an Entity Member or Physician Interest Holder to transfer his, her or its Units to the SCA Member or the Company for the Fair Market Value Transfer Price.

**15.6 Confidentiality.** Each Covered Person shall, and shall cause each agent or principal thereof, to keep secret and confidential, all information acquired relating to the following (all such information being hereinafter referred to as “**Confidential Business Information**”): (a) the financial condition and other information relating to the business of the Company, including, without limitation, its rates for services, its operations and contracts, and its business plans and arrangements; (b) the systems, products, plans, services, marketing, sales, administration and management procedures, trade relations or practices, techniques and practices heretofore or hereafter acquired, developed and/or used by the Company; and (c) in connection with the Company’s patients, providers, clients, customers, suppliers, vendors, lenders, independent contractors, and payors, the provisions and terms of any agreements or proposed agreements between the Company, the Center and any of such individuals or entities. No Covered Person shall at any time disclose any such Confidential Business Information to any person, firm, corporation, association or other entity, or use the same in any manner other than in connection with operating the business and affairs of the Company or the Center; provided, however, a Covered Person may disclose Confidential Business Information to a bona fide, potential third-party purchaser of any interest in the Company, if the purchase is to be made in accordance with any applicable provisions hereof and if such third party has executed a confidentiality agreement acceptable to the Board of Managers pursuant to which such third party has agreed to keep the Confidential Business Information strictly confidential. Subject to the foregoing proviso, no Covered Person shall under any circumstances use Confidential Business Information in any way the Board of Managers reasonably believes is detrimental to the Company or the Center. Notwithstanding the foregoing, the term “**Confidential Business Information**” shall not include the following: any information which was independently developed by a party without the use of the Confidential Business Information; any information which is or becomes available in the public domain during the term of this Agreement other than through a breach of this Agreement or other agreement with the Company or the Center; any information which is ordered to be released by requirement of a governmental agency or court of law; any information provided to a party’s professional advisers (i.e., attorneys and accountants); and any information independently made lawfully available to a party as a matter of right by a third party. Each Covered Person agrees that these confidentiality covenants shall apply while a Person is a Covered Person and also at all times thereafter.

## **XVI. BOARD OF MANAGERS’ TRANSACTIONS AND LIABILITY**

### **16.1 Permitted Transactions of the SCA Member.**

(a) The SCA Member may engage in or possess interests in business ventures other than the Company, of every nature and description, independently or with others, including, but not limited to, the operation of other health care facilities and neither the Company nor the Members shall have any right by virtue of this Agreement in or to such independent ventures or to the income or profits derived therefrom.

(b) The fact that the SCA Member is directly or indirectly interested in or connected with any person who renders or performs a service to the Company, or any person from whom the Company may borrow money, shall not prohibit the Company from engaging in any transaction with such person or create any duty or legal justification additional to that which would exist if such person were not so related to the Company, and neither the Company nor any other Member shall have any right in or to any income or profits derived from such transaction by such person.

16.2 Liability of the Managers to the Members and the Company. The Managers shall not be required to devote all of its time or business efforts to the affairs of the Company but shall devote so much of its time and attention to the Company as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company. The Managers shall not be liable to the Members because any taxing authorities disallow or adjust any deductions, allocations or credits in the Company income tax returns. Furthermore, the Managers shall not have any personal liability for the repayment of capital contributions of the Members. No amendment of this Section shall be binding on any Person or change the rights of such Person hereunder who is or was a Manager without such Person's approval.

16.3 Exculpation. Neither the Managers nor any officer of the Company (each a "**Responsible Party**"), shall be liable, responsible or accountable in damages or otherwise to the Company or any Members for any action taken or failure to act (even if such action or failure to act constituted the gross negligence of such Responsible Party) on behalf of the Company within the scope of the authority conferred on or permitted to any such Responsible Party by this Agreement or by law, unless such act or omission was performed or omitted fraudulently, with gross negligence or as an act of willful misconduct. The provisions of this Agreement, to the extent that they expand, restrict or eliminate the duties and liabilities of any Responsible Party otherwise existing at law or in equity, are agreed by the Members to expand, restrict or eliminate to that extent such other duties and liabilities of such Responsible Party to the fullest extent permitted by applicable law. A Responsible Party will not be liable to the Company or any Members for breach of contract or breach of duties (including fiduciary duties) of such Responsible Party, except that nothing herein will limit or eliminate any liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing. However, in no event will any Responsible Party be liable to the Company or any other Members for any breach of fiduciary duty or implied contractual covenant of good faith and fair dealing, to the extent arising hereunder, for such Responsible Party's good faith reliance on the provisions of this Agreement.

16.4 Indemnification. The Company shall indemnify and hold harmless to the fullest extent permitted by law each Responsible Party from and against any loss, expense, damage or injury suffered or sustained by it by reason of any acts, omissions or alleged acts or omissions (even if such acts or omissions constituted the gross negligence of such Responsible Party) arising out of its activities on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, attorney's fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based were for a purpose reasonably believed by the Responsible Party to be in, or not opposed to, the interests of the Company and were not performed or omitted fraudulently, with gross negligence or as an act of willful misconduct, and were not in violation of the express terms of this Agreement. In no event will any Member be required to make any contribution to the Company that may be necessary for the Company to satisfy its indemnity obligation hereunder. No amendment of this Section shall be binding on any Person or change the rights of such Person hereunder who is or was a Manager without such Person's approval.

16.5 Return of Capital Contribution. Anything in this Agreement to the contrary notwithstanding, no Manager shall be individually liable for the return of the Capital Contributions of the



Members, or any portion thereof, it being expressly understood that any such return shall be made solely from Company assets.

## **XVII. MISCELLANEOUS**

17.1 Notices. Except as otherwise provided in this Agreement, any notice, payment, demand, request or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be duly given by the applicable party if given to the applicable party at its address set forth below:

(a) If to the Company:

Kitsap Ambulatory Surgery Center, LLC  
c/o Surgical Care Affiliates, LLC  
569 Brookwood Village, Suite 901  
Birmingham, Alabama 35209  
Attention: Chief Operating Officer

with copy to:

Surgical Care Affiliates, LLC  
569 Brookwood Village, Suite 901  
Birmingham, Alabama 35209  
Attention: General Counsel

or to such other address as the Board of Managers may from time to time specify by written notice to the Members; and

(b) If to a Member, at such Member's address set forth in the Company records, or to such other address as such Member may from time to time specify by written notice to the Board of Managers.

(c) Any such notice shall, for all purposes, be deemed to be given and received:

(i) if by hand, when delivered;

(ii) if given by nationally recognized and reputable overnight delivery service, the business day on which the notice is actually received by the party; or

(iii) if given by certified mail, return receipt requested, postage prepaid, three business days after posted with the United States Postal Service.

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

17.3 Severability. Every provision of this Agreement is intended to be severable. If any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

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

17.5 Governing Law. The laws of the State of Washington shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties hereto, without giving effect to any conflicts-of-laws provisions.

17.6 Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company and during the period of its liquidation following any dissolution, any right to maintain any action for partition with respect to any of the assets of the Company.

17.7 Counterpart Execution. This Agreement may be executed in one or more counterparts all of which together shall constitute one and the same Agreement. Electronically delivered signature pages shall be treated as originals.

17.8 Parties in Interest. Except as otherwise provided in this Agreement, this Agreement shall be binding upon the parties hereto and their successors, heirs, devisees, assigns, legal representatives, executors and administrators.

17.9 Construction of Pronouns. The feminine or neuter of the words “he,” “his” and “him” used herein shall be automatically deemed to have been substituted for such words where appropriate to the particular Member executing this Agreement.

17.10 Integrated Agreement. This Agreement and the agreements referred to herein constitute the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations or warranties among the parties other than those set forth herein or herein provided for.

17.11 Force Majeure. If any of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by Force majeure, said party shall not be liable under this Agreement for said delay or failure. “**Force majeure**” shall mean any cause beyond the reasonable control of a party, including, but not limited to, act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation or any other act or omission beyond the reasonable control of a party.

17.12 Schedules and Exhibits. Each Schedule and Exhibit to this Agreement is incorporated herein for all purposes.

17.13 Benefit/Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns; provided, however, that nothing contained herein shall negate or diminish the restrictions on transfer set forth in this Agreement. This Agreement is intended solely for the benefit of the parties hereto and is not intended to, and shall not, create any enforceable third party beneficiary rights.

17.14 Waiver. Failure by any party to enforce any of the provisions hereof for any length of time shall not be deemed a waiver of its rights set forth in this Agreement. Such a waiver may be made only by an instrument in writing signed by the party sought to be charged with the waiver. No waiver of any condition or covenant of this Agreement shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of the parties of any right or remedy at law or in equity or otherwise.

17.15 Business Day. Should any due date hereunder fall on a Saturday, Sunday or legal holiday, then such due date shall be deemed timely if given on the first business day following such Saturday, Sunday or legal holiday.

17.16 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

17.17 Language Construction. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning, and not for or against any party hereto. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**[Signatures appear on following pages.]**

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

\_\_\_\_\_  
Oren Shill

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

\_\_\_\_\_  
Paul A. Kremer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By 2nd Mark \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

\_\_\_\_\_  
Oren Shill

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

\_\_\_\_\_  
Paul A. Kremer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: Michael C. Jungkeit, MD \_\_\_\_\_

Name: Michael C Jungkeit, MD

Title: President

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

*William Pethick* \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Oren Shill

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

\_\_\_\_\_  
Paul A. Kremer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

*Ann Skill* \_\_\_\_\_  
ANN SKILL

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

\_\_\_\_\_  
Paul A. Kremer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

\_\_\_\_\_  
Oren Shill

*Michael C. Jungkeit, M.D.* \_\_\_\_\_  
~~Michael C. Jungkeit, M.D.~~

\_\_\_\_\_  
Paul A. Kremer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

\_\_\_\_\_  
Oren Shill

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

  
\_\_\_\_\_  
Paul A. Neimer, M.D.

\_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Amended and Restated Limited Liability Company Agreement has been executed as of the date first above written.

**MANAGERS:**

\_\_\_\_\_  
William Pethick

\_\_\_\_\_  
Oren Shill

\_\_\_\_\_  
Michael C. Jungkeit, M.D.

\_\_\_\_\_  
Paul A. Kremer, M.D.

*Sarah Neitzel, D.P.M.* \_\_\_\_\_  
Sarah Neitzel, D.P.M.

**MEMBERS:**

**SCA PACIFIC SURGERY HOLDINGS, LLC**

By: \_\_\_\_\_

Name: Ladd W. Mark

Title: Vice President, General Counsel & Secretary

**NKASC HOLDINGS, INC.**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**PSC HOLDINGS INC**

By: Michael C Jungkeit, MD

Name: Michael C Jungkeit, MD

Title: President

**Schedule A**

**NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**

**SCHEDULE OF MEMBERS**

**AS OF 12/1/21**

<b>MEMBER</b>	<b>UNITS OWNED</b>	<b>PERCENTAGE OF OWNERSHIP INTEREST</b>
SCA Pacific Surgery Holdings, LLC 569 Brookwood Village, Suite 901 Birmingham, Alabama 35209	4,050.000 Units	9.99%
NKASC Holdings, Inc. 20669 Bond Road NE Suite 200 Poulsbo, WA 98370-6525	36,450.000 Units	89.91%
PSC Holdings, Inc. 20669 Bond Road NE Suite 200 Poulsbo, WA 98370-6525	40.541 Units	0.1%
TOTAL	40,540.541 Units	100%

**Schedule B**

**NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**

**GRANDFATHERED INTERESTS**

<b>Physician Name</b>	<b>Physician Practice Name</b>	<b>Relationship</b>
Kristan Guenterberg, MD	Kitsap General Surgery, PLLC	Owner
Jon Hillyer, MD	Peninsula Pain Clinic, PLLC	Owner
Michael Jungkeit, MD	North Kitsap Ear Nose & Throat Clinic	Owner
Thomas Meeks, DO	Olympic Plastic Surgery Center, LLC	Owner
Sarah Neitzel, DPM	Peninsula Podiatry, LLC	Owner

## EXHIBIT E

### MEDICAL DIRECTOR AGREEMENT BETWEEN RON WAYNE, M.D. AND NORTH KITSAP AMBULATORY SURGERY CENTER, LLC

## MEDICAL DIRECTION AGREEMENT

THIS MEDICAL DIRECTION AGREEMENT (the "Agreement"), is made as of the 1<sup>st</sup> of May, 2023 (the "Effective Date"), by and between North Kitsap Ambulatory Surgery Center, LLC, a Washington limited liability company (the "Company"), and Ron Wayne, M.D., a physician in the state of Washington (the "Contractor").

### W I T N E S S E T H:

WHEREAS, the Company operates that certain ambulatory surgical facility located at 20669 Bond Road NE, Suite #200, Poulsbo, Washington (the "State") 98370 (the "Facility"); and

WHEREAS, the Contractor is a duly qualified physician practicing the specialty of anesthesiology in the State; and

WHEREAS, the Company and the Contractor desire for the Contractor to continue to provide medical direction and administrative services in the Facility; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Contractor agree as follows:

**Section 1. Prior Agreement and Term.** This Agreement shall be effective and shall commence as of the Effective Date and shall continue in full force and effect for an initial period of one (1) year, unless earlier terminated as set forth in this Agreement. Thereafter, this Agreement shall automatically renew for successive one (1) year periods unless either party shall give written notice of non-renewal to the other party at least thirty (30) days in advance of the end of the then current term.

### **Section 2. Services to be Provided by the Contractor.**

(a) The Contractor agrees to act as the medical director of the Facility, providing services, including, but not limited to the following:

(i) Providing medical direction with respect to all clinical activities performed in connection with or related to all medical procedures performed at the Facility and all administrative activities related thereto and ensuring that such activities are performed in conformity with the Company's policies and procedures and the bylaws of the Facility, as amended from time to time by the Company, and all applicable laws, rules, regulations, standards and guidelines promulgated by all applicable "Regulatory Authorities." Regulatory Authorities is defined in Section 12(a) of this Agreement.

(ii) Consulting with and rendering advice to the Company, the medical staff of the Facility (the "Medical Staff"), the Chief Administrative Officer of the Facility (the "CAO") and all other personnel at the Facility regarding the timely and complete documentation of all clinical records and other data and, where appropriate, reviewing such records.

(iii) Coordinating the orientation of new medical staff members and active participation in the review of medical staff membership applications and requests for privileges:

(iv) Maintaining communications with the medical staff regarding service and Facility initiatives including, but not limited to, attendance at the Facility's growth planning sessions,

development and implementation of initiatives to ensure delivery of on-time starts, efficient turn over times, minimization of cancellation rates, utilization of block time, and optimal staffing and supply usage.

(v) Consulting with and rendering advice to the Company, the Medical Staff, the CAO and all clinical and nursing personnel at the Facility regarding, and participating in, the Facility's quality assurance and risk management programs.

(vi) Consulting with and rendering advice to the Company and the CAO regarding, and supervising compliance by the Medical Staff and all clinical and nursing personnel of the Facility with, the Company's policies and procedures and the bylaws of the Facility, as amended from time to time by the Company and the Facility, and all applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws promulgated by all applicable Regulatory Authorities.

(vii) Consulting with and rendering advice to the Company, the Medical Staff, the CAO and all clinical and nursing personnel at the Facility, and assisting in the development and coordination of and participating in, all continuing in-service education and training programs for the Medical Staff and all clinical and nursing personnel at the Facility with respect to the performance of all medical procedures at the Facility.

(viii) Assessing the overall patient experience at the Facility by reviewing patient satisfaction surveys, patient and physician feedback and providing recommendations to the Company, the Medical Staff and/or the CAO.

(ix) Consulting with and rendering advice to the Company and the CAO regarding the qualifications and performance of the clinical and nursing personnel at the Facility.

(x) Conducting periodic evaluations of the adequacy and appropriateness of the medical procedures performed at the Facility and consulting with and rendering advice to the Company and the CAO with respect to selection and acquisition of equipment, outside vendors, supplies and support services with respect to the performance of such procedures.

(xi) Serving as a member of the Medical Executive Committee, and acting as a liaison between the CAO and the Governing Body of the Facility and the medical staff.

(xii) Cooperating with the Company, Medical Executive Committee, CAO, and other medical contractors performing services at the Facility in an effort to support and improve the operational performance of the Facility.

(xiii) Attending administrative meetings and accepting appointments to ad-hoc and standing committees of the Facility and of the Medical Staff, including without limitation, attendance at one regional and one national leadership meeting per year.

(xiv) Acting as a representative of and goodwill ambassador for the Facility; assisting the Company in informing the public, including, but not limited to, physicians, healthcare organizations, insurance companies, health maintenance organizations and third party payors, community agencies, local businesses, schools and other educational institutions and athletic and sports organizations, about the Facility and the services it provides. Where appropriate and as may reasonably be requested by the Company or the CAO, the Contractor shall assist with public relations and participate in community education and speaking engagements.



(xv) Participating in any medical director training modules required by the Chief Medical Officer of Surgical Care Affiliates, LLC, the Company's management company ("Required SCA Training").

(xvi) Performing such other duties as may from time to time be agreed to by the Contractor and the Company.

The services set forth in this Section 2 shall be referred to herein as the "Services."

(b) Coverage. The Contractor shall provide the Services for a maximum of ten (10) hours per month (the "Hours Cap"), primarily Monday through Friday, although the Contractor shall be available for emergencies upon reasonable request on weekends and evenings from time to time. Any Services provided beyond the Hours Cap shall require prior approval by the CAO. Notwithstanding the foregoing or anything herein to the contrary, the Director may participate in and be compensated in accordance with Section 3(a) hereof for up to an additional ten (10) hours per year for Required SCA Training. Such hours shall not count towards the Hours Cap.

(c) Time Records. The Contractor agrees to record promptly and maintain records pertaining to the performance of the Services by the Contractor under this Agreement on a time sheet to be provided by the Company (the "Time Records"). Upon request of the Company, the Contractor shall execute an affidavit concerning the time spent by the Contractor in the performance of the Contractor's obligations and duties under this Agreement and concerning the records pertaining thereto prepared by the Contractor.

(d) Accountability to the CAO. The Contractor shall be accountable to the CAO for the performance by the Contractor of the Contractor's obligations under this Agreement.

### **Section 3. Compensation.**

(a) Payments. As compensation for all of the Contractor's services hereunder, the Company agrees to pay the Contractor Three Hundred Dollars (\$300) per hour during the term of this Agreement, payable within fifteen (15) days of submission of the Time Records for the preceding month. Such compensation shall be delivered to the Contractor each month only after the Contractor has delivered to the Company written time records showing compliance with the requirements of this Agreement.

(b) No Withholdings. The compensation to be paid to the Contractor pursuant to this Agreement shall not be subject to reduction by any withholding for federal, state or local taxes, Social Security or similar deductions. The parties understand, acknowledge and agree that the Contractor is responsible for paying any and all of such items.

(c) Compensation intended to be at Fair Market Value for Surgery Centers. The parties expressly agree and acknowledge that the compensation payable under this Agreement to the Contractor is intended to be a fair market rate for the services performed. The parties further agree to renegotiate and adjust the rate of compensation in the event any Regulatory Authority determines that the compensation exceeds fair market rates.

**Section 4. Representations and Warranties of the Contractor.** The Contractor makes the following representations and warranties to the Company.

(a) Authority. Neither the execution and delivery of this Agreement, nor the rendering of services by the Contractor hereunder, will violate the provisions of, or constitute a default under, any other contract or agreement to which the Contractor is a party or by which the Contractor is bound, or which would preclude the Contractor from performing the Services required of the Contractor hereunder, or which would impose liability or obligation upon the Company for accepting the Services.

(b) Professional Qualification and Fitness. As of the date of this Agreement, and continuing throughout the term of this Agreement, the Contractor:

(i) has all necessary permits, authorizations and licenses required by all applicable Regulatory Authorities to perform the Services in the State, including, but not limited to, a license to practice medicine in the State and a valid Drug Enforcement Agency Number;

(ii) has not had any such permits, authorizations or licenses in the State or in any other jurisdiction, including a license to practice medicine in the State or a Drug Enforcement Agency Number, suspended, restricted, revoked or voluntarily relinquished and the Contractor is not aware of any such pending or threatened action or any fact or circumstance that would give rise to such action being taken against the Contractor;

(iii) has not been reprimanded, sanctioned or disciplined by any applicable Regulatory Authority and the Contractor is not aware of any such pending or threatened action or any fact or circumstance that would give rise to such action being taken against the Contractor;

(iv) has not been excluded from participating in Medicare, Medicaid or any other federal or state health care program and has not been suspended, excluded, barred or sanctioned by a third-party payor and the Contractor is not aware of any such pending or threatened action or any fact or circumstance that would give rise to such action being taken against the Contractor;

(v) has not conducted and is not currently conducting the Contractor's medical practice in such a manner as to cause the Contractor to be suspended, excluded, barred or sanctioned by a third-party payor or under any federal or state medical program, including, but not limited to, Medicare, Medicaid or any similar program;

(vi) currently maintains medical staff privileges at an acute-care facility within a reasonable distance of the Facility that provides emergency services, has not had the Contractor's medical staff privileges at any hospital or medical facility suspended, restricted or revoked and the Contractor is not aware of any such pending or threatened action or any fact or circumstance that would give rise to such action being taken against the Contractor;

(vii) has not settled without judgment, or had a final judgment entered against the Contractor with respect to a malpractice or similar action for an aggregate award or amount to the plaintiff in excess of Fifty Thousand Dollars (\$50,000) during the past five (5) years and the Contractor is not aware of any such pending or threatened legal action against the Contractor or any fact or circumstance that would give rise to such legal action being taken against the Contractor; and

(viii) has not had any professional liability or medical malpractice insurance cancelled by an insurance provider or has never been refused insurance coverage and the Contractor is not aware of any such pending or threatened action or any fact or circumstance that would give rise to such action being taken against the Contractor.

**Section 5. Covenants of the Contractor.** The Contractor makes the following covenants to the Company:

(a) Permits and Licenses. During the term of this Agreement, the Contractor shall:

(i) maintain all applicable licenses, permits, accreditations and authorizations required by any applicable Regulatory Authority or as may reasonably be required by the Company for the Contractor to provide the Services under this Agreement, including, but not limited to, a license to practice medicine issued by the State and a Drug Enforcement Agency Number issued to the Director at the Facility's address;

(ii) provide evidence of such licenses, permits, accreditations and authorizations to the Company upon its reasonable request;

(iii) immediately inform the Company and the CAO of any actual or threatened action by any applicable Regulatory Authority that affects or is likely to affect the Contractor's ability to perform the Contractor's obligations and duties under this Agreement; and

(iv) in the event of any such action as set forth in Section 5(a)(iii) above, shall take immediate corrective action, if remedial.

(b) Performance of the Services. During the term of this Agreement, the Contractor shall:

(i) perform the Services in accordance with all applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws of all applicable Regulatory Authorities and all applicable policies and procedures of the Company and the Facility;

(ii) perform the Services faithfully, diligently and to the best of the Contractor's ability, and in such a manner as is customarily performed by providers of similar services as the Services in ambulatory surgical facilities located in the market area in the immediate vicinity of the Facility; and

(iii) perform such continuing education requirements as may be required by all applicable Regulatory Authorities and as may reasonably be required by the Company and the CAO.

(c) Medical Staff Privileges. The Contractor shall:

(i) during the term of this Agreement, continue to maintain membership and staff privileges on the medical staff of at least one acute-care facility within a reasonable distance of the Facility which provides emergency services; and

(ii) upon the effective date of this Agreement, seek and, during the term of this Agreement, maintain membership and staff privileges on the active Medical Staff of the Facility.

(d) Insurance. During the term of this Agreement, the Contractor shall:

(i) maintain private medical practice, professional liability and malpractice insurance coverage with respect to the Contractor's private medical practice in the amount not less than the greater of that required by any appropriate Regulatory Authority or the bylaws of the Medical Staff of the Facility;

(ii) provide written evidence of such insurance coverage to the Company upon its reasonable request; and

(iii) immediately notify the Company and the CAO if such insurance coverage is reduced, modified or canceled or is threatened to be reduced, modified or canceled.

(e) Confidentiality. During the term of this Agreement and at all times after the expiration or termination of this Agreement, the Contractor, except as may be required by law or by any appropriate Regulatory Authority, shall:

(i) keep the terms and conditions of this Agreement confidential and shall not disclose the terms and conditions of this Agreement to any person;

(ii) not disclose to any third party any confidential or proprietary information concerning: (1) the business, affairs or operations, (2) any trade secrets, new product developments, or special or unique processes or methods, or (3) any marketing, sales, advertising or other concepts or plans of the Company or the Company's affiliates; and

(iii) keep the contents of all records and reports created by the Contractor relating to the performance of services under this Agreement confidential and shall not disclose the same to any person.

(f) HIPAA; Privacy of Patients.

(i) Compliance. During the term of this Agreement and at all times thereafter, the Contractor shall comply with all applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws promulgated by all applicable Regulatory Authorities and all applicable policies and procedures of the Company and the Facility regarding maintaining the confidentiality of the identity and the privacy of the patients treated at the Facility, and of any individually identifiable health information relating to patients treated at the Facility ("Protected Health Information" or "PHI"). In particular, except as permitted or required by this Agreement or by law, the Contractor will not use or disclose patient information in a manner that would violate the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and/or the federal privacy regulations ("Privacy Regulations") set forth at 45 CFR Part 160 and Part 164.

(ii) Business Associate Agreement. Because the Contractor provides services for the Company that involve the use and/or disclosure of PHI relating to patients who receive medical treatment at the Facility, the Contractor is deemed to be a business associate of the Company pursuant to HIPAA, and the Contractor agrees to execute the Company Business Associate Agreement, in substantially the form attached hereto as Exhibit A.

(g) Records and Reports. During the term of this Agreement, the Contractor shall promptly prepare and submit to the Company complete and accurate reports and records in connection with the provision of the Services under this Agreement as may be required by all applicable Regulatory Authorities and the Company. The parties acknowledge and agree that the ownership of all records and reports prepared by the Contractor in connection with the performance of the Contractor's obligations under this Agreement and all documentation prepared in connection with or ancillary thereto vests exclusively with the Company; provided, however, that the Contractor may maintain and use for its own purposes copies of any records relating to its provision of Services at the Facility.



**Section 6. Representations and Warranties of the Company.** The Company makes the following representations and warranties to the Contractor.

(a) Existence. The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was organized. The Company has the corporate power and authority to carry on its business as it is now conducted and to own, lease and operate its properties and is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted or the properties or assets owned or leased by it makes such qualification necessary, except where the absence thereof would not individually, or in the aggregate, have a material adverse effect on the Company.

(b) Authority. The execution and delivery of this Agreement will not violate the provisions of, or constitute a default under, any other contract or agreement to which the Company is a party or by which the Company is bound, or which would preclude the Company from performing its obligations under this Agreement, or which would impose any liability or obligation upon the Company for accepting the Services from the Contractor.

(c) Permits and Licenses. As of the date of this Agreement:

(i) the Company is licensed and qualified and has all necessary permits, authorizations and licenses required by any applicable Regulatory Authority to operate the Facility, except where the absence thereof would not individually, or in the aggregate, have a material adverse effect on the Company or the operation of the Facility; and

(ii) the Company is not excluded from participating in Medicare, Medicaid or any other Federal health care program.

**Section 7. Covenants of the Company.** The Company makes the following covenants to the Contractor.

(a) Permits and Licenses. During the term of this Agreement, the Company shall:

(i) maintain all material applicable licenses, permits and accreditations required by any applicable Regulatory Authority to operate the Facility;

(ii) immediately inform the Contractor of any actual or threatened action by any applicable Regulatory Authority that materially affects or is likely to materially affect the Company's ability to perform its obligations and duties under this Agreement; and

(iii) in the event of any such action as set forth in Section 7(a)(ii) above, take immediate corrective action, if remedial.

(b) Operation of Facility. During the term of this Agreement, the Company shall use reasonable efforts to operate the Facility in accordance with all material applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws of all applicable Regulatory Authorities and all material applicable policies and procedures of the Company and the Facility.

(c) Insurance. During the term of this Agreement, the Company shall:

(i) maintain facility insurance coverage of the type and in the amounts required by any applicable Regulatory Authority and as is customary in connection with the operation of an ambulatory surgical facility; and

(ii) maintain insurance coverage with limits of up to One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in aggregate for the benefit of the Contractor in connection with claims made against the Contractor relating to the performance by the Contractor of the administrative duties required to be performed by the Contractor under this Agreement as medical director of the Facility. The parties acknowledge and agree that this insurance coverage does not cover the Contractor with respect to claims made against the Contractor in connection with acts and omissions made by the Contractor in connection with the Contractor's private medical practice.

(d) HIPAA; Privacy of Patients.

(i) Compliance. During the term of this Agreement and at all times thereafter, the Company shall comply with all applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws promulgated by all applicable Regulatory Authorities regarding maintaining the confidentiality of the identity and the privacy of the patients treated at the Facility, and of any PHI relating to such patients and, specifically, except as permitted or required by this Agreement or by law, will not use or disclose PHI in a manner that would violate HIPAA and the Privacy Regulations.

(ii) Policies, Privacy Practices, and Restrictions. The Company shall provide the Contractor with copies of any notices, policies and procedures of the Facility and/or the Company regarding privacy issues with which the Contractor is expected to comply. If the Company makes any changes to such policies or notices, or if a patient revokes or restricts the Company's right to use or disclose PHI and the Company expects the Contractor to comply with such changes or restrictions, the Company shall immediately advise the Contractor and shall allow the Contractor a reasonable period in which to bring the Contractor's own practices into compliance.

(iii) Patient Rights. If the Company receives a request from a patient wishing to exercise such patient's rights with respect to PHI, to exercise such rights, including (x) the right to inspect PHI within the possession or control of the Company, its business associates, and their subcontractors, (y) the right to amend such PHI, and (z) the right to obtain an accounting of certain disclosures of their PHI to third parties, and the Company reasonably believes the Contractor is in possession or control of all or portions of such PHI that is not already in the possession or control of the Company, the Company shall notify the Contractor in writing of the request.

**Section 8. Government Access to Records.** During the term of this Agreement and for a period of four (4) years after this Agreement expires or is terminated, each party shall, pursuant to Title 42 of the United States Code and applicable rules and regulations promulgated thereunder, make available, upon appropriate written request by the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided by the Contractor under this Agreement. Disclosure pursuant to this section shall not be construed as a waiver of any other legal right to which the disclosing party may be entitled under law or regulation. In the event either party is requested to disclose any books, records or documents for the purpose of an audit or investigation relating to this Agreement and the Services provided under this Agreement by the Contractor, such party shall immediately notify the other party of the nature and scope of the request and shall make available to the other party, upon receipt of a reasonable written request from such other party, copies of all

documents encompassed by the request, provided the party making such request pays for the cost of making such copies.

**Section 9. Term and Termination.**

(a) Termination. This Agreement may be terminated:

(i) by the parties upon their mutual consent;

(ii) by any party:

(1) without cause, upon at least thirty (30) days prior written notice to the other party;

(2) immediately, if any of the other party fails to observe, keep or perform any material provision of this Agreement and such default remains uncured ten (10) business days after written notice to cure has been given to the defaulting party;

(3) immediately, upon a determination that any of the covenants made by either party have been breached and such breach remains uncured ten (10) business days after written notice of breach has been given to the breaching party;

(4) immediately, upon a determination that any of the representations or warranties made by either party were false or incorrect when made, or have since become false or incorrect, unless such representation or warranty is made accurate within ten business days after written notice has been given to the representing party that the representation or warranty was or has become false or incorrect;

(5) upon two (2) business days prior written notice to the other party if any material provision shall be determined to be invalid, void or unenforceable in whole or in part for any reason by a court of competent jurisdiction;

(6) immediately, if any proceeding under the Federal Bankruptcy code, as amended, is commenced by or against any party and is not dismissed within ninety (90) days of the commencement thereof, if any party is adjudged insolvent or makes any assignment for the benefit of its creditors or upon making or receiving from any of the other parties notice of a decision to voluntarily cease operations as they substantially exist as of the date of this Agreement or otherwise voluntarily liquidate; or

(7) upon two (2) business days, if the Company dissolves, ceases to operate the Facility or is no longer licensed to operate the Facility; or

(iii) by the Company if:

(1) the Contractor dies, becomes disabled or is otherwise unable to perform the Services or substantially all of the obligations and duties required to be performed by the Contractor under this Agreement;

(2) the Contractor commits any act of fraud, misappropriation or embezzlement or is charged with a felony or any crime of moral turpitude; or

(3) the Contractor becomes uninsurable for malpractice or professional liability insurance.

(b) Effect of Termination or Expiration. Upon the expiration or termination of this Agreement, all provisions of this Agreement shall be null, void and have no further force and effect except those that clearly specify or contemplate performance after the expiration or termination of this Agreement. The parties shall comply with all obligations required to be performed by them upon the termination of this Agreement, including, but not limited to, the Contractor's compliance with Section 5(f)(ii). Compensation, if any, for Services performed by the Contractor prior to the expiration or termination of this Agreement shall be paid by the Company in accordance with the terms of this Agreement. The termination or expiration of this Agreement shall not automatically effect a termination of the Contractor's privileges on the Medical Staff at the Facility. The Contractor acknowledges that this Agreement is independent of the Medical Staff Bylaws, and upon termination of this Agreement, Contractor shall not be entitled to notice, hearing or other review or appeal as provided under the Medical Staff Bylaws.

#### **Section 10. Independent Contractor Status.**

(a) Independent Contractor. The parties agree that the Contractor is an independent contractor of the Company. The parties acknowledge and agree that no relationship of employer and employee is created by this Agreement and that the Contractor shall not be considered to be an employee of the Company, or of any of the Company's affiliates and shall have no claims under this Agreement or otherwise against any of them for vacation pay, sick pay, retirement benefits or any other employee benefit of any kind. Furthermore, the Contractor specifically acknowledges and agrees that the Contractor shall be solely responsible for the payment of all distributions, wages, salaries, taxes, withholding payments, penalties, fees, professional education and similar expenses, professional liability insurance premiums, contributions to insurance, pension or other deferred compensation plans, licensing and regulation fees and the filing of all required documents, forms and returns pertinent to any of the foregoing.

(b) No Agency. The parties acknowledge and agree that no relationship of principal and agent is created by this Agreement. Other than as provided for in this Agreement, the Contractor has no authority to act on behalf of or bind the Company or any of the Company's affiliates.

(c) Private Medical Practice. The parties acknowledge that the Contractor maintains a private medical practice separate and apart from the services provided by the Contractor under this Agreement. The parties acknowledge and agree that the Contractor is solely responsible for all of the Contractor's actions taken in connection with the Contractor's private medical practice and that neither the Company nor any of the Company's affiliates has any right to and does not control the professional judgment, treatment or professional medical services rendered by the Contractor in connection with the performance of the Contractor's private medical practice.

#### **Section 11. Indemnification.**

(a) Indemnification of the Company and Others. During the term of this Agreement and after the expiration or termination of this Agreement, the Contractor agrees to indemnify and hold the Company, the Company's affiliates and their respective directors, officers, employees, agents and representatives (the "Company's Indemnified Parties") harmless from and against any and all third party claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, costs, damages and expenses (including, without limitation, court costs and attorneys' fees actually and reasonably incurred) ("Losses"), arising directly or indirectly, in whole or in part, out of (i) any breach by



the Contractor of this Agreement or any Service (including supervision) to be performed or provided by the Contractor under this Agreement, including but not limited to the negligence of, or any professional acts or omissions of the Contractor; or (ii) any Losses sustained by any of the Company's Indemnified Parties under any theory of vicarious liability.

(b) Indemnification of the Contractor. During the term of this Agreement and after the expiration or termination of this Agreement, the Company agrees to indemnify and hold the Contractor harmless from and against any and all Losses arising (i) directly out of the proper and complete performance by the Contractor of the Services; provided, however, that none of the Company's Indemnified Parties above shall be responsible for any such defense or indemnification with respect to the acts or omissions of the Contractor with respect to the performance of the Contractor's private medical practice; or (ii) directly or indirectly, in whole or in part, out of any breach by the Company of its obligations under this Agreement.

(c) Indemnity Procedures. In case any claim, demand or action shall be brought against any party entitled to indemnity under Section 11(a) or Section 11(b) above, such party shall promptly notify the other party from whom indemnity is sought in writing and the indemnifying party shall assume the defense thereof, including the employment of counsel; provided, however, that any failure to notify the indemnifying party of a claim, demand or action shall not bar a claim of indemnity unless the indemnified party has been prejudiced or damaged, in which case the right to be indemnified shall be reduced by the damages suffered as a result of a failure to give notice. The indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless the employment of such counsel has been specifically authorized by the indemnifying party or unless a conflict of interest exists between the interests of the indemnified and indemnifying parties that requires a separate representation, in which case the fees and expenses of separate counsel shall be paid by the indemnifying party. The indemnifying party shall not be liable for any settlement of any action effected without its consent, but if settled with the consent of the indemnifying party or if there shall be a final judgment for the plaintiff in any such action, the indemnifying party shall indemnify and hold harmless the indemnified party from and against any loss or liability by reason of such settlement or judgment.

## **Section 12. Miscellaneous Provisions.**

(a) Definitions. For the purpose of this Agreement, the term "Regulatory Authorities" shall mean all federal, state and local governments, and all departments, agencies and divisions thereof, which have regulatory and administrative control with respect to or in connection with all facilities which provide medical services, including, but not limited to, the Facility, its personnel, independent contractors providing services at or to the Facility, including, but not limited to, surgical and medical services, anesthesia services, laboratory services, pathology services, pharmacy services and all administrative services related thereto and to the operation of the Facility. Such Regulatory Authorities shall include, but shall not be limited to, all federal, state and local licensing boards, specialty boards, societies or state insurance commissions/funds, including, but not limited to, the State Medical Association; the State Board of Medical Examiners; the State Board of Pharmacy; the American Medical Association the American Society of Anesthesiologists and the College of American Pathologists, the Joint Commission on Accreditation of Healthcare Organizations; the Center for Medicare and Medicaid Services, the Office of Inspector General for the United States Department of Health and Human Services, the state Medicaid Program and the U.S. Department of Justice Drug Enforcement Administration.

(b) Entire Agreement. This document contains the entire agreement between the parties and supersedes any and all prior and contemporaneous agreements between the parties, written or oral, with respect to the transactions contemplated in this Agreement.

(c) Additional Acts. All parties to this Agreement hereby agree to perform any further acts and to execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

(d) Amendments. This Agreement and all exhibits, schedules and attachments hereto may be amended only by an agreement in writing executed by all of the parties.

(e) Modifications and Renewals. If either party terminates this Agreement without cause or decides not to renew this Agreement, the parties shall not enter into the same or a similar agreement with each other unless the new agreement does not have the effect of altering or modifying the payment provisions of this Agreement, if any, during what otherwise would have been the remainder of the first year of the term then in effect. The intent of this provision is to prohibit the parties from terminating this Agreement without cause and then entering into a new agreement in order to alter or modify the payment provisions prior to the expiration of the first year of the original or any renewal term of this Agreement.

(f) Referrals. It is not the purpose of this Agreement to induce the referral of patients. The parties acknowledge that there is no requirement under this Agreement or any other agreement between the Company and the Contractor that either party refer patients to the other for products or services. Additionally, no payment made by any party under this Agreement is in return for the referral of patients to the other party for products or services. Both parties may refer patients to any other entity providing such products or services and will make such referrals, if any, in a manner consistent with its professional medical judgment and the needs and wishes of the individual patients. Neither party will intentionally conduct itself under the terms of this Agreement in a manner constituting a violation of the Medicare and Medicaid Fraud and Abuse provisions nor make any payments prohibited thereunder or under any other state or federal law.

(g) No Assignment or Subcontracting. Except as otherwise provided in this Agreement, the Contractor may not assign this Agreement (by operation of law or otherwise) or subcontract any or all of the Services or obligations to be performed by the Contractor under this Agreement to any other person or entity.

(h) Notices. All notices, requests and communications required or permitted by this Agreement or any document or agreement executed and delivered in connection with this Agreement shall be deemed sufficient and properly given if it is in writing and is hand delivered, or sent by overnight courier, and addressed to the respective party to whom such notice request or communication relates at the addresses set forth below or at such other addresses as shall be furnished in writing by any party to the other party. All such notices, requests or communications shall be deemed received when hand delivered or two business days after delivered to the overnight courier. Notice of a change in address of one of the parties shall be given in writing to the other party as provided above, but shall be effective only upon actual receipt.

If to the Contractor: Ron Wayne, M.D.  
22921 Singingwood Place NE  
Kingston, WA 98346

If to the Company: North Kitsap Ambulatory Surgery Center, LLC

20669 Bond Road NE, Suite #200  
Poulsbo, WA 98370  
Attention: Chief Administrative Officer

With copies to:

Surgical Care Affiliates, LLC  
569 Brookwood Village, Suite 901  
Birmingham, AL 35209  
Attention: Legal Services

(i) Compliance with Laws. It is expressly understood that the parties intend that this Agreement and their performance under this Agreement will comply with all applicable laws, rules, regulations, standards, guidelines, policies, procedures and bylaws of all applicable Regulatory Authorities. The parties agree to renegotiate in good faith, any term, condition or provision of this Agreement that any Regulatory Authority determines to be in contravention of any such law, rule, regulation, standard, guideline, policy, procedure or bylaw, or if any interpretation is issued by any Regulatory Authority that prohibits the Company from billing for a referral received from the Contractor or any of its physician employees.

(j) Remedies. Any party resorting to legal action to enforce its rights under this Agreement, shall be entitled to obtain any available legal or equitable remedy, including an injunction, without bond, and specific performance. The prevailing party shall be entitled to recover the expenses incurred in such action, including without limitation, court costs and attorneys' fees reasonably and actually incurred.

(k) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and, if applicable, their respective successors and permitted assigns.

(l) No Third Party Beneficiaries. This Agreement is an agreement between the parties executing it. Under no circumstances shall there be any third-party beneficiaries nor shall any third party have any rights or benefits under this Agreement.

(m) Waiver/Consents. All consents or waivers, express or implied, given by any party to this Agreement with respect to or in connection with the performance of, or any breach or default by any other party are event specific and shall not be construed to be a consent or waiver to any subsequent performance, breach or default of the same nature or to any other performance, breach or default at any time. The granting of any consent or approval by any party shall not be construed as abrogating the need for such consent or approval in any other or subsequent instance. Failure on the part of any party to enforce performance of any other party, to complain of any act or failure to act by any other party or to declare any other party in breach or default under this Agreement, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement.

(n) Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(o) Survivability. With the exception of this section and any provision of this Agreement which requires performance after the term of this Agreement has expired or been terminated, no provision of this Agreement shall survive the expiration or termination of this Agreement.

(p) Force Majeure. All parties to this Agreement may be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion, epidemic, pandemic, public health emergency or the inability to obtain the necessary labor, materials or facilities resulting from one of the above referenced events. All parties are, however, not released from using their best efforts to avoid or remove such causes and shall continue performance under this Agreement immediately following the removal or end of such events. Any party wishing to claim under this section shall provide prompt written notice of its claim to all other parties to this Agreement.

(q) No Rule of Construction. The parties acknowledge that this Agreement was initially prepared by the Company as a convenience. All parties acknowledge that they have read this Agreement and have had an opportunity to review its terms with legal counsel and to negotiate the language used in this Agreement. All parties acknowledge and agree that no rule of construction shall apply to this Agreement which construes ambiguity or unclear language in favor of or against any party by reason of that party's role in the initial preparation and drafting of this Agreement.

(r) Headings; Interpretation. The captions or headings contained in this Agreement are for convenience and reference purposes only and shall not be construed to describe, define or limit the scope or the intent of the provisions of this Agreement. Any singular term contained in this Agreement shall be deemed to include the plural, and any plural term the singular. Any reference to gender in this Agreement shall be deemed to include the other.

(s) Exhibits, Schedules and Attachments. All exhibits, schedules and attachments referred to in this Agreement are deemed to be and are hereby incorporated into this Agreement.

(t) Governing Law. This Agreement shall be interpreted, construed and enforced under and in accordance with the laws of the State.

(u) Counterparts. This Agreement may be executed in several counterparts, each of which when so executed, shall be deemed to be an original, and all such counterparts shall, together, constitute one instrument.

[Signature Page Follows.]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed by themselves or by their duly authorized representatives on their behalf on the date written below to be effective as of the Effective Date.

**COMPANY:**

**NORTH KITSAP AMBULATORY SURGERY  
CENTER, LLC**

By: Karen Franco  
Name: Karen Franco  
Title: Business Office Manager

**THE CONTRACTOR:**

Ron Wayne, M.D.  
Ron Wayne, M.D.



**EXHIBIT A**  
**COMPANY**  
**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is dated May 1, 2023 (the “Effective Date”), is entered into by and between North Kitsap Ambulatory Surgery Center, LLC (“Covered Entity”), which operates a healthcare facility located in Poulsbo, Washington (the “Center”) and Ron Wayne, M.D. (“Business Associate”) (individually, a “Party” and collectively, the “Parties”), and supersedes and amends any prior Business Associate Agreement, and any amendments thereto between the Parties.

**RECITALS**

WHEREAS, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”), pursuant to which Business Associate may create, receive, maintain, or transmit data for or from Covered Entity that constitutes Protected Health Information to perform services (“Services”) on behalf of Covered Entity; and

WHEREAS, Covered Entity is or may be subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), and the implementing regulations set forth at 45 CFR Parts 160, 162, and 164 (the “HIPAA Regulations”); and

WHEREAS, to the extent required by the HIPAA Regulations and applicable state law, Business Associate is or may be directly subject to certain privacy and security obligations and penalty provisions of the HIPAA Regulations and state law.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

**I. DEFINITIONS**

Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Regulations. “PHI” shall have the same meaning as the term “Protected Health Information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity. “Electronic PHI” shall have the same meaning as the term “Electronic Protected Health Information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity. “Unsecured PHI” shall have the same meaning as the term “Unsecured Protected Health Information” in 45 CFR 164.402, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

**II. EFFECT OF AGREEMENT**

The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, the HITECH Act, the HIPAA Regulations, and applicable state law.

### III. BUSINESS ASSOCIATE OBLIGATIONS

- (A) **Permitted Uses and Disclosures:** Business Associate shall not use and disclose PHI other than as expressly permitted or required by this Business Associate Agreement or as Required By Law. Except as otherwise limited in this Business Associate Agreement, Business Associate is permitted to use and disclose PHI as follows:
- (i) Business Associate may use and disclosure PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Business Arrangements, provided that use or disclosure would not violate the HIPAA Regulations if done by Covered Entity.
  - (ii) Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate (collectively, "Business Associate's Operations"), provided that Business Associate may only disclose PHI for Business Associate's Operations if the disclosure is Required By Law or Business Associate obtains reasonable assurances, evidenced by a written contract, from the recipient that the recipient will: (1) hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the recipient or as Required By Law; and (2) notify Business Associate of any instance of which the recipient becomes aware in which the confidentiality of such PHI has been breached without unreasonable delay and in no event later than five (5) days.
  - (iii) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) to the extent expressly required pursuant to the Business Arrangements.
  - (iv) To the extent Covered Entity notifies Business Associate of a restriction request granted by Covered Entity that would limit Business Associate's use or disclosure of PHI, Business Associate will comply with the restriction.
  - (v) To the extent Business Associate is authorized to make disclosures directly to health plans, Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, as required by 42 USC 17935(a).
  - (vi) Notwithstanding anything herein to the contrary, Business Associate may not use PHI to create information that is not Individually Identifiable Health Information (i.e., de-identified information) unless expressly required pursuant to the Business Arrangements.
  - (vii) Notwithstanding anything herein to the contrary, Business Associate shall not use or disclose PHI for purposes of marketing or fundraising, as defined in the HIPAA Regulations, the HITECH Act, and applicable state law.
  - (viii) Notwithstanding anything herein to the contrary, Business Associate shall not sell or receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not be construed to limit or

otherwise affect payment by Covered Entity to Business Associate for services provided pursuant to the Business Arrangements.

- (B) **Compliance:** Business Associate shall be directly responsible for full compliance with the applicable requirements of the HIPAA Regulations to the same extent as Covered Entity. To the extent Business Associate is to carry out an obligation of Covered Entity under the HIPAA Regulations, Business Associate shall comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligation.
- (C) **Minimum Necessary:** Business Associate represents that the PHI requested, used, or disclosed by Business Associate shall be the minimum amount necessary to carry out the purposes of the Business Arrangements. To the extent the requirements of 45 CFR 164.502(b) apply, Business Associate will limit all of its uses and disclosures of, and requests for, PHI (1) when practical, to the information making up a Limited Data Set, and (2) in all other cases, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- (D) **Business Associate Agents:** Business Associate shall ensure that each agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to the same restrictions and conditions that apply to Business Associate pursuant to this Business Associate Agreement.
- (E) **Appropriate Safeguards; Security:** Business Associate shall use and maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent uses and disclosures of PHI other than as permitted in this Business Associate Agreement. In addition, Business Associate agrees to comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C with respect to Electronic PHI and any guidance issued by the Secretary of the Department of Health and Human Services.
- (F) **Access to Records:** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or to the Secretary of the Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations. In the event Business Associate provides such information to the Secretary of the Department of Health and Human Services, Business Associate shall provide Covered Entity with a copy of such information. Covered Entity may, at its option, access and audit the records of Business Associate related to Business Associate's use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine are necessary to ensure compliance with the HIPAA Regulations.
- (G) **Improper Access, Use, or Disclosure; Security Incident; Breach:** Business Associate shall report to Covered Entity in writing any access, use, or disclosure of PHI not permitted by this Business Associate Agreement, any Security Incident, and any Breach of Unsecured PHI of which it becomes aware or which it discovers without unreasonable delay and in no event later than five (5) days after discovery.
  - (i) A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate, or by exercising reasonable diligence would have been known to Business Associate. Business



Associate shall be deemed to have knowledge of a Breach if the Breach is known by, or by exercising reasonable diligence would have been known to, any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate.

- (ii) Any report of Breach required by this section shall include the information specified in 45 CFR 164.410 and such other information as Covered Entity requires.
  - (iii) Business Associate shall promptly provide Covered Entity with updates of information concerning the details of any unauthorized access, use, or disclosure of PHI, Security Incident, or Breach.
  - (iv) Business Associate shall perform a preliminary risk assessment immediately following the discovery of any unauthorized access, use, or disclosure of PHI. Such preliminary risk assessment must take into account those factors set forth in 45 CFR 164.402 as well as such other factors as Covered Entity requests. The results of such preliminary risk assessment shall be provided to Covered Entity in writing without unreasonable delay and in no case later than fifteen (15) days from the date of discovery of the unauthorized access, use, or disclosure of PHI. Business Associate shall promptly provide Covered Entity with updates of information material to a risk assessment undertaken by Covered Entity.
  - (v) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement, a Security Incident, or a Breach of Unsecured PHI. Business Associate shall promptly reimburse Covered Entity for all reasonable costs incurred by Covered Entity with respect to mitigating a Breach involving Business Associate. Business Associate shall undertake mitigation activities under this section in consultation with, and in accordance with the instructions of, Covered Entity.
  - (vi) It is the sole responsibility of Covered Entity to notify individuals of any Breach of Unsecured PHI. Business Associate shall cooperate with Covered Entity in the provision of any such notification. Business Associate shall promptly reimburse Covered Entity for all reasonable costs incurred by Covered Entity with respect to providing notification of a Breach involving Business Associate, including without limitation costs related to printing, postage, and the establishment of hotlines.
  - (vii) Business Associate shall report to Covered Entity in writing any security incident or breach of personal information for which applicable state law may require notification or other action by either Business Associate or Covered Entity. Any such report shall be made in accordance with the requirements of the relevant state law.
- (H) **Access to PHI; Amendment of PHI:** To the extent that the Parties mutually agree in writing that PHI is part of a Designated Record Set, and that such Designated Record Set (or a portion thereof) is to be maintained by Business Associate, as set forth and agreed to in Schedule A:

- (i) Business Associate shall within ten (10) days after a written request from Covered Entity provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to such PHI to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524.
- (ii) If the requested PHI is maintained electronically, Business Associate shall provide a copy of the PHI in the form and format requested by the Individual, if it is readily producible, or, if not, in a readable electronic form and format agreed to by Covered Entity and the Individual.
- (iii) In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
- (iv) Business Associate shall within ten (10) days after a written request from Covered Entity make amendments to such PHI as directed or agreed to by Covered Entity in accordance with the requirements of 45 CFR 164.526.
- (v) In the event that a request for an amendment is delivered directly to Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity.
- (I) **Accounting:** Business Associate shall document such disclosures of PHI and information related to such disclosures and, within ten (10) days after Covered Entity's written request, shall provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity, information collected in accordance with this section, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. In the event that a request for an accounting is delivered directly to Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity.

#### IV. **COVERED ENTITY'S OBLIGATIONS**

- (A) **Notice of Privacy Practices:** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any subsequent changes to such notice of privacy practices.
- (B) **Changes in Access by Individual:** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (C) **Restrictions on Use and Disclosure of PHI:** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

## V. TERMINATION

- (A) **Term:** The Term of this Agreement shall be effective as of the Effective Date and shall remain in effect until termination of the Business Arrangements; provided, however, that certain obligations shall survive termination of this Agreement as set forth in Section V(C).
- (B) **Termination for Cause:** Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement. In its sole discretion, Covered Entity may permit Business Associate the ability to cure or take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity. If termination pursuant to this section is infeasible, Covered Entity shall report the breach to the Secretary of the Department of Health and Human Services. The Parties understand and agree that termination of this Business Associate Agreement pursuant to this section shall constitute a material breach by Business Associate under the Business Arrangements.
- (C) **Return or Destruction of PHI:** Upon termination, if feasible, Business Associate shall return or destroy, at no cost to Covered Entity, all PHI that Business Associate still maintains in any form and shall retain no copies of such information. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of PHI infeasible and Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further use of such PHI solely to those purposes that make the return or destruction of such PHI infeasible. The provisions of this section shall survive the expiration or termination of this Business Associate Agreement.

## VI. MISCELLANEOUS

- (A) **Ownership of PHI:** Business Associate acknowledges that Business Associate has no ownership rights with respect to PHI.
- (B) **Amendment to Comply with Law:** The Parties acknowledge that it may be necessary to amend this Business Associate Agreement to comply with modifications to HIPAA, the HITECH Act, the HIPAA Regulations, and applicable state law, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. The Parties agree to use good faith efforts to develop and execute any amendments to this Business Associate Agreement as may be required by any such modifications.
- (C) **Amendment:** This Business Associate Agreement may be amended or modified only in writing signed by the Parties.
- (D) **Assignment:** Notwithstanding anything in the Business Arrangements to the contrary, neither Party may assign this Business Associate Agreement, in whole or in part, without the prior written consent of the other Party; provided, however, that Covered Entity may assign this Business Associate Agreement without the consent of the other Party to an affiliate or in conjunction with a merger, reorganization, consolidation, change of control or sale of all or substantially all of its assets. Subject to the requirements of this

paragraph, this Business Associate Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.

- (E) **No Third Party Beneficiaries; Agency Relationship:** Nothing expressed or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. Nothing in this Business Associate Agreement shall be construed to create any agency relationship between the parties.
- (F) **Governing Law:** This Business Associate Agreement shall be governed by and construed in accordance with the substantive law of the state in which the Center is located without regard to conflicts of laws principles.
- (G) **Paragraph Headings:** The paragraph headings in this Business Associate Agreement are for convenience only. They form no part of this Business Associate Agreement and shall not affect its interpretations.
- (H) **Notice:** Any notice required by the Business Associate under the terms of this Business Associate Agreement, including notifications of breach, should be made in writing and without unreasonable delay to the following:

**COVERED ENTITY:**

North Kitsap Ambulatory Surgery Center, LLC  
Attn: Chief Administrative Officer  
20669 Bond Road NE, Suite #200  
Poulsbo, WA 98370

With copies to:

Surgical Care Affiliates, LLC  
Attn: Privacy Officer, Compliance  
569 Brookwood Village, Suite 900  
Birmingham, AL 35209

**BUSINESS ASSOCIATE:**

Ron Wayne, M.D.  
22921 Singingwood Place NE  
Kingston, WA 98346

**VII. INDEMNIFICATION**

Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and such other Party's parent corporation, affiliates, employees, directors, officers, subcontractors, agents or other members of such other Party's workforce (collectively referred to as the "Indemnified Party"), against all costs suffered by the Indemnified Party, including but not limited to any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees), arising from or in connection with a material breach of this Business Associate Agreement by the Indemnifying Party. This provision shall survive the expiration or termination of this Business Associate Agreement.

[Signature Page Follows.]

IN WITNESS WHEREOF, the Parties have executed this Business Associate Agreement as of the day and year written below to be effective as of the Effective Date.

**COVERED ENTITY:**

**North Kitsap Ambulatory Surgery Center, LLC**

By: Karen Franco  
Name: Karen Franco  
Title: Business Office Manager

**BUSINESS ASSOCIATE:**

Ronald Wayne  
Ron Wayne, M.D.

**Schedule A**

**Identification of Designated Record Set**

As contemplated in Section III(H), the Parties agree to the provision marked below:

- ☐ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements constitutes a Designated Record Set (or a part thereof), and such Designated Record Set (or portion thereof) shall be maintained by Business Associate.
  
- ☒ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements DOES NOT constitute a Designated Record Set (or a part thereof), and NO such Designated Record Set (or portion thereof) shall be maintained by Business Associate.

## EXHIBIT F

### FIRST AMENDMENT TO COMMERCIAL LEASE AGREEMENT BETWEEN PACIFIC MEDICAL BUILDING, LLC AND NORTH KITSAP AMBULATORY SURGERY CENTER, LLC



## COMMERCIAL LEASE AGREEMENT

THIS LEASE (this "Lease") is dated January 1, 2021,

BETWEEN:

**Pacific Medical Building, LLC**

(the "Landlord")

OF THE FIRST PART

**- AND -**

**Pacific Surgery Center of 20669 Bond Road N. E., Suite 200, Poulsbo, WA  
98370**

(the "Tenant")

OF THE SECOND PART

**IN CONSIDERATION OF** the Landlord leasing certain premises to the Tenant, the Tenant leasing those premises from the Landlord and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Parties to this Lease (the "Parties") agree as follows:

### **Basic Terms**

1. The following basic terms are hereby approved by the Parties and each reference in this Lease to any of the basic terms will be construed to include the provisions set forth below as well as all of the additional terms and conditions of the applicable sections of this Lease where such basic terms are more fully set forth:
  - a. Landlord: Pacific Medical Building, LLC
  - b. Physical address: Pacific Medical Building, LLC, 20669 Bond Road N.E., Poulsbo, WA 98370
  - c. Mailing address of Pacific Medical Building, LLC: c/o Schultz & Associates, P.O. Box 1265, Poulsbo, WA 98370 Attn: Walter Schultz
  - d. Tenant: Pacific Surgery Center
  - e. Address of Pacific Surgery Center: 20669 Bond Road N. E., Suite 200, Poulsbo, WA 98370.

- f. Term of Lease: The term of the Lease is for 5 years to commence at 12:00 noon on January 1, 2021 and end at midnight on December 31, 2025, with the right to renew for an additional five years.
- g. Commencement Date of Lease: January 1, 2021.
- h. Base Rent: \$26.31 per square foot based on 13,842 square feet of combined rentable space and common space as summarized in Attachment "A". (Both Parties recognize and agree that this total combined space will be adjusted to a total of 15,342 square feet resulting from building modifications by this tenant once these are completed.) Rent shall be payable on or before the tenth day of each month.
- i. Permitted Use of Premises: Operation of a commercial facility for the practice of medicine, and related enterprises.
- j. Advance rent: None.
- k. Security/Damage Deposit: None.

### **Definitions**

- 2. When used in this Lease, the following expressions will have the meanings indicated:
  - a. "Additional Rent" means all amounts payable by the Tenant under this Lease except Base Rent, whether or not specifically designated as Additional Rent elsewhere in this Lease;
  - b. "Building" means all buildings, improvements, building related equipment and fixtures intended for the functioning of the building, property and facilities from time to time located at 20669 Bond Road N. E., Poulsbo, WA 98370, as from time to time altered, expanded or reduced by the Landlord in its sole discretion;
  - c. "Common Areas and Facilities" mean:
    - i. those portions of the Building areas, buildings, improvements, facilities, utilities, equipment and installations in or forming part of the Building which from time to time are not designated or intended by the Landlord to be leased to tenants of the Building including, without limitation, exterior weather walls, roofs, entrances and exits, parking areas, driveways, loading docks and area, storage, mechanical and electrical rooms, areas above and below leasable premises and not included within leasable premises, security and alarm equipment, grassed and

landscaped areas, retaining walls and maintenance, cleaning and operating equipment serving the Building; and

- ii. those lands, areas, buildings, improvements, facilities, utilities, equipment and installations which serve or are for the useful benefit of the Building, the tenants of the Building or the Landlord and those having business with them, whether or not located within, adjacent to or near the Building and which are designated from time to time by the Landlord as part of the Common Areas and Facilities;
- d. "Leasable Area" means with respect to any rentable premises, the area expressed in square feet of all floor space including floor space of mezzanines, if any, determined and calculated by the Landlord and measured from the exterior face of all exterior walls, doors and windows, including walls, doors and windows separating the rentable premises from enclosed Common Areas and Facilities, if any, and from the center line of all interior walls separating the rentable premises from adjoining rentable premises. There will be no deduction or exclusion for any space occupied by or used for columns, ducts or other structural elements; both parties shall agree and accept the measurements as summarized in Attachment "A".
- e. "Premises" means the commercial space at 20669 Bond Road N. E., Suite 102 and Suite 200, Poulsbo, WA 98370 which is located approximately as shown in Attachment 'B' incorporated in the Lease;
- f. "Proportionate Share" means a fraction, the numerator of which is the Leasable Area of the Premises and the denominator of which is the aggregate of the Leasable Area of all rentable premises in the Building.
- g. "Allocated Usage Share" means the portion of an expense that is allocated to the tenant based on their share of usage. (Refer to 22c)

### **Intent of Lease**

- 3. It is understood and agreed to by the Parties to this lease that the general intent and purpose of this Lease is that this lease be triple net lease with respect to the Landlord. The Tenant shall pay all of the actual Real Property Taxes, Assessments, insurance, utilities, and all normal maintenance and operating cost for their proportionate or allocated usage share of the entire premises, as described in Section 16. Capital improvements shall not be included in the triple net calculation. A Capital Improvement Fund shall be established by the landlord to cover capital improvements and structural repairs.

### **Leased Premises**

4. The Landlord agrees to rent the Premises to the Tenant for only permitted uses (the "Permitted Use") which shall be agreed to in advance in writing between the Landlord and the Tenant.

The Premises are more particularly described as set forth in Attachment "B".

Neither the Premises nor any part of the Premises will be used at any time during the term of this Lease by Tenant for any purpose other than the Permitted Use.

5. The Landlord reserves the right in its reasonable discretion to alter, reconstruct, expand, withdraw from or add to the Building from time to time. In the exercise of those rights, the Landlord undertakes to use reasonable efforts to minimize any interference with the visibility of the Premises and to use reasonable efforts to ensure that direct entrance to and exit from the Premises is maintained.
6. The Landlord reserves the right for itself and for all persons authorized by it, to erect, use and maintain wiring, mains, pipes and conduits and other means of distributing services in and through the Premises, and at all reasonable times to enter upon the Premises for the purpose of installation, maintenance or repair, and such entry will not be an interference with the Tenant's possession under this Lease.
7. The Landlord reserves the right, when necessary by reason of accident or in order to make repairs, alterations or improvements relating to the Premises or to other portions of the Building to cause temporary obstruction to the Common Areas and Facilities as reasonably necessary and to interrupt or suspend the supply of electricity, water and other services to the Premises until the repairs, alterations or improvements have been completed. There will be no abatement in rent because of such obstruction, interruption or suspension provided that the repairs, alterations or improvements are made expeditiously as is reasonably possible. The Landlord shall give Tenant advance notice of any scheduled repairs and or improvements.
8. Subject to this Lease, the Tenant and its employees, customers and invitees will have the non-exclusive right to use for their proper and intended purposes, during business hours in common with all others entitled thereto those parts of the Common Areas and Facilities from time to time permitted by the Landlord. The Common Areas and Facilities and the Building will at all times be subject to the exclusive control and management of the Landlord. The Landlord will operate and maintain the Common Areas and Facilities and the Building in such manner as the Landlord determines from time to time.

9. The Tenant agrees that the areas and boundaries described in Attachment 'B' are:
- a. subject to alteration by acquisition or conveyance of lands for any purpose including the dedication, expropriation or conveyance of lands for municipal lands; and
  - b. may, upon the sole discretion of the Landlord, be relocated to another area within the Building which area would, where possible, be of similar size and character to the original Premises.

The Landlord agrees to reimburse the Tenant for any reasonable moving expenses incurred in any such relocation. The Tenant covenants that at the request of the Landlord, it will enter into such further assurances, releases, amending agreements, or other documents as may be required by the Landlord to give effect to such alteration, variation, diminution, enlargement, supplementation or relocation.

**Term**

10. The term of the Lease is for 5 years to commence at 12:00 noon on January 1, 2021.

**Rent**

11. Subject to the provisions of this Lease, the Tenant will pay a base rent of \$26.31 per square foot as shown on Attachment 'A', payable on or before the tenth day of each month, for the Premises (the "Base Rent").
12. The Tenant will pay the Base Rent on or before the tenth day of each and every month of the term of this Lease to the Landlord's agent at Schultz & Associates, P.O. Box 1265, Poulsbo, WA 98370, or at such other place as the Landlord may later designate.
13. The Base Rent for the Premises will increase each January 1st during the Term of the Lease by the percentage of increase, if any, in the Consumer Price Index-All Urban Consumers Seattle-Tacoma-Bremerton Area as published by the United States Department of Labor's Bureau of Labor Statistics or the successor to such index or if no successor then in any generally accepted index showing the inflation rate, if any, for the United States as a whole (hereinafter referred to as "the Consumer Price Index"). The Consumer Price Index rate used, shall be the twelve months ending December of each year. Such increase shall not exceed 3% in any one year. The current base rent shall be multiplied by the percentage increase in the Consumer Price Index since the later of the execution date hereof or the date of the last increase of base rent. The resulting figure shall be added to the base rent to determine the new adjusted base rent. In no event shall the minimum rent be less than the sum specified in item number 11 above.

14. For any payment of Rent that is received after the 10<sup>th</sup> day of the month in which it is due, the Tenant will be charged an additional amount as follows: equal to five percent (5%) of such overdue amount.
15. In the event that this Lease expires or is terminated before the end of the period for which any item of Additional Rent or Base Rent would otherwise be payable or other than at the commencement or end of a calendar month, such amounts payable by the Tenant will be apportioned and adjusted pro rata on the basis of a thirty (30) day month in order to calculate the amount payable for such irregular period.

#### **Operating Costs**

16. In addition to the Base Rent, the Tenant's monthly rent payment paid on or before the tenth day of each and every month shall include the Tenant's Proportionate Share of costs, charges and expenses of operating, maintaining, repairing, and insuring the Building including the Common Areas and Facilities from time to time and the carrying out of all obligations of the Landlord under this Lease and similar leases with respect to the Building ("Operating Costs") which include without limitation or duplication, all expenses, costs and outlays relating to the following:
  - a. operating and servicing elevators;
  - b. all utilities supplied to the Common Areas and Facilities;
  - c. security;
  - d. window cleaning;
  - e. all insurance relating to the Building as placed by the Landlord from time to time, acting prudently;
  - f. repairs and maintenance to the Building and any component of the Building (excluding structural repairs- see paragraph 18);
  - g. provision, repair and maintenance of heating, cooling, ventilation and air conditioning equipment throughout the Building;
  - h. supplies used in relation to operating and maintaining the Building (excluding those for the direct account of a specific other Tenant or vacant space - see paragraph 18);
  - i. all outdoor maintenance including landscaping and snow removal;



- j. operation and maintenance of parking area which include striping, patching and sealing;
  - k. preventive maintenance and inspection.
17. Except as otherwise provided in this Lease, Operating Costs will not include debt service, accounting cost, Property Management fees, Income taxes, State Business Taxes, mortgage, interest, legal costs, depreciation, costs determined by the Landlord from time to time to be fairly allocable to the correction of construction faults or initial maladjustments in operating equipment, all management costs, work performed in connection with the initial construction of the Building and the Premises and improvements and modernization to the Building subsequent to the date of original construction which are not in the nature of a repair or replacement of an existing component, system or part of the Building.
18. Operating Costs will also not include the following:
- a. any increase in insurance premiums to the Building as a result of business activities of other Tenants;
  - b. the costs of any capital replacements;
  - c. the costs incurred or accrued due to the willful act or negligence of the Landlord or anyone acting on behalf of the Landlord;
  - d. structural repairs;
  - e. costs for which the Landlord is reimbursed by insurers or covered by warranties;
  - f. costs incurred for repairs or maintenance for the direct account of a specific other Tenant or vacant space;
  - g. costs recovered directly from any Tenant for separate charges such as heating, ventilating, and air conditioning relating to that Tenant's leased premises, and in respect of any act, omission, neglect or default of any other Tenant of its obligations under its Lease; or
  - h. any expenses incurred as a result of the Landlord or other tenant generating revenues from common area facilities will be paid from those revenues generated.
19. In computing Operating Costs there will be credited as a deduction the amounts of proceeds of insurance relating to insured damage. Any expenses not directly incurred



by the Landlord but which are included in Operating Costs may be estimated by the Landlord, acting reasonably if and to the extent the Landlord cannot ascertain the actual amount of such expenses from the tenants who incurred them. Any report of the Landlord's independent chartered accountant for such purpose will be conclusive as to the amount of Operating Costs for any period to which such report relates. To the extent that any component of Operating Costs should be allocated, in the reasonable opinion of the Landlord, to any group of tenants, the Landlord may, but will not be obliged to allocate the cost of that Component to Operating Costs of those tenants alone.

20. The Tenant will pay:

- a. To the Landlord, the Tenant's Proportionate Share of all real property taxes, rates, duties, levies and assessments which are levied, rated, charged, imposed or assessed by any lawful taxing authority (whether federal, state, district, municipal, school or otherwise) against the Building and the land or any part of the Building and land from time to time or any taxes payable by the Landlord which are charged in lieu of such taxes or in addition to such taxes, but excluding income tax and state business and occupation tax upon the income of the Landlord to the extent that such taxes are not levied in lieu of real property taxes against the Building or upon the Landlord in respect of the Building.
- b. To the lawful taxing authorities, or to the Landlord, as it may direct, as and when the same become due and payable, all property taxes, rates, use fees, duties, assessments and other charges that are levied, rated, charged or assessed against or in respect of all improvements, equipment and facilities of the Tenant on or in default by the Tenant and in respect of any business carried on in the Premises or in respect of the use or occupancy of the Premises by the Tenant and every subtenant, licensee, concessionaire or other person doing business on or from the Premises or occupying any portion of the Premises.

21. The Tenant will deliver promptly to the Landlord a copy of any separate tax bills or separate assessment notices for the Premises and receipts evidencing the payment of all amounts payable by the Tenant directly to any taxing authority and will furnish such information in connection therewith as the Landlord may from time to time require.

22. The Tenant will pay to the Landlord, forthwith upon demand, the following amounts:

- a. If the Tenant or any person occupying the Premises or any part of the Premises will make an election in respect to the Premises, any additional amount payable

in respect of the Premises or the Building as a result of such election, as reasonably determined by the Landlord.

- b. An amount equal to any increase in the Operating Costs if such increase is directly or indirectly attributable to any installation in or upon the Premises or any activity or conduct on the Premises.
  - c. In such manner as the Landlord will from time to time direct, the cost of supplying all water, fuel, electricity, telephone and any other utilities used or consumed upon or serving the Premises. If the Tenant is billed for the consumption or use of such utilities directly by the appropriate utility authority, the Tenant will pay any such billings promptly when due and payable. If separate check meters are not installed in respect of utilities consumption in, upon or serving the Premises or if the Tenant is not billed for the consumption of such utilities directly by the competent authority, the Landlord will allocate to the Tenant, on a reasonable basis, a share of the total costs of all utilities consumed within the Building. Payment shall be based on square footage. With the exception of electricity, which shall be allocated based on load consumption estimates. Currently, the mutually accepted usage estimate for this Tenant's share is 62% of the total electricity consumed.
23. All amounts payable by the Tenant relating to the Operating Costs will be deemed to be rent and receivable and collectable as such notwithstanding the expiration or sooner termination of this Lease and all remedies of the Landlord for nonpayment of rent will be applicable thereto.
24. For any rent review negotiation, the new base rent will be calculated as being the higher of the Base Rent payable immediately before the date of review and the Open Market Rent on the date of review.

#### **Landlord's Estimate**

25. The Landlord may, in respect of all property taxes and Operating Costs and any other items of Additional Rent referred to in this Lease, compute bona fide estimates of the amounts which are anticipated to accrue in the next following lease year, calendar year or fiscal year, or portion of such year, as the Landlord and Tenant may determine is most appropriate for each and of all items of Additional Rent, and the Landlord may provide the Tenant with written notice and a reasonable breakdown of the amount of any such estimate, and the Tenant, following receipt of such written notice of the estimated amount and breakdown will pay to the Landlord such amount, in equal consecutive monthly installments throughout the application period with the monthly

installments of Base Rent. With respect to any item of Additional Rent which the Landlord has not elected to estimate from time to time, the Tenant will pay to the Landlord the amount of such item of Additional Rent, determined under the applicable provisions of this Lease, within thirty days of receipt of an invoice setting out such items of Additional Rent. Within one hundred and twenty (120) days of the conclusion of each year of the term or a portion of a year, as the case may be, calendar year or fiscal year, or portion of such year, as the case may be, for which the Landlord has estimated any item of Additional Rent, the Landlord will compute the actual amount of such item of Additional Rent, and make available to the Tenant for examination a statement providing the amount of such item of Additional Rent and the calculation of the Tenant's share of that Additional Rent for such year or portion of such year. If the actual amount of such items of Additional Rent, as set out in any such statement, exceeds the aggregate amount of the installments paid by the Tenant in respect of such item, the Tenant will pay to the Landlord the amount of excess within thirty (60) days of receipt of any such statement, or at such other time as the parties may mutually agree to in writing. If the contrary is the case, any such statement will be accompanied by a refund to the Tenant of any such overpayment without interest, provided that the Landlord may first deduct from such refund any rent which is then in arrears.

#### **Use and Occupation**

26. The Tenant will use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. The Tenant will carry on business under the name of Pacific Surgery Center and will not change such name without the prior written consent of the Landlord, such consent not to be unreasonably withheld. The Tenant will open the whole of the Premises for business to the public fully fixtured, stocked and staffed on the date of commencement of the term and throughout the term, will continuously occupy and utilize the entire Premises in the active conduct of its business in a reputable manner on such days and during such hours of business as may be determined from time to time by the Landlord. The same provisions that pertain under this paragraph for Tenants shall pertain to Sub-Tenants.
27. The Tenant covenants that the Tenant will carry on and conduct its business from time to time carried on upon the Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, provincial, municipal or other competent authority and will not do anything on or in the Premises in contravention of any of them.

#### **Quiet Enjoyment**

28. The Landlord covenants that on paying the Rent and performing the covenants contained in this Lease, the Tenant will peacefully and quietly have, hold, and enjoy the Premises for the agreed term.

#### **Default**

29. If the Tenant is in default in the payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, and such default continues following any specific due date on which the Tenant is to make such payment, or in the absence of such specific due date, for the 30 days following written notice by the Landlord requiring the Tenant to pay the same then, at the option of the Landlord, this Lease may be terminated upon 10 days notice and the term will then immediately become forfeited and void, and the Landlord may without further notice or any form of legal process immediately reenter the Premises or any part of the Premises and in the name of the whole repossess and enjoy the same as of its former state anything contained in this Lease or in any statute or law to the contrary notwithstanding.
30. Unless otherwise provided for in this Lease, if the Tenant does not observe, perform and keep each and every of the non-monetary covenants, agreements, stipulations, obligations, conditions and other provisions of this Lease to be observed, performed and kept by the Tenant and persists in such default, after 30 days following written notice from the Landlord requiring that the Tenant remedy, correct or comply or, in the case of such default which would reasonably require more than 30 days to rectify, unless the Tenant will commence rectification within the said 30 days notice period and thereafter promptly and diligently and continuously proceed with the rectification of any such defaults then, at the option of the Landlord, this Lease may be terminated upon 30 days notice and the term will then immediately become forfeited and void, and the Landlord may without further notice or any form of legal process immediately reenter the Premises or any part of the Premises and in the name of the whole repossess and enjoy the same as of its former state anything contained in this Lease or in any statute or law to the contrary notwithstanding.
31. If and whenever:
- a. the Tenant's leasehold interest hereunder, or any goods, chattels or equipment of the Tenant located in the Premises will be taken or seized in execution or attachment, or if any writ of execution will issue against the Tenant or the Tenant will become insolvent or commit an act of bankruptcy or become bankrupt or take the benefit of any legislation that may be in force for bankrupt or insolvent debtor or become involved in voluntary or involuntary winding up,

dissolution or liquidation proceedings, or if a receiver will be appointed for the affairs, business, property or revenues of the Tenant; or

- b. the Tenant fails to commence, diligently pursue and complete the Tenant's work to be performed under any agreement to lease pertaining to the Premises or vacate or abandon the Premises, or fail or cease to operate or otherwise cease to conduct business from the Premises, or use or permit or suffer the use of the Premises for any purpose other than as permitted in this clause, or make a bulk sale of its goods and assets which has not been consented to by the Landlord, or move or commence, attempt or threaten to move its goods, chattels and equipment out of the Premises other than in the routine course of its business; or

then, and in each such case, at the option of the Landlord, this Lease may be terminated without notice and the term will then immediately become forfeited and void, and the Landlord may without notice or any form of legal process immediately reenter the Premises or any part of the Premises and in the name of the whole repossess and enjoy the same as of its former state anything contained in this Lease or in any statute or law to the contrary notwithstanding.

- 32. In the event that the Landlord has terminated the Lease pursuant to this section, on the expiration of the time fixed in the notice, if any, this Lease and the right, title, and interest of the Tenant under this Lease will terminate in the same manner and with the same force and effect, except as to the Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the Lease.

### **Distress**

- 33. If and whenever the Tenant is in default in payment of any money, whether hereby expressly reserved or deemed as rent, or any part of the rent, the Landlord may, without notice or any form of legal process, enter upon the Premises and seize, remove and sell the Tenant's goods, chattels and equipment from the Premises or seize, remove and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them, in the same manner as if they had remained upon the Premises, all notwithstanding any rule of law or equity to the contrary, and the Tenant hereby retains the benefit of any present or future statute or law limiting or eliminating the Landlord's right of distress.

### **Overholding**



34. If the Tenant continues to occupy the Premises with the written consent of the Landlord after the expiration or other termination of the term, then, without any further written agreement, the Tenant will be a month-to-month tenant at a minimum monthly rental equal to 150% of the current Base Rent plus any additional rent and subject always to all of the other provisions of this Lease insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year will not be created by implication of law.
35. If the Tenant continues to occupy the Premises without the written consent of the Landlord at the expiration or other termination of the term, then the Tenant will be a tenant at will and will pay to the Landlord, as liquidated damages and not as rent, an amount equal to twice the Base Rent plus any Additional Rent during the period of such occupancy, accruing from day to day and adjusted pro rata accordingly, and subject always to all the other provisions of this Lease insofar as they are applicable to a tenancy at will and a tenancy from month to month or from year to year will not be created by implication of law; provided that nothing in this clause contained will preclude the Landlord from taking action for recovery of possession of the Premises.

**Additional Rights on Re-entry**

36. If the Landlord re-enters the Premises or terminates this Lease, then:
- a. notwithstanding any such termination or the term thereby becoming forfeited and void, the provisions of this Lease relating to the consequences of termination will survive;
  - b. the Landlord may use such reasonable force as it may deem necessary for the purpose of gaining admittance to and retaking possession of the Premises and the Tenant hereby releases the Landlord from all actions, proceedings, claims and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith or consequential thereupon;
  - c. the Landlord may expel and remove, forcibly, if necessary, the Tenant, those claiming under the Tenant and their effects, as allowed by law, without being taken or deemed to be guilty of any manner of trespass;
  - d. in the event that the Landlord has removed the property of the Tenant, the Landlord may store such property in a public warehouse or at a place selected by the Landlord, at the expense of the Tenant. If the Landlord feels that it is not worth storing such property given its value and the cost to store it, then the Landlord may dispose of such property in its sole discretion and use such funds, if any, towards any indebtedness of the Tenant to the Landlord. The Landlord

will not be responsible to the Tenant for the disposal of such property other than to provide any balance of the proceeds to the Tenant after paying any storage costs and any amounts owed by the Tenant to the Landlord;

- e. the Landlord may re-lease the Premises or any part of the Premises for a term or terms which may be less or greater than the balance of the term of this Lease remaining and may grant reasonable concessions in connection with such re-letting including any alterations and improvements to the Premises;
- f. after re-entry, the Landlord may terminate the Lease on giving 15 days written notice of termination to the Tenant. Without this notice, re-entry of the Premises by the Landlord or its agents will not terminate this Lease;
- g. the Tenant will pay to the Landlord on demand:
  - i. all rent, Additional Rent and other amounts payable under this Lease up to the time of re-entry or termination, whichever is later;
  - ii. reasonable expenses as the Landlord incurs or has incurred in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, realizing upon assets seized; including without limitation, brokerage, fees and expenses and legal fees and disbursements and the expenses of keeping the Premises in good order, repairing the same and preparing them for re-letting; and
  - iii. as liquidated damages for the loss of rent and other income of the Landlord expected to be derived from this Lease during the period which would have constituted the unexpired portion of the term had it not been terminated, at the option of the Landlord, either:
    - i. an amount determined by reducing to present worth at an assumed interest rate of five percent (5%) per annum all Base Rent and estimated Additional Rent to become payable during the period which would have constituted the unexpired portion of the term, such determination to be made by the Landlord, who may make reasonable estimates of when any such other amounts would have become payable and may make such other assumptions of the facts as may be reasonable in the circumstances; or
    - ii. an amount equal to the Base Rent and estimated Additional Rent for a period of six (6) months.



37. During the Term and any renewal of this Lease, the Landlord and its agents may enter the Premises to make inspections or repairs at all reasonable times. However, except where the Landlord or its agents consider it is an emergency, the Landlord must have given not less than 24 hours prior written notice to the Tenant.
38. The Tenant acknowledges that the Landlord or its agent will have the right to enter the Premises at all reasonable times to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also during the ninety days preceding the termination of the terms of this Lease, place upon the Premises the usual type of notice to the effect that the Premises are for rent, which notice the Tenant will permit to remain on them.

### **Tenant Improvements**

39. The Tenant will make the following improvements to the Premises:
- a. Tenant agrees that Landlord shall not be called upon to make any expenditure whatever on account of any improvement, alteration, renewal, modification, addition or change to any building or improvement situated upon the Property or to the appurtenances thereof or to the sidewalks or parking area abutting thereon. Tenant shall make no modifications on the Property without Landlord's express written consent, which consent shall not be unreasonably withheld.
40. All improvements provided by the Tenant will revert to the Landlord at the end of the Lease except for the following: Medical equipment used in day to day operation of Tenant's primary business.

---

---

---

---

---

### **Utilities and Other Costs**

41. The Tenant is responsible for the direct payment of the following utilities and other charges in relation to the Premises: telephone, internet and cable.

### **Signage**

42. The Tenant may erect, install and maintain signage of a kind and size in a location, all in accordance with the Landlord's design criteria for the Building and as first approved in writing by the Landlord. All other signage, including advertising by the Tenant in the

form of signage, shall comply with all applicable rules and regulations of the Landlord. The Tenant may not erect, install or maintain any signage other than in accordance with this section.

### **Insurance**

43. The Tenant is hereby advised and understands that the personal property of the Tenant is not insured by the Landlord for either damage or loss, and the Landlord assumes no liability for any such loss. The Tenant is advised that, if insurance coverage is desired by the Tenant, the Tenant should inquire of Tenant's insurance agent regarding a Tenant's Policy of Insurance.

### **Tenant's Insurance**

44. The Tenant will, during the whole of the term and during such other time as the Tenant occupies the Premises, take out and maintain the following insurance, at the Tenant's sole expense, in such form as used by solvent insurance companies in the State of Washington:
- a. Comprehensive general liability insurance against claims for bodily injury, including death, and property damage or loss arising out of the use or occupation of the Premises, or the Tenant's business on or about the Premises; such insurance to be in the joint name of the Tenant and the Landlord so as to indemnify and protect both the Tenant and the Landlord and to contain a 'cross liability' and 'severability of interest' clause so that the Landlord and the Tenant may be insured in the same manner and to the same extent as if individual policies had been issued to each, and will be for the amount of not less than \$1,000,000.00 combined single limit or such other amount as may be reasonably required by the Landlord from time to time; such comprehensive general liability insurance will for the Tenant's benefit only include contractual liability insurance in a form and of a nature broad enough to insure the obligations imposed upon the Tenant under the terms of this Lease.
  - b. All risks insurance upon its merchandise, stock-in-trade, furniture, fixtures and improvements and upon all other property in the Premises owned by the Tenant or for which the Tenant is legally liable, and insurance upon all glass and plate glass in the Premises against breakage and damage from any cause, all in an amount equal to the full replacement value of such items, which amount in the event of a dispute will be determined by the decision of the Landlord. In the event the Tenant does not obtain such insurance, it is liable for the full costs of repair or replacement of such damage or breakage.

- c. Furnace and machinery and medical equipment and other office equipment insurance on such equipment may be installed by, or under the exclusive control of, the Tenant in the Premises.
- d. Owned automobile insurance with respect to all motor vehicles owned by the Tenant and operated in its business.

45. The Tenant's policies of insurance hereinbefore referred to will contain the following:

- a. provisions that the Landlord is protected notwithstanding any act, neglect or misrepresentation of the Tenant which might otherwise result in the avoidance of claim under such policies will not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insured(s);
- b. provisions that such policies and the coverage evidenced thereby will be primary and noncontributing with respect to any policies carried by the Landlord and that any coverage carried by the Landlord will be excess coverage;
- c. all insurance referred to above will provide for waiver of the insurer's rights of subrogation as against the Landlord; and
- d. provisions that such policies of insurance will not be cancelled without the insurer providing the Landlord thirty (30) days written notice stating when such cancellation will be effective.

46. The Tenant will further during the whole of the term maintain such other insurance in such amounts and in such sums as the Landlord may reasonably determine from time to time. Evidence satisfactory to the Landlord of all such policies of insurance will be provided to the Landlord upon request.

47. The Tenant will not do, omit or permit to be done or omitted upon the Premises anything which will cause any rate of insurance upon the Building or any part of the Building to be increased or cause such insurance to be cancelled. If any such rate of insurance will be increased as previously mentioned, the Tenant will pay to the Landlord the amount of the increase as Additional Rent. If any insurance policy upon the Building or any part of the Building is cancelled or threatened to be cancelled by reason of the use or occupancy by the Tenant or any such act or omission, the Tenant will immediately remedy or rectify such use, occupation, act or omission upon being requested to do so by the Landlord, and if the tenant fails to so remedy or rectify, the Landlord may at its option terminate this Lease and the Tenant will immediately deliver up possession of the Premises to the Landlord.

48. The Tenant will not at any time during the term of this Lease use, exercise, carry on or permit or suffer to be used, exercised, carried on, in or upon the Premises or any part of the Premises, any noxious, noisome or offensive act, trade business occupation or calling, and no act, matter or thing whatsoever will at any time during the said term be done in or upon the Premises, or any part Premises, which will or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of the occupiers or owners of the Building, or adjoining lands or premises.

#### **Landlord's Insurance**

49. The Landlord will take out or cause to be taken out and keep or cause to be kept in full force and effect during the whole of the term:

- a. extended fire and extended coverage insurance on the Building, except foundations, on a replacement cost basis, subject to such deductions and exceptions as the Landlord may determine; such insurance will be in a form or forms normally in use from time to time for buildings and improvements of a similar nature similarly situate, including, should the Landlord so elect, insurance to cover any loss of rental income which may be sustained by the Landlord; and
- b. comprehensive general liability insurance against claims for bodily injury, including death and property damage in such form and subject to such deductions and exceptions as the Landlord may determine; provided that nothing in this clause will prevent the Landlord from providing or maintaining such lesser, additional or broader coverage as the Landlord may elect in its discretion.

50. The Landlord agrees to request its insurers, upon written request of the Tenant, to have all insurance taken out and maintained by the Landlord provide for waiver of the Landlord's insurers' rights of subrogation as against the Tenant when and to the extent permitted from time to time by its insurers.

#### **Abandonment**

51. If at any time during the term of this Lease, the Tenant abandons the Premises or any part of the Premises, the Landlord may, at its option, enter the Premises by any means without being liable for any prosecution for such entering, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and may, at the Landlord's discretion, as agent for the Tenant, re-let the Premises, or any part of the Premises, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such re-letting, and, at the Landlord's option, hold

the Tenant liable for any difference between the Rent that would have been payable under this Lease during the balance of the unexpired term, if this Lease had continued in force, and the net rent for such period realized by the Landlord by means of the re-letting. If the Landlord's right of re-entry is exercised following abandonment of the premises by the Tenant, then the Landlord may consider any personal property belonging to the Tenant and left on the Premises to also have been abandoned, in which case the Landlord may dispose of all such personal property in any manner the Landlord will deem proper and is relieved of all liability for doing so.

#### **Subordination and Attornment**

52. This Lease and the Tenant's rights under this Lease will automatically be subordinate to any mortgage or mortgages, or encumbrance resulting from any other method of financing or refinancing, now or afterwards in force against the Lands or Building or any part of the Lands or Building, as now or later constituted, and to all advances made or afterwards made upon such security; and, upon the request of the Landlord, the Tenant will execute such documentation as may be required by the Landlord in order to confirm and evidence such subordination.
53. The Tenant will, in the event any proceedings are brought, whether in foreclosure or by way of the exercise of the power of sale or otherwise, under any other mortgage or other method of financing or refinancing made by the Landlord in respect of the Building, or any portion of the Building, attorn to the encumbrancer upon any such foreclosure or sale and recognize such encumbrancer as the Landlord under this Lease, but only if such encumbrancer will so elect and require.
54. Upon the written request of the Tenant, the Landlord agrees to request any mortgagee or encumbrancee of the Lands (present or future) to enter into a non-disturbance covenant in favor of the Tenant, whereby such mortgagee or encumbrancee will agree not to disturb the Tenant in its possession and enjoyment of the Premises for so long as the Tenant is not in default under this Lease.

#### **Estoppel Certificate and Acknowledgement**

55. Whenever requested by the Landlord, a mortgagee or any other encumbrance holder or other third party having an interest in the Building or any part of the Building, the Tenant will, within ten (10) days of the request, execute and deliver an estoppel certificate or other form of certified acknowledgement as to the Commencement Date, the status and the validity of this Lease, the state of the rental account for this Lease, any incurred defaults on the part of the Landlord alleged by the Tenant, and such other information as may reasonably be required.



### **Sale by Landlord**

56. In the event of any sale, transfer or lease by the Landlord of the Building or any interest in the Building or portion of the Building containing the Premises or assignment by the Landlord of this Lease or any interest of the Landlord in the Lease to the extent that the purchaser, transferee, tenant or assignee assumes the covenants and obligations of the Landlord under this Lease, the Landlord will without further written agreement be freed and relieved of liability under such covenants and obligations. This Lease may be assigned by the Landlord to any mortgagee or encumbrancee of the Building as security.

### **Tenant's Indemnity**

57. The Tenant will and does hereby indemnify and save harmless the Landlord of and from all loss and damage and all actions, claims, costs, demands, expenses, fines, liabilities and suits of any nature whatsoever for which the Landlord will or may become liable, incur or suffer by reason of a breach, violation or nonperformance by the Tenant of any covenant, term or provision hereof or by reason of any builders' or other liens for any work done or materials provided or services rendered for alterations, improvements or repairs, made by or on behalf of the Tenant to the Premises, or by reason of any injury occasioned to or suffered by any person or damage to any property, or by reason of any wrongful act or omission, default or negligence on the part of the Tenant or any of its agents, concessionaires, contractors, customers, employees, invitees or licensees in or about the Building.

58. It is agreed between the Landlord and the Tenant that the Landlord will not be liable for any loss or damage caused by acts or omissions of other tenants or occupants, their employees or agents or any persons not the employees or agents of the Landlord, or for any damage caused by the construction of any public or quasi-public works, and in no event will the Landlord be liable for any consequential or indirect damages suffered by the Tenant.

59. It is agreed between the Landlord and the Tenant that the Landlord will not be liable for any loss, injury or damage caused to persons using the Common Areas and Facilities or to vehicles or their contents or any other property on them, or for any damage to property entrusted to its or their employees, or for the loss of any property by theft or otherwise, and all property kept or stored in the Premises will be at the sole risk of the Tenant.

### **Liens**

60. The Tenant will immediately upon demand by the Landlord remove or cause to be removed and afterwards institute and diligently prosecute any action pertinent to it, any builders' or other lien or claim of lien noted or filed against or otherwise constituting an encumbrance on any title of the Landlord. Without limiting the foregoing obligations of the Tenant, the Landlord may cause the same to be removed, in which case the Tenant will pay to the Landlord as Additional Rent, such cost including the Landlord's legal costs.

#### **Attorney Fees**

61. In the event that any action is filed in relation to this Lease, the unsuccessful party in the action will pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

#### **Governing Law**

62. It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Washington, without regard to the jurisdiction in which any action or special proceeding may be instituted.

#### **Severability**

63. If there is a conflict between any provision of this Lease and the applicable statutes of the State of Washington, the Revised Code of the State of Washington ("RCW") will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the RCW. Further, any provisions that are required by the RCW are incorporated into this Lease.

64. If there is a conflict between any provision of this Lease and any form of lease prescribed by the Act, that prescribed form will prevail and such provisions of the lease will be amended or deleted as necessary in order to comply with that prescribed form. Further, any provisions that are required by that prescribed form are incorporated into this Lease.

#### **Amendment of Lease**



65. Any amendment or modification of this Lease or additional obligation assumed by either party to this Lease in connection with this Lease will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

#### **Damage to Premises**

66. If the Premises, or any part of the Premises, will be partially damaged by fire or other casualty not due to the Tenant's negligence or willful act or that of the Tenant's employee, family, agent, or visitor, the Premises will be promptly repaired by the Landlord and there will be an abatement of rent corresponding with the time during which, and the extent to which, the Premises may have been untenable. However, if the Premises should be damaged other than by the Tenant's negligence or willful act or that of the Tenant's employee, family, agent, or visitor to the extent that the Landlord will decide not to rebuild or repair, the term of this Lease will end and the Rent will be prorated up to the time of the damage.

#### **Force Majeure**

67. In the event that the Landlord or the Tenant will be unable to fulfill, or shall be delayed or prevented from the fulfillment of, any obligation in this Lease by reason of municipal delays in providing necessary approvals or permits, the other party's delay in providing approvals as required in this Lease, strikes, third party lockouts, fire, flood, earthquake, lightning, storm, acts of God or our Country's enemies, riots, insurrections or other reasons of like nature beyond the reasonable control of the party delayed or prevented from fulfilling any obligation in this Lease (excepting any delay or prevention from such fulfillment caused by a lack of funds or other financial reasons) and provided that such party uses all reasonable diligence to overcome such unavoidable delay, then the time period for performance of such an obligation will be extended for a period equivalent to the duration of such unavoidable delay.

#### **Eminent Domain and Expropriation**

68. If during the term of this Lease, title is taken to the whole or any part of the Building by any competent authority under the power of eminent domain or by expropriation, which taking, in the reasonable opinion of the Landlord, does not leave a sufficient remainder to constitute an economically viable building, the Landlord may at its option, terminate this Lease on the date possession is taken by or on behalf of such authority. Upon such termination, the Tenant will immediately deliver up possession of the Premises, Base Rent and any Additional Rent will be payable up to the date of such termination, and the Tenant will be entitled to be repaid by the Landlord any rent paid

in advance and unearned or an appropriate portion of that rent. In the event of any such taking, the Tenant will have no claim upon the Landlord for the value of its property or the unexpired portion of the term of this Lease, but the Parties will each be entitled to separately advance their claims for compensation for the loss of their respective interests and to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award for the Tenant, the Landlord will account for that award to the Tenant and vice versa.

### **Condemnation**

69. A condemnation of the Building or any portion of the Premises will result in termination of this Lease. The Landlord will receive the total of any consequential damages awarded as a result of the condemnation proceedings. All future rent installments to be paid by the Tenant under this Lease will be terminated.

### **Tenant's Repairs and Alterations**

70. The Tenant covenants with the Landlord to occupy the Premises in a tenant-like manner and not to permit waste. The Tenant will at all times and at its sole expense, subject to the Landlord's repair, maintain and keep the Premises. Without limiting the generality of the foregoing, the Tenant will keep, repair, replace and maintain all glass, wiring, pipes and mechanical apparatus in, upon or serving the Premises in good and tenantable repair at its sole expense. When it becomes (or, acting reasonably, should have become) aware of same, the Tenant will notify the Landlord of any damage to or deficiency or defect in any part of the Premises or the Building.
71. The Tenant covenants with the Landlord that the Landlord, its servants, agents and workmen may enter and view the state of repair of the Premises and that the Tenant will repair the Premises according to notice in writing received from the Landlord, subject to the Landlord's repair obligations. If the Tenant refuses or neglects to repair as soon as reasonably possible after written demand, the Landlord may, but will not be obligated to, undertake such repairs without liability to the Tenant for any loss or damage that may occur to the Tenant's merchandise, fixtures or other property or to the Tenant's business by such reason, and upon such completion, the Tenant will pay, upon demand, as Additional Rent, the Landlord's cost of making such repairs plus fifteen percent (15%) of such cost for overhead and supervision.

73. The Tenant will keep in good order, condition and repair the non-structural portions of the interior of the Premises and every part of those Premises, including, without limiting the generality of the foregoing, all equipment within the Premises, fixtures, walls, ceilings, floors, windows, doors, plate glass and skylights located within the Premises. Without limiting the generality of the foregoing, the Tenant will keep, repair, replace and maintain all interior glass, wiring, pipes and mechanical apparatus in, upon or serving the Premises in good and tenantable repair at its sole expense. When it becomes (or, acting reasonably, should have become) aware of same, the Tenant will notify the Landlord of any damage to or deficiency or defect in any part of the Premises or the Building. The Tenant will not use or keep any device which might overload the capacity of any floor, wall, utility, electrical or mechanical facility or service in the Premises or the Building.
74. The Tenant will not make or have others make alterations, additions or improvements or erect or have others erect any partitions or install or have others install any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades, awnings, exterior decorations or make any changes to the Premises or otherwise without first obtaining the Landlord's written approval thereto, such written approval not to be unreasonably withheld in the case of alterations, additions or improvements to the interior of the Premises.
75. The Tenant will not install in or for the Premises any special locks, safes or apparatus for air-conditioning, cooling, heating, illuminating, refrigerating or ventilating the Premises without first obtaining the Landlord's written approval thereto. Locks may not be added or changed without the prior written agreement of both the Landlord and the Tenant.
76. When seeking any approval of the Landlord for Tenant repairs as required in this Lease, the Tenant will present to the Landlord plans and specifications of the proposed work which will be subject to the prior approval of the Landlord, not to be unreasonably withheld or delayed.
77. The Tenant will promptly pay all contractors, material suppliers and workmen so as to minimize the possibility of a lien attaching to the Premises or the Building. Should any claim of lien be made or filed the Tenant will promptly cause the same to be discharged.
78. The Tenant will be responsible at its own expense to replace all electric light bulbs, tubes, ballasts or fixtures serving the Premises.

**Landlord's Repairs**

79. The Landlord covenants and agrees to effect at its expense repairs of a structural nature to the structural elements of the roof, foundation and outside walls exterior glass of the Building, whether occasioned or necessitated by faulty workmanship, materials, improper installation, construction defects or settling, or otherwise, unless such repair is necessitated by the negligence of the Tenant, its servants, agents, employees or invitees, in which event the cost of such repairs will be paid by the Tenant together with an administration fee of fifteen percent (15%) for the Landlord's overhead and supervision.

#### **Care and Use of Premises**

80. The Tenant will promptly notify the Landlord of any damage, or of any situation that may significantly interfere with the normal use of the Premises.

81. The Tenant will not make (or allow to be made) any noise or nuisance which, in the reasonable opinion of the Landlord, disturbs the comfort or convenience of other tenants.

82. The Tenant will dispose of its trash in a timely, tidy, proper and sanitary manner.

83. The Tenant will not engage in any illegal trade or activity on or about the Premises.

84. The Landlord and Tenant will comply with standards of health, sanitation, fire, housing and safety as required by law.

85. The hallways, passages and stairs of the building in which the Premises are situated will be used for no purpose other than going to and from the Premises and the Tenant will not in any way encumber those areas with boxes, furniture or other material or place or leave rubbish in those areas and other areas used in common with any other tenant.

#### **Surrender of Premises**

86. The Tenant covenants to surrender the Premises, at the expiration of the tenancy created in this Lease, in the same condition as the Premises were in upon delivery of possession under this Lease, reasonable wear and tear, damage by fire or the elements, and unavoidable casualty excepted, and agrees to surrender all keys for the Premises to the Landlord at the place then fixed for payment of rent and will inform the Landlord of all combinations to locks, safes and vaults, if any. All alterations, additions and improvements constructed or installed in the Premises and attached in any manner to the floor, walls or ceiling, including any leasehold improvements, equipment, floor covering or fixtures (excluding trade fixtures and trade equipment), will remain upon and be surrendered with the Premises and will become the absolute property of the

Landlord except to the extent that the Landlord requires removal of such items. If the Tenant abandons the Premises or if this Lease is terminated before the proper expiration of the term due to a default on the part of the Tenant then, in such event, as of the moment of default of the Tenant all trade fixtures and furnishings of the Tenant (whether or not attached in any manner to the Premises) will, except to the extent the Landlord requires the removal of such items, become and be deemed to be the property of the Landlord without indemnity to the Tenant and as liquidated damages in respect of such default but without prejudice to any other righter remedy of the Landlord. Notwithstanding that any trade fixtures, furnishings, alterations, additions, improvements or fixtures are or may become the property of the Landlord, the Tenant will immediately remove all or part of the same and will make good any damage caused to the Premises resulting from the installation or removal of such fixtures, all at the Tenant's expense, should the Landlord so require by notice to the Tenant. If the Tenant, after receipt of such notice from the Landlord, fails to promptly remove any trade fixtures, furnishings, alterations, improvements and fixtures in accordance with such notice, the Landlord may enter into the Premises and remove from the Premises all or part of such trade fixtures, furnishings, alterations, additions, improvements and fixtures without any liability and at the expense of the Tenant, which expense will immediately be paid by the Tenant to the Landlord. The Tenant's obligation to observe or perform the covenants contained in this Lease will survive the expiration or other termination of the term of this Lease.

#### **Hazardous Materials**

87. The Tenant will not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might unreasonably increase the danger of fire on the Premises or that might be considered hazardous by any responsible insurance company without first notifying Landlord in writing and taking necessary safety precautions.

#### **Rules and Regulations**

88. The Tenant will obey all rules and regulations posted by the Landlord regarding the use and care of the Building, parking lot, and other common facilities that are provided for the use of the Tenant in and around the Building on the Premises.

#### **Address for Notice**

89. For any matter relating to this tenancy, whether during or after this tenancy has been terminated:



- a. the address for service of the Tenant is the Premises during this tenancy, and 20669 Bond Road N.E., Suite 200, Poulsbo, WA 98370 after this tenancy is terminated. The phone number of the Tenant is 360-697-8822, and the fax number of the Tenant is 360-697-2743; and
- b. the address for service of the Landlord is Schultz & Associates, P.O. Box 1265, Poulsbo, WA 98370 Attn: Walter Schultz, both during this tenancy and after it is terminated.

The Landlord or the Tenant may, on written notice to each other, change their respective addresses for notice under this Lease.

#### **No Waiver**

90. No provision of this Lease will be deemed to have been waived by the Landlord unless a written waiver from the Landlord has first been obtained and, without limiting the generality of the foregoing, no acceptance of rent subsequent to any default and no condoning, excusing or overlooking by the Landlord on previous occasions of any default nor any earlier written waiver will be taken to operate as a waiver by the Landlord or in any way to defeat or affect the rights and remedies of the Landlord.

#### **Landlord's Performance**

91. Notwithstanding anything to the contrary contained in this Lease, if the Landlord is delayed or hindered or prevented from the performance of any term, covenant or act required under this Lease by reason of strikes, labor troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God or other reason, whether of a like nature or not, which is not the fault of the Landlord, then performance of such term, covenant or act will be excused for the period of the delay and the Landlord will be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay.

#### **Remedies Cumulative**

92. No reference to or exercise of any specific right or remedy by the Landlord will prejudice or preclude the Landlord from any other remedy whether allowed at law or in equity or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination.

### **Landlord May Perform**

93. If the Tenant fails to observe, perform or keep any of the provisions of this Lease to be observed, performed or kept by it and such failure is not rectified within the time limits specified in this Lease, the Landlord may, but will not be obliged to, at its discretion and without prejudice, rectify the default of the Tenant. The Landlord will have the right to enter the Premises for the purpose of correcting or remedying any default of the Tenant and to remain until the default has been corrected or remedied. However, any expenditure by the Landlord incurred in any correction of a default of the Tenant will not be deemed to waive or release the Tenant's default or the Landlord's right to take any action as may be otherwise permissible under this Lease in the case of any default.

### **General Provisions**

94. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease. All covenants are to be construed as conditions of this Lease.
95. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be Additional Rent and will be recovered by the Landlord as rental arrears.
96. Where there is more than one Tenant executing this Lease, all Tenants are jointly and severally liable for each other's acts, omissions and liabilities pursuant to this Lease.
97. The Tenant will be charged an additional amount of \$25.00 for each N.S.F. check or check returned by the Tenant's financial institution.
98. All schedules to this Lease are incorporated into and form an integral part of this Lease.
99. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
100. This Lease may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
101. Time is of the essence in this Lease.
102. This Lease constitutes the entire agreement between the Landlord and Tenant. Any prior understanding or representation of any kind preceding the date of this Lease is



not be binding on either party to this Lease except to the extent incorporated in this Lease. In particular, no warranties of the Landlord not expressed in this Lease are to be implied.

**IN WITNESS WHEREOF** the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, on January 6<sup>th</sup>, 2021.

Pacific Medical Building, LLC (Landlord)

By: [Signature] (Its Manager)

Pacific Surgery Center (Tenant)

By: [Signature] (Its Manager)

State of Washington                    )  
  )ss.  
County of Kitsap                        )

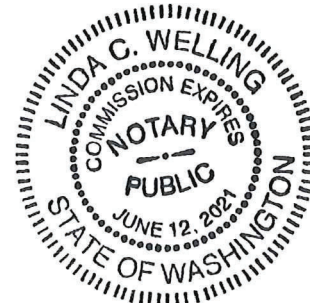
On January 6<sup>th</sup>, 2021, personally appeared before me the Manager of Pacific Medical Building, LLC, (PRINT NAME HERE David JC O'Merch) and the Manager of Pacific Surgery Center (PRINT NAME HERE Samie Fowler), to me known to be the individuals described in and who execute the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal.

[Signature]

Notary Public- State of WA

My Commission Expires: 06/12/2021



ATTACHMENT A

**Allocation of Square Footage of Pacific Medical Building LLC (after PSC roofdeck buildout)**

<b>Square Footage</b>	<b>Suite 100</b>	<b>Suite 101</b>	<b>Suite 200</b>	<b>Total</b>
Rentable Space	10,086	998	12,236	<b>23,320</b>
Common Space	1,606	159	1,949	<b>3,714</b>
Total Square Footage	11,692	1,157	14,185	<b>27,034</b>
% of Total Sq Ft	43.25%	4.28%	52.47%	

ATTACHMENT A

**Allocation of Square Footage of Pacific Medical Building LLC (1/1/2021, prior to PSC roofdeck buildout)**

<b>Square Footage</b>	<b>Suite 100</b>	<b>Suite 101</b>	<b>Suite 200</b>	<b>Total</b>
Rentable Space	10,086	998	10,602	<b>21,686</b>
Common Space	1,949	193	2,049	<b>4,191</b>
Total Square Footage	12,035	1,191	12,651	<b>25,877</b>
% of Total Sq Ft	46.51%	4.60%	48.89%	

## EXHIBIT G

### AMENDMENT NO. 1 TO CREDIT AGREEMENT AND AMENDMENT NO. 2 TO PROMISSORY NOTES

**AMENDMENT NO. 1 TO CREDIT AGREEMENT AND AMENDMENT NO. 1 TO  
PROMISSORY NOTES**

This **AMENDMENT NO. 1 TO CREDIT AGREEMENT AND AMENDMENT NO. 1 TO PROMISSORY NOTES** (this “**Amendment**”) is made as of December 30, 2022, by and among **NORTH KITSAP AMBULATORY SURGERY CENTER, LLC**, a Washington limited liability company (“**Borrower**”), **THE HUNTINGTON NATIONAL BANK**, as Lender (“**Lender**”), and **SURGICAL CARE AFFILIATES, LLC**, a Delaware limited liability company, as a Guarantor (“**Guarantor**”).

A. Pursuant to that certain Credit Agreement dated as of May 31, 2022, by and among Borrower, Guarantor and Lender (as amended hereby, and as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”) Lender agreed to make available to Borrower (i) a term loan in the amount of up to \$3,200,000, (ii) a second term loan in the amount of up to \$1,100,000, and (iii) a revolving loan in the maximum principal amount outstanding from time to time of up to \$500,000 subject to the terms and conditions of the Credit Agreement (collectively, the “**Loan**”).

B. Pursuant to that certain Promissory Note dated as of May 31, 2022 (as amended hereby, and as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Revolving Loan Note**”) executed by Borrower in favor of Lender, Borrower promises to pay Lender up to \$500,000 or such lesser principal amount of Revolving Loans that are outstanding from time to time.

C. Pursuant to that certain Promissory Note dated as of May 31, 2022 (as amended hereby, and as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Term Loan Note**”) executed by Borrower in favor of Lender, Borrower promises to pay Lender the principal amount of \$3,200,000 or such lesser principal amount of the Term Loan that is outstanding thereunder.

D. Pursuant to that certain Promissory Note dated as of the date hereof (as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Second Term Loan Note**”) executed by Borrower in favor of Lender, Borrower promises to pay Lender the principal amount of \$1,100,000 or such lesser principal amount of the Second Term Loan that is outstanding thereunder.

E. Pursuant to that certain Payment Guaranty dated as of May 31, 2022 (as amended by that certain Amendment No. 1 to Payment Guaranty, dated as of the date hereof, and as it may be further amended, restated, supplemented or otherwise modified from time to time, the “**Guaranty**”) by Guarantor in favor of Lender, Guarantor has partially guaranteed the payment and performance of the liabilities and Obligations of the Borrower under the Credit Agreement and the other Loan Documents.

F. Borrower desires, among other things, to amend certain Credit Agreement, Term Loan Note and Revolving Loan Note provisions and Lender has agreed to do so as set forth herein.

In consideration of the foregoing, the terms and conditions set forth in this Amendment,

and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and the Parties hereby agree as follows:

1. **Recitals.** This Amendment shall constitute a Loan Document and the Recitals set forth above shall be construed as part of this Amendment as if set forth fully in the body of this Amendment.

2. **Defined Terms.** Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Credit Agreement.

3. **Amendments to Credit Agreement.**

(a) **Section 1.1 Definitions.**

i. The following definitions are hereby added to Section 1.1 of the Credit Agreement in the appropriate alphabetical order:

“Second Term Loan” has the meaning set forth in Article 2.

“Second Term Loan Amount” means the aggregate amount of Second Term Loan borrowings; provided, that the Second Term Loan Amount shall not exceed the Second Term Loan Commitment Amount.

“Second Term Loan Commitment Amount” means \$1,100,000.

“Second Term Loan Maturity Date” means September 1, 2033.

“Second Term Loan Promissory Note” means that certain Promissory Note, dated as of December 30, 2022, executed by Borrower in favor of Lender, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Second Term Loan Repayment Period” means the period commencing on the day immediately following the last day of the Draw Period and continuing through the Second Term Loan Maturity Date during which monthly payments of principal and interest will be due as provided under the Loan Documents.

ii. The definition of “Draw Period” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Draw Period” means the period beginning on the Effective Date and ending September 1, 2023.

iii. The definition “Loan Amount” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Loan Amount” means, collectively, the Revolving Loan Commitment Amount, the Term Loan Amount, and the Second Term Loan Amount

iv. The definition “Promissory Notes” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Promissory Notes” means, collectively, the Revolving Loan Promissory Note, the Term Loan Promissory Note, the Second Term Loan Promissory Note and any other promissory notes to be executed by Borrower and delivered to Lender pursuant to Section 2.3 hereto, and any and all renewals, extensions, modifications, and replacements thereof.

v. The definition “Revolving Loan Commitment Amount” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Revolving Loan Commitment Amount” means \$500,000.

vi. The definition of “Revolving Loan Maturity Date” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Revolving Loan Maturity Date” means the date on which demand for payment of the aggregate principal balance of the Revolving Loan is made by Lender to Borrower.

vii. The definition of “Term Loan Maturity Date” set forth in Section 1.1 of the Credit Agreement is hereby amended and restated in its entirety as follows:

“Term Loan Maturity Date” means September 1, 2033.

(b) Section 2 Loan.

i. The following is added as subsection (c) to Section 2.1 in its entirety as follows:

(c) Second Term Loan. On the terms and subject to the fulfillment of all conditions precedent set forth herein, Lender agrees to loan Borrower, subject to the satisfaction of all conditions set forth in Section 4.1 or Section 4.2, as applicable, on or after December 30, 2022, in one or multiple draws throughout the Draw Period, up to an aggregate outstanding principal amount not to exceed the Second Term Loan Commitment Amount (collectively, the “Second Term Loan”). Borrower shall not have any right to reborrow any portion of the Second Term Loan that is repaid or prepaid from time to time.

ii. The following is added as subsection (c) to Section 2.2 in its entirety as follows:

(c) Second Term Loan. The Second Term Loan shall be a multi-draw term loan payable in full upon the Second Term Loan Maturity Date and upon the terms and conditions provided in this Agreement and in the Second Term Loan Promissory Note. Lender and Borrower intend the Second Term Loan to be in the nature which Borrower may make multiple draws and repay in accordance with the terms and conditions of this Agreement. No amount paid by Borrower or otherwise collected or



applied by Lender in respect of principal, interest or other charges shall be subject to re-borrowing. The right of Borrower to draw funds and the obligation of Lender to disburse funds shall not accrue until all of the conditions set forth in Section 4.1 or Section 4.2, as applicable, have been fully satisfied, and shall terminate: (i) at the election of Lender, upon occurrence and during the continuation of an Event of Default, or (ii) upon the Second Term Loan Maturity Date, unless the Second Term Loan is renewed or extended by Lender in which case such termination shall occur upon the maturity of the final renewal or extension of the Second Term Loan. Upon such termination, any and all amounts owing to Lender pursuant to the Second Term Loan Promissory Note and this Agreement shall thereupon be due and payable in full.

iii. The following is added as subsection (c) to Section 2.3 in its entirety as follows:

(c) Second Term Loan. The Second Term Loan shall be evidenced by a Second Term Loan Promissory Note. The Second Term Loan Promissory Note shall be executed and delivered to Lender on December 30, 2022. Proceeds of the Second Term Loan may be disbursed by Lender by wire transfer or otherwise pursuant to Section 2.7.

iv. Section 2.6 is hereby amended to (i) re-letter the existing clause (c) therein as clause (d) and add the following new clause (c) immediately prior to new clause (d) as follows:

(c) Second Term Loan.

(i) Second Term Loan Draw Period. During the Draw Period, interest accrued pursuant to Section 2.10 is to be paid in arrears on the first Business Day of each calendar month, commencing February 1, 2023.

(ii) Second Term Loan Repayment Period. During the Second Term Loan Repayment Period there shall be due and payable, and the Borrower shall repay the Second Term Loan through scheduled monthly principal and interest payments in an amount which will fully amortize the unpaid principal balance of the Second Term Loan outstanding on the final day of the Draw Period based upon the Ten Year SWAP Rate as determined pursuant to Section 2.10(c), on the first Business Day of each month commencing October 1, 2023, and continuing on the first Business Day of each month thereafter until the Second Term Loan Maturity Date. Payments and prepayments of principal, and interest on, the Second Term Loan and all fees, expenses and other obligations under this Agreement payable to Lender shall be made without setoff or counterclaim in immediately available funds on the dates called for under this Agreement to Lender at its main office in Dayton, Ohio or otherwise in accordance with wire instructions provided by Lender from time to time. Funds received after such time shall be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment shall

be made on the next succeeding Business Day and such extension of time, in the case of a payment of principal, shall be included in the computation of any interest on such principal payment.

(iii) Payment on Second Term Loan Maturity Date. All principal, unpaid interest and all other amounts due under the Second Term Loan shall be paid in full on the Second Term Loan Maturity Date, unless required to be paid or prepaid at an earlier date in accordance with this Agreement.

(iv) Payment Allocation. Prior to an Event of Default under this Agreement, payments shall be applied first to interest, then to principal, then to any fees or other amounts due and owing to Lender in connection with the Second Term Loan. After an Event of Default, and while such Event of Default is continuing under this Agreement, payments may be applied, at Lender's option, as follows: first to any collection costs or expenses (including reasonable attorneys' fees), then to any late charges or other fees owing under the Loan Documents, then to accrued interest, then to principal. To the extent that Borrower makes a payment or Lender receives any payment or proceeds of the Collateral for Borrower's benefit (in each case to the extent applied to the Second Term Loan), which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Second Term Loan or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

v. The following is added as subsection (c) to Section 2.7 in its entirety as follows:

(c) Second Term Loan. Borrower shall deliver to Lender a Draw Request with respect to each proposed Second Term Loan advance, such Draw Request to be delivered no later than noon (Eastern time) two (2) Business Days prior to the date of such requested draw. Unless Lender has determined that any of the conditions precedent to the disbursement set forth in Section 4.1 or Section 4.2, as applicable, have not been satisfied, Lender shall on the requested advance date (i) deposit the requested disbursement into the SCA Deposit Account (or such other account at Lender as may be requested in writing by Borrower) and/or (ii) as and to the extent requested by Borrower, disburse all or a portion of the Second Term Loan directly to parties to whom such amounts are to be paid. All such Second Term Loan disbursements to any party other than Borrower shall be deemed Second Term Loan disbursements to Borrower hereunder, including disbursements into the SCA Deposit Account of which it shall be the sole responsibility of Surgical Care Affiliates to transfer such funds to the Borrower thereafter. Any disbursements or payments which Lender makes directly to another Person pursuant to this Section 2.7(c) shall be added to the outstanding principal balance of the

Second Term Loan, shall bear interest at the then applicable rate pursuant to Section 2.10 (c), and shall be secured by the Collateral Documents. Borrower hereby indemnifies and holds Lender harmless from any claim, demand, cause of action, damage, loss or liability, including court costs and reasonable attorneys' fees actually incurred, which Lender may suffer or incur as a direct or indirect consequence of the provisions of this Section 2.7(c) (except to the extent such claim, demand, cause of action, damage, loss or liability arises solely from Lender's breach of contract, gross negligence or willful misconduct), and Borrower shall pay any indebtedness arising under this indemnity to Lender immediately upon written demand of Lender. Borrower's duty to indemnify Lender, as set forth above, shall survive the release and cancellation of the Obligations.

vi. Section 2.10 is hereby amended to (1) re-letter the existing clause (c) therein as clause (d), (2) re-letter the existing clause (d) therein as clause (e), (3) re-letter the existing clause (e) therein as clause (f), (4) re-letter the existing clause (f) therein as clause (g), (5) re-letter the existing clause (g) therein as clause (h), and (6) add the following new clause (c) immediately prior to new clause (d) as follows:

(c) Second Term Loan.

(i) Second Term Loan Draw Period. During the Draw Period, the Second Term Loan shall bear interest at a rate equal to the Prime Commercial Rate.

(ii) Second Term Loan Repayment Period. During the Second Term Loan Repayment Period, the Second Term Loan shall bear interest at the sum of the Ten Year Swap Rate (as determined by Lender as of the final Business Day of the Draw Period) plus 2.75%. Interest shall be at the rate computed on the basis of a 360 day year and actual days elapsed.

vii. Section 2.11 is hereby amended and restated in its entirety as follows

(a) Optional Prepayments. Borrower may, on any Business Day, upon payment of all accrued interest, fees and other amounts then due and payable to Lender, and upon at least ten (10) Business Days prior written notice to Lender, elect to prepay all or part of the unpaid principal balance on the Term Loan or Second Term Loan, subject to the Prepayment Premium.

(b) Mandatory Prepayments. Subject to the final paragraph of Section 2.11(c), in the event and on each occasion that any Net Proceeds are received by or on behalf of Borrower in respect of any Prepayment Event, Borrower shall promptly, but in any event within five (5) Business Days after such Net Proceeds are received by such Person, make a principal payment, first, on the Term Loan and, second, on Second Term Loan, then, if any remaining Net Proceeds, to the Revolving Loan, in an aggregate amount equal to one hundred percent (100%) of such excess Net

Proceeds (with a permanent reduction in the Term Loan Commitment and Second Term Loan Commitment, as applicable, but without resulting in any permanent reduction in the Revolving Loan Commitment, hereunder, except in the case of a Change of Control); provided, that, in the case of any event described in clauses (a) or (b) of the definition of the term “Prepayment Event”, if Borrower shall deliver to Lender a certificate of the president, chief executive officer, chief financial officer or controller of Borrower to the effect that Borrower intends to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within one hundred eighty (180) days after receipt of such Net Proceeds, to acquire or repair equipment or other tangible assets to be used in the business of Borrower, and certifying that no Event of Default has occurred and is continuing, then no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate; provided, further, that to the extent of any such Net Proceeds therefrom that have not been so applied by the end of such 180 day period, a prepayment shall be required in an amount equal to such Net Proceeds that have not been so applied. Except as specifically set forth herein, nothing contained in this Section 2.11 shall be or be deemed to be a consent to any Prepayment Event.

(c) Prepayment Premium. In the event of prepayment of the Term Loan or Second Term Loan, in whole or in part, a prepayment premium (“Prepayment Premium”) shall be assessed as follows:

- i. If the prepayment occurs on or before the first anniversary date of the Effective Date, the Prepayment Premium will equal five percent (5%) of the principal amount prepaid.
- ii. If the prepayment occurs after the first anniversary date of the Effective Date, but on or before the second anniversary date of the Effective Date, the Prepayment Premium will equal four percent (4%) of the principal amount prepaid.
- iii. If the prepayment occurs after the second anniversary date of the Effective Date, but on or before the third anniversary date of the Effective Date, the Prepayment Premium will equal three percent (3%) of the principal amount prepaid.
- iv. If the prepayment occurs after the third anniversary date of the Effective Date, but on or before the fourth anniversary date of the Effective Date, the Prepayment Premium will equal two percent (2%) of the principal amount prepaid.
- v. If the prepayment occurs after the fourth anniversary date of the Effective Date, the Prepayment Premium will equal one percent (1%) of the principal amount prepaid.

Notwithstanding the foregoing, (i) Borrower may, each calendar year, prepay up to 10% of the principal balance of the Term Loan or Second Term Loan outstanding on January 1st of such calendar year (or if the principal balance outstanding on January 1st of said calendar year is zero (0) because prepayment occurs within one (1) year from the Effective Date, ten percent (10%) of the principal balance outstanding as of the Effective Date) without incurring a Prepayment Premium; and (ii) Borrower will not be charged a Prepayment Premium for prepayment, in whole or in part, following the fifth anniversary of the Effective Date.

Borrower agrees that the Prepayment Premium shall be due and payable to Lender regardless of whether the prepayment results from an optional prepayment or mandatory prepayment; provided, that, the Prepayment Premium shall not apply to or be assessed upon any prepayment made by Borrower if such payments were required by Lender to be made pursuant to clause (b) of the definition of the term “Prepayment Event” (relating to casualty and condemnation proceeds). All fees payable pursuant to this Section 2.11 shall be deemed fully earned and non-refundable as of the Effective Date.

(c) Section 4.2 Conditions Subsequent to Loan Disbursements.

- i. Section 4.2 (f) of the Credit Agreement is hereby amended and restated in its entirety as follows:

(f) Borrower shall have delivered to Lender (i) with respect to the Term Loan, an executed Draw Request substantially in the form attached hereto as Exhibit A in accordance with Section 2.7(b), (ii) with respect to the Second Term Loan, an executed Draw Request substantially in the form attached hereto as Exhibit A in accordance with Section 2.7(c), or (ii) with respect to the Revolving Loan, an online request for Revolving Loans in accordance with Section 2.7(a).

- ii. The following is added as subsection (h) to Section 4.2 in its entirety as follows:

(h) The outstanding principal balance of the Second Term Loan plus the amount of any requested disbursement of a Second Term Loan shall not exceed the Second Term Loan Commitment Amount.

(d) Section 6.1 Use of Proceeds.

- i. The following is added as subsection (d) to Section 6.1 in its entirety as follows:

(d) The proceeds of the Second Term Loan shall be used by Borrower solely for transaction fees incurred in connection with the Loan Documents, for reimbursement of Borrower for expenses incurred in connection with improvements to the Facility, and for the purpose of financing the construction project.

**4. Amendment to Revolving Loan Note.**

- (a) The Amount set forth in the Revolving Loan Note is hereby amended to “\$500,000.00”
- (b) The Maturity Date set forth in the Revolving Loan Note is hereby amended and restated to “On demand given by Lender to Borrower or as set forth in the Credit Agreement.”
- (c) The first paragraph in the Revolving Loan Note is hereby amended and restated in its entirety to read as follows:

For value received, Borrower promises to pay to the order of Lender at the office of The Huntington National Bank, Dayton Commercial Lending, PO Box 341470 - GW1W31, Columbus, OH 43234-1470, or at such other place as Lender may from time to time designate in writing, in immediately available funds, in the principal sum of up to FIVE HUNDRED THOUSAND and NO/100 DOLLARS (\$500,000) or such lesser principal balance as may be outstanding hereunder in lawful money of the United States of America, with interest thereon calculated and payable as provided herein and in the Credit Agreement (as defined below).

**5. Amendment to Term Loan Note**

- (b) The Maturity Date set forth in the Term Loan Note is hereby amended and restated to “September 1, 2033”.

**6. Representations and Warranties; Covenants.** Borrower and Guarantor represent and warrant to Lender that, before and after giving effect to this Amendment:

(a) all representations and warranties of Loan Parties contained in the Loan Documents were true and correct in all material respects when made and continue to be true and correct in all material respects on the date hereof, except to the extent that such representations and warranties relate expressly to an earlier date;

(b) the execution and delivery by each Party of this Amendment and the performance by it of the transactions herein contemplated, as applicable (i) are and will be within its powers, (ii) have been authorized by all necessary action (corporate or otherwise), and (iii) are not and will not be in contravention of any order of any court or other agency of government, of law or any other indenture, agreement or undertaking to which such Party is a party or by which the property of such Party is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or encumbrance of any nature on any of the properties of such Party; and

(c) this Amendment and all allonges, assignments, instruments, documents, and agreements executed and delivered in connection herewith, as applicable, constitute the legal, valid and binding obligation of each relevant Party and each is enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy,



insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

**7. Reaffirmation of Security Interest and Guaranty.**

(a) Borrower confirms and agrees that: (i) all security interests and liens granted to Lender continue in full force and effect, and (ii) all Collateral remains free and clear of any liens other than liens in favor of Lender and Permitted Encumbrances. Nothing herein contained is intended to impair or limit the validity, priority and extent of Lender's security interest in and liens upon the Collateral.

(b) Guarantor confirms and agrees that the Guaranty remains in full force and effect and reaffirms its guaranty of the Guaranteed Obligations (as defined in the Guaranty), subject to the limitation on liability set forth therein. Nothing herein contained is intended to impair, limit or otherwise affect the validity of the Guaranty.

**8. Enforceability.** This Amendment constitutes the legal, valid and binding obligation of the relevant Parties and is enforceable against each such Party in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

**9. Costs and Fees.** Borrower shall be responsible for the payment of all reasonable costs and fees of Lender's counsel incurred in connection with the preparation of this Amendment and any related documents.

**10. Conditions to Effectiveness.** Except as set forth in this Section 10, this Amendment shall become effective as of the date on which each Party shall have delivered to Lender this Amendment duly executed by an authorized officer of such Party (or notarized by such Party, as applicable), and Lender shall have executed and delivered this Amendment (the "**Effective Date**"). Sections 4 and 5 of this Amendment shall become effective as of the date on which each of the following conditions has been satisfied, each in form and substance satisfactory to Lender:

(a) there are no Defaults or Events of Default that have not been waived or cured (and Borrower's and Guarantor's delivery of their respective signatures hereto shall be deemed to be its certification that no Defaults or Events of Default currently exist); and

(b) all representations and warranties of the Parties contained herein shall be true and correct as of the Effective Date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof).

**11. No Waiver or Novation.** Except as expressly provided in this Amendment, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Lender, nor constitute a waiver of any provision of the Credit Agreement, the other Loan Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement, or other Loan Documents or any of Lender's rights and remedies in respect of such



Defaults or Events of Default. This Amendment (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

**12. Release.** For and in consideration of Lender's agreements contained in this Amendment and as a material inducement to Lender to enter into this Amendment on which Lender is relying, each Loan Party, for and on behalf of itself and all of its respective direct or indirect parents, divisions, subsidiaries, affiliates, members, managers, participants, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, members, managers, partners, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (collectively, "Releasors"), each intending to be legally bound, hereby voluntarily, intentionally and knowingly releases and forever waives and discharges Lender and its direct and indirect parents, divisions, subsidiaries, affiliates, members, managers, participants, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, members, managers, partners, agents, and employees, and each of their respective predecessors, successors, heirs, and assigns (individually and collectively, the "Released Parties") of and from any and all possible claims, counterclaims, crossclaims, demands, actions, causes of action, damages, costs, expenses and liabilities whatsoever, whether known or unknown, matured or unmatured, anticipated or unanticipated, suspected or unsuspected, vested, fixed, contingent or conditional, at law or in equity (individually and collectively, "Claims") existing on or before the Effective Date and which relate to or arise out of (i) any or all of the Loan Documents or transactions contemplated thereby or any actions or omissions in connection therewith, (ii) any aspect of the dealings or relationships between or among any or all of the Loan Parties, on the one hand, and any or all of the Released Parties, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, or (iii) the negotiation for and execution of this Amendment (including, without limitation, any contracting for, charging, taking, reserving, collecting or receiving interest in excess of the highest lawful rate applicable), irrespective of whether any such Claims arise out of contract, tort, violation of law or regulations, or otherwise, and the Loan Parties, for themselves and the other Releasors, waive all defenses with respect to the enforcement by any Released Party of the provisions of the release set forth herein. For the avoidance of doubt, the foregoing release, waiver and discharge does not apply to Claims relating to future performance of express contractual obligations that mature after the date hereof that are owing to Borrower and/or Guarantor by Lender or another Released Party.

**13. Affirmation.** Except as specifically amended pursuant to the terms hereof, the Credit Agreement, the Revolving Loan Note, Term Loan Note, and all other Loan Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by Borrower and Guarantor. Borrower and Guarantor covenant and agree to comply with all of the terms, covenants and conditions of the Credit Agreement (as amended hereby), the Revolving Loan Note (as amended hereby), Term Loan Note (as amended hereby), and the other Loan Documents applicable to such Borrower and Guarantor, notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

**14. Miscellaneous.**

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Amendment, each reference in the Credit Agreement, the Revolving Loan Note, or the Term Loan Note to “this Agreement,” “this Amendment,” “hereunder,” “hereof,” “herein,” or words of similar import shall mean and be a reference to the Credit Agreement, Revolving Loan Note, or Term Loan Note, as applicable, as amended by this Amendment. Except as specifically amended above, the Credit Agreement, the Revolving Loan Note, the Term Loan Note, and all other Loan Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by the Borrower and Guarantor.

(b) Incorporation of Credit Agreement Provisions. The provisions contained in Article 11 of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety, *mutatis mutandis*.

(c) Headings. Section headings in this Amendment are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(d) Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be treated as delivery of an original and shall bind the parties hereto. This Amendment constitutes the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this document constitute an agreement duly executed under seal, each of the undersigned has executed this Amendment under seal as of the day and year first hereinabove set forth.

**BORROWER:**

**NORTH KITSAP AMBULATORY SURGERY  
CENTER, LLC**, a Washington limited liability  
company

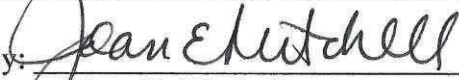
By: 

Name: Oren Shill

Title: President

**LENDER:**

**THE HUNTINGTON NATIONAL BANK**

By: 

Name: Joan E. Mitchell

Title: Senior Vice President



EXHIBIT H

CONTRACTOR'S ESTIMATE AND  
DOCUMENTATION OF THE PROJECT COSTS

DESCRIPTION		Sub-Category	Updated Budget Amount: 3/7/23	CON Approved Contractor Amount
Division 01: General Conditions			\$1,175,184.12	\$175,935.92
Division 02: Existing Conditions			\$88,252.51	\$6,463.61
Division 03: Concrete			\$10,219.71	\$0.00
Division 04: Masonry			\$5,720.00	\$0.00
Division 05: Metals			\$192,034.44	\$0.00
Division 06: Woods & Plastics				\$0.00
	06 10 00	Rough Carpentry	\$22,408.94	\$19,047.60
	06 11 05	Blocking	\$16,323.75	\$8,161.88
	06 11 30	Floor Framing		\$0.00
	06 11 40	Roof Framing		\$0.00
	06 11 50	Misc. Framing	\$18,936.67	\$0.00
	06 16 40	Roof Sheathing		\$0.00
	06 17 54	Roof Trusses	\$4,192.00	\$0.00
	06 20 00	Finish Carpentry	\$4,227.98	\$1,873.14
	06 06 00	Fiberglass Reinforced Paneling (FRP)	\$21,649.44	\$3,736.68
Division 07: Moisture & Damp Proof				\$0.00
	07 13 00	Sheet Membrane Waterproofin (Shower Pan Liner)	\$713.09	\$0.00
	07 21 00	Insulation	\$37,083.00	\$0.00
	07 21 10	Rigid Insulation, Exterior Walls		\$0.00
	07 21 30	Sound Batt Insulation, interior		\$0.00
	07 27 00	Air Barrier		\$0.00
	07 30 00	Steep Slope Roofing/Shingles		\$0.00
	07 46 50	Fiber Cement Siding	\$100,485.45	\$0.00
	07 50 00	Membrane Roofing	\$49,466.37	\$0.00
	07 60 00	Flashing & Sheet Metal	\$4,796.00	\$0.00
	07 84 00	Firestopping/Joint Sealer	\$8,318.13	\$0.00
	07 92 00	Joint Sealants (Interior/Exterior)	\$3,105.50	\$1,418.16
Division 08: Openings				\$0.00
	08 10 00	Doors & Frames	\$68,596.66	\$1,500.00
	08 31 00	Access Doors	\$3,622.65	\$3,622.65
	08 33 00	Colling Doors & Grilles (Elevator Fire Doors)	\$14,285.00	\$0.00
	08 34 00	Special Function Doors (PACU Doors)	\$12,811.97	\$0.00
	08 40 00	Storefronts & Entrances (PMB Main Door)		\$0.00
	08 50 00	Windows- Vinyl & HM Relites	\$15,255.29	\$789.00
	08 71 00	Door Hardware (exterior door)	\$5,250.11	\$0.00
Division 09: Finishes				\$0.00
	09 22 00	Light Guage Metal Framing	\$166,829.74	\$10,307.41
	09 29 00	Drywall	\$171,021.63	\$38,086.12
	09 51 00	Acoustical Ceilings (Permanent)	\$40,030.00	\$0.00
	09 51 00	Acoustical Ceilings (Temporary)	\$8,250.00	\$0.00
	09 60 10	Floor Prep	\$32,500.00	\$16,250.00
	09 60 00	Flooring (Rubber Base)		\$0.00
	09 65 00	Resilient Flooring	\$77,975.94	\$10,598.07
	09 90 00	Paintings/Coatings	\$126,880.00	\$21,905.95
Division 10: Specialities			\$43,314.91	\$11,555.11
Division 11: Equipment			\$13,571.03	\$5,327.73
Division 12: Furnishing			\$134,388.40	\$9,767.19
	12 93 00	Bike Rack	\$15,179.62	\$0.00
Division 21: Fire Supression			\$49,711.51	\$19,444.86
Division 22: Plumbing			\$501,660.50	\$211,457.61
Division 23: HVAC			\$189,582.02	\$189,582.02
	CO# 12	Smoke Damper (Missing from MEP)	\$5,373.98	\$5,373.98
Division 26: Electrical			\$308,407.00	\$77,101.75
	CO# 5	Electrical Survey	\$30,451.60	\$0.00
	CO# 9	OR lights/Generator Connnection	\$8,821.34	\$0.00
	CO# 10	Removing PEC from Generator	\$46,102.78	\$0.00
	CO# 11	Building Lobby light addition	\$5,947.42	\$0.00
	CO# 12	Electrical for Smoke Dampers (Missing from MEP)	\$8,461.82	\$8,461.82
Division 27: Communication				\$0.00
Division 28: Electronic Safety & Security			\$10,000.00	\$0.00
Division 31: Earthwork			\$20,172.06	\$0.00
Division 32: Exterior Improvements			\$38,691.05	\$0.00
Misc				\$0.00
		Builders Fee	\$242,077.51	\$48,415.50
		Tax	\$393,456.65	\$86,087.46
TOTAL Contractor Cost			\$5,905,505.35	\$992,271.20



EXHIBIT I

UNAUDITED FINANCIAL STATEMENTS

# Pacific Surgery Center

## PROFIT AND LOSS

January - December 2020

	TOTAL
Income	
3500 Professional Fees Collected	8,601,156.08
3510 Professional Fees - Refunded	-63,894.68
<b>Total Income</b>	<b>\$8,537,261.40</b>
GROSS PROFIT	<b>\$8,537,261.40</b>
Expenses	
General & Administrative	160,979.87
Leased Equipment	120,545.65
Occupancy Expenses	404,107.30
Payroll Education & Travel	16,647.43
Payroll Insurance	135,100.35
Payroll Retirement	61,828.66
Payroll Salaries	1,977,755.13
Payroll Taxes	209,672.13
Purchased Services	555,225.06
Repairs & Maintenance	106,323.89
Supplies	3,698,604.31
Taxes	147,404.56
Unapplied Cash Bill Payment Expense	0.00
<b>Total Expenses</b>	<b>\$7,594,194.34</b>
NET OPERATING INCOME	<b>\$943,067.06</b>
Other Income	
8110 Interest Income	1,544.56
8160 Other Non-Patient Income	2,057.33
8170 HHS Stimulus Income	228,255.51
<b>Total Other Income</b>	<b>\$231,857.40</b>
Other Expenses	
Depreciation	370,886.13
<b>Total Other Expenses</b>	<b>\$370,886.13</b>
NET OTHER INCOME	<b>\$ -139,028.73</b>
NET INCOME	<b>\$804,038.33</b>

# Pacific Surgery Center

## Profit & Loss

January 1 through November 23, 2021

	Jan 1 - Nov 23, 21
<b>Income</b>	
3100 · Professional Fees Billed	31,025,847.31
3110 · Contractual Allowances	-20,418,337.77
3120 · Refunds	-34,203.66
<b>Total Income</b>	<b>10,573,305.88</b>
<b>Gross Profit</b>	<b>10,573,305.88</b>
<b>Expense</b>	
5010 · OR Expense	
5015 · OR Nursing	
5015-1 · OR Nursing Labor	542,503.58
5015-2 · OR Nursing Taxes	48,005.02
5015-3 · OR Nursing Retirement	20,549.63
5015-4 · OR Nursing Insurance	23,959.68
5015-5 · OR Nursing Education	5,487.18
<b>Total 5015 · OR Nursing</b>	<b>640,505.09</b>
5020 · OR SPD	
5020-1 · OR SPD Labor	125,043.05
5020-2 · OR SPD Taxes	11,659.94
5020-3 · OR SPD Retirement	4,686.38
5020-4 · OR SPD Insurance	13,804.88
5020-5 · OR SPD Education	2,328.41
5020 · OR SPD - Other	-1,847.64
<b>Total 5020 · OR SPD</b>	<b>155,675.02</b>
5030 · OR Surgical Tech	
5030-1 · OR Surgical Tech Labor	220,148.30
5030-2 · OR Surgical Tech Taxes	19,559.14
5030-3 · OR Surgical Tech Retirement	8,242.80
5030-4 · OR Surgical Tech Insurance	8,929.70
5030-5 · OR Surgical Tech Education	2,637.00
<b>Total 5030 · OR Surgical Tech</b>	<b>259,516.94</b>
5040 · OR Medical Assistant	
5040-5 · Or Medical Assistant Education	200.00
<b>Total 5040 · OR Medical Assistant</b>	<b>200.00</b>
<b>Total 5010 · OR Expense</b>	<b>1,055,897.05</b>
5100 · PreOp Expense	
5110 · PreOp Nursing	
5110-1 · PreOp Nursing Labor	335,430.74
5110-2 · PreOp Nursing Taxes	31,015.50
5110-3 · PreOp Nursing Retirement	16,542.79
5110-4 · PreOp Nursning Insurance	21,492.46
5110-5 · PreOp Nursing Education	3,928.84
5110 · PreOp Nursing - Other	4,923.04
<b>Total 5110 · PreOp Nursing</b>	<b>413,333.37</b>
5140 · PreOp Medical Assistant	
5140-1 · PreOp Medical Assistant Labor	43,724.09
5140-2 · PreOp Medical Assistant Taxes	4,407.93
5140-3 · PreOp Medical Assistant Retire	311.40
5140-4 · PreOp Medical Assistant Insur	1,962.52
5140-5 · PreOp Medical Assistant Edu	2,261.75
<b>Total 5140 · PreOp Medical Assistant</b>	<b>52,667.69</b>

**Pacific Surgery Center**  
**Profit & Loss**  
 January 1 through November 23, 2021

	Jan 1 - Nov 23, 21
<b>5150 · PreOp Aide</b>	
5150-1 · PreOp Aide Labor	16,154.86
5150-2 · PreOp Aide Taxes	1,817.64
5150-3 · PreOp Aide Retirement	262.86
5150-4 · PreOp Aide Insurance	5,063.17
<b>Total 5150 · PreOp Aide</b>	23,298.53
<b>Total 5100 · PreOp Expense</b>	489,299.59
<b>5200 · PACU Expense</b>	
<b>5210 · PACU Nursing</b>	
5210-1 · PACU Nursing Labor	498,737.77
5210-2 · PACU Nursing Taxes	46,271.99
5210-3 · PACU Nursing Retirement	13,963.44
5210-4 · PACU Nursing Insurance	22,186.38
5210-5 · PACU Nursing Education	1,620.34
<b>Total 5210 · PACU Nursing</b>	582,779.92
<b>5250 · PACU Aide</b>	
5250-1 · PACU Aide Labor	23,830.99
5250-2 · PACU Aide Taxes	2,494.39
5250-3 · PACU Aide Retirement	1,409.72
5250-4 · PACU Aide Insurance	3,834.64
5250 · PACU Aide - Other	-5,722.73
<b>Total 5250 · PACU Aide</b>	25,847.01
<b>Total 5200 · PACU Expense</b>	608,626.93
<b>5300 · Materials Management Expense</b>	
5310-1 · Materials Management Labor	112,204.23
5310-2 · Materials Management Taxes	10,120.10
5310-3 · Materials Management Retirement	5,223.72
5310-4 · Materials Management Insurance	13,939.64
5310-5 · Materials Management Education	78.17
<b>Total 5300 · Materials Management Expense</b>	141,565.86
<b>5400 · Environmental Services Expense</b>	
5410-1 · Environmental Services Labor	26,133.12
5410-2 · Environmental Services Taxes	3,037.13
5410-3 · Environmental Services Retire	1,034.63
5410-4 · Environmental Services Insur	9,405.22
5410-5 · Environmental Services Edu	109.00
<b>Total 5400 · Environmental Services Expense</b>	39,719.10
<b>5500 · Business Office Expense</b>	
5510-1 · Business Office Labor	518,258.93
5510-2 · Business Office Taxes	42,342.81
5510-3 · Business Office Retirement	24,427.22
5510-4 · Business Office Insurance	32,313.01
5510-5 · Business Office Education	7,098.68
<b>Total 5500 · Business Office Expense</b>	624,440.65
<b>6000 · Clinical Costs</b>	
<b>6010 · Pharmacy</b>	
6010-1 · Scheduled Pharmacy	1,883.20
6010-2 · Non-Scheduled Pharmacy	88,674.11
<b>Total 6010 · Pharmacy</b>	90,557.31

**Pacific Surgery Center**  
**Profit & Loss**  
January 1 through November 23, 2021

	Jan 1 - Nov 23, 21
<b>6020 · Surgical Supplies</b>	
6020-1 · Anesthesia	81,394.19
6020-10 · Suture	29,615.45
6020-11 · Urology	18,037.92
6020-12 · General	328,522.64
6020-13 · Laboratory	222,446.21
6020-14 · Laparoscopic	19,519.59
6020-2 · Central Services	34,851.74
6020-3 · Endoscopy	65,473.34
6020-4 · ENT	162,440.43
6020-5 · Ophthalmology	313,221.71
6020-6 · GYN	177,322.14
6020-7 · Ortho	11,910.60
6020-8 · Pain	145,174.17
6020-9 · Plastics	5,106.11
6020 · Surgical Supplies - Other	205.80
<b>Total 6020 · Surgical Supplies</b>	<b>1,615,242.04</b>
<b>6030 · Implants</b>	
6030-1 · Implants-ENT	26,615.64
6030-2 · Implants-Plastics	19,073.55
6030-3 · Implants-Ophthalmology	650,603.05
6030-4 · Implants-General	-70,964.42
6030-5 · Implants-Pain	1,435,084.09
6030-6 · Implants-Ortho	90,912.33
6030-7 · Implants-Other	2,580.05
6030-8 · Implants-Urology	15,826.00
<b>Total 6030 · Implants</b>	<b>2,169,730.29</b>
<b>6040 · Surgical Instruments</b>	<b>22,513.28</b>
<b>6050 · Linen</b>	<b>25,930.25</b>
<b>6060 · Repairs &amp; Maintenance-Clinical</b>	<b>105,443.71</b>
<b>6065 · Maintenance Contracts</b>	<b>4,349.10</b>
<b>6070 · Rent/Lease Medical Equipment</b>	<b>140,778.68</b>
<b>6080 · Employee Health</b>	<b>353.42</b>
<b>6095 · Rebates</b>	<b>-226,432.54</b>
<b>Total 6000 · Clinical Costs</b>	<b>3,948,465.54</b>
<b>6100 · General &amp; Administrative</b>	
6101 · Office Supplies	40,309.99
6102 · Environmental Services Supplies	20,704.60
6103 · Memberships-Professional	6,779.35
6104 · Recruitment	27,111.09
6106 · Employee Relations	9,144.11
6107 · 401 K Administration	115.31
<b>6108 · Insurance</b>	
6108-2 · Insurance-Employment Liability	17,092.78
6108-3 · Insurance-Directors & Officers	28,625.35
6108-5 · Insurance-Cyber	3,010.14
6108-6 · Insurance-Partner's Life	11,090.00
6108 · Insurance - Other	0.00
<b>Total 6108 · Insurance</b>	<b>59,818.27</b>

**Pacific Surgery Center**  
**Profit & Loss**  
January 1 through November 23, 2021

	Jan 1 - Nov 23, 21
6109 · Freight and Postage	3,498.42
6110 · Subscriptions/Library	7,534.04
6111 · Advertising and Marketing	19,473.18
6112 · Bank charges	24,764.60
6113 · Business Licenses	25,496.50
6115 · Repairs & Maintenance-General	975.17
6116 · Rent/Lease Office Equipment	6,834.03
6117 · Building Rent	483,477.25
6118 · Utilities	43,199.76
6119 · Miscellaneous	548.39
6120 · Mileage Reimbursement	213.98
6100 · General & Administrative - Other	800.00
<b>Total 6100 · General &amp; Administrative</b>	<b>780,798.04</b>
6200 · Purchsed Services	
6201 · Accounting Services	16,107.02
6202 · Legal Services	
6202-1 · Legal Services-Operating	0.00
6202-2 · Legal Services-M&A	82,507.50
<b>Total 6202 · Legal Services</b>	<b>82,507.50</b>
6203 · Medical Director Services	48,000.00
6204 · IT Services	48,746.57
6205 · Clerical Services	6,357.78
6206 · Revenue Management Services	334,628.04
6207 · Software Subscriptions	43,303.88
6208 · Other Services	7,118.17
6209 · Cleaning Services	16,700.68
<b>Total 6200 · Purchsed Services</b>	<b>603,469.64</b>
6300 · Business Taxes	
6301 · Personal Property Taxes	13,678.37
6302 · Excise Taxes	157,260.19
<b>Total 6300 · Business Taxes</b>	<b>170,938.56</b>
6400 · Other Income	
6401 · Interest Income	-653.83
6402 · Non-Patient Income	-599,746.83
6400 · Other Income - Other	-1,955.00
<b>Total 6400 · Other Income</b>	<b>-602,355.66</b>
6500 · Other Expenses	
6510 · Depreciation Expense	
6510-1 · Depreciation Expense-LI	23,622.93
6510-3 · Depreciation Expense-Medical	93,836.61
<b>Total 6510 · Depreciation Expense</b>	<b>117,459.54</b>
6520 · Interest Expense	16,086.10
6500 · Other Expenses - Other	3,687.46
<b>Total 6500 · Other Expenses</b>	<b>137,233.10</b>
<b>Total Expense</b>	<b>7,998,098.40</b>
<b>Net Income</b>	<b>2,575,207.48</b>

Pacific Surgery Center  
Profit & Loss  
November 24-30, 2021

	Nov 24-30 21
<b>Income</b>	
3100 · Professional Fees Billed	239,500.40
3110 · Contractual Allowances	-153,529.22
3120 · Refunds	-515.84
<b>Total Income</b>	<b>85,455.34</b>
<b>Gross Profit</b>	<b>85,455.34</b>
<b>Expense</b>	
5010 · OR Expense	
5015 · OR Nursing	
5015-1 · OR Nursing Labor	14,181.64
5015-2 · OR Nursing Taxes	555.72
5015-3 · OR Nursing Retirement	0.00
5015-4 · OR Nursing Insurance	3,045.44
5015-5 · OR Nursing Education	0.00
<b>Total 5015 · OR Nursing</b>	<b>17,782.80</b>
5020 · OR SPD	
5020-1 · OR SPD Labor	2,347.25
5020-2 · OR SPD Taxes	145.65
5020-3 · OR SPD Retirement	0.00
5020-4 · OR SPD Insurance	-343.16
5020-5 · OR SPD Education	0.00
5020 · OR SPD - Other	0.00
<b>Total 5020 · OR SPD</b>	<b>2,149.74</b>
5030 · OR Surgical Tech	
5030-1 · OR Surgical Tech Labor	4,311.59
5030-2 · OR Surgical Tech Taxes	255.85
5030-3 · OR Surgical Tech Retirement	0.00
5030-4 · OR Surgical Tech Insurance	462.10
5030-5 · OR Surgical Tech Education	0.00
<b>Total 5030 · OR Surgical Tech</b>	<b>5,029.54</b>
5040 · OR Medical Assistant	
5040-5 · Or Medical Assistant Education	0.00
<b>Total 5040 · OR Medical Assistant</b>	<b>0.00</b>
<b>Total 5010 · OR Expense</b>	<b>24,962.08</b>
5100 · PreOp Expense	
5110 · PreOp Nursing	
5110-1 · PreOp Nursing Labor	8,295.24
5110-2 · PreOp Nursing Taxes	398.17
5110-3 · PreOp Nursing Retirement	0.00
5110-4 · PreOp Nursning Insurance	1,139.48
5110-5 · PreOp Nursing Education	0.00
5110 · PreOp Nursing - Other	0.00
<b>Total 5110 · PreOp Nursing</b>	<b>9,832.89</b>
5140 · PreOp Medical Assistant	
5140-1 · PreOp Medical Assistant Labor	1,579.17
5140-2 · PreOp Medical Assistant Taxes	91.49
5140-3 · PreOp Medical Assistant Retire	0.00
5140-4 · PreOp Medical Assistant Insur	6.49
5140-5 · PreOp Medical Assistant Edu	0.00
<b>Total 5140 · PreOp Medical Assistant</b>	<b>1,677.15</b>



**Pacific Surgery Center**  
**Profit & Loss**  
**November 24-30,2021**

	Nov 24-30 21
5150 · PreOp Aide	
5150-1 · PreOp Aide Labor	0.00
5150-2 · PreOp Aide Taxes	0.00
5150-3 · PreOp Aide Retirement	0.00
5150-4 · PreOp Aide Insurance	466.81
	466.81
Total 5150 · PreOp Aide	466.81
Total 5100 · PreOp Expense	11,976.85
5200 · PACU Expense	
5210 · PACU Nursing	
5210-1 · PACU Nursing Labor	15,854.25
5210-2 · PACU Nursing Taxes	691.66
5210-3 · PACU Nursing Retirement	0.00
5210-4 · PACU Nursing Insurance	2,459.13
5210-5 · PACU Nursing Education	0.00
	19,005.04
Total 5210 · PACU Nursing	19,005.04
5250 · PACU Aide	
5250-1 · PACU Aide Labor	1,501.78
5250-2 · PACU Aide Taxes	74.23
5250-3 · PACU Aide Retirement	0.00
5250-4 · PACU Aide Insurance	864.22
5250 · PACU Aide - Other	0.00
	2,440.23
Total 5250 · PACU Aide	2,440.23
Total 5200 · PACU Expense	21,445.27
5300 · Materials Management Expense	
5310-1 · Materials Management Labor	3,548.80
5310-2 · Materials Management Taxes	248.47
5310-3 · Materials Management Retirement	0.00
5310-4 · Materials Management Insurance	2,402.26
5310-5 · Materials Management Education	0.00
	6,199.53
Total 5300 · Materials Management Expense	6,199.53
5400 · Environmental Services Expense	
5410-1 · Environmental Services Labor	0.00
5410-2 · Environmental Services Taxes	0.00
5410-3 · Environmental Services Retire	0.00
5410-4 · Environmental Services Insur	0.00
5410-5 · Environmental Services Edu	0.00
	0.00
Total 5400 · Environmental Services Expense	0.00
5500 · Business Office Expense	
5510-1 · Business Office Labor	12,115.39
5510-2 · Business Office Taxes	780.21
5510-3 · Business Office Retirement	0.00
5510-4 · Business Office Insurance	7,199.55
5510-5 · Business Office Education	0.00
	20,095.15
Total 5500 · Business Office Expense	20,095.15
6000 · Clinical Costs	
6010 · Pharmacy	
6010-1 · Scheduled Pharmacy	0.00
6010-2 · Non-Scheduled Pharmacy	187.36
	187.36
Total 6010 · Pharmacy	187.36

Pacific Surgery Center  
Profit & Loss  
November 24-30, 2021

	Nov 24-30 21
6020 · Surgical Supplies	
6020-1 · Anesthesia	0.00
6020-10 · Suture	0.00
6020-11 · Urology	0.00
6020-12 · General	200.15
6020-13 · Laboratory	0.00
6020-14 · Laparoscopic	0.00
6020-2 · Central Services	0.00
6020-3 · Endoscopy	0.00
6020-4 · ENT	0.00
6020-5 · Ophthalmology	0.00
6020-6 · GYN	0.00
6020-7 · Ortho	0.00
6020-8 · Pain	0.00
6020-9 · Plastics	0.00
6020 · Surgical Supplies - Other	0.00
Total 6020 · Surgical Supplies	200.15
6030 · Implants	
6030-1 · Implants-ENT	0.00
6030-2 · Implants-Plastics	0.00
6030-3 · Implants-Ophthalmology	0.00
6030-4 · Implants-General	0.00
6030-5 · Implants-Pain	0.00
6030-6 · Implants-Ortho	0.00
6030-7 · Implants-Other	0.00
6030-8 · Implants-Urology	0.00
Total 6030 · Implants	0.00
6040 · Surgical Instruments	0.00
6050 · Linen	0.00
6060 · Repairs & Maintenance-Clinical	0.00
6065 · Maintenance Contracts	0.00
6070 · Rent/Lease Medical Equipment	0.00
6080 · Employee Health	0.00
6095 · Rebates	0.00
Total 6000 · Clinical Costs	387.51
6100 · General & Administrative	
6101 · Office Supplies	0.00
6102 · Environmental Services Supplies	0.00
6103 · Memberships-Professional	489.00
6104 · Recruitment	0.00
6106 · Employee Relations	-23.21
6107 · 401 K Administration	0.00
6108 · Insurance	
6108-2 · Insurance-Employment Liability	0.00
6108-3 · Insurance-Directors & Officers	-1,217.44
6108-5 · Insurance-Cyber	65.24
6108-6 · Insurance-Partner's Life	0.00
6108 · Insurance - Other	0.00
Total 6108 · Insurance	-1,152.20

Pacific Surgery Center  
**Profit & Loss**  
November 24-30, 2021

	Nov24-30 21
6109 · Freight and Postage	319.45
6110 · Subscriptions/Library	31.16
6111 · Advertising and Marketing	0.00
6112 · Bank charges	69.19
6113 · Business Licenses	-13,076.00
6115 · Repairs & Maintenance-General	0.00
6116 · Rent/Lease Office Equipment	283.51
6117 · Building Rent	0.00
6118 · Utilities	0.00
6119 · Miscellaneous	0.00
6120 · Mileage Reimbursement	0.00
6100 · General & Administrative - Other	0.00
<b>Total 6100 · General &amp; Administrative</b>	<b>-13,059.10</b>
6200 · Purchsed Services	
6201 · Accounting Services	1,038.78
6202 · Legal Services	
6202-1 · Legal Services-Operating	-72.85
6202-2 · Legal Services-M&A	0.00
<b>Total 6202 · Legal Services</b>	<b>-72.85</b>
6203 · Medical Director Services	0.00
6204 · IT Services	0.00
6205 · Clerical Services	0.00
6206 · Revenue Management Services	0.00
6207 · Software Subscriptions	-5,301.89
6208 · Other Services	177.00
6209 · Cleaning Services	0.00
<b>Total 6200 · Purchsed Services</b>	<b>-4,158.96</b>
6300 · Business Taxes	
6301 · Personal Property Taxes	0.00
6302 · Excise Taxes	1,281.83
<b>Total 6300 · Business Taxes</b>	<b>1,281.83</b>
6400 · Other Income	
6401 · Interest Income	-88.70
6402 · Non-Patient Income	-91.76
6400 · Other Income - Other	0.00
<b>Total 6400 · Other Income</b>	<b>-180.46</b>
6500 · Other Expenses	
6510 · Depreciation Expense	
6510-1 · Depreciation Expense-LI	511.95
6510-3 · Depreciation Expense-Medical	0.00
<b>Total 6510 · Depreciation Expense</b>	<b>511.95</b>
6520 · Interest Expense	1,706.27
6500 · Other Expenses - Other	0.00
<b>Total 6500 · Other Expenses</b>	<b>2,218.22</b>
<b>Total Expense</b>	<b>71,167.92</b>
<b>Net Income</b>	<b>14,287.42</b>

**50599 - Pacific Surgery Center**  
**Trailing 12-month Income Statement**  
**For Period Ending: December 31, 2021**

Run Date: 01/13/22  
Run Time: 07:32 PM

	2021-1	2021-2	2021-3	2021-4	2021-5	2021-6	2021-7	2021-8	2021-9	2021-10	2021-11	2021-12	TTM	Actual
<b>Gross Patient Revenue</b>														
OP Revenue	-	-	-	-	-	-	-	-	-	-	-	1,470,296.35	1,470,296.35	
Medicare	-	-	-	-	-	-	-	-	-	-	-	62,068.02	62,068.02	
Medicaid	-	-	-	-	-	-	-	-	-	-	-	1,057,233.59	1,057,233.59	
Managed Care and Oth Disc Plan	-	-	-	-	-	-	-	-	-	-	-	12,572.04	12,572.04	
Workers' Compensation	-	-	-	-	-	-	-	-	-	-	-	116,666.76	116,666.76	
Other	-	-	-	-	-	-	-	-	-	-	-	2,718,836.76	2,718,836.76	
<b>OP Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	2,718,836.76	2,718,836.76	
<b>Gross Patient Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	2,718,836.76	2,718,836.76	
<b>Contractual Allowance</b>														
OP Contractual Allowance	-	-	-	-	-	-	-	-	-	-	-	915,934.77	915,934.77	
Medicare	-	-	-	-	-	-	-	-	-	-	-	61,682.51	61,682.51	
Medicaid	-	-	-	-	-	-	-	-	-	-	-	657,636.62	657,636.62	
Managed Care and Oth Disc Plan	-	-	-	-	-	-	-	-	-	-	-	7,820.51	7,820.51	
Workers' Compensation	-	-	-	-	-	-	-	-	-	-	-	90,299.22	90,299.22	
Other	-	-	-	-	-	-	-	-	-	-	-	1,733,373.63	1,733,373.63	
<b>OP Contractual Allowance</b>	-	-	-	-	-	-	-	-	-	-	-	1,733,373.63	1,733,373.63	
<b>Contractual Allowance</b>	-	-	-	-	-	-	-	-	-	-	-	1,733,373.63	1,733,373.63	
<b>IP Net Patient Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	
<b>OP Net Patient Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	985,463.13	985,463.13	
<b>Net Patient Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	985,463.13	985,463.13	
<b>Other Income</b>														
Rental income	-	-	-	-	-	-	-	-	-	-	-	170.98	170.98	
Other operating income	-	-	-	-	-	-	-	-	-	-	-	170.98	170.98	
<b>Other Income</b>	-	-	-	-	-	-	-	-	-	-	-	170.98	170.98	
<b>Net Revenue</b>	-	-	-	-	-	-	-	-	-	-	-	985,634.11	985,634.11	
<b>Salaries and benefits</b>														
Salaries	-	-	-	-	-	-	-	-	-	-	-	212,046.74	212,046.74	
Other Benefits	-	-	-	-	-	-	-	-	-	-	-	645.10	645.10	
<b>Salaries and benefits</b>	-	-	-	-	-	-	-	-	-	-	-	212,691.84	212,691.84	
<b>Medical Supplies</b>														
Med Supplies - Chargeable	-	-	-	-	-	-	-	-	-	-	-	84,720.88	84,720.88	
Med Supplies - Non Chargeable	-	-	-	-	-	-	-	-	-	-	-	16,147.96	16,147.96	
Drugs and Medicine	-	-	-	-	-	-	-	-	-	-	-	9,733.13	9,733.13	
O&P devices and implants	-	-	-	-	-	-	-	-	-	-	-	114,641.48	114,641.48	
<b>Medical Supplies</b>	-	-	-	-	-	-	-	-	-	-	-	225,243.45	225,243.45	
<b>Variable Expenses</b>														
Office Supplies	-	-	-	-	-	-	-	-	-	-	-	1,617.84	1,617.84	
Housekeeping and Janitorial	-	-	-	-	-	-	-	-	-	-	-	280.09	280.09	
Minor Equipment	-	-	-	-	-	-	-	-	-	-	-	9,003.81	9,003.81	
Rental Equipment	-	-	-	-	-	-	-	-	-	-	-	11,476.55	11,476.55	
Repairs	-	-	-	-	-	-	-	-	-	-	-	14,332.67	14,332.67	
Maint Contracts	-	-	-	-	-	-	-	-	-	-	-	8,790.67	8,790.67	
Printing	-	-	-	-	-	-	-	-	-	-	-	80.63	80.63	
Postage and Delivery	-	-	-	-	-	-	-	-	-	-	-	54.20	54.20	
Utilities	-	-	-	-	-	-	-	-	-	-	-	-	-	
Recruitment and Relocation	-	-	-	-	-	-	-	-	-	-	-	351.97	351.97	
Contract Services	-	-	-	-	-	-	-	-	-	-	-	51,013.11	51,013.11	
Legal Fees	-	-	-	-	-	-	-	-	-	-	-	67,729.92	67,729.92	
Professional fees	-	-	-	-	-	-	-	-	-	-	-	(800.88)	(800.88)	
Medical director fees	-	-	-	-	-	-	-	-	-	-	-	3,500.00	3,500.00	
<b>Other Variable Expenses</b>	-	-	-	-	-	-	-	-	-	-	-	2,486.34	2,486.34	
<b>Variable Expenses</b>	-	-	-	-	-	-	-	-	-	-	-	169,716.92	169,716.92	
<b>Fixed Expenses</b>														
Rent	-	-	-	-	-	-	-	-	-	-	-	43,799.70	43,799.70	
Insurance	-	-	-	-	-	-	-	-	-	-	-	4,492.55	4,492.55	

**SCA**  
Surgical Care Affiliates

**50599 - Pacific Surgery Center**  
**Trailing 12-month Income Statement**  
**For Period Ending: December 31, 2021**

Run Date: 01/13/22  
Run Time: 07:32 PM

	2021-1	2021-2	2021-3	2021-4	2021-5	2021-6	2021-7	2021-8	2021-9	2021-10	2021-11	2021-12	TTM	Actual
Fixed Expenses	-	-	-	-	-	-	-	-	-	-	-	48,292.25	48,292.25	
Provision for doubtful accts	-	-	-	-	-	-	-	-	-	-	-	14,781.69	14,781.69	
EBITDA	-	-	-	-	-	-	-	-	-	-	-	314,907.96	314,907.96	
Interest, Depreciation, Amort	-	-	-	-	-	-	-	-	-	-	-	31,100.49	31,100.49	
Depreciation Expense	-	-	-	-	-	-	-	-	-	-	-	4,726.67	4,726.67	
Amortization Expense	-	-	-	-	-	-	-	-	-	-	-	1,183.97	1,183.97	
Interest Expense	-	-	-	-	-	-	-	-	-	-	-	37,011.13	37,011.13	
Total Exp Before Mgmt Fee and I/C	-	-	-	-	-	-	-	-	-	-	-	707,737.28	707,737.28	
Income (loss) before Mgmt Fee, I/C, Taxes, & Sale	-	-	-	-	-	-	-	-	-	-	-	277,896.83	277,896.83	
Mgmt Fee, Intercompany, Taxes	-	-	-	-	-	-	-	-	-	-	-	38,834.10	38,834.10	
Intercompany Mgmt Fee Expense	-	-	-	-	-	-	-	-	-	-	-	38,834.10	38,834.10	
Mgmt Fee, Intercompany, Taxes	-	-	-	-	-	-	-	-	-	-	-	38,834.10	38,834.10	
Net Income (Loss) Before Minority Interest, Sale of Investment	-	-	-	-	-	-	-	-	-	-	-	239,062.73	239,062.73	
Net Income (Loss)	-	-	-	-	-	-	-	-	-	-	-	239,062.73	239,062.73	
EBIT	-	-	-	-	-	-	-	-	-	-	-	279,080.80	279,080.80	
EBITDA	-	-	-	-	-	-	-	-	-	-	-	314,907.96	314,907.96	
EBITDAR	-	-	-	-	-	-	-	-	-	-	-	358,707.66	358,707.66	

Statistical information:

Surgical cases	-	-	-	-	-	-	-	-	-	-	-	398	398.00
Ttl Salary related expense per case	-	-	-	-	-	-	-	-	-	-	-	534.40	534.40
Variable cost per case	-	-	-	-	-	-	-	-	-	-	-	426.42	426.42
Supply cost per case	-	-	-	-	-	-	-	-	-	-	-	565.94	565.94
Fixed cost per case	-	-	-	-	-	-	-	-	-	-	-	121.34	121.34
Total expense per case	-	-	-	-	-	-	-	-	-	-	-	1,778.23	1,778.23
Net patient revenue per case	-	-	-	-	-	-	-	-	-	-	-	2,476.04	2,476.04
Gross revenue per case	-	-	-	-	-	-	-	-	-	-	-	6,831.25	6,831.25

# Pacific Surgery Center

## Balance Sheet

As of November 30, 2021

	Nov 30, 21
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	
1130 · Kitsap Bank-General	23,430.26
1140 · Kitsap Bank-Refunds	2,100.83
1160 · Kitsap Bank-Money Market	237,094.22
1165 · Columbia Bank	43,983.46
1170 · Petty Cash	150.00
Total Checking/Savings	306,758.77
Accounts Receivable	
1200 · Accounts Receivable	1,623,655.28
Total Accounts Receivable	1,623,655.28
Other Current Assets	
1300 · Employee Health Insurance Rec	2,704.65
1306 · Other Receiveables	2,043.64
1350 · Prepaid Insurance	35,946.24
1351 · PrePaid Subscriptions	6,688.96
1352 · PrePaid License	13,100.00
1400 · Inventory	600,000.25
Total Other Current Assets	660,483.74
Total Current Assets	2,590,897.79
<b>Fixed Assets</b>	
1510 · Leasehold Improvements	
1511 · Accum Dep Leasehold Improvement	-430,326.27
1510 · Leasehold Improvements - Other	963,185.12
Total 1510 · Leasehold Improvements	532,858.85
1520 · Medical Equipment	
1521 · Accum Dep Medical Equipment	-2,310,851.99
1520 · Medical Equipment - Other	2,310,852.00
Total 1520 · Medical Equipment	0.01
1530 · Furniture and Fixtures	
1531 · Accum Dep Furniture & Fixtures	-102,201.00
1530 · Furniture and Fixtures - Other	102,201.00
Total 1530 · Furniture and Fixtures	0.00
1540 · Office Equipment	
1541 · Accum Dep Office Equipment	-134,452.39
1540 · Office Equipment - Other	134,452.39
Total 1540 · Office Equipment	0.00
1599 · Fixed Asset Holding	368,931.60
Total Fixed Assets	901,790.46
<b>TOTAL ASSETS</b>	<b>3,492,688.25</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	
2100 · Accounts Payable	310,947.33
Total Accounts Payable	310,947.33

**Pacific Surgery Center**  
**Balance Sheet**  
As of November 30, 2021

	Nov 30, 21
<b>Other Current Liabilities</b>	
2130 · Kitsap Bank Line of Credit	250,000.00
2210 · FSA/Sec 125 Payable	2,313.55
2225 · Labor and Benefits Payable	78,079.34
2226 · Excise Tax Payable	12,798.20
2230 · Other Liabilities	8,038.06
<b>Total Other Current Liabilities</b>	351,229.15
<b>Total Current Liabilities</b>	662,176.48
<b>Long Term Liabilities</b>	
2310 · Lease Payable-Umpqua Medtronic	133,841.50
2312 · Lease Payable-Umpqua Ultrasound	26,266.44
2314 · Loan Payable-PMB HVAC	53,514.07
<b>Total Long Term Liabilities</b>	213,622.01
<b>Total Liabilities</b>	875,798.49
<b>Equity</b>	
2725 · Member Equity-PSC Holdings, Inc	14,536.00
2735 · Member Equity-NKASC Holdings	2,588,066.34
Net Income	14,287.42
<b>Total Equity</b>	2,616,889.76
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>3,492,688.25</b>



Page 1

**50599 - Pacific Surgery Center**  
**Trailing 12-month Income Statement**  
**For Period Ending: December 31, 2022**

Run Date: 01/12/23  
Run Time: 07:44 PM

	2022-1	2022-2	2022-3	2022-4	2022-5	2022-6	2022-7	2022-8	2022-9	2022-10	2022-11	2022-12	TTM	Actual
<b>Gross Patient Revenue</b>														
<b>OP Revenue</b>														
Nedcare	1,543,564.21	1,382,048.64	2,382,380.18	933,784.04	2,535,384.34	1,686,226.11	1,759,664.56	2,278,959.16	2,083,174.93	1,852,335.05	1,531,772.17	660,833.91	20,629,927.30	
Nedcard	101,653.35	190,933.47	85,265.46	159,957.20	113,257.51	204,807.17	183,453.86	126,151.56	157,609.09	156,253.03	90,140.49	153,224.29	1,721,986.48	
BCBS	490,309.40	(63,998.15)	(31,440.23)	8,257.18	264,172.84	88,506.92	253,716.15	256,758.32	110,091.15	203,254.41	293,609.34	324,393.06	4,227,467.23	
Managed Care and Oth Disc Plan	250,921.26	690,525.40	7,815.67	1,105.08	45,553.71	7,424.48	1,050.08	9,614.78	4,400.00	10,175.33	(2,433.36)	6,760.99	2,613,025.79	
Workers' Compensation	15,446.04	1,105.08	192,847.42	723,665.87	819,766.09	712,544.49	827,930.57	918,100.22	656,316.90	901,865.04	778,180.70	702,151.70	107,157.80	
Exchange	-	-	1,197,396.43	470,574.42	76,618.48	184,735.77	156,732.36	118,283.45	78,904.43	138,303.28	303,652.64	89,299.60	8,237,918.01	
Other Payers	98,303.25	130,596.10	205,261.44	2,296,238.71	3,959,526.37	2,884,244.94	3,182,582.58	3,099,869.17	3,090,456.52	3,362,188.14	2,723,307.96	1,936,663.54	1,770,248.93	
Other	2,500,197.51	2,330,570.54	3,959,526.37	2,296,238.71	3,854,732.98	2,884,244.94	3,182,582.58	3,099,869.17	3,090,456.52	3,362,188.14	2,723,307.96	1,936,663.54	35,700,578.96	
OP Revenue														
Gross Patient Revenue														
<b>Contractual Allowance</b>														
<b>OP Contractual Allowance</b>														
Nedcare	1,133,770.95	758,834.46	1,659,014.45	626,493.24	1,819,634.48	1,129,921.83	1,209,357.87	1,489,681.48	1,415,850.80	1,220,830.74	978,797.66	452,227.30	13,894,415.26	
Nedcard	70,301.46	164,878.13	80,737.03	148,956.90	110,705.86	189,593.85	174,536.30	118,478.26	160,087.85	148,729.49	63,307.71	138,410.42	1,568,903.26	
BCBS	216,714.33	(33,452.30)	(90,235.94)	5,708.50	202,595.42	60,844.05	156,756.46	93,974.96	74,304.42	179,773.65	200,338.93	255,466.40	1,784,077.23	
Managed Care and Oth Disc Plan	240,788.93	404,081.45	3,387.71	700.95	37,516.45	4,729.57	415.74	(489.05)	2,322.37	4,813.61	(1,991.80)	3,248.28	66,647.82	
Workers' Compensation	11,005.91	1,989.98	121,806.90	485,468.10	543,698.12	451,074.36	545,929.38	536,759.54	411,574.24	586,932.21	478,819.71	464,472.81	121,806.90	
Exchange	-	-	72,944.70	154,997.95	351,755.28	121,807.62	80,372.76	61,389.56	109,301.09	38,931.64	76,622.22	1,454,781.14	5,247,073.17	
Other	109,615.57	149,780.57	154,997.95	1,630,255.12	2,770,109.98	1,981,071.28	2,208,300.98	2,318,777.95	2,125,529.24	2,250,380.79	1,759,720.70	1,390,447.43	24,335,555.71	
OP Contractual Allowance	1,782,197.15	1,446,112.29	2,672,652.80	1,630,255.12	2,770,109.98	1,981,071.28	2,208,300.98	2,318,777.95	2,125,529.24	2,250,380.79	1,759,720.70	1,390,447.43	24,335,555.71	
Contractual Allowance														
<b>IP Net Patient Revenue</b>														
<b>OP Net Patient Revenue</b>														
Net Patient Revenue	718,000.36	884,458.25	1,266,873.57	665,983.59	1,084,623.00	903,173.66	974,081.60	1,381,091.22	964,927.28	1,011,807.35	963,587.26	546,216.11	11,364,823.25	
<b>Other Income</b>														
Rental Income	20,388.31	16,345.06	-	3,500.00	(4,104.73)	100.14	192.52	5,420.62	(291.40)	105.17	(684.86)	-	40,970.83	
Other operating income	20,388.31	16,345.06	-	3,500.00	(4,104.73)	100.14	192.52	5,420.62	(291.40)	105.17	(684.86)	-	40,970.83	
Other Income														
Net Revenue	738,388.67	900,803.31	1,266,873.57	669,483.59	1,080,518.27	903,273.80	974,274.12	1,386,511.84	964,635.88	1,011,912.52	962,902.40	546,216.11	11,405,794.08	
<b>Salaries and benefits</b>														
Salaries	291,304.48	201,436.32	239,070.75	152,558.74	300,557.94	106,445.15	217,096.51	262,969.44	218,911.70	298,700.29	273,320.20	256,168.51	2,818,540.03	
FICA	15,105.03	14,390.20	17,667.48	12,238.35	20,477.91	122,347.83	15,733.65	19,193.43	17,512.82	18,946.38	19,572.95	18,239.02	311,465.05	
FUTA	1,171.73	671.91	200.02	114.46	225.87	(4.09)	44.74	88.87	138.74	12.5	32.47	137.89	2,820.86	
SUI	1,023.79	917.71	1,159.47	544.10	1,071.67	836.81	797.42	921.70	824.57	838.98	862.09	750.78	10,569.09	
401K	2,550.59	4,933.70	6,888.52	4,664.45	8,205.59	6,697.51	6,097.51	7,083.72	6,715.95	8,142.11	7,936.03	6,769.48	76,615.63	
Group Med Ins	13,231.84	18,054.46	12,256.56	13,057.13	14,321.26	10,545.17	11,293.37	12,950.64	15,272.20	13,574.73	14,397.78	22,533.64	171,488.78	
Voluntary-Supplemental Insurne	2,455.99	1,882.15	2,315.80	2,175.75	2,422.36	2,061.58	2,105.97	2,425.02	2,426.50	2,438.09	2,542.48	2,723.37	27,995.06	
Other Benefits	566.80	-	-	-	1,250.00	-	200.00	-	-	-	-	-	2,016.80	
Work Comp Ins	1,840.00	1,840.00	2,694.25	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	25,897.00	
Salaries and benefits	329,250.25	244,126.45	282,772.85	187,477.73	350,657.35	250,985.18	255,533.92	307,754.57	263,947.23	344,766.58	320,788.76	309,447.43	3,447,008.30	
<b>Medical Supplies</b>														
Med Supplies - Chargeable	55,145.40	71,110.91	136,938.89	69,766.90	34,025.40	49,090.44	70,576.26	65,257.14	55,075.05	56,984.75	56,220.60	40,126.77	760,678.51	
Med Supplies - Non Chargeable	46,022.21	70,868.70	17,667.48	12,238.35	20,477.91	122,347.83	15,733.65	19,193.43	17,512.82	18,946.38	19,572.95	18,239.02	784,843.11	
Drugs and Medicine	7,959.53	18,616.38	19,594.84	6,207.41	6,023.95	3,731.22	33,067.62	13,030.17	22,537.36	16,352.64	5,976.25	3,769.01	156,466.76	
OKT devices and implants	68,913.87	127,445.18	67,162.57	183,859.83	225,618.90	240,492.13	243,860.32	221,597.89	253,585.20	302,547.39	130,802.38	154,814.06	2,753,524.32	
Medical Supplies	178,041.41	288,041.17	812,582.92	314,154.67	338,817.35	360,846.36	398,860.23	386,603.40	413,500.28	454,031.42	254,259.94	258,175.35	4,457,912.70	
<b>Variable Expenses</b>														
Food and Catering	-	-	-	-	-	19.11	-	43.74	-	-	-	-	62.85	
Office Supplies	767.43	2,176.41	4,012.79	664.95	1,109.55	1,218.57	1,529.31	1,548.67	2,551.08	1,426.45	2,289.39	1,021.93	20,316.53	
Housekeeping and Janitorial	(7.44)	2,141.70	2,095.44	2,141.70	1,299.11	2,222.82	2,783.09	3,714.71	3,482.92	4,165.44	3,442.70	3,897.38	29,237.87	
Linens	2,117.76	281.69	4,844.65	2,010.40	3,043.84	2,444.54	2,072.41	157.53	2,305.26	103.34	156.06	226.68	19,764.16	
Uniforms	-	207.30	-	-	-	1,033.81	263.60	-	(21,539)	190.34	-	-	1,549.66	
Minor Equipment	1,658.59	1,546.61	2,116.09	19,937.89	25,301.89	1,228.73	2,588.88	21,600.39	(34,190.70)	27,084.33	87.63	1,396.41	44,704.25	
Rental Equipment	13,647.11	15,174.05	18,023.67	20,380.63	15,214.27	15,715.49	17,646.08	12,547.48	18,511.60	18,400.43	7,832.47	12,788.75	185,885.93	
Storage - Including Data	-	-	126.96	126.96	126.96	126.96	126.96	126.96	126.96	-	-	-	761.76	
Repairs	(206.70)	2,486.51	13,230.67	687.39	68.47	(125.47)	(6,122.41)	(13,192.78)	976.58	16,744.68	16,744.68	(3,955.42)	43,781.79	
Main Contracts	(1,543.04)	11,694.14	20,141.40	34,295.06	3,903.23	4,068.49	4,548.26	(801.77)	131.04	2,300.04	285.76	3,866.00	80,302.81	
Bank Service Charges	-	-	2,214.72	113.85	2,999.93	1,590.66	120.46	17,912.47	4,472.70	2,300.04	285.76	2,793.20	45,095.37	
Dues and Subscriptions	-	-	1,571.43	4,350.00	296.71	-	205.00	-	-	742.10	120.00	-	169.00	
Printing	-	230.52	312.43	112.45	53.33	-	271.2	4.72	-	83.35	3.54	107.56	935.02	

**50599 - Pacific Surgery Center**  
**Trailing 12-month Income Statement**  
**For Period Ending: December 31, 2022**

Run Date: 01/12/23  
Run Time: 07:44 PM

	2022-1	2022-2	2022-3	2022-4	2022-5	2022-6	2022-7	2022-8	2022-9	2022-10	2022-11	2022-12	TTM
													Actual
Postage and Delivery	842.09	179.39	105.56	71.24	-	286.86	293.72	505.98	179.86	3,726.72	214.00	159.73	6,565.15
Telephone	3,160.91	1,992.32	2,318.19	(178.85)	-	847.14	173.76	1,491.18	716.27	886.25	1,175.90	865.45	14,482.72
Education	5,750.87	4,025.00	2,165.72	1,977.04	1,643.26	249.75	292.82	1,400.00	3,493.94	2,334.95	2,078.12	3,925.85	27,937.32
Recruitment and Relocation	-	-	1,666.37	940.06	4,678.90	4,678.90	1,046.30	1,400.00	6,099.96	800.00	2,485.72	1,150.00	26,537.58
Contract Services	33,420.45	16,989.21	65,902.33	77,851.09	48,600.32	53,800.32	49,009.92	54,162.94	59,047.52	61,373.67	52,895.36	5,165.28	578,202.80
Collection Fees	-	-	-	61.65	413.67	520.11	754.36	-	1,454.88	925.88	936.38	783.57	5,850.50
Legal Fees	(74,479.99)	9,075.11	8,823.12	-	4,587.88	4,587.88	2,098.36	2,244.00	-	1,830.00	339.00	195.36	(63,185.39)
Professional fees	9,155.11	3,000.00	3,000.00	44,677.77	2,094.57	2,996.76	5,093.25	1,661.77	1,391.81	15,160.81	45,769.36	(29,937.80)	72,130.64
Medical director fees	(3,300.00)	872.00	1,700.59	800.00	2,400.00	4,875.00	2,325.00	2,100.00	2,175.00	3,000.00	3,000.00	4,125.00	29,700.00
Marketing	-	-	-	-	-	-	-	-	-	18.50	-	434.21	434.21
Travel and Entertainment	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Variable Expenses	3,760.86	17,652.54	5,445.78	1,185.39	10,085.51	1,830.90	569.72	68.33	1,770.89	361.06	1,403.91	621.91	4,257.68
7262 - Rigids - Flight Costs	-	-	-	4,225.26	5,735.73	1,873.45	12,179.09	(3,238.15)	13,784.04	8,794.04	14,591.37	15,067.80	100,171.71
Variable Expenses	(3,328.62)	99,873.75	160,435.10	175,180.93	134,596.33	98,914.42	113,911.45	111,399.55	100,697.71	127,468.96	157,325.88	24,818.85	1,301,294.31
Fixed Expenses													
Rent	43,799.70	43,799.70	23,350.50	43,799.70	43,799.70	43,799.70	43,799.70	43,799.70	43,799.70	43,799.70	43,799.70	43,799.70	505,147.92
Insurance	5,555.47	4,492.55	9,510.53	6,165.24	6,165.24	6,165.00	6,165.19	6,163.25	6,163.33	6,163.33	6,160.57	6,157.36	75,027.06
Sales and Use Tax	-	-	-	-	-	-	-	-	0.01	-	-	-	0.01
Property Tax	358.00	358.00	938.19	3,154.98	358.00	1,052.00	1,052.00	1,052.00	1,052.00	1,052.00	1,052.00	(2,175.08)	9,304.09
Tax Penalty	1,343.37	-	-	-	-	-	-	-	-	-	-	-	1,343.37
Miscellaneous	-	-	-	-	-	-	-	-	-	-	-	-	-
Fixed Expenses	51,056.54	63,633.41	13,877.96	18,972.24	9,977.40	16,283.55	13,473.33	14,613.24	20,797.68	13,909.96	15,486.83	14,614.20	166,994.55
Provision for doubtful accts	10,769.86	13,887.22	19,003.10	9,989.75	16,193.90	13,547.61	14,611.22	20,716.37	14,473.91	15,177.11	14,756.93	(111,463.41)	757,817.00
EBITDA	172,599.23	191,241.31	(55,097.58)	(89,416.65)	179,952.71	111,679.89	126,866.99	494,409.67	100,203.94	5,543.37	149,271.70	2,843.62	1,390,098.20
Interest, Depreciation, Amort													
Depreciation Expense	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,558.90	28,204.57	370,768.37
Amortization Expense	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.63	56,200.00
Interest Income	-	(88.49)	-	(109.31)	(1,884.82)	(1,439.60)	(1,353.41)	(2,262.41)	(75.46)	(135.00)	(2,281.61)	(1,354.43)	(9,469.89)
Interest Expense	2,143.68	2,035.02	1,784.71	1,992.32	3,403.21	4,932.31	1,957.13	22,135.70	11,299.59	153.82	22,816.91	41,566.13	114,700.11
Total Exp Before Mgmt Fee and I/C	37,970.84	37,773.69	37,611.87	37,650.17	37,345.55	38,759.45	35,148.95	55,697.45	47,051.29	35,845.98	58,820.45	73,142.90	532,818.59
Income (loss) before Mgmt Fee, I/C, Taxes, & Sale	603,760.28	747,335.69	1,359,383.02	796,550.41	937,911.11	830,353.36	882,556.08	947,799.62	911,483.23	1,042,215.13	872,451.14	616,515.39	10,548,314.46
Intercompany Mgmt Fee Expense	134,628.39	153,467.62	(92,709.45)	(127,066.82)	142,607.16	72,920.44	91,718.04	438,712.22	53,152.65	(30,302.61)	90,451.26	(70,299.28)	857,279.62
Mgmt Fee, Intercompany, Taxes	29,104.75	35,476.64	49,914.82	26,379.75	42,372.98	35,589.05	38,386.52	54,631.82	38,006.48	39,869.42	37,925.82	26,307.18	454,165.23
Net Income (Loss) Before Minority Interest, Sale of Investment	29,104.75	35,476.64	49,914.82	26,379.75	42,372.98	35,589.05	38,386.52	54,631.82	38,006.48	39,869.42	37,925.82	26,307.18	454,165.23
Net Income (Loss)	105,523.64	117,990.98	(142,624.27)	(153,446.57)	100,034.18	37,331.39	53,331.52	384,080.40	15,146.17	(70,172.03)	52,525.44	(96,606.46)	403,114.39
EBIT	136,772.07	155,414.15	(90,924.74)	(125,243.81)	144,125.55	75,852.73	91,039.83	458,582.51	64,376.78	(30,283.79)	112,986.13	(30,087.58)	962,609.83
EBITDA	172,599.23	191,241.31	(55,097.58)	(89,416.65)	179,952.71	111,679.89	126,866.99	494,409.67	100,203.94	5,543.37	149,271.70	2,843.62	1,390,098.20
EBITDAR	216,998.93	235,041.01	(31,747.08)	(45,616.95)	223,752.50	155,479.68	170,666.78	538,209.46	144,003.73	49,343.16	193,071.49	46,643.41	1,895,246.12

Statistical Information:

Surgical cases	304	519	485	300	454	542	379	545	467	501	453	401	5,350.00
Ttl Salary related expense per case	1,083.06	470.38	582.01	624.93	772.37	463.07	674.23	564.69	565.20	688.16	708.14	771.69	644.30
Variable cost per case	(110.95)	192.43	330.79	583.94	296.47	182.50	300.56	204.40	215.63	254.43	347.30	61.89	243.23
Supply cost per case	585.66	554.99	1,675.43	1,047.18	746.29	665.77	1,052.47	709.36	885.44	966.25	561.28	643.82	833.25
Fixed cost per case	167.95	122.61	98.30	240.32	132.82	124.17	170.16	120.42	153.77	129.59	146.80	155.60	141.65
Total expense per case	1,986.05	1,439.95	2,803.26	2,655.17	2,065.88	1,532.02	2,328.64	1,739.94	1,951.78	2,080.27	1,925.94	1,537.68	1,971.68
Net patient revenue per case	2,361.84	1,704.16	2,612.11	2,219.95	2,389.04	1,666.37	2,570.14	2,534.11	2,066.23	2,019.58	2,127.12	1,362.13	2,124.27
Gross revenue per case	8,224.33	4,490.50	8,122.73	7,654.13	8,490.60	5,321.49	8,397.32	6,788.75	6,617.68	6,511.35	6,011.72	4,829.58	6,673.01



50599 – Pacific Surgery Center  
Trailing 12-month Income Statement  
For Period Ending: May 31, 2023

Run Date: 06/12/23  
Run Time: 06:22 PM

	2022-6	2022-7	2022-8	2022-9	2022-10	2022-11	2022-12	2023-1	2023-2	2023-3	2023-4	2023-5	TTM	Actual
<b>Gross Patient Revenue</b>														
<b>OP Revenue</b>														
Medicare	1,686,226.11	1,759,664.56	2,278,959.16	2,083,174.93	1,852,335.05	1,531,572.17	660,833.01	1,734,616.55	1,176,065.20	1,771,521.96	1,707,615.33	1,575,051.31	19,817,686.24	
Medicaid	204,807.17	183,453.86	126,151.26	157,569.09	156,253.03	90,140.49	153,224.29	119,520.62	235,085.92	298,918.52	104,467.80	165,871.07	1,991,669.42	
BCBS	88,506.92	255,761.15	256,758.32	110,091.15	203,254.41	293,869.34	324,393.05	250,883.14	277,075.66	133,687.84	187,665.91	136,492.53	1,155.98	
Managed Care and Oth Dis Plan	7,424.48	1,103.08	9,614.72	4,400.00	10,175.33	6,240.99	6,700.99	9,190.64	2,815.00	10,424.00	8,640.00	17,998.00	251,639.42	
Workers' Compensation	712,544.49	827,930.57	918,100.22	656,316.90	901,865.04	791,880.70	702,151.70	764,725.75	964,500.71	960,176.68	817,485.90	902,641.88	86,028.94	
Other Payers	184,735.77	156,733.26	110,285.13	78,909.45	138,305.28	30,633.64	89,299.60	226,959.64	168,699.57	228,655.77	253,733.26	136,721.58	9,906,620.54	
Other	2,884,244.94	3,182,582.58	3,699,869.17	3,090,456.52	3,262,188.14	2,723,307.96	1,936,603.54	3,105,895.34	2,822,242.31	3,403,384.77	2,800,035.68	2,932,782.37	1,524,167.78	
OP Revenue	2,884,244.94	3,182,582.58	3,699,869.17	3,090,456.52	3,262,188.14	2,723,307.96	1,936,603.54	3,105,895.34	2,822,242.31	3,403,384.77	2,800,035.68	2,932,782.37	35,843,653.32	
Gross Patient Revenue	2,884,244.94	3,182,582.58	3,699,869.17	3,090,456.52	3,262,188.14	2,723,307.96	1,936,603.54	3,105,895.34	2,822,242.31	3,403,384.77	2,800,035.68	2,932,782.37	35,843,653.32	
<b>Contractual Allowance</b>														
<b>OP Contractual Allowance</b>														
Medicare	1,129,921.83	1,209,357.87	1,489,681.48	1,415,850.80	1,220,830.74	978,797.66	453,227.30	1,170,165.93	736,993.09	1,191,401.18	1,139,407.70	1,024,653.46	13,159,289.04	
Medicaid	189,593.85	174,536.30	118,478.26	160,087.85	148,729.49	63,507.71	138,410.42	102,937.78	215,325.23	273,242.77	98,406.45	156,007.30	1,836,263.41	
BCBS	60,864.05	156,756.46	98,974.96	74,304.42	179,773.65	200,838.93	255,466.40	187,091.19	169,829.76	92,033.21	127,980.97	92,709.09	754.85	
Managed Care and Oth Dis Plan	4,729.57	415.74	(489.05)	2,322.37	4,813.61	(1,591.80)	3,248.28	9,168.97	1,887.54	6,098.84	6,540.80	10,555.69	1,691,613.09	
Workers' Compensation	451,074.36	545,929.38	536,929.38	411,574.24	586,932.21	478,819.71	464,472.81	521,349.73	600,957.64	672,352.14	516,739.25	566,589.36	6,353,590.37	
Other Payers	144,887.62	121,903.23	80,372.76	61,389.56	109,301.09	38,593.64	76,622.22	180,178.16	140,001.98	184,571.47	107,603.01	107,603.01	1,226,602.67	
Other	1,981,071.28	2,208,500.98	2,318,777.95	2,125,529.24	2,250,380.79	1,759,720.70	1,390,447.43	2,170,891.76	1,864,995.24	2,419,719.61	1,807,621.10	1,958,117.91	24,315,773.99	
OP Contractual Allowance	1,981,071.28	2,208,500.98	2,318,777.95	2,125,529.24	2,250,380.79	1,759,720.70	1,390,447.43	2,170,891.76	1,864,995.24	2,419,719.61	1,807,621.10	1,958,117.91	24,315,773.99	
Contractual Allowance	1,981,071.28	2,208,500.98	2,318,777.95	2,125,529.24	2,250,380.79	1,759,720.70	1,390,447.43	2,170,891.76	1,864,995.24	2,419,719.61	1,807,621.10	1,958,117.91	24,315,773.99	
<b>IP Net Patient Revenue</b>														
OP Net Patient Revenue	903,173.66	974,081.60	1,381,091.22	964,927.28	1,011,807.35	963,387.26	546,216.11	935,003.58	957,247.07	983,665.16	932,414.58	974,664.46	11,527,879.33	
Net Patient Revenue	903,173.66	974,081.60	1,381,091.22	964,927.28	1,011,807.35	963,387.26	546,216.11	935,003.58	957,247.07	983,665.16	932,414.58	974,664.46	11,527,879.33	
<b>Other Income</b>														
Rental income	100.14	192.52	5,420.62	(291.40)	105.17	(684.86)	-	30.90	5,075.93	2.74	3.32	53.81	10,008.89	
Other operating income	100.14	192.52	5,420.62	(291.40)	105.17	(684.86)	-	30.90	5,075.93	2.74	3.32	53.81	10,008.89	
Other Income	100.14	192.52	5,420.62	(291.40)	105.17	(684.86)	-	30.90	5,075.93	2.74	3.32	53.81	10,008.89	
Net Revenue	903,273.80	974,274.12	1,386,511.84	964,635.88	1,011,912.52	962,002.40	546,216.11	935,034.48	962,323.00	983,667.90	932,417.90	974,718.27	11,537,888.22	
<b>Salaries and benefits</b>														
Salaries	106,445.15	217,096.51	262,969.44	218,911.70	298,700.29	273,320.20	256,168.51	318,045.16	243,317.13	256,048.70	257,931.75	282,141.99	2,991,096.53	
FICA	122,347.83	15,775.65	19,193.43	17,512.82	18,946.38	19,972.95	18,239.02	22,777.37	18,212.72	23,920.70	18,083.85	21,276.40	335,857.12	
FUTA	(4,009)	44.74	85.87	138.74	1,25	32.47	137.89	1,960.95	344.31	149.54	107.86	48.39	3,047.92	
SUI	836.81	797.42	921.70	884.57	838.98	862.09	730.78	1,573.78	1,187.79	1,533.20	1,153.33	1,353.01	12,673.46	
401K	6,627.98	6,097.51	7,083.72	6,715.95	8,142.11	7,936.03	6,769.48	9,167.11	7,699.46	9,980.72	7,768.86	13,527.51	97,516.44	
Group Med Ins	10,545.17	11,293.37	12,950.64	15,272.20	13,574.73	14,397.78	22,533.64	29,252.06	21,391.00	24,272.37	22,733.70	26,186.32	224,402.98	
Voluntary-Supplemental Insurance	2,061.58	2,105.97	2,425.02	2,426.50	2,438.09	2,242.48	2,723.37	3,323.81	2,882.28	3,173.24	2,744.06	3,116.55	31,962.95	
Other Benefits	-	200.00	-	-	-	-	-	(225.00)	799.00	-	-	-	774.00	
Work Comp Ins	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	2,124.75	35,516.75	10,472.75	67,237.00	
Salaries and benefits	250,985.18	255,533.92	307,754.57	263,947.23	344,766.58	320,788.76	309,447.43	387,999.99	297,938.44	321,223.22	346,040.16	358,122.92	3,764,568.40	
<b>Medical Supplies</b>														
Med Supplies - Chargeable	49,090.44	70,576.26	65,577.14	55,075.05	56,984.75	56,220.60	40,126.77	40,883.13	42,235.19	41,336.14	33,268.59	38,632.66	589,986.72	
Med Supplies - Non Chargeable	67,531.97	52,130.37	86,218.20	80,702.67	78,146.64	59,463.51	59,463.51	55,075.05	74,404.30	95,139.21	76,911.56	69,599.46	856,715.79	
Drugs and Medicine	3,731.22	2,937.63	1,301.17	2,337.36	1,632.60	5,976.25	3,769.01	1,614.13	13,000.00	10,704.97	10,704.97	16,480.82	146,930.18	
OAP devices and implants	240,492.73	243,866.33	221,597.89	255,885.20	302,547.30	130,002.38	154,814.06	316,241.91	260,301.07	213,346.00	202,672.01	243,438.32	2,785,215.28	
Medical Supplies	360,846.36	398,860.23	386,603.40	413,500.28	454,031.42	254,259.94	258,173.35	414,246.70	389,940.36	360,226.32	319,718.15	368,141.26	4,578,847.97	
<b>Variable Expenses</b>														
Food and Catering	19.11	43.74	-	-	-	-	-	-	-	-	-	-	62.85	
Office Supplies	1,218.57	1,529.31	1,548.67	2,251.08	1,426.45	2,289.39	1,021.93	1,331.41	1,241.34	1,690.03	81,668	1,538.69	18,423.55	
Housekeeping and Janitorial	2,222.82	2,783.09	3,714.71	3,482.92	4,165.44	3,442.70	3,897.38	2,996.01	3,364.65	4,159.77	3,254.13	3,738.43	40,842.05	
Linens	2,444.54	2,072.41	1,571.53	2,802.26	1,03.34	156.06	226.68	135.80	2,147.05	2,884.21	2,262.24	2,652.37	17,547.49	
Uniforms	-	1,103.81	263.60	(215.39)	190.34	190.34	1,396.41	8,894.16	14,986.27	314.00	5,788.46	-	1,656.36	
Minor Equipment	1,228.73	2,958.88	21,608.39	(34,190.70)	270.84	870.63	1,396.41	8,894.16	14,986.27	21,829.10	5,788.46	2,784.38	48,025.55	
Rental Equipment	15,715.49	17,646.08	12,547.48	18,511.60	18,404.33	7,432.47	12,788.75	15,995.11	14,093.74	11,664.26	7,008.44	(7,992.67)	144,215.08	
Storage - Including Data	126.96	126.96	126.96	126.96	126.96	126.96	126.96	126.96	126.96	126.96	126.96	126.96	507.84	
Repairs	125.47	6,553.77	(6,122.41)	13,192.78	976.58	16,744.68	(3,955.42)	10,866.22	3,281.80	15,760.41	7,930.50	1,936.87	67,411.25	
Maint Contracts	4,068.49	4,548.26	(801.77)	131.04	-	285.76	2,793.20	3,303.03	5,023.25	11,668.84	5,215.61	10,839.10	46,487.57	
Bank Service Charges	1,590.66	205.00	17,912.47	4,472.70	2,300.04	169.00	120.00	3,375.00	5,436.87	4,260.35	6,309.96	4,260.35	53,799.75	
Dues and Subscriptions	-	27.12	4.72	-	-	83.35	179.86	345.77	848.88	707.40	1,257.95	382.82	410.71	
Postage and Delivery	286.86	293.72	1,491.18	716.27	886.25	1,175.90	865.45	1,016.77	1,005.07	956.09	872.76	873.26	8,909.69	
Telephone	847.14	173.76	-	-	-	-	-	-	-	-	-	-	10,899.90	

**50599 – Pacific Surgery Center**  
**Trailing 12-month Income Statement**  
**For Period Ending: May 31, 2023**

Run Date: 06/12/23  
Run Time: 06:22 PM

	2022-6	2022-7	2022-8	2022-9	2022-10	2022-11	2022-12	2023-1	2023-2	2023-3	2023-4	2023-5	TTM
													Actual
Education	249.75	292.82	-	3,493.94	2,334.95	2,078.12	3,925.85	-	698.00	3,021.64	264.81	-	16,359.88
Recruitment and Relocation	4,678.90	1,046.30	1,400.00	6,099.96	800.00	2,485.72	1,150.00	2,181.05	1,102.31	9,856.81	700.00	-	35,701.05
Contact Services	53,806.71	49,009.92	54,162.94	59,047.52	61,373.67	52,083.26	5,165.28	41,937.67	39,830.86	53,109.79	42,484.26	47,143.98	559,965.59
Collection Fees	520.11	-	-	1,454.88	925.88	936.38	783.57	646.37	536.02	695.36	1,396.02	153.70	8,825.83
Legal Fees	-	-	2,244.00	-	-	1,830.00	339.00	6,879.60	3,639.14	4,013.44	10,701.28	1,213.00	25,500.60
Professional fees	2,996.76	5,493.25	1,661.77	1,391.81	15,160.81	45,769.36	(29,937.80)	3,350.00	3,000.00	3,685.37	1,027.84	7,714.87	62,616.62
Medical director fees	4,875.00	2,325.00	2,100.00	2,175.00	3,000.00	3,000.00	4,125.00	3,150.00	3,000.00	3,000.00	3,000.00	3,000.00	37,350.00
Marketing	-	-	-	(0.59)	18.50	-	434.21	-	34.49	-	-	-	486.61
Travel and Entertainment	18.90	569.72	68.33	1,770.89	361.06	1,403.91	621.91	211.69	725.17	875.38	1,690.03	2,234.23	10,551.42
Other Variable Expenses	1,873.45	12,179.09	(3,238.15)	13,783.94	8,794.04	14,591.37	15,067.80	6,255.77	5,561.42	9,053.36	6,049.32	12,343.28	102,314.69
7262 - Brigade - Flight Costs	-	-	-	-	-	454.19	-	-	-	-	-	-	454.19
Variable Expenses	98,914.42	113,911.45	111,399.55	100,697.71	127,468.96	157,325.88	248,18.85	114,611.50	106,738.88	160,371.89	108,021.47	99,656.66	1,323,937.22
Fixed Expenses													
Rent	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	43,799.79	525,597.48
Insurance	6,165.00	6,165.19	6,163.25	6,163.33	6,163.33	6,160.57	6,157.36	6,159.05	6,155.97	6,156.52	4,028.10	5,619.81	71,257.48
Sales and Use Tax	-	-	-	0.01	-	-	-	(3.19)	0.01	(8.46)	-	-	(11.63)
Property Tax	1,052.00	1,052.00	1,052.00	1,052.00	1,052.00	1,052.00	(2,175.08)	644.00	2,551.42	970.12	1,527.20	644.00	10,473.66
Miscellaneous	16,283.55	13,473.33	14,613.24	20,797.68	13,909.96	15,486.83	14,614.20	10,991.47	13,957.97	13,891.20	14,622.62	13,109.95	175,352.00
Fixed Expenses	67,300.34	64,490.31	65,628.28	71,812.81	64,925.08	66,499.19	62,366.27	61,191.12	66,465.16	64,809.17	63,977.71	63,173.55	782,668.99
Provision for doubtful assets	13,547.61	14,611.22	20,716.37	14,473.91	15,177.11	14,756.93	(111,463.41)	14,025.05	13,374.46	14,754.98	13,986.22	14,619.97	52,580.42
EBITDA	111,679.89	126,866.99	494,409.67	100,203.94	5,543.37	149,271.70	2,843.62	(57,039.88)	87,845.90	61,982.32	80,674.19	71,003.92	1,235,285.23
Interest, Depreciation, Amort													
Depreciation Expense	31,100.49	31,100.49	31,100.49	31,100.49	31,100.49	31,558.90	28,204.57	24,949.46	24,949.46	26,828.34	26,146.67	26,345.59	344,485.44
Amortization Expense	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	4,726.67	56,720.00
Interest Income	(1,439.60)	(1,735.34)	(2,263.41)	(734.46)	(133.00)	(282.03)	(1,354.43)	(1,038.66)	(1,038.66)	(775.29)	(148.71)	(633.43)	(9,903.36)
Interest Expense	4,571.89	1,057.13	22,135.70	11,299.59	153.82	22,816.91	41,266.51	(13,651.34)	26,804.31	26,804.31	9,064.84	44,530.76	189,270.26
	38,759.45	35,148.95	55,697.45	47,051.29	35,845.98	58,820.45	73,142.90	16,024.79	47,651.80	57,670.23	9,848.47	74,569.59	580,572.34
Total Exp Before Mgmt Fee and I/C	830,353.36	882,556.08	947,799.62	911,483.23	1,042,215.13	872,451.14	616,515.39	1,008,999.15	922,129.30	979,355.81	891,533.18	978,683.95	10,883,175.33
Income (loss) before Mgmt Fee, I/C, Taxes, & Sale	72,920.44	91,718.04	438,712.22	53,152.65	(30,302.61)	90,451.26	(70,299.28)	(73,064.66)	40,193.70	4,312.09	40,884.72	(3,965.68)	654,712.89
Mgmt Fee, Intercompany, Taxes													
Intercompany Mgmt Fee Expense	35,589.05	38,386.52	54,631.82	38,006.48	39,869.42	37,925.82	26,307.18	36,840.38	37,957.94	38,756.52	36,737.27	38,403.93	459,412.33
Mgmt Fee, Intercompany, Taxes	35,589.05	38,386.52	54,631.82	38,006.48	39,869.42	37,925.82	26,307.18	36,840.38	37,957.94	38,756.52	36,737.27	38,403.93	459,412.33
Net Income (Loss) Before Minority Interest, Sale of Investment	37,331.39	53,331.52	384,080.40	15,146.17	(70,172.03)	52,525.44	(96,606.46)	(109,905.04)	2,235.76	(34,444.43)	4,147.45	(42,669.61)	195,300.56
Net Income (Loss)	37,331.39	53,331.52	384,080.40	15,146.17	(70,172.03)	52,525.44	(96,606.46)	(109,905.04)	2,235.76	(34,444.43)	4,147.45	(42,669.61)	195,300.56
EBIT	75,852.73	91,039.83	458,582.51	64,376.78	(30,283.79)	112,986.13	(30,087.58)	(86,716.01)	58,169.37	30,427.31	49,800.85	39,931.66	834,079.79
EBITDA	111,679.89	126,866.99	494,409.67	100,203.94	5,543.37	149,271.70	2,843.62	(57,039.88)	87,845.90	61,982.32	80,674.19	71,003.92	1,235,285.23
EBITDAAR	155,479.68	170,666.78	538,209.46	144,003.73	49,343.16	193,071.49	46,643.41	(13,540.09)	131,645.29	105,782.11	124,473.98	114,803.71	1,760,882.71

Statistical Information

Surgical cases	542	379	545	467	501	453	401	437	437	527	466	570	5,725.00
Ttl Salary related expense per case	463.07	674.23	564.69	565.20	688.16	708.14	771.69	887.87	681.83	609.53	742.58	628.29	657.57
Variable cost per case	182.50	300.56	204.40	215.63	254.43	347.30	61.89	262.27	244.25	304.31	231.81	231.26	174.84
Supply cost per case	665.77	1,052.40	709.36	885.44	906.25	561.28	643.82	947.93	892.31	684.11	686.09	645.86	764.86
Fixed cost per case	124.17	170.16	120.42	153.77	129.59	146.80	155.60	140.03	122.98	122.98	137.29	110.83	136.71
Total expense per case	1,532.02	2,328.64	1,739.08	1,951.78	2,080.27	1,925.44	1,537.44	2,306.86	2,110.14	1,858.36	1,913.16	1,716.99	1,900.99
Net patient revenue per case	1,666.37	2,570.14	2,534.11	2,066.23	2,019.58	2,127.12	1,362.13	2,139.60	2,190.50	1,866.54	2,000.89	1,709.94	2,013.60
Gross revenue per case	5,321.49	8,397.32	6,788.75	6,617.68	6,511.35	6,011.72	4,829.58	7,107.31	6,458.22	6,458.04	6,008.66	5,145.23	6,260.90