

**COPY**

**Tenn SM, LLC**

**d/b/a**

**Providence Surgery**  
**Center**

**CN1608-031**



**TENN SM, LLC**

**D/B/A**

**PROVIDENCE SURGERY CENTER**

**AMBULATORY SURGERY CENTER  
MT. JULIET, TN**

**CERTIFICATE OF NEED APPLICATION  
AUGUST 2016**



AUG 15 15 48:24

71 Vickery Street  
Roswell, Georgia 30075  
Telephone 770-394-8465  
Facsimile 770-394-5470  
www.thestrategyhouse.net

August 12, 2016

Via Hand Delivery

Melanie Hill, Executive Director  
**TN Health Services and Development Agency**  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

RE: Tenn SM, LLC (Providence Surgery Center) - New CON Application

Dear Ms. Hill:

Please find enclosed one original and two copies of the CON application referenced above. I am also providing a filing fee check for \$15,000.00, the original newspaper notice with masthead intact and a notarized applicant's affidavit.

Thank you for your assistance with this project.

Warm regards,

THE STRATEGY HOUSE, INC.

A handwritten signature in black ink, appearing to read "Robert M. Limyansky".

Robert M. Limyansky  
Partner

enclosures

cc: Corey Ridgway, Market President, USPI  
Byron Trauger, Esq., Trauger & Tuke

**THE STRATEGY HOUSE, INC.**  
71 VICKERY STREET  
ROSWELL, GA 30075

84-9184/611  
913  
CHECK NUMBER

8/12/2016

PAY TO THE ORDER OF TN Health Services and Development Agency

\$ \*\*15,000.00

Fifteen Thousand and 00/100\*\*\*\*\*

DOLLARS

TN Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243



AUTHORIZED SIGNATURE

MEMO

Tenn SM, LLC - CON Filing Fee



## **SECTION A:**

### **APPLICANT PROFILE**

Please enter all Section A responses on this form. All questions must be answered. If an item does not apply, please indicate "N/A." **Attach appropriate documentation as an Appendix at the end of the application and reference the applicable Item Number on the attachment.**

**For Section A, Item 1, Facility Name must be applicant facility's name and address must be the site of the proposed project.**

**For Section A, Item 3, Attach a copy of the partnership agreement, or corporate charter and certificate of corporate existence, if applicable, from the Tennessee Secretary of State.**

**For Section A, Item 4, Describe the existing or proposed ownership structure of the applicant, including an ownership structure organizational chart. Explain the corporate structure and the manner in which all entities of the ownership structure relate to the applicant. As applicable, identify the members of the ownership entity and each member's percentage of ownership, for those members with 5% or more ownership interest. In addition, please document the financial interest of the applicant, and the applicant's parent company/owner in any other health care institution as defined in Tennessee Code Annotated, §68-11-1602 in Tennessee. At a minimum, please provide the name, address, current status of licensure/certification, and percentage of ownership for each health care institution identified.**

**For Section A, Item 5, For new facilities or existing facilities without a current management agreement, attach a copy of a draft management agreement that at least includes the anticipated scope of management services to be provided, the anticipated term of the agreement, and the anticipated management fee payment methodology and schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract.**

Please describe the management entity's experience in providing management services for the type of the facility, which is the same or similar to the applicant facility. Please describe the ownership structure of the management entity.

**For Section A, Item 6, For applicants or applicant's parent company/owner that currently own the building/land for the project location; attach a copy of the title/deed. For applicants or applicant's parent company/owner that currently lease the building/land for the project location, attach a copy of the fully executed lease agreement. For projects where the location of the project has not been secured, attach a fully executed document including Option to Purchase Agreement, Option to Lease Agreement, or other appropriate documentation. Option to Purchase Agreements must include anticipated purchase price. Lease/Option to Lease Agreements must include the actual/anticipated term of the agreement and actual/anticipated lease expense. The legal interests described herein must be valid on the date of the Agency's consideration of the certificate of need application.**

1.	<b><u>Name of Facility, Agency, or Institution</u></b>		
	<u>Providence Surgery Center</u>		
	Name		
	<u>5002 Crossing Circle, Suite 110</u>	<u>Wilson</u>	
	Street or Route		County
	<u>Mount Juliet</u>	<u>TN</u>	<u>37122</u>
	City	State	Zip Code
2.	<b><u>Contact Person Available for Responses to Questions</u></b>		
	<u>Byron R. Trauger</u>	<u>Esquire</u>	
	Name		Title
	<u>Trauger &amp; Tuke</u>	<u>btrauger@tnlaw.net</u>	
	Company Name		email address
	<u>222 Fourth Avenue North</u>	<u>Nashville</u>	<u>TN</u> <u>37219</u>
	Street or Route	City	State Zip Code
	<u>Counsel to Applicant</u>	<u>(615) 256-8585</u>	<u>(615) 256-7444</u>
	Association with Owner	Phone Number	Fax Number
3.	<b><u>Owner of the Facility, Agency or Institution</u></b>		
	<u>Tenn SM, LLC</u>	<u>(615) 533-9100</u>	
	Name		Phone Number
	<u>5002 Crossing Circle, Suite 110</u>	<u>Wilson</u>	
	Street or Route		County
	<u>Mount Juliet</u>	<u>TN</u>	<u>37122</u>
	City	ST	Zip Code
	<b>See Attachment A, 3 (Tab 1) – Corporate Charter documentation</b>		
4.	<b><u>Type of Ownership of Control (Check One)</u></b>		
	A. Sole Proprietorship	<input type="checkbox"/>	F. Governmental (State of TN or Political Subdivision)
	B. Partnership	<input type="checkbox"/>	G. Joint Venture
	C. Limited Partnership	<input type="checkbox"/>	H. Limited Liability Company
	D. Corporation (For Profit)	<input type="checkbox"/>	I. Other (Specify)
	E. Corporation (Not-for-Profit)	<input type="checkbox"/>	<u>X</u>

**PUT ALL ATTACHMENTS AT THE BACK OF THE APPLICATION IN ORDER AND REFERENCE THE APPLICABLE ITEM NUMBER ON ALL ATTACHMENTS**

**See Attachment A, 3 (Tab 1) – Corporate Charter documentation**  
**See Attachment A, 4 (Tab 2) – Organizational/Ownership Chart**  
**See Attachment A, 4 (Tab 3) – Related Healthcare Institutions**

5. **Name of Management/Operating Entity (If Applicable)**

USP Tennessee, Inc. (United Surgical Partners International) \_\_\_\_\_  
 Name  
 8 Cadillac Drive, Suite 200 \_\_\_\_\_ Williamson \_\_\_\_\_  
 Street or Route \_\_\_\_\_ County \_\_\_\_\_  
 Brentwood \_\_\_\_\_ TN \_\_\_\_\_ 37027 \_\_\_\_\_  
 City \_\_\_\_\_ ST \_\_\_\_\_ Zip Code \_\_\_\_\_

**PUT ALL ATTACHMENTS AT THE END OF THE APPLICATION IN ORDER AND REFERENCE THE APPLICABLE ITEM NUMBER ON ALL ATTACHMENTS.**

**See Attachment A, 5 (Tab 4) – Management Agreement.**

6. **Legal Interest in the Site of the Institution (Check One)**

- |                                      |                          |
|--------------------------------------|--------------------------|
| A. Ownership _____                   | D. Option to Lease _____ |
| B. Option to Purchase _____          | E. Other (Specify) _____ |
| C. Lease of <u>11</u> Years <u>X</u> |                          |

**PUT ALL ATTACHMENTS AT THE BACK OF THE APPLICATION IN ORDER AND REFERENCE THE APPLICABLE ITEM NUMBER ON ALL ATTACHMENTS.**

**See Attachment A, 6 (Tab 5) – Site Entitlement**

7. **Type of Institution (Check as appropriate--more than one response may apply)**

- |  |  |
|--|--|
| A. Hospital (Specify) Acute Care _____                                   | I. Nursing Home _____                        |
| B. Ambulatory Surgical Treatment Center (ASTC), Multi-Specialty <u>X</u> | J. Outpatient Diagnostic Center _____        |
| C. ASTC, Single Specialty _____  | K. Recuperation Center _____                 |
| D. Home Health Agency _____  | L. Rehabilitation Facility _____             |
| E. Hospice _____   | M. Residential Hospice _____                 |
| F. Mental Health Hospital _____  | N. Non-Residential Methadone Facility _____  |
| G. Mental Health Residential Treatment Facility _____                    | O. Birthing Center _____                     |
| H. Mental Retardation Institutional Habilitation Facility (ICF/MR) _____ | P. Other Outpatient Facility (Specify) _____ |
|  | Q. Other (Specify) _____                     |

8. **Purpose of Review (Check as appropriate--more than one response may apply)**

- |   |   |
|---|---|
| A. New Institution _____  | G. Change in Bed Complement [Please note the type of change by underlining the appropriate response: Increase, Decrease, Designation, Distribution, Conversion, Relocation] _____ |
| B. Replacement/Existing Facility _____  |   |
| C. Modification/Existing Facility _____   |   |
| D. Initiation of Significant Health Care Service as defined in TCA § 68-11-1607(4) (Spec) <u>Multispecialty ASTC</u> <u>X</u> |   |
| E. Discontinuance of OB Services _____  | H. Change of Location _____   |
| F. Acquisition of Equipment _____   | I. Other (Specify) _____  |

9. **Bed Complement Data**

*Please indicate current and proposed distribution and certification of facility beds.*

	<u>Current Beds</u>	<u>Staffed Beds</u>	<u>Beds Proposed</u>	<u>TOTAL Beds at Completion</u>
	<u>Licensed *CON</u>			
A. Medical	_____	_____	_____	_____
B. Surgical (General Med/Surg)	_____	_____	_____	_____
C. Long-Term Care Hospital	_____	_____	_____	_____
D. Obstetrical	_____	_____	_____	_____
E. ICU/CCU	_____	_____	_____	_____
F. Neonatal	_____	_____	_____	_____
G. Pediatric	_____	_____	_____	_____
H. Adult Psychiatric	_____	_____	_____	_____
I. Geriatric Psychiatric	_____	_____	_____	_____
J. Child/Adolescent Psychiatric	_____	_____	_____	_____
K. Rehabilitation	_____	_____	_____	_____
L. Nursing Facility (non-Medicaid Certified)	_____	_____	_____	_____
M. Nursing Facility Level 1 (Medicaid only)	_____	_____	_____	_____
N. Nursing Facility Level 2 (Medicare only)	_____	_____	_____	_____
O. Nursing Facility Level 2 (dually certified Medicaid/Medicare)	_____	_____	_____	_____
P. ICF/MR	_____	_____	_____	_____
Q. Adult Chemical Dependency	_____	_____	_____	_____
R. Child and Adolescent Chemical Dependency	_____	_____	_____	_____
S. Swing Beds	_____	_____	_____	_____
T. Mental Health Residential Treatment	_____	_____	_____	_____
U. Residential Hospice	_____	_____	_____	_____
<b>TOTAL</b>	_____	_____	_____	_____
*approved but not yet in service				

**RESPONSE:** Not applicable.

10. **Medicare Provider Number** 3287013  
**Certification Type** Ambulatory Surgical Center

11. **Medicaid Provider Number** 1513212  
**Certification Type** Ambulatory Surgical Center

12. **If this is a new facility, will certification be sought for Medicare and/or Medicaid?** N/A

13. **Identify all TennCare Managed Care Organizations/Behavioral Health Organizations (MCOs/BHOs) operating in the proposed service area. Will this project involve the treatment of TennCare participants? Yes If the response to this item is yes, please identify all MCOs/BHOs with which the applicant has contracted or *plans to contract*.**

***Discuss any out-of-network relationships in place with MCOs/BHOs in the area.***

**RESPONSE:** AmeriGroup, BlueCare, United Healthcare Community Plan and TennCare Select are the TennCare MCOs operating in the area. The applicant is contracted with all of these. Please see **Attachment A, 13 (Tab 6)** for a list of managed care contracts.

**NOTE:** **Section B** is intended to give the applicant an opportunity to describe the project and to discuss the need that the applicant sees for the project. **Section C** addresses how the project relates to the Certificate of Need criteria of Need, Economic Feasibility, and the Contribution to the Orderly Development of Health Care. **Discussions on how the application relates to the criteria should not take place in this section unless otherwise specified.**

**SECTION B: PROJECT DESCRIPTION**

Please answer all questions on 8 1/2" x 11" white paper, clearly typed and spaced, identified correctly and in the correct sequence. In answering, please type the question and the response. All exhibits and tables must be attached to the end of the application in correct sequence identifying the questions(s) to which they refer. If a particular question does not apply to your project, indicate "Not Applicable (NA)" after that question.

- I. Provide a brief executive summary of the project not to exceed two pages. Topics to be included in the executive summary are a brief description of proposed services and equipment, ownership structure, service area, need, existing resources, project cost, funding, financial feasibility and staffing.

**RESPONSE:** Please see the following executive summary.

**PROVIDENCE SURGERY CENTER  
MODIFICATION OF CONDITIONS TO EXISTING ASTC**

Ownership. Tenn SM, LLC d/b/a Providence Surgery Center ("Providence") is a joint venture between Saint Thomas Health, United Surgical Partners International, area physicians and a local medical office building developer. Saint Thomas Health and United Surgical Partners International jointly own and operate 14 endoscopy and surgery centers in the greater Nashville area, including five in Davidson County, three in Rutherford County, two in Wilson County and one each in Coffee, Montgomery, Sumner and Williamson Counties.

Modification of Conditions. Providence has two previous CON approvals. The first, CN0411-103, approved the establishment of an ambulatory surgery treatment center ("ASTC") consisting of one operating room and two procedure rooms limited to providing ambulatory surgery and pain management services to the patients of Tennessee Sports Medicine & Orthopaedics, PC. The second, CN1006-028, approved the conversion of one procedure room to an operating room (resulting in two operating rooms and one procedure room) and removed the limitations for the use of the facility by physicians in Tennessee Sports Medicine & Orthopaedics, PC only.

Services and Equipment. Today, after another six years, Providence seeks approval to modify its authorized multispecialty status from orthopedics and pain management to all specialties, including but not restricted to otolaryngology ("ENT"), obstetrics/gynecology, podiatry and general surgery. There will be no changes to the existing location or the two operating rooms and one procedure room. Only additional instrument trays are required to implement the project.

Service Area. Providence Surgery Center is located in the city of Mount Juliet and serves Wilson County along with contiguous zip codes in Davidson and Rutherford counties. The primary service area is currently comprised of four zip codes in Wilson County (37122, 37087, 37090, 37184). The secondary service area is comprised of six zip codes in Davidson County (37076, 37138, 37214, 37013, 37211, 37217) and five zip codes in Rutherford County (37167, 37086, 37130, 37128, 37129). The proposed service area will not change due to this latest request for the modification of conditions.

Need. Modification of the conditions to Providence Surgery Center's prior CON approvals is the most efficient way to improve access to high quality and cost-effective outpatient surgery services to patients and payers in the service area.

- The only multispecialty ASTC in Wilson County, Lebanon Surgery Center (Tennova Healthcare – Lebanon, f/k/a University Medical Center), is no longer operational. It did not serve any patients in 2014 and has not filed a Joint Annual Report ("JAR") for 2015. It was authorized for three operating rooms and one procedure room.
- The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management.
- The four existing ASTCs in the secondary service area offering ENT services are above the 70% minimum utilization level while all 14 existing ASTCs are only slightly below the minimum (67.2%).
- The only hospital-based outpatient operating rooms in Wilson County (Tennova Healthcare – Lebanon) reported 87.6% utilization.
- The only ASTC services outside of Lebanon in Wilson County are at Providence in Mount Juliet. Mount Juliet is the most populous and fastest growing city in Wilson County.
- Providence's ASTC was last profitable in 2013. As indicated by the various physician letters of support, Providence can achieve improved operational efficiency and financial sustainability with this requested modification of conditions.
- At the same time, patients and payers will continue to benefit from Providence's lower cost freestanding ASTC rates compared to a higher cost hospital-based ambulatory surgery center.

- Finally, Providence meets two criteria for special HSDA consideration.
  - All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
  - Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

Existing Resources. The benefits above can be achieved with no or minimal negative effects on the health care system.

- Similar ASTC services are not available in either Wilson County or the city of Mount Juliet.
- Projected population growth will continue to support the need for existing providers.
- No new construction or facility renovations are required, merely additional surgical trays.
- Additional staffing will be minimal and can be recruited from existing Saint Thomas Health and United Surgical Partners resources.

Project Cost. The total cost of the project will be only \$235,387, which includes minor equipment costs, contingencies, CON filing fees and the fair market value of the remaining space lease.

Funding, Financial Feasibility. Providence's joint venture partner, Saint Thomas Health, will provide the modest amount of funding necessary to implement the project. The expansion of services is projected to produce a positive financial return. The project will have no adverse impact on existing patient charges.

II. Provide a detailed narrative of the project by addressing the following items as they relate to the proposal.

- A. Describe the construction, modification and/or renovation of the facility (exclusive of major medical equipment covered by T.C.A. § 68-11-1601 et seq.) including square footage, major operational areas, room configuration, etc. Applicants with hospital projects (construction cost in excess of \$5 million) and other facility projects (construction cost in excess of \$2 million) should complete the Square Footage and Cost per Square Footage Chart. Utilizing the attached Chart, applicants with hospital projects should complete Parts A.-E. by identifying as applicable nursing units, ancillary areas, and support areas affected by this project. Provide the location of the unit/service within the existing facility along with current square footage, where, if any, the unit/service will relocate temporarily during construction and renovation, and then the location of the unit/service with proposed square footage. The total cost per square foot should provide a breakout between new construction and renovation cost per square foot. Other facility projects need only complete Parts B.-E. Please also discuss and justify the cost per square foot for this project.

If the project involves none of the above, describe the development of the proposal.

**RESPONSE:** Not applicable. There will be no construction or modification of the existing facility. Therefore, the square footage chart and cost per square footage chart has not been completed. As indicated above, additional operating room equipment with a cost of less than \$100,000 will be purchased for this conversion. No construction or renovation costs will be required.

- B. Identify the number and type of beds increased, decreased, converted, relocated, designated, and/or redistributed by this application. Describe the reasons for change in bed allocations and describe the impact the bed change will have on the existing services.

**RESPONSE:** Not applicable. This existing outpatient surgery center modification does not involve beds.



C. As the applicant, describe your need to provide the following health care services (if applicable to this application):

1. Adult Psychiatric Services
2. Alcohol and Drug Treatment for Adolescents (exceeding 28 days)
3. Birthing Center
4. Burn Units
5. Cardiac Catheterization Services
6. Child and Adolescent Psychiatric Services
7. Extracorporeal Lithotripsy
8. Home Health Services
9. Hospice Services
10. Residential Hospice
11. ICF/MR Services
12. Long-term Care Services
13. Magnetic Resonance Imaging (MRI)
14. Mental Health Residential Treatment
15. Neonatal Intensive Care Unit
16. Non-Residential Methadone Treatment Centers
17. Open Heart Surgery
18. Positron Emission Tomography
19. Radiation Therapy/Linear Accelerator
20. Rehabilitation Services
21. Swing Beds

**RESPONSE:** Not applicable. Providence Surgery Center is an existing Ambulatory Surgical Treatment Center ("ASTC") with two operating rooms and one procedure room. This project proposes to modify two previous CON approval conditions to expand ASTC services for specialties not offered in Wilson County.

D. Describe the need to change location or replace an existing facility.

**RESPONSE:** Not applicable. There will be no construction or modification of the existing facility.

E. Describe the acquisition of any item of major medical equipment (as defined by the Agency Rules and the Statute) which exceeds a cost of \$1.5 million; and/or is a magnetic resonance imaging (MRI) scanner, positron emission tomography (PET) scanner, extracorporeal lithotripter and/or linear accelerator by responding to the following:

1. For fixed-site major medical equipment (not replacing existing equipment):

- a. Describe the new equipment, including:
  1. Total cost; (As defined by Agency Rule).
  2. Expected useful life;
  3. List of clinical applications to be provided; and
  4. Documentation of FDA approval.

b. Provide current and proposed schedules of operations.

**RESPONSE:** Not applicable. No major medical equipment purchases are proposed.

2. For mobile major medical equipment:
  - a. List all sites that will be served;
  - b. Provide current and/or proposed schedule of operations;
  - c. Provide the lease or contract cost.
  - d. Provide the fair market value of the equipment; and
  - e. List the owner for the equipment.

**RESPONSE:** Not applicable. No mobile major medical equipment purchases are proposed.

3. Indicate applicant's legal interest in equipment (i.e., purchase, lease, etc.). In the case of equipment purchase include a quote and/or proposal from an equipment vendor, or in the case of an equipment lease provide a draft lease or contract that at least includes the term of the lease and the anticipated lease payments.

**RESPONSE:** Not applicable. As described above, no major medical equipment purchases are proposed.

III. (A) Attach a copy of the plot plan of the site on an 8 1/2" x 11" sheet of white paper which **must include:**

1. Size of site (*in acres*);
2. Location of structure on the site; and
3. Location of the proposed construction.
4. Names of streets, roads or highway that cross or border the site.

***Please note that the drawings do not need to be drawn to scale. Plot plans are required for all projects.***

**RESPONSE:** Please see **Attachment B, III.(A) (Tab 7)** for a copy of the plot plan. The existing ASTC occupies space on the first floor of the medical office building. There will be no construction or modification of the existing facility.

- (B) 1. Describe the relationship of the site to public transportation routes, if any, and to any highway or major road developments in the area. Describe the accessibility of the proposed site to patients/clients.

**RESPONSE:** Providence Surgery Center is located on the southwest quadrant of the intersection of Mt. Juliet Road and I-40. The site is highly accessible to patients due to the proximity of I-40.

In addition, commuter train service provided by the Regional Transportation Authority of Middle Tennessee connects Mount Juliet to Martha and Lebanon in Wilson County as well as downtown Nashville in Davidson County. Please see **Attachment B, III.(B).1 (Tab 8)** for a route map.

Due to patient discharge policies, however, train and taxi access is not advisable. Patients arrive and leave via private automobile.

- IV. Attach a floor plan drawing for the facility which includes legible labeling of patient care rooms (noting private or semi-private), ancillary areas, equipment areas, etc. on an 8 1/2" x 11" sheet of white paper.

NOTE: **DO NOT SUBMIT BLUEPRINTS**. Simple line drawings should be submitted and need not be drawn to scale.

**RESPONSE:** There will be no construction or modification of the existing facility. Please see **Attachment B, IV (Tab 9)** for the floor plan schematics.

- V. For a Home Health Agency or Hospice, identify:

1. Existing service area by County;
2. Proposed service area by County;
3. A parent or primary service provider;
4. Existing branches; and
5. Proposed branches.

**RESPONSE:** Not applicable. The project does not involve a Home Health Agency or Hospice.

## **SECTION C: GENERAL CRITERIA FOR CERTIFICATE OF NEED**

In accordance with Tennessee Code Annotated § 68-11-1609(b), "no Certificate of Need shall be granted unless the action proposed in the application for such Certificate is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, and will contribute to the orderly development of health care." The three (3) criteria are further defined in Agency Rule 0720-4-.01. Further standards for guidance are provided in the state health plan (Guidelines for Growth), developed pursuant to Tennessee Code Annotated §68-11-1625.

The following questions are listed according to the three (3) criteria: (I) Need, (II) Economic Feasibility, and (III) Contribution to the Orderly Development of Health Care. Please respond to each question and provide underlying assumptions, data sources, and methodologies when appropriate. Please type each question and its response on an 8 1/2" x 11" white paper. All exhibits and tables must be attached to the end of the application in correct sequence identifying the question(s) to which they refer. If a question does not apply to your project, indicate "Not Applicable (NA)."

### **QUESTIONS**

#### **NEED**

1. Describe the relationship of this proposal toward the implementation of the *State Health Plan* and *Tennessee's Health: Guidelines for Growth*.
  - a. Please provide a response to each criterion and standard in Certificate of Need Categories that are applicable to the proposed project. Do not provide responses to General Criteria and Standards (pages 6-9) here.

**RESPONSE:** This project is consistent with the criteria for "Ambulatory Surgical Treatment Centers," effective May 23, 2013. It is also consistent with the "5 Principles for Achieving Better Health" found in the *State Health Plan*.

### **AMBULATORY SURGERY TREATMENT CENTERS**

#### Determination of Need

1. **Need.** The minimum numbers of 884 Cases per Operating Room and 1867 Cases per Procedure Room are to be considered as baseline numbers for purposes of determining Need. An applicant should demonstrate the ability to perform a minimum of 884 Cases per Operating Room and/or 1867 Cases per Procedure Room per year, except that an applicant may provide information on its projected case types and its assumptions of estimated average time and clean up and preparation time per Case if this information differs significantly from the above-stated assumptions. It is recognized that an ASTC may provide a variety of services/Cases and that as a result the estimated average time and clean up and preparation time for such services/Cases may not meet the minimum numbers set forth herein. It is also recognized that an applicant applying for an ASTC Operating Room(s) may apply for a Procedure Room, although the anticipated utilization of that Procedure Room may not meet the base guidelines contained here. Specific reasoning and explanation for the inclusion in a CON application of such a Procedure Room must be provided. An applicant that desires to limit its Cases to a specific type or types should apply for a Specialty ASTC.

**RESPONSE:** Providence Surgery Center is an existing ASTC with two operating rooms and one procedure room. This project proposes to modify previous CON approval conditions to expand ASTC services for specialties not offered in Wilson County.

Providence seeks approval to modify its authorized multispecialty status from orthopedics and pain management to all specialties, including but not restricted to otolaryngology (“ENT”), obstetrics/gynecology, podiatry and general surgery. There will be no changes to the existing location or the two operating rooms and one procedure room.

Beginning with actual utilization for the 12 months ending March 2016, Providence performed 680 total cases (547 OR and 133 PR). Conservatively, projections are based on minimal case increases (“low” scenario as opposed to “medium” and “high” volume scenarios) for:

- orthopedics (528 cases),
- pain (144 cases) and
- ENT (114 cases) only
- (786 total case increase + 680 historical = 1,466 Year 1).

**Providence Historical and Projected ASTC Utilization Cases**

	<b>Trail 12 mo March 2016</b>	<b>Year 1 2017</b>	<b>Year 2 2018</b>
<b>Cases</b>			
OR	547	1,180	1,381
PR	133	286	334
	680	1,466	1,715
<b>Rooms</b>			
OR	2	2	2
PR	1	1	1
<b>Cases/Rm</b>			
OR	273.5	590.0	690.5
PR	133.0	286.0	334.0

These projections are based on the following physician needs provided to Providence.

- Existing Premier Orthopedics and Tennessee Orthopedics Alliance physicians adding two more surgeons.
- Existing Allergy and ENT Associates of Middle Tennessee physicians adding one more surgeon.
- The addition of another ENT physician.

As demonstrated above, Providence has existing available capacity to meet the service area need for comprehensive ASTC services not currently offered in Wilson County. Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

The following factors contribute to the lack of access to ASTC services in Wilson County.

- The only multispecialty ASTC in Wilson County, Lebanon Surgery Center (Tennova Healthcare – Lebanon, f/k/a University Medical Center), is no longer operational. It did not serve any patients in 2014 and has not filed a Joint Annual Report ("JAR") for 2015. It was authorized for three operating rooms and one procedure room.
- The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management.
- The four existing ASTCs in the secondary service area offering ENT services are above the 70% minimum utilization level while all 14 existing ASTCs are only slightly below the minimum (67.2%).
- The only hospital-based outpatient operating rooms in Wilson County (Tennova Healthcare – Lebanon) reported 87.6% utilization.
- The only ASTC services outside of Lebanon in Wilson County are at Providence in Mount Juliet. Mount Juliet is the most populous and fastest growing city in Wilson County.
- Providence's ASTC was last profitable in 2013. As indicated by the various physician letters of support, Providence can achieve improved operational efficiency and financial sustainability with this requested modification of conditions.
- At the same time, patients and payers will continue to benefit from Providence's lower cost freestanding ASTC rates compared to a higher cost hospital-based ambulatory surgery center.

2. Need and Economic Efficiencies. An applicant must estimate the projected surgical hours to be utilized per year for two years based on the types of surgeries to be performed, including the preparation time between surgeries. Detailed support for estimates must be provided.

**RESPONSE:** Projections provided below are based on the assumptions found in the ASTC standards and criteria for operating rooms and procedure rooms.

**Providence Projected ASTC Utilization Hours**

	<b>Year 1 2017</b>	<b>Year 2 2018</b>
<b>Cases</b>		
OR	1,180	1,381
PR	286	334
	1,466	1,715
<b>Min/Case</b>		
OR	95	95
PR	45	45
<b>Total Min</b>		
OR	112,100	131,195
PR	12,870	15,030
	124,970	146,225
<b>Total Hours</b>		
OR	1,868.3	2,186.6
PR	214.5	250.5
	2,082.8	2,437.1

3. Need; Economic Efficiencies; Access. To determine current utilization and need, an applicant should take into account both the availability and utilization of either: a) all existing outpatient Operating Rooms and Procedure Rooms in a Service Area, including physician office based surgery rooms (when those data are officially reported and available) OR b) all existing comparable outpatient Operating Rooms and Procedure Rooms based on the type of Cases to be performed. Additionally, applications should provide similar information on the availability of nearby out-of-state existing outpatient Operating Rooms and Procedure Rooms, if that data are available, and provide the source of that data. Unstaffed dedicated outpatient Operating Rooms and unstaffed dedicated outpatient Procedure Rooms are considered available for ambulatory surgery and are to be included in the inventory and in the measure of capacity.

**RESPONSE:** As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

**2015 ASTC Utilization in the Providence Service Area**

County	Zip Code	Facility Name	ORs	OR Cases	OR Cases per OR
Davidson	37076	Associated Endoscopy	0	0	0
	37211	Premier Orthopaedic Surg Cntr	2	2,165	1,083
	37211	Southern Endoscopy Center	0	0	0
	37076	Summit Surgery Center	5	4,105	821
	37013	Tennessee Pain Surgery Center	1	1,514	1,514
Wilson	37090	Lebanon Endoscopy Center	0	0	0
	37122	Providence Surgery Center	2	542	271
	37087	Wilson County Eye Surgery Center	1	987	987
Rutherford	37130	Mid-State Endoscopy Center	0	0	0
	37129	Middle TN Ambulatory Surg Center	6	5,837	973
	37167	Physicians Pavillion Surgery Center	4	1,991	498
	37167	Spine and Pain Surgery Center, LLC	0	0	0
	37129	Surgicare of Murfreesboro Med Clinic	3	4,034	1,345
	37129	Williams Surgery Center (podiatry)	1	56	56
			<b>Total Prim Svc Area (14 facilities)</b>	<b>25</b>	<b>21,231</b>

Source: Tennessee Department of Health - JARs 2015

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

4. Need and Economic Efficiencies. An applicant must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON application to establish an ASTC or to expand existing services of an ASTC should not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed, if those services are known and relevant, within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above.

**RESPONSE:** As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

With regard to economic efficiencies, Providence's ASTC was last profitable in 2013. As indicated by the various physician letters of support, Providence can achieve improved operational efficiency and financial sustainability with this requested modification of conditions. At the same time, patients and payers will continue to benefit from Providence's lower cost freestanding ASTC rates compared to a higher cost hospital-based ambulatory surgery center.

5. Need and Economic Efficiencies. An application for a Specialty ASTC should present its projections for the total number of cases based on its own calculations for the projected length of time per type of case, and shall provide any local, regional, or national data in support of its methodology. An applicant for a Specialty ASTC should provide its own definitions of the surgeries and/or procedures that will be performed and whether the Surgical Cases will be performed in an Operating Room or a Procedure Room. An applicant for a Specialty ASTC must document the potential impact that the proposed new ASTC would have upon the existing service providers and their referral patterns. A CON proposal to establish a Specialty ASTC or to expand existing services of a Specialty ASTC shall not be approved unless the existing ambulatory surgical services that provide comparable services regarding the types of Cases performed within the applicant's proposed Service Area or within the applicant's facility are demonstrated to be currently utilized at 70% or above. An applicant that is granted a CON for a Specialty ASTC shall have the specialty or limitation placed on the CON.

**RESPONSE:** These items are addressed in the responses to Questions 1 – 4, above. Please note that Providence Surgery Center is an existing multispecialty ASTC seeking to remove its remaining multispecialty CON conditions (i.e., Providence is not proposing to establish a Specialty ASTC).

#### Other Standards and Criteria

6. Access to ASTCs. The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.

**RESPONSE:** Based on Providence's 2015 zip code patient origin data, 67% of patients resided in 15 contiguous zip codes. The primary service area is currently comprised of four zip codes in Wilson County (37122, 37087, 37090, 37184). The secondary service area is comprised of six zip codes in Davidson County (37076, 37138, 37214, 37013, 37211, 37217) and five zip codes in Rutherford County (37167, 37086, 37130, 37128, 37129). The proposed service area will not change due to this latest request for the modification of conditions.

The majority of the population in Providence's service area resides within 60 minutes average driving time to the facility.

7. Access to ASTCs. An applicant should provide information regarding the relationship of an existing or proposed ASTC site to public transportation routes if that information is available.

**RESPONSE:** Providence Surgery Center is located on the southwest quadrant of the intersection of Mt. Juliet Road and I-40. The site is highly accessible to patients due to the proximity of I-40.

In addition, commuter train service provided by the Regional Transportation Authority of Middle Tennessee connects Mount Juliet to Martha and Lebanon in Wilson County as well as downtown Nashville in Davidson County. Please see **Attachment B, III.(B).1 (Tab 8)** for a route map.

Due to patient discharge policies, however, train and taxi access is not advisable. Patients arrive and leave via private automobile

8. Access to ASTCs. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project the origin of potential patients by percentage and county of residence and, if such data are readily available, by zip code, and must note where they are currently being served. Demographics of the Service Area should be included, including the anticipated provision of services to out-of-state patients, as well as the identity of other service providers both in and out of state and the source of out-of-state data. Applicants shall document all other provider alternatives available in the Service Area. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

**RESPONSE:** Providence's proposed service area is not projected to change due to this latest request for the modification of conditions.

**Providence Surgery Center  
Historical and Projected Patient Origin**

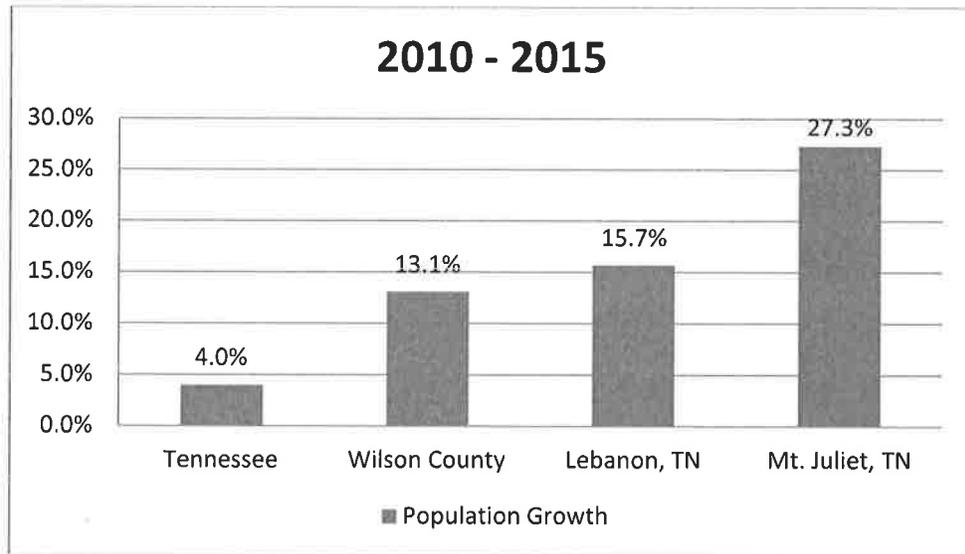
County	Zip Code	2015	2015	Year 1	Year 2
Total Patients		692		1,466	1,715
WILSON	37122	122	17.6%	258.5	302.4
WILSON	37087	71	10.3%	150.4	176.0
RUTHERFORD	37167	41	5.9%	86.9	101.6
DAVIDSON	37076	33	4.8%	69.9	81.8
DAVIDSON	37138	24	3.5%	50.8	59.5
DAVIDSON	37214	24	3.5%	50.8	59.5
DAVIDSON	37013	21	3.0%	44.5	52.0
RUTHERFORD	37086	21	3.0%	44.5	52.0
WILSON	37090	21	3.0%	44.5	52.0
RUTHERFORD	37130	20	2.9%	42.4	49.6
WILSON	37184	17	2.5%	36.0	42.1
DAVIDSON	37211	15	2.2%	31.8	37.2
RUTHERFORD	37128	15	2.2%	31.8	37.2
DAVIDSON	37217	12	1.7%	25.4	29.7
RUTHERFORD	37129	11	1.6%	23.3	27.3
Subtotal		468		991.5	1,159.9
		67.6%			
OTHER		224		474.5	555.1

Source: Internal records

Relatively few patients are projected to be served from outside Tennessee.

Mount Juliet is now the largest city in Wilson County. According to US Census data for 2010 and 2015, the population in Mount Juliet grew an astonishing 27.3% compared to 15.7% for Lebanon, 13.1% for Wilson County and just 4.0% for Tennessee overall. This is consistent with the support letter from Mayor Ed Hagerty of the City of Mount Juliet, citing examples of job growth in the area.

**Providence Surgery Center  
Service Area Population Growth Comparisons**



Source: US Census

In addition, more detailed county-level population data from the Department of Health and the US Census are reported below.

**Providence Surgery Center  
County-Level Service Area Demographics**

Variable	Wilson	Davidson	Rutherford	Service Area	Tennessee
Current Year (2016), Age 65+	19,933	77,571	31,869	129,373	1,091,516
Projected Year (2020), Age 65+	24,411	88,314	40,458	153,183	1,266,295
Age 65+, % Change	22.5%	13.8%	27.0%	18.4%	16.0%
Age 65+, % Total (PY)	17.6%	12.4%	11.3%	12.7%	17.8%
CY, Total Population	129,094	680,427	318,638	1,128,159	6,812,005
PY, Total Population	138,561	714,756	357,615	1,210,932	7,108,031
Total Pop. % Change	7.3%	6.6%	12.2%	7.3%	4.3%
TennCare Enrollees	20,067	154,343	52,654	227,064	1,557,953
TennCare Enrollees as a % of Total Population (2016)	15.5%	22.7%	16.5%	20.1%	22.9%
Median Age (2015)	40.2	34.4	33.4	N/A	38.6
Median Household Income (2014)	\$60,095	\$47,434	\$55,096	N/A	\$44,621
Population % Below Poverty Level (2014)	10.4%	18.8%	13.3%	N/A	18.3%

Source: Department of Health and US Census

In summary, these data demonstrate that:

- The service area's projected population change of 7.3% from 2016 to 2020 is almost twice the rate for Tennessee overall (4.3%).
- Wilson County, where Providence is located and the project's primary service area, has the highest median age (40.2 years). It is also the wealthiest, with the least amount of poverty.

All assumptions, including the specific methodology by which utilization is projected, is provided in the response to Question 1, above.

Alternatives to this latest Providence project are few in number. As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

9. Access and Economic Efficiencies. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

**RESPONSE:** All assumptions, including the specific methodology by which utilization is projected, is provided in the response to Question 1, above. Quarterly patient volumes are based upon United Surgical Partner's extensive experience managing ASTCs throughout the nation generally and at Providence specifically.

**Providence Surgery Center  
Projected Cases by Quarter**

Projection	Year	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Cases	1	341	360	375	390	1,466
Cases	2	405	420	435	456	1,716

Source: Internal records

10. Patient Safety and Quality of Care; Health Care Workforce.

- a. An applicant should be or agree to become accredited by any accrediting organization approved by the Centers for Medicare and Medicaid Services, such as

the Joint Commission, the Accreditation Association of Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgical Facilities, or other nationally recognized accrediting organization.

**RESPONSE:** Providence Surgery Center is currently accredited by The Joint Commission. This accreditation will be maintained upon CON approval. Please see **Attachment C, Contribution to the Orderly Development of Health Care – 7.(b) (Tab 18)**.

- b. An applicant should estimate the number of physicians by specialty that are expected to utilize the facility and the criteria to be used by the facility in extending surgical and anesthesia privileges to medical personnel. An applicant should provide documentation on the availability of appropriate and qualified staff that will provide ancillary support services, whether on- or off-site.

**RESPONSE:** As an existing licensed and accredited facility, Providence already has qualified staff and credentialing processes in place to support the delivery of quality patient care.

Conservative projections are based upon ASTC utilization by seven orthopedic surgeons, two pain management specialists and approximately four ENT surgeons (13 total).

As described later in the application, full-time equivalent staff are expected to increase from 12.0 currently to approximately 15.0. Both Saint Thomas Health and United Surgical Partners have extensive recruitment resources which will be utilized to staff the Providence project.

11. Access to ASTCs. In light of Rule 0720-11.01, which lists the factors concerning need on which an application may be evaluated, and Principle No. 2 in the State Health Plan, "Every citizen should have reasonable access to health care," the HSDA may decide to give special consideration to an applicant:

**RESPONSE:** Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under these ASTC access special considerations.

The following factors contribute to the lack of access to ASTC services in Wilson County.

- The only multispecialty ASTC in Wilson County, Lebanon Surgery Center (Tennova Healthcare – Lebanon, f/k/a University Medical Center), is no longer operational. It did not serve any patients in 2014 and has not filed a Joint Annual Report ("JAR") for 2015. It was authorized for three operating rooms and one procedure room.
- The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management.
- The four existing ASTCs in the secondary service area offering ENT services are above the 70% minimum utilization level while all 14 existing ASTCs are only slightly below the minimum (67.2%).
- The only hospital-based outpatient operating rooms in Wilson County (Tennova Healthcare – Lebanon) reported 87.6% utilization.

- The only ASTC services outside of Lebanon in Wilson County are at Providence in Mount Juliet. Mount Juliet is the most populous and fastest growing city in Wilson County.
- Providence's ASTC was last profitable in 2013. As indicated by the various physician letters of support, Providence can achieve improved operational efficiency and financial sustainability with this requested modification of conditions.
- At the same time, patients and payers will continue to benefit from Providence's lower cost freestanding ASTC rates compared to a higher cost hospital-based ambulatory surgery center.

- a. Who is offering the service in a medically underserved area as designated by the United States Health Resources and Services Administration;

**RESPONSE:** All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county). Please see the June 2016 MUA map from the Tennessee Department of Health, provided in **Tab 11**.

- b. Who is a "safety net hospital" or a "children's hospital" as defined by the Bureau of TennCare Essential Access Hospital payment program;

**RESPONSE:** Not applicable. Providence is an existing ASTC.

- c. Who provides a written commitment of intention to contract with at least one TennCare MCO and, if providing adult services, to participate in the Medicare program; or

**RESPONSE:** Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients, with 11.8% and 14.5% of gross revenues, respectively.

- d. Who is proposing to use the ASTC for patients that typically require longer preparation and scanning times. The applicant shall provide in its application information supporting the additional time required per Case and the impact on the need standard.

**RESPONSE:** Not applicable. Providence is not seeking special consideration for case times.

## 5 PRINCIPLES FOR ACHIEVING BETTER HEALTH

Each of the 5 Principles for Achieving Better Health is addressed below.

Principle 1: Healthy Lives - *"The purpose of the State Health Plan is to improve the health of Tennesseans."*

**RESPONSE:** Among the top 10 leading causes of death for Tennessee residents are cancer and accidents. Surgical services proposed by Providence Surgery Center will help in the

treatment of these two leading causes of death plus the morbidity associated with orthopedic and other diseases.

Principle 2: Access to Care - *"Every citizen should have reasonable access to health care."*

**RESPONSE:** Among the three criteria required to attain good access, as listed in the 2010 National Health Disparities Report, is, "getting access to sites of care where patients can receive needed services." The proposed modification of conditions at Providence Surgery Center is designed to, among other goals, increase patient accessibility by expanding ASTC services not currently available in Wilson County.

Principle 3: Economic Efficiencies - *"The state's health care resources should be developed to address the needs of Tennesseans while encouraging competitive markets, economic efficiencies, and the continued development of the state's health care system."*

**RESPONSE:** Recognizing the benefits of outpatient surgery centers such as the Providence Surgery Center ASTC, Saint Thomas Health is actively involved in 13 other similar joint ventures with United Surgical Partners International throughout the greater Nashville area. Please see **Attachment A4, Related Healthcare Institutions (Tab 3)**.

This strategy remains vital today more than ever, in response to the Affordable Care Act (ACA) and continued pressure from payors to contain healthcare costs. Saint Thomas Health formed one of the nation's first Accountable Care Organizations (ACOs), MissionPoint Health Partners, in August 2011. Its goal is to assist doctors, employers and patients to work more closely together to trim medical costs and make people healthier under insurance plans. The concept behind the physician-led program is to help stakeholders in a patient's care – including doctors, hospitals, pharmacies and payers – to get in sync at a time when insurers are pushing for better coordination of care and linking payment amounts to health outcomes. MissionPoint works closely with patients, both when they are well and when they are sick.

ASTCs such as Providence Surgery Center play an important role within the ACA and ACO care delivery model for containing costs, promoting quality and increasing accessibility. In 2014, the Lebanon Surgery Center multispecialty ASTC under Tennova Healthcare – Lebanon (f/k/a University Medical Center) ceased operations. As documented in the Medicare pricing differential rates in **Attachment C, Need – 1 (Tab 12)**, freestanding ASCs were reimbursed at about half the rate as hospital-based facilities. This has a direct impact on patient deductibles and co-payments as well. Since Medicare rates often form a basis for third-party reimbursement, the impact of this differential on the service area population is even more widespread.

Principle 4: Quality of Care - *"Every citizen should have confidence that the quality of health care is continually monitored and standards are adhered to by health care providers."*

**RESPONSE:** As an existing licensed and accredited provider of quality patient services, without regard to patient gender, ethnicity, geographic location or socioeconomic status, Saint Thomas Health and Providence Surgery Center are equitable healthcare providers. This same level of commitment will continue with the proposed operating room expansion.

Principle 5: Health Care Workforce - "The state should support the development, recruitment, and retention of a sufficient and quality health care workforce."

**RESPONSE:** While "the state" appears to be the party charged with supporting the development, recruitment, and retention of a sufficient and quality health care workforce, Providence Surgery Center is an existing healthcare facility with a history of successful staff recruitment and retention.

2. Describe the relationship of this project to the applicant facility's long-range development plans, if any.

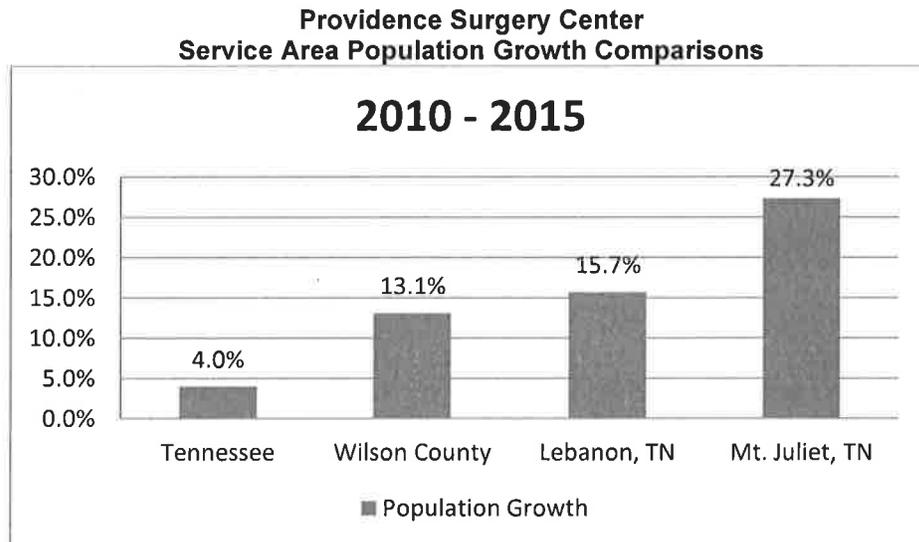
**RESPONSE:** As a joint venture with Saint Thomas Health, Providence Surgery Center's long-range plan is to assure the availability in Middle Tennessee of high quality, cost-effective and accessible outpatient services. A network of such facilities operated and managed in a coordinated fashion, especially when part of the ACO described above, will result in the optimum use of resources and will be a key component in future models of health care that contemplate broad provider integration.

3. Identify the proposed service area and justify the reasonableness of that proposed area. Submit a county level map including the State of Tennessee clearly marked to reflect the service area. **Please submit the map on 8 1/2" x 11" sheet of white paper marked only with ink detectable by a standard photocopier (i.e., no highlighters, pencils, etc.).**

**RESPONSE:** For reasons set forth in the ASTC rules above, Providence Surgery Center's service area for this project is comprised of 15 contiguous zip codes in Wilson, Davidson and Rutherford counties. Please see **Attachment C, Need – 1 (Tab 10)** for a map of the service area.

4. A. Describe the demographics of the population to be served by this proposal.

**RESPONSE:** Mount Juliet is now the largest city in Wilson County. According to US Census data for 2010 and 2015, the population in Mount Juliet grew an astonishing 27.3% compared to 15.7% for Lebanon, 13.1% for Wilson County and just 4.0% for Tennessee overall. This is consistent with the support letter from Mayor Ed Hagerty of the City of Mount Juliet, citing examples of job growth in the area.



Source: US Census

In addition, more detailed county-level population data from the Department of Health and the US Census are reported below.

**Providence Surgery Center  
County-Level Service Area Demographics**

<b>Variable</b>	<b>Wilson</b>	<b>Davidson</b>	<b>Rutherford</b>	<b>Service Area</b>	<b>Tennessee</b>
Current Year (2016), Age 65+	19,933	77,571	31,869	129,373	1,091,516
Projected Year (2020), Age 65+	24,411	88,314	40,458	153,183	1,266,295
Age 65+, % Change	22.5%	13.8%	27.0%	18.4%	16.0%
Age 65+, % Total (PY)	17.6%	12.4%	11.3%	12.7%	17.8%
CY, Total Population	129,094	680,427	318,638	1,128,159	6,812,005
PY, Total Population	138,561	714,756	357,615	1,210,932	7,108,031
Total Pop. % Change	7.3%	6.6%	12.2%	7.3%	4.3%
TennCare Enrollees	20,067	154,343	52,654	227,064	1,557,953
TennCare Enrollees as a % of Total Population (2016)	15.5%	22.7%	16.5%	20.1%	22.9%
Median Age (2015)	40.2	34.4	33.4	N/A	38.6
Median Household Income (2014)	\$60,095	\$47,434	\$55,096	N/A	\$44,621
Population % Below Poverty Level (2014)	10.4%	18.8%	13.3%	N/A	18.3%

Source: Department of Health and US Census

In summary, these data demonstrate that:

- The service area's projected population change of 7.3% from 2016 to 2020 is almost twice the rate for Tennessee overall (4.3%).
- Wilson County, where Providence is located and the project's primary service area, has the highest median age (40.2 years). It is also the wealthiest, with the least amount of poverty.

B. Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly the elderly, women, racial and ethnic minorities, and low-income groups. Document how the business plans of the facility will take into consideration the special needs of the service area population.

**RESPONSE:** Providence Surgery Center provides services without regard to gender, race, socio-economic status, or ability to pay, and participates in the Medicare and TennCare programs.

In 2020, the 65 and older population is projected to account for 12.7% of the total population in the service area. As a major demographic subgroup of Providence Surgery Center's patient base, the elderly will continue to expect of Providence Surgery Center the same level of service.

In terms of the TennCare population, 20.1% of the service area population is enrolled compared to 22.9% for the state overall. Please see **Attachment C, Need – 4 (Tab 13)**.

5. Describe the existing or certified services, including approved but unimplemented CONs, of similar institutions in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. Be certain to list each institution and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: admissions or discharges, patient days, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc.

**RESPONSE:** As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

**2015 ASTC Utilization in the Providence Service Area**

County	Zip Code	Facility Name	ORs	OR Cases	OR Cases per OR
Davidson	37076	Associated Endoscopy	0	0	0
	37211	Premier Orthopaedic Surg Cntr	2	2,165	1,083
	37211	Southern Endoscopy Center	0	0	0
	37076	Summit Surgery Center	5	4,105	821
	37013	Tennessee Pain Surgery Center	1	1,514	1,514
Wilson	37090	Lebanon Endoscopy Center	0	0	0
	37122	Providence Surgery Center	2	542	271
	37087	Wilson County Eye Surgery Center	1	987	987
Rutherford	37130	Mid-State Endoscopy Center	0	0	0
	37129	Middle TN Ambulatory Surg Center	6	5,837	973
	37167	Physicians Pavillion Surgery Center	4	1,991	498
	37167	Spine and Pain Surgery Center, LLC	0	0	0
	37129	Surgicare of Murfreesboro Med Clinic	3	4,034	1,345
	37129	Williams Surgery Center (podiatry)	1	56	56
		<b>Total Prim Svc Area (14 facilities)</b>	<b>25</b>	<b>21,231</b>	<b>849</b>

Source: Tennessee Department of Health - JARs 2015

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

6. Provide applicable utilization and/or occupancy statistics for your institution for each of the past three (3) years and the projected annual utilization for each of the two (2) years following completion of the project. Additionally, provide the details regarding the methodology used to project utilization. The methodology must include detailed calculations or documentation from referral sources, and identification of all assumptions.

**RESPONSE:** Details are provided in the discussion of the ASTC rules. Support letters are provided at **TAB 14**. Providence Surgery Center has sufficient capacity to support the projected demand from interested physicians who lack access to adequate ASTC services in Wilson County.

**Providence Historical and Projected ASTC Utilization**

	JAR 2013	JAR 2014	Trail 12 mo March 2016	Year 1 2017	Year 2 2018
Cases					
OR	765	652	547	1,180	1,381
PR	6	55	133	286	334
	771	707	680	1,466	1,715
Rooms					
OR	2	2	2	2	2
PR	1	1	1	1	1
Cases/Rm					
OR	382.5	326.0	273.5	590.0	690.5
PR	6.0	55.0	133.0	286.0	334.0

Source: HSDA JARs, internal data and projections

## ECONOMIC FEASIBILITY

1. Provide the cost of the project by completing the Project Costs Chart on the following page. Justify the cost of the project.
  - All projects should have a project cost of at least \$3,000 on Line F. (Minimum CON Filing Fee). CON filing fee should be calculated from Line D. (See Application Instructions for Filing Fee)
  - The cost of any lease (building, land and/or equipment) should be based on fair market value or the total amount of the lease payments over the initial term of the lease, whichever is greater. NOTE: This applies to all equipment leases including by procedure or "per click" arrangements. The methodology used to determine the total lease cost for a "per click" arrangement must include, at a minimum, the projected procedures, the "per click" rate and the term of the lease.
  - The cost for fixed and moveable equipment includes, but is not necessarily limited to, maintenance agreements covering the expected useful life of the equipment; federal, state, and local taxes and other government assessments; and installation charges, excluding capital expenditures for physical plant renovation or in-wall shielding, which should be included under construction costs or incorporated in a facility lease.
  - For projects that include new construction, modification, and/or renovation; **documentation must be** provided from a contractor and/or architect that support the estimated construction costs.

**RESPONSE:** The space lease for the surgery center is valued over the remaining three months of the 11-year initial term including base rent and common area allocations.

No equipment will be purchased with a value over \$50,000.

There will be no construction or modification of the existing facility

**PROJECT COSTS CHART**

A. Construction and equipment acquired by purchase:

1.	Architectural and Engineering Fees	_____
2.	Legal, Administrative (Excluding CON Filing Fee), Consultant Fees	<u>\$ 50,000</u>
3.	Acquisition of Site	_____
4.	Preparation of Site	_____
5.	Construction Costs	_____
6.	Contingency Fund	<u>\$ 25,000</u>
7.	Fixed Equipment (Not included in Construction Contract)	_____
8.	Moveable Equipment (List all equipment over \$50,000)	<u>\$ 100,000</u>
9.	Other	_____

B. Acquisition by gift, donation, or lease (3 mo remain on initial term):

1.	Facility (inclusive of building and land)	_____
2.	Building only	<u>\$ 45,387</u>
3.	Land only	_____
4.	Equipment (Specify)	_____
5.	Other (Specify)	_____

C. Financing Costs and Fees:

1.	Interim Financing	_____
2.	Underwriting Costs	_____
3.	Reserve for One Year's Debt Service	_____
4.	Other (Specify)	_____

D. Estimated Project Cost (A+B+C) \$ 220,387

E. CON Filing Fee \$ 15,000

F. Total Estimated Project Cost (D+E) \$ 235,387

**TOTAL** \$ 235,387

2. Identify the funding sources for this project.  
Please check the applicable item(s) below and briefly summarize how the project will be financed.  
**(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment C, Economic Feasibility-2.)**

- A. Commercial loan--Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- B. Tax-exempt bonds--Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- C. General obligation bonds—Copy of resolution from issuing authority or minutes from the appropriate meeting.
- D. Grants--Notification of intent form for grant application or notice of grant award; or
- E. Cash Reserves (**Tab 15**, Saint Thomas Health has funds available for the project)
- F. Other—Identify and document funding from all other sources.

3. Discuss and document the reasonableness of the proposed project costs. If applicable, compare the cost per square foot of construction to similar projects recently approved by the Health Services and Development Agency.

**RESPONSE:** Not applicable. There will be no construction or modification of the existing facility.

4. Complete Historical and Projected Data Charts on the following two pages--**Do not modify the Charts provided or submit Chart substitutions!** Historical Data Chart represents revenue and expense information for the last *three (3)* years for which complete data is available for the institution. Projected Data Chart requests information for the two (2) years following the completion of this proposal. Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (i.e., if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility).

**RESPONSE:** Please refer to the completed charts on the following pages.

5. Please identify the project's average gross charge, average deduction from operating revenue, and average net charge.

**RESPONSE:** Average gross patient charge per case, as reported in the Historical Data Chart for 2015, was \$10,814. The average deduction from gross patient charges was \$8,189, resulting in an average net charge per case of \$2,624.

Average gross patient charge per case, as reported in the Projected Data Chart and based on Year 2 projections, is \$10,609. The average deduction from gross patient charges was \$8,399, resulting in an average net charge per case of service of \$2,210. Despite the addition of surgical services, the projected net charges per case are actually projected to be lower with the increased patient case volume.

## HISTORICAL DATA CHART

Give information for the last *three (3)* years for which complete data are available for the facility or agency. The fiscal year begins in January.

	Year 2013	Year 2014	Year 2015
A. Utilization Data	<u>790</u>	<u>662</u>	<u>692</u>
B. Revenue from Services to Patients			
1. Inpatient Services	<u>                    </u>	<u>                    </u>	<u>                    </u>
2. Outpatient Services	<u>\$8,541,845</u>	<u>\$6,859,277</u>	<u>\$7,483,178</u>
3. Emergency Services	<u>                    </u>	<u>                    </u>	<u>                    </u>
4. Other Operating Revenue (Specify)	<u>                    </u>	<u>                    </u>	<u>581</u>
<b>Gross Operating Revenue</b>	<u>\$8,541,845</u>	<u>\$6,859,277</u>	<u>\$7,483,759</u>
C. Deductions from Gross Operating Revenue			
1. Contractual Adjustments	<u>\$6,216,658</u>	<u>\$4,940,348</u>	<u>\$5,733,228</u>
2. Provision for Charity Care	<u>0</u>	<u>0</u>	<u>0</u>
3. Provisions for Bad Debt	<u>120,772</u>	<u>95,733</u>	<u>65,609</u>
<b>Total Deductions</b>	<u>\$6,337,430</u>	<u>\$5,036,081</u>	<u>\$5,798,837</u>
<b>NET OPERATING REVENUE</b>	<u>\$2,204,415</u>	<u>\$1,823,196</u>	<u>\$1,684,922</u>
D. Operating Expenses			
1. Salaries and Wages	<u>\$457,832</u>	<u>\$395,742</u>	<u>\$419,438</u>
2. Physician's Salaries and Wages	<u>                    </u>	<u>                    </u>	<u>                    </u>
3. Supplies	<u>677,029</u>	<u>752,713</u>	<u>776,290</u>
4. Taxes	<u>17,018</u>	<u>-7,680</u>	<u>2,606</u>
5. Depreciation	<u>299,792</u>	<u>296,206</u>	<u>88,276</u>
6. Rent	<u>147,692</u>	<u>161,818</u>	<u>174,035</u>

7.	Interest, other than Capital	<u>                    </u>	<u>                    </u>	<u>                    </u>
8.	Management Fees:			
	a. Fees to Affiliates	<u>132,265</u>	<u>109,392</u>	<u>101,095</u>
	b. Fees to Non-Affiliates	<u>                    </u>	<u>                    </u>	<u>                    </u>
9.	Other Expenses (Specify)			
	Anesthesia Expense	<u>0</u>	<u>0</u>	<u>7</u>
	Purchased Services	<u>153,539</u>	<u>137,988</u>	<u>134,197</u>
	Utilities and Maintenance	<u>163,492</u>	<u>169,640</u>	<u>224,696</u>
	Other Miscellaneous	<u>44,012</u>	<u>45,304</u>	<u>38,407</u>
	<b>Total Operating Expenses</b>	<b><u>\$2,092,671</u></b>	<b><u>\$2,061,123</u></b>	<b><u>\$1,959,047</u></b>
E.	Other Revenue (Expenses) - Net (Specify)	<u>                    </u>	<u>                    </u>	<u>                    </u>
	<b>NET OPERATING INCOME (LOSS)</b>	<b><u>\$111,744</u></b>	<b><u>(237,927)</u></b>	<b><u>(274,125)</u></b>
F.	Capital Expenditures			
1.	Retirement of Principal	<u>\$127,815</u>	<u>\$141,775</u>	<u>\$160,456</u>
2.	Interest	<u>69,588</u>	<u>55,628</u>	<u>36,947</u>
	<b>Total Capital Expenditures</b>	<b><u>\$197,403</u></b>	<b><u>\$197,403</u></b>	<b><u>\$197,403</u></b>
	<b>NET OPERATING INCOME (LOSS)</b>			
	<b>LESS CAPITAL EXPENDITURES</b>	<b><u>(\$85,659)</u></b>	<b><u>(\$435,330)</u></b>	<b><u>(\$471,528)</u></b>

## PROJECTED DATA CHART

Give us information for the two (2) years following the completion of this proposal. The fiscal year begins in January.

	2017	2018
A. Utilization Data (Surgical & Endo Procedures)	<u>1,466</u>	<u>1,715</u>
B. Revenue from Services to Patients		
1. Inpatient Services	<u>                    </u>	<u>                    </u>
2. Outpatient Services	<u>\$15,727,969</u>	<u>\$18,193,820</u>
3. Emergency Services	<u>                    </u>	<u>                    </u>
4. Other Operating Revenue (Specify)	<u>                    </u>	<u>                    </u>
<b>Gross Operating Revenue</b>	<u>\$15,727,969</u>	<u>\$18,193,820</u>
C. Deductions from Gross Operating Revenue		
1. Contractual Adjustments	<u>\$12,332,604</u>	<u>\$14,265,966</u>
2. Provision for Charity Care	<u>0</u>	<u>0</u>
3. Provisions for Bad Debt	<u>118,705</u>	<u>137,475</u>
<b>Total Deductions</b>	<u>\$12,451,309</u>	<u>\$14,403,441</u>
<b>NET OPERATING REVENUE</b>	<u>\$3,276,660</u>	<u>\$3,790,379</u>
D. Operating Expenses		
1. Salaries and Wages	<u>\$650,600</u>	<u>\$663,612</u>
2. Physician's Salaries and Wages	<u>                    </u>	<u>                    </u>
3. Supplies	<u>1,296,090</u>	<u>1,322,012</u>
4. Taxes	<u>26,806</u>	<u>59,672</u>
5. Depreciation	<u>98,000</u>	<u>98,000</u>
6. Rent	<u>180,000</u>	<u>187,272</u>



6. A. Please provide the current and proposed charge schedules for the proposal. Discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the proposed project and the impact on existing patient charges.

**RESPONSE:** Average gross patient charge per case, as reported in the Historical Data Chart for 2015, was \$10,814. The average deduction from gross patient charges was \$8,189, resulting in an average net charge per case of \$2,624.

Average gross patient charge per case, as reported in the Projected Data Chart and based on Year 2 projections, is \$10,609. The average deduction from gross patient charges was \$8,399, resulting in an average net charge per case of service of \$2,210.

Despite the addition of surgical services, the projected net charges per case are actually projected to be lower with the increased patient case volume. Approval of the modification of conditions at Providence Surgery Center will favorably impact existing patient charges.

B. Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

**RESPONSE:** Information is provided in **TAB 12**. As an ASTC reimbursed as a freestanding ASC, Providence Surgery Center offers a clear cost advantage compared to hospital-based ASCs like Tennova Healthcare - Lebanon. This extends to patient co-payments and deductibles.

7. Discuss how projected utilization rates will be sufficient to maintain cost-effectiveness.

**RESPONSE:** Providence Surgery Center has been operating at a loss since 2014. Its proposed modification of conditions is financially feasible and represents a cost-effective alternative to hospital-based outpatient services. As indicated in the Projected Data Chart, projected utilization will be sufficient to allow Providence Surgery Center to operate efficiently and effectively.

8. Discuss how financial viability will be ensured within two years; and demonstrate the availability of sufficient cash flow until financial viability is achieved.

**RESPONSE:** As indicated in the Projected Data Chart, projected cash flow will ensure financial viability within two years and over the long-term.

9. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid, and medically indigent patients will be served by the project. In addition, report the estimated dollar amount of revenue and percentage of total project revenue anticipated from each of TennCare, Medicare, or other state and federal sources for the proposal's first year of operation.

**RESPONSE:** The facility currently participates in the TennCare MCOs operating in Middle Tennessee and has a history of providing care regardless of payor source. During the first year of operation, the facility's payor mix is anticipated to be 11.8% Medicare, 14.5% TennCare, and 0.3% self pay. This amounts to a projected \$1,855,900 in Medicare gross charges in Year 1 and \$2,280,556 in TennCare gross charges in Year 1.

10. Provide copies of the balance sheet and income statement from the most recent reporting period of the institution and the most recent audited financial statements with accompanying notes, if applicable. For new projects, provide financial information for the corporation, partnership, or principal parties involved with the project. Copies must be inserted at the end of the application, in the correct alpha-numeric order and labeled as Attachment C, Economic Feasibility-10.

**RESPONSE:** Please see **Attachment C, Economic Feasibility – 10 (Tab 16)**.

11. Describe all alternatives to this project which were considered and discuss the advantages and disadvantages of each alternative including but not limited to:
- a. A discussion regarding the availability of less costly, more effective, and/or more efficient alternative methods of providing the benefits intended by the proposal. If development of such alternatives is not practicable, the applicant should justify why not; including reasons as to why they were rejected.

**RESPONSE:** Recognizing the benefits of outpatient surgery centers such as the Providence Surgery Center ASTC, Saint Thomas Health is actively involved in 13 other similar joint ventures with United Surgical Partners International throughout the greater Nashville area. Please see **Attachment A4, Related Healthcare Institutions (Tab 3)**.

This strategy remains vital today more than ever, in response to the Affordable Care Act (ACA) and continued pressure from payors to contain healthcare costs. Saint Thomas Health formed one of the nation's first Accountable Care Organizations (ACOs), MissionPoint Health Partners, in August 2011. Its goal is to assist doctors, employers and patients to work more closely together to trim medical costs and make people healthier under insurance plans. The concept behind the physician-led program is to help stakeholders in a patient's care – including doctors, hospitals, pharmacies and payers – to get in sync at a time when insurers are pushing for better coordination of care and linking payment amounts to health outcomes. MissionPoint works closely with patients, both when they are well and when they are sick.

ASTCs such as Providence Surgery Center play an important role within the ACA and ACO care delivery model for containing costs, promoting quality and increasing accessibility. In 2014, the Lebanon Surgery Center multispecialty ASTC under Tennova Healthcare – Lebanon (f/k/a University Medical Center) ceased operations. As documented in the Medicare pricing differential rates in **Attachment C, Need – 1 (Tab 12)**, freestanding ASCs were reimbursed at about half the rate as hospital-based facilities. This has a direct impact on patient deductibles and co-payments as well. Since Medicare rates often form a basis for third-party reimbursement, the impact of this differential on the service area population is even more widespread.

Modifying the conditions to Providence's existing ASTC became the most cost effective and efficient operational decision.

- b. The applicant should document that consideration has been given to alternatives to new construction, e.g., modernization or sharing arrangements. It should be documented that superior alternatives have been implemented to the maximum extent practicable.

**RESPONSE:** Modifying the conditions to Providence's existing ASTC does not require new construction.

## CONTRIBUTION TO THE ORDERLY DEVELOPMENT OF HEALTH CARE

1. List all existing health care providers (e.g., hospitals, nursing homes, home care organizations, etc.), managed care organizations, alliances, and/or networks with which the applicant currently has or plans to have contractual and/or working relationships, e.g., transfer agreements, contractual agreements for health services.

**RESPONSE:** Providence Surgery Center has many active managed care contracts in place to provide for seamless care of its patients, including:

- Aetna
- Americhoice TennCare
- Amerigroup TennCare
- Beech Street
- Bluegrass Family Health Plan
- Blue Cross Blue Shield – TN – Ntwk P & S
- BlueCare/TennCare Select
- Bridgestone Firestone – WC arrangement
- Center Care Network
- Cigna HMO, POS, & PPO / Med Solutions
- Corvel
- Coventry / First Health
- Health Payors Organizations (HPO)
- HealthSpring HMO / Medicare Advantage
- Humana – Military – Tricare Prime
- Humana – all products
- Nissan – Work Comp arrangement
- Orchid Medical – Work Comp
- Prime Health
- Multiplan / Private Healthcare Systems
- Novanet – all products
- Signature Health Alliance – access through Bluegrass
- United Healthcare – all products
- USA Managed Care
- Windsor Health Plan of TN – MEDICARE EXTRA

2. Describe the positive and/or negative effects of the proposal on the health care system. Please be sure to discuss any instances of duplication or competition arising from your proposal including a description of the effect the proposal will have on the utilization rates of existing providers in the service area of the project.

**RESPONSE:** Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas (“MUAs”) (Wilson – entire county; Davidson and Rutherford – partial county)

- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

The following factors contribute to the lack of access to ASTC services in Wilson County.

- The only multispecialty ASTC in Wilson County, Lebanon Surgery Center (Tennova Healthcare – Lebanon, f/k/a University Medical Center), is no longer operational. It did not serve any patients in 2014 and has not filed a Joint Annual Report (“JAR”) for 2015. It was authorized for three operating rooms and one procedure room.
- The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management.
- The four existing ASTCs in the secondary service area offering ENT services are above the 70% minimum utilization level while all 14 existing ASTCs are only slightly below the minimum (67.2%).
- The only hospital-based outpatient operating rooms in Wilson County (Tennova Healthcare – Lebanon) reported 87.6% utilization.
- The only ASTC services outside of Lebanon in Wilson County are at Providence in Mount Juliet. Mount Juliet is the most populous and fastest growing city in Wilson County.
- Providence’s ASTC was last profitable in 2013. As indicated by the various physician letters of support, Providence can achieve improved operational efficiency and financial sustainability with this requested modification of conditions.
- At the same time, patients and payers will continue to benefit from Providence’s lower cost freestanding ASTC rates compared to a higher cost hospital-based ambulatory surgery center.

Therefore, Providence’s proposal will not have on an adverse impact on the utilization rates of existing providers in the service area of the project.

3. Provide the current and/or anticipated staffing pattern for all employees providing patient care for the project. This can be reported using FTEs for these positions. Additionally, please compare the clinical staff salaries in the proposal to prevailing wage patterns in the service area as published by the Tennessee Department of Labor & Workforce Development and/or other documented sources.

**RESPONSE:** Due to an anticipated increase in the volume of patients served, this project will require a 3.0 full-time equivalent employee (FTE) increase in professional and support staff. There are 12.0 FTEs already at Providence Surgery Center, including 10.0 FTEs serving in clinical functions. The expanded facility will require 15.0 FTEs, including 13.0 FTEs in clinical functions.

Additional candidates are readily available from within the existing surgery center network or in the marketplace in general. Providence Surgery Center will utilize a number of channels to secure needed staff, including in-house listings of available positions, advertisements in local and regional newspapers, advertisements in professional publications, and recruiting firms. Saint Thomas Health, United Surgical Partners International and Providence Surgery Center all have a history of successfully recruiting professional and administrative staff because they provide competitive compensation and benefits and are committed to the retention of existing personnel.

The table below illustrates current and proposed staffing levels of the proposed project.

**CURRENT AND PROPOSED STAFFING LEVELS  
(FULL TIME EQUIVALENTS)**

Position	Current	Proposed	FTE Variance
RN	7.5	9.5	2.0
Surg Tech	2.5	3.5	1.0
Med Assist/Ofc	2.0	2.0	0.0
<b>Total FTEs</b>	<b>12.0</b>	<b>15.0</b>	<b>3.0</b>

The table below profiles comparable positions and salaries for the Nashville-Davidson-Murfreesboro MSA. Providence Surgery Center's salaries and wages (excluding benefits and bonuses) are competitive with the market. Proposed hourly salaries for key positions are presented below.

**NASHVILLE-DAVIDSON-MURFREESBORO MSA  
MAY 2015 HOURLY WAGE RATES**

Position	Projected Compensation	Nashville MSA*			
		25th Pctile	Mean	Median	75th Pctile
RN	\$30.36	\$23.44	\$28.49	\$28.28	\$33.82
Surg Tech	\$24.97	\$16.93	\$20.24	\$19.59	\$23.01
Med Assist/Ofc	\$14.79	\$13.23	\$15.87	\$15.54	\$17.97

Sources: Internal sources; US Bureau of Labor Statistics

- Discuss the availability of and accessibility to human resources required by the proposal, including adequate professional staff, as per the Department of Health, the Department of Mental Health and Developmental Disabilities, and/or the Division of Mental Retardation Services licensing requirements.

**RESPONSE:** A number of channels are utilized to increase staffing, including in-house listings of available positions, advertisements in local and regional newspapers, advertisements in professional publications, and recruiting firms. Saint Thomas Health, United Surgical Partners International and Providence Surgery Center all have a history of successfully recruiting professional and administrative staff. They provide competitive compensation and benefits and are committed to the retention of existing personnel.

- Verify that the applicant has reviewed and understands all licensing certification as required by the State of Tennessee for medical/clinical staff. These include, without limitation, regulations concerning physician supervision, credentialing, admission privileges, quality assurance policies and programs, utilization review policies and programs, record keeping, and staff education.

**RESPONSE:** Providence Surgery Center has reviewed and understands the licensure and certification requirements for medical and clinical staff. As an existing licensed and accredited facility, Providence Surgery Center has administrative policies and procedures in place to ensure that licensure and certification requirements are followed. Furthermore, Providence Surgery Center maintains quality standards that are focused on continual improvement.

6. Discuss your health care institution's participation in the training of students in the areas of medicine, nursing, social work, etc. (e.g., internships, residencies, etc.).

**RESPONSE:** The applicant is not currently involved in any training programs, but is willing to consider this under the auspices of an appropriate educated institution.

7. (a) Please verify, as applicable, that the applicant has reviewed and understands the licensure requirements of the Department of Health, the Department of Mental Health and Developmental Disabilities, the Division of Mental Retardation Services, and/or any applicable Medicare requirements.

**RESPONSE:** Providence Surgery Center is licensed by the Tennessee Department of Health. The current license expires May 30, 2017. Providence Surgery Center has reviewed and understands the licensure requirements.

- (b) Provide the name of the entity from which the applicant has received or will receive licensure, certification, and/or accreditation.

**RESPONSE:** Licensure: Board for Licensing Health Care Facilities, State of Tennessee, Department of Health. The current license expires May 30, 2017. Please see **Attachment C, Contribution to the Orderly Development of Health Care – 7.(b) (Tab 17)**.

Accreditation: Providence Surgery Center is accredited by The Joint Commission. Accreditation expires June 17, 2018. Please see **Attachment C, Contribution to the Orderly Development of Health Care – 7.(b) (Tab 18)**.

- (c) If an existing institution, please describe the current standing with any licensing, certifying, or accrediting agency. Provide a copy of the current license of the facility.

**RESPONSE:** Please see **Attachment C, Contribution to the Orderly Development of Health Care – 7.(b) (Tab 17)**. The current license is valid until May 30, 2017.

- (d) For existing licensed providers, document that all deficiencies (if any) cited in the last licensure certification and inspection have been addressed through an approved plan of correction. Please include a copy of the most recent licensure/certification inspection with an approved plan of correction.

**RESPONSE:** There are no outstanding deficiencies.

8. Document and explain any final orders or judgments entered in any state or country by a licensing agency or court against professional licenses held by the applicant or any entities or persons with more than a 5% ownership interest in the applicant. Such information is to be provided for licenses regardless of whether such license is currently held.

**RESPONSE:** There have been no final orders or judgments placed against Providence Surgery Center or any entity or person with more than 5% ownership.

9. Identify and explain any final civil or criminal judgments for fraud or theft against any person or entity with more than a 5% ownership interest in the project

**RESPONSE:** There have been no civil or criminal judgments against Providence Surgery Center or any entity or person with more than 5% ownership.

10. If the proposal is approved, please discuss whether the applicant will provide the Tennessee Health Services and Development Agency and/or the reviewing agency information concerning the number of patients treated, the number, and type of procedures performed, and other data as required.

**RESPONSE:** Yes, Providence Surgery Center will provide the Tennessee Health Services and Development Agency and/or the reviewing agency information concerning the number of patients treated, the number, and type of procedures performed, and other data as required. Additionally, Providence Surgery Center submits a Joint Annual Report (JAR) to the Department of Health and will continue to do so.

## PROOF OF PUBLICATION

Attach the full page of the newspaper in which the notice of intent appeared with the mast and dateline intact or submit a publication affidavit from the newspaper as proof of the publication of the letter of intent.

**RESPONSE:** Please see Attachment D – Proof of Publication (Tabs 19-20).

## DEVELOPMENT SCHEDULE

Tennessee Code Annotated §68-11-1609(c) provides that a Certificate of Need is valid for a period not to exceed three (3) years (for hospital projects) or two (2) years (for all other projects) from the date of its issuance and after such time shall expire; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificates of Need for good cause shown. Subsequent to granting the Certificate of Need, the Agency may extend a Certificate of Need for a period upon application and good cause shown, accompanied by a non-refundable reasonable filing fee, as prescribed by rule. A Certificate of Need which has been extended shall expire at the end of the extended time period. The decision whether to grant such an extension is within the sole discretion of the Agency, and is not subject to review, reconsideration, or appeal.

1. Please complete the Project Completion Forecast Chart on the next page. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.
2. If the response to the preceding question indicates that the applicant does not anticipate completing the project within the period of validity as defined in the preceding paragraph, please state below any request for an extended schedule and document the “good cause” for such an extension.

**RESPONSE:** Please see the project forecast completion chart below. (There will be no construction or renovation of the existing facility.)

Form HF0004  
Revised 02/01/06  
Previous Forms are obsolete

**PROJECT FORECAST COMPLETION CHART**

Enter the Agency projected Initial Decision date, as published in T.C.A. § 68-11-1609(                      10/26/2016

Assuming the CON approval becomes the final agency action on that date; indicate the number of days from the above agency decision date to each phase of the completion forecast.

	<b>DAYS REQUIRED</b>	<b>Anticipated Date (MONTH/YEAR)</b>
1. Architectural and engineering contract signed	N/A	
2. Construction documents approved by the Tennessee Department of Health	N/A	
3. Construction contract signed	N/A	
4. Building permit secured	N/A	
5. Site preparation completed	N/A	
6. Building construction commenced	N/A	
7. Construction 40% complete	N/A	
8. Construction 80% complete	N/A	
9. Construction 100% complete (approved for occupancy)	N/A	
10. *Issuance of license	30	Jan-17
11. *Initiation of service	0	Jan-17
12. Final Architectural Certification of Payment	N/A	
13. Final Project Report Form (HF0055)	N/A	

\* For projects that do NOT involve construction or renovation: Please complete items 10 and 11 only.

**Note: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date.**

**AFFIDAVIT**

STATE OF Tennessee  
COUNTY OF Davidson

Michael Corey Ridgway being first duly sworn, says that he/she is the applicant named in this application or his/her lawful agent, that this project will be completed in accordance with the application, that the applicant has read the directions to this application, the Health Services and Development Agency, and T.C.A. § 68-11-1601, et seq., and that the responses to this application or any other questions deemed appropriate by the Health Services and Development Agency are true and complete.

MCR VP  
SIGNATURE/TITLE

Sworn to and subscribed before me this 11<sup>th</sup> day of August, 2016 a Notary  
(Month) (Year)

Public in and for the County/State of Davidson / TN

Lori Marl  
NOTARY PUBLIC

My commission expires 9/10 2018  
(Month/Day) (Year)



## **TABLE OF CONTENTS**

### **Attachment A**

- Tab 1 - Corporate Charter
- Tab 2 - Organizational/Ownership Charts
- Tab 3 - Related Healthcare Institutions
- Tab 4 - Management Agreement
- Tab 5 - Site Entitlement
- Tab 6 - Medicare Participation

### **Attachment B**

- Tab 7 - Plot Plan
- Tab 8 - Service Area Access
- Tab 9 - Schematics

### **Attachment C**

- Tab 10 - Service Area Map
- Tab 11 - Medically Underserved Areas
- Tab 12 - Medicare Rate Comparisons
- Tab 13 - Service Area TennCare Population/Demographic Data
- Tab 14 - Support Letters
- Tab 15 - Verification of Funding
- Tab 16 - Balance Sheet and Income Statement
- Tab 17 - Facility License
- Tab 18 - Accreditation

### **Attachment D**

- Tab 19 - Copy of Published Public Notice
- Tab 20 - Letter of Intent

**Attachment A**

**Corporate Charter  
Organizational/Ownership Charts  
Related Healthcare Institutions  
Management Agreement  
Site Entitlement  
Medicare Participation**

**Tab 1**

**Attachment A, 3**

**Corporate Charter**

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
6th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

DATE: 09/29/03  
REQUEST NUMBER: 4918-0945  
TELEPHONE CONTACT: (615) 741-2286  
FILE DATE/TIME: 09/29/03 1023  
EFFECTIVE DATE/TIME: 09/29/03 1023  
CONTROL NUMBER: 0454717

TO:  
DANIEL W. SMALL  
ONE BURTON HILLS BLV  
STE 330  
NASHVILLE, TN 37216

RE:  
PKW, LLC  
ARTICLES OF ORGANIZATION -  
LIMITED LIABILITY COMPANY

CONGRATULATIONS UPON THE FORMATION OF THE LIMITED LIABILITY COMPANY IN THE STATE OF TENNESSEE WHICH IS EFFECTIVE AS INDICATED ABOVE.

A LIMITED LIABILITY COMPANY ANNUAL REPORT MUST BE FILED WITH THE SECRETARY OF STATE ON OR BEFORE THE FIRST DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE LIMITED LIABILITY COMPANY'S FISCAL YEAR. ONCE THE FISCAL YEAR HAS BEEN ESTABLISHED, PLEASE PROVIDE THIS OFFICE WITH WRITTEN NOTIFICATION. THIS OFFICE WILL MAIL THE REPORT DURING THE LAST MONTH OF SAID FISCAL YEAR TO THE LIMITED LIABILITY COMPANY AT THE ADDRESS OF ITS PRINCIPAL OFFICE OR TO A MAILING ADDRESS PROVIDED TO THIS OFFICE IN WRITING. FAILURE TO FILE THIS REPORT OR TO MAINTAIN A REGISTERED AGENT AND OFFICE WILL SUBJECT THE LIMITED LIABILITY COMPANY TO ADMINISTRATIVE DISSOLUTION.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE LIMITED LIABILITY COMPANY CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A LIMITED LIABILITY COMPANY HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

FOR: ARTICLES OF ORGANIZATION -  
LIMITED LIABILITY COMPANY

ON DATE: 09/29/03

FROM:  
DANIEL W. SMALL (ONE BURTON HILL)  
ONE BURTON HILL  
SUITE 330  
NASHVILLE, TN 37215-0000

	FEES	
RECEIVED:	\$300.00	\$0.00
TOTAL PAYMENT RECEIVED:	\$300.00	

RECEIPT NUMBER: 00003363935  
ACCOUNT NUMBER: 00419139



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

4 3 1 3 1 3 2 5

This Document Prepared By:  
Daniel W. Small  
Attorney At Law  
One Burton Hills Blvd., Suite 330  
Nashville, Tennessee 37215

ARTICLES OF ORGANIZATION

PKW, LLC

RECEIVED  
STATE OF TENNESSEE  
FILED  
2003 SEP 29 AM 10:23  
RILEY DARNELL  
SECRETARY OF STATE

The undersigned, acting as Organizer of a limited liability company under Tennessee Limited Liability Company Act, Tennessee Code Annotated, Title 48, Chapters 201-248, hereby adopts the following Articles of Organization for such limited liability company:

ARTICLE I

The name of the limited liability company (the "Company") is PKW, LLC.

ARTICLE II

The street address and zip code of the initial registered office of the Company shall be One Burton Hills Boulevard, Suite 330, Nashville, Davidson County, Tennessee 37215. The name of the Company's initial registered agent at its initial registered office is Daniel W. Small.

ARTICLE III

The name and address of the Organizer is Daniel W. Small, Suite 330, One Burton Hills Boulevard, Nashville, Davidson County, Tennessee 37215.

ARTICLE IV

At the date and time of formation, the Company has three members.

ARTICLE V

The Company shall be managed by the members.

- a. All powers shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by or under the direction of, the member(s).
- b. Whenever the members are required or permitted to take action by vote, such action

may be taken without a meeting on action by written consent, setting forth the action so taken and specifying that the required number of members entitled to vote thereon consent to the taking of action on written consent without a meeting, with the required number necessary to provide such consent being provided for in the Operating Agreement of the Company (the "Operating Agreement"). Any such action shall be as valid and effective as any meeting and vote duly taken at any annual or special meeting of the members.

- c. The required vote for all decisions which shall require action by the members shall be as specified in the Operating Agreement.
- d. New members shall be admitted to the Company in the manner prescribed in the Operating Agreement.
- e. The Chief Manager and such other managers as shall be designated in the Operating Agreement or by election of the members shall have such authority and shall perform the duties set forth in the Operating Agreement or as prescribed by the members of the Company.

#### ARTICLE VI

At the date and time of the filing of these Articles of Organization, there are three (3) members of the Company.

#### ARTICLE VII

The Company shall be formed and its existence shall begin at the time these Articles of Organization are filed with the Secretary of State of the State of Tennessee.

#### ARTICLE VIII

The street address and zip code of the principal executive office of the Company, including the county in which the principal executive office is located, are 1430 Baddour Parkway, Suite A, Lebanon, Wilson County, Tennessee 37087.

#### ARTICLE IX

The Company shall not have the power or authority to expel a member.

**ARTICLE X**

The duration of the Company shall be limited to a specific term commencing on the date of the filing of these Articles of Organization and ending on September 26, 2028.

**ARTICLE XI**

The Company shall have the power and authority to carry on any business permitted, and to have and exercise all of the powers and rights conferred, by the Tennessee Limited Liability Company Act, as amended from time to time, or any successor provisions thereto.

**ARTICLE XII**

The members of the Company shall not have preemptive rights.

**ARTICLE XIII**

In the event of the death, retirement, withdrawal, dissolution or bankruptcy of a member or the occurrence of any event that terminates the membership of a member in the Company, the existence and business of the Company shall be terminated; provided, however, that the existence and business of the Company may be continued by the affirmative consent of a majority in interest of the remaining members, subject to the provisions of the Operating Agreement. A member may transfer governance rights in the Company upon the affirmative consent of a majority in interest of the non-transferring members, subject to the provisions of the Operating Agreement.

**ARTICLE XIV**

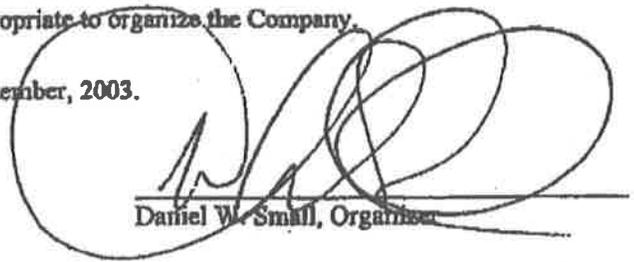
- a. The Company shall have the power to indemnify any person who has taken an action of management as a member, manager, employee or agent of the Company, or any other person who is serving at the request of the Company in any such capacity with another foreign or domestic corporation, limited liability company, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), to the fullest extent permitted by the Tennessee Limited Liability Company Act as it exists on the date hereof or as it may hereafter be amended, and any such indemnification may continue as to any person who has ceased to be a member manager, employee or agent and may inure to the benefit of the heirs, executors and administrators of such person.

b. By action of its managers, notwithstanding any interest of the managers in the action, the Company may purchase and maintain insurance, in such amounts as the managers deem appropriate, to protect any member, manager, employee, or agent of the Company, or any other person, who is or was serving at the request of the Company in any such capacity with another foreign or domestic corporation, limited liability company, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), against liability asserted against him or incurred by him in any such capacity or arising out of his status as such (including, without limitation, expenses, judgments, fines and amounts paid in settlement) to the fullest extent permitted by the Tennessee Limited Liability Company Act as it exists on the date hereof or as it may hereafter be amended, and whether or not the Company would have the power or would be required to indemnify such person under the terms of these Articles of Organization or any agreement or provision of the Operating Agreement or the Tennessee Limited Liability Company Act. For purposes of this paragraph (b), "fines" shall include any excise taxes assessed against a person with respect to any employee benefit plan.

ARTICLE XV

The Organizer shall have the power to form the Company pursuant to Tennessee Code Annotated, Section 48-203-102 and, in that capacity, may file these Articles of Organization with the Secretary of State of the State of Tennessee, accept initial contributions from the members, and take such other actions as may be necessary or appropriate to organize the Company.

Dated this 26<sup>th</sup> day of September, 2003.

  
Daniel W. Small, Organizer

BK/PG: 1011/1892-1895  
03208311

STATE OF TENNESSEE	
SECRETARY OF REVENUE	
STATE OF TENNESSEE, WILSON COUNTY	
JOHN B SPICKARD	
RECEIVED OF DOLLARS	
TOTAL AMOUNT	7.00
REGISTER'S FEE	0.00
SP FEE	2.00
RECORDING FEE	5.00
TRANSFER TAX	0.00
NOTARIAL TAX	0.00

E:\30019\Kadlin\FKW LLC\FKW.LLC.Articles.Org.Sep2003.wpd

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

DATE: 03/31/04  
REQUEST NUMBER: 5092-1163  
TELEPHONE CONTACT: (615) 741-2286  
FILE DATE/TIME: 03/31/04 1547  
EFFECTIVE DATE/TIME: 03/31/04 1630  
CONTROL NUMBER: 0454717

TO:  
BAKER DONELSON BEARMAN ETC  
211 COMMERCE STREET  
STE 1000  
NASHVILLE, TN 37201

RE:  
TENN SM, LLC  
ARTICLES OF AMENDMENT - LIMITED LIABILITY COMPANY

THIS WILL ACKNOWLEDGE THE FILING OF THE ATTACHED DOCUMENT WITH AN EFFECTIVE DATE AS INDICATED ABOVE.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR FILING, PLEASE REFER TO THE LIMITED LIABILITY COMPANY CONTROL NUMBER GIVEN ABOVE. PLEASE BE ADVISED THAT THIS DOCUMENT MUST ALSO BE FILED IN THE OFFICE OF THE REGISTER OF DEEDS IN THE COUNTY WHEREIN A LIMITED LIABILITY COMPANY HAS ITS PRINCIPAL OFFICE IF SUCH PRINCIPAL OFFICE IS IN TENNESSEE.

BK/PG: 1043/851-852  
04225592

STATE OF TENNESSEE, WILSON COUNTY	
JOHN B SPICKARD REGISTER OF DEEDS	
STATE OF TENNESSEE, WILSON COUNTY	
TOTAL AMOUNT	
REGISTER'S FEE	5.00
DP FEE	2.00
RECORDING FEE	5.00
TRANSFER TAX	0.00
NOTARIAL TAX	0.00
VOLUNTARY	0.00
03/26/2005 - 03:03 AM	
DARLA BACH: 3189	
STATE OF TENNESSEE - LIMITED LIABILITY CO	

FOR: ARTICLES OF AMENDMENT - LIMITED LIABILITY COMPANY ON DATE: 03/31/04

FROM:  
BAKER DONELSON BEARMAN ETC (NASHVILLE)  
211 COMMERCE STREET  
#1000  
NASHVILLE, TN 37201-0000

RECEIVED: FEES \$20.00 \$0.00  
TOTAL PAYMENT RECEIVED: \$20.00

RECEIPT NUMBER: 00003470487  
ACCOUNT NUMBER: 00208389



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

AMENDMENT TO THE  
ARTICLES OF ORGANIZATION  
OF  
TENN SM, LLC  
(Control No. 0454717)

FILED

2004 MAR 31 PM 3:47

SECRETARY OF STATE

The undersigned person, having capacity to contract and act as a manager of a limited liability company, adopts the following Amendment of the Articles of Organization for such Company under the Tennessee Limited Liability Company Act:

1. **Name.** The name of the Company is:

Tenn SM, LLC (formerly PKW, LLC)

2. **Amendments.**

- (a) Article II of the Articles of Organization is amended to read as follows:

**Registered Office and Agent.** The Company's registered office is 211 Commerce Street, Suite 1000, Nashville, Tennessee 37201, which is located in Davidson County, and its registered agent at that office is Steven J. Eisen, Esq.

- (b) Articles IV and VI of the Articles of Organization are amended to read as follows:

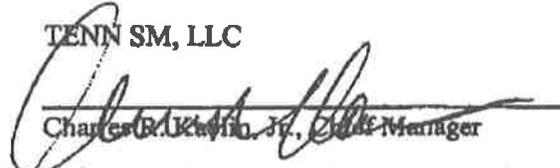
**Members.** At the date of the filing of these Articles, there are two Members.

3. **Adoption.** The amendment was duly adopted by the unanimous consent of the members on February 19, 2004.

4. **Effective Date.** This amendment is to be effective when filed by the Secretary of State.

Dated: February 19, 2004.

TENN SM, LLC

  
Charles R. Kiffin, Jr., Chief Manager

This Instrument Prepared By:  
Baker, Donelson, Bearman, Caldwell & Berkowitz  
Commerce Center  
Suite 1000  
211 Commerce Street  
Nashville, Tennessee 37201  
(615) 726-5600



State of Tennessee  
 Department of State  
 Corporate Filings  
 312 Eighth Avenue North  
 6th Floor, William R. Snodgrass Tower  
 Nashville, TN 37243

4953 0695

ARTICLES OF AMENDMENT  
 TO THE  
 LIMITED LIABILITY COMPANY

RECEIVED  
 STATE SECRETARY  
 2003 NOV -6 AM 10:43  
 RILEY DARNELL  
 SECRETARY OF STATE

LIMITED LIABILITY COMPANY CONTROL NUMBER (IF KNOWN) 0454717

PURSUANT TO THE PROVISIONS OF §48-209-104 OF THE TENNESSEE LIMITED LIABILITY COMPANY ACT, THE UNDERSIGNED ADOPTS FOLLOWING ARTICLES OF AMENDMENT TO ITS LIMITED LIABILITY COMPANY:

PLEASE MARK THE BLOCK THAT APPLIES:

- AMENDMENT IS TO BE EFFECTIVE WHEN FILED BY THE SECRETARY OF STATE.
  - AMENDMENT IS TO BE EFFECTIVE \_\_\_\_\_ (DATE) \_\_\_\_\_ (TIME).
- (NOT TO BE LATER THAN THE 90TH DAY AFTER THE DATE THIS DOCUMENT IS FILED.) IF NEITHER BLOCK IS CHECKED, THE AMENDMENT WILL BE EFFECTIVE AT THE TIME OF FILING.

1. PLEASE INSERT THE NAME OF THE LIMITED LIABILITY COMPANY AS IT APPEARS ON RECORD: PKW, LLC

IF CHANGING THE NAME, INSERT THE NEW NAME ON THE LINE BELOW:

Tenn SM, LLC

2. PLEASE INSERT ANY CHANGES THAT APPLY:

A. PRINCIPAL ADDRESS: \_\_\_\_\_ STREET ADDRESS

CITY STATE/COUNTY ZIP CODE

B. REGISTERED AGENT: \_\_\_\_\_

C. REGISTERED ADDRESS: \_\_\_\_\_ STREET

CITY STATE ZIP CODE COUNTY

D. OTHER CHANGES:

3. PLEASE COMPLETE THE FOLLOWING SENTENCE BY FILLING IN THE DATE AND BY CHECKING ONE OF THE TWO BOXES:

THE AMENDMENT WAS DULY ADOPTED ON 10/4/03 BY THE

MONTH DAY YEAR

BOARD OF GOVERNORS WITHOUT MEMBER APPROVAL AS SUCH WAS NOT REQUIRED

MEMBERS

Registered Agent  
SIGNER'S CAPACITY

  
SIGNATURE

Daniel W. Small, Esq.  
NAME OF SIGNER (TYPED OR PRINTED)

# Tennessee Secretary of State

Tre Hargett

- [Business Services](#)
- [Charitable](#)
- [Civics](#)
- [Elections](#)
- [Fantasy Sports](#)
- [Publications](#)
- [Library & Archives](#)
- [Contact Us](#)

Business Services Online > Request a Certificate of Existence > Data Entry

## Certificate of Existence

000454717: TENN SM, LLC

<b>Verification</b>	Requested By	Print Form
---------------------	--------------	------------

**Secretary of State Control Number: 000454717**

**Name:** TENN SM, LLC  
**Type:** Limited Liability Company  
**Formed in:** TENNESSEE

**Principal Office Address:** JEN MORAN  
 15305 DALLAS PKWY STE 1600  
 ADDISON, TX 75001-6491 USA

**Status - SOS:** Active  
**Standing - Annual Report:** Good  
**Standing - Registered Agent:** Good  
**Standing - Other:** Good  
**Standing - Revenue:** Other

*Your request for a Certificate of Existence cannot be completed for this business entity.*

★ Please contact the TN Department of Revenue at 615-253-0700. Inform them that you are attempting to obtain an Online Certificate of Existence and need to address any outstanding tax issues. If you still have questions, please contact us at the number below.

Please contact us at (615) 741-6488 or via email at [TNSOS.CERT@tn.gov](mailto:TNSOS.CERT@tn.gov) if you have questions or need further assistance.

[Continue](#) [Cancel](#)

<p><b>Division of Business Services</b>          312 Rosa L. Parks Avenue, Snodgrass          Tower, 6th Floor          Nashville, TN 37243          615-741-2286          8:00 a.m. until 4:30 p.m. (Central)          Monday - Friday.</p> <p><a href="#">Directions</a>   <a href="#">State Holidays</a>   <a href="#">Methods of Payment</a></p>	<p>Business Filings and Information (615) 741-2286   <a href="mailto:TNSOS.CORPINFO@tn.gov">TNSOS.CORPINFO@tn.gov</a>          Certified Copies and Certificate of Existence (615) 741-6488   <a href="mailto:TNSOS.CERT@tn.gov">TNSOS.CERT@tn.gov</a>          Motor Vehicle Temporary Liens (615) 741-0529   <a href="mailto:TNSOS.MVTL@tn.gov">TNSOS.MVTL@tn.gov</a>          Notary Commissions (615) 741-3699   <a href="mailto:TNSOS.ATS@tn.gov">TNSOS.ATS@tn.gov</a>          Uniform Commercial Code (UCC) (615) 741-3276   <a href="mailto:TNSOS.UCC@tn.gov">TNSOS.UCC@tn.gov</a>          Workers' Compensation Exemption Registrations (615) 741-0526   <a href="mailto:TNSOS.WCER@tn.gov">TNSOS.WCER@tn.gov</a>          Apostilles &amp; Authentications (615) 741-0536   <a href="mailto:TNSOS.ATS@tn.gov">TNSOS.ATS@tn.gov</a>          Summons (615) 741-1799   <a href="mailto:TNSOS.ATS@tn.gov">TNSOS.ATS@tn.gov</a>          Trademarks (615) 741-0531   <a href="mailto:TNSOS.ATS@tn.gov">TNSOS.ATS@tn.gov</a>          Nonresident Fiduciaries (615) 741-0536   <a href="mailto:TNSOS.ATS@tn.gov">TNSOS.ATS@tn.gov</a></p>
--	---



# TENNESSEE DEPARTMENT OF REVENUE

TENN SM, LLC  
 ATTN: TAX DEPARTMENT  
 15305 DALLAS PKWY STE 1600  
 ADDISON TX 75001-6491

August 9, 2016

Account Type: FRAN/EXCS2

Account No.: 319148384

We have received and processed your request for tax clearance for the account indicated above. Your certificate of tax clearance is attached below. If you have a Tennessee charter or certificate of authority, this certificate, along with the appropriate reports, forms, and fees required, must be submitted to the following address:

Secretary of State  
 312 Rosa L. Parks Ave.  
 6th floor  
 William R. Snodgrass Tower  
 Nashville, TN 37243

Certificates of clearance for Certificate of Existence/Authorization or Reinstatement of Corporate Charter/Certificate of Authority are invalid after 45 days past the effective date. For additional information regarding your Tennessee charter or certificate of authority, please contact the Tennessee Secretary of State, Division of Business Services at 615-741-2286.

DETACH HERE AND SUBMIT TO THE TENNESSEE SECRETARY OF STATE

## TENNESSEE DEPARTMENT OF REVENUE

500 DEADERICK STREET  
 ANDREW JACKSON STATE OFFICE BUILDING  
 NASHVILLE, TN 37242

### CERTIFICATE OF TAX CLEARANCE

August 9, 2016

TENN SM, LLC  
 15305 DALLAS PKWY STE 1600  
 ADDISON, TX 75001

Notice No.: 3730109160809  
 Account No.: 319148384  
 Sec. of State Control No.: 0454717  
 Effective Date: August 9, 2016

Tax Clearance has been granted for:

### CONFIRMATION OF GOOD STANDING

This is to certify that all applicable reports have been filed and that fees, penalties and taxes have been paid as required by revenue laws of this state.

Richard H. Roberts  
 COMMISSIONER OF REVENUE

**Tab 2**

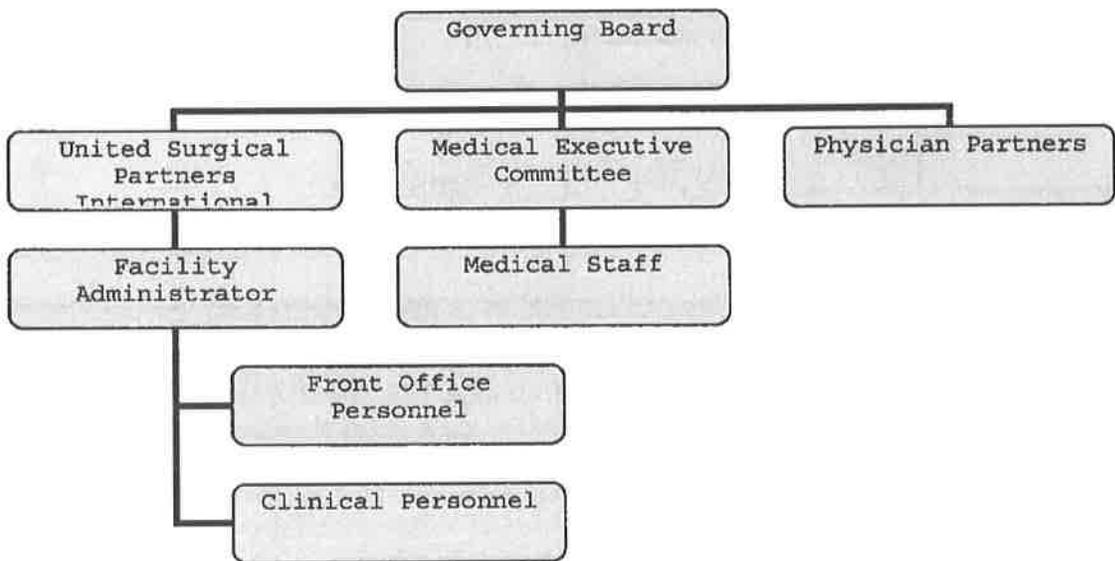
**Attachment A, 4**

**Organizational/Ownership Charts**

<b>PROVIDENCE SURGERY CENTER</b>		<b>Statement No. LD 108</b>
<b>Prepared by ALG</b>	<b>Approved by GW</b>	<b>Title</b>
<b>Date: Jan 09; Revised 4/10;11/10</b>	<b>Page 1 of 1</b>	<b>Facility Organizational Plan</b>

**Purpose:** The organizational plan for the Providence Surgery Center is designed to ensure proper lines of authority and communication to achieve optimal, safe and professional operation of the facility. The following chart will be revised and updated as necessary.

**Facility Organizational Chart**



**Providence Surgery Center  
Ownership Detail, 7-21-2016**

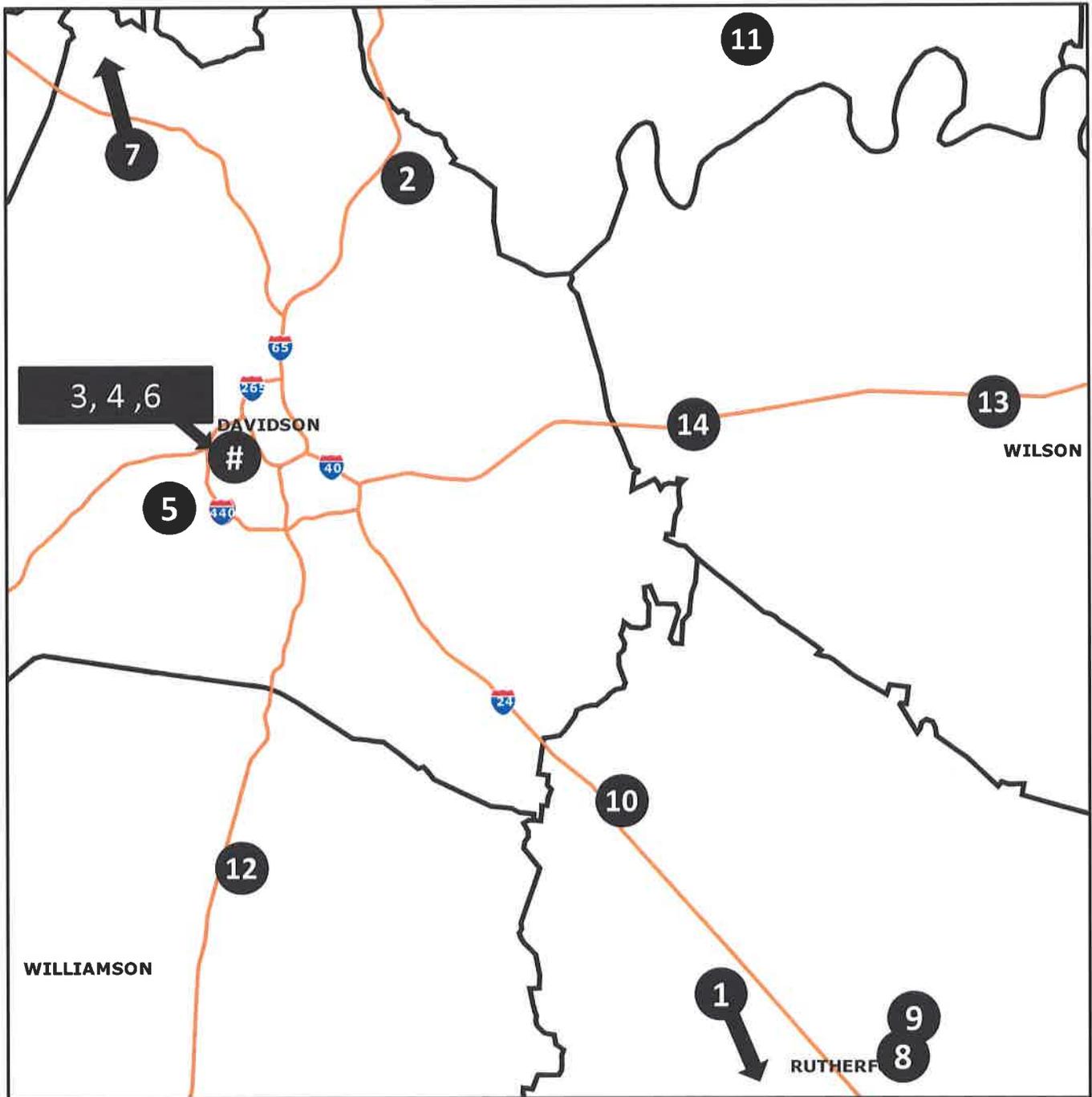
	<b>Current # of Units</b>	<b>%</b>
<b>Shares / Units</b>	<b>100</b>	<b>100%</b>
 <b><u>Non-Physician Partners</u></b>		
Biscan, Robert	37.77	37.77%
Saint Thomas/USP Surgery Centers, L.L.C.	36.67	36.67%
<b>SubTotal</b>	<b>74.44</b>	<b>74.44%</b>
 <b><u>Physician Partners</u></b>		
Eby MD, James	4.26	4.26%
Elalyli MD, Tarek	4.26	4.26%
Kaelin, Jr. MD, Charles	4.26	4.26%
KLN Management, LLC	4.26	4.26%
S Dixit MD Inc	4.26	4.26%
Taleghani MD, Christopher K.	4.26	4.26%
<b>Total</b>	<b>25.56</b>	<b>25.56%</b>
	<b>100.00</b>	<b>100.00%</b>

**Tab 3**

**Attachment A, 4**

**Related Healthcare Institutions**

## Saint Thomas/USPI Ambulatory Surgery Center Locations



### ID Facility

- 1 Tullahoma Ambulatory Surgery (Not pictured)
- 2 Northridge Surgery Center
- 3 Baptist Plaza Surgicare
- 4 Baptist Ambulatory Surgery Center
- 5 Saint Thomas Surgicare
- 6 Eye Surgery Center of Nashville
- 7 Clarksville Surgery Center (Not pictured)

### ID Facility

- 8 Middle Tennessee Ambulatory Surgery Center
- 9 Mid-State Endoscopy Center
- 10 Physicians Pavilion Surgery Center
- 11 Patient Partners Surgery Center
- 12 Franklin Surgery Center
- 13 Lebanon Endoscopy Center
- 14 Providence Surgery Center

Saint Thomas/USPI Ambulatory Surgery Centers

	Name	Address 1	Address 2	City	State	ZIP	County	Sub Type of Facility
1	Tulahoma Ambulatory Surgery	725 Kings Lane		Tulahoma	TN	37388	Coffee	Ambulatory Surgery Center
2	Northridge Surgery Center	647 Myatt Drive		Madison	TN	37115	Davidson	Ambulatory Surgery Center
3	Baptist Plaza Surgicare	2011 Church Street		Nashville	TN	37203	Davidson	Ambulatory Surgery Center
4	Baptist Ambulatory Surgery Center	312 21st. Avenue North		Nashville	TN	37203	Davidson	Ambulatory Surgery Center
5	Eye Surgery Center of Nashville, LLC	4230 Harding Road		Nashville	TN	37205	Davidson	Ambulatory Surgery Center
6	Clarkesville Surgery Center	310 25th Avenue N.	Suite 105	Nashville	TN	37203	Davidson	Ambulatory Surgery Center
7	Middle Tennessee Ambulatory Surgery Center	793 Weatherly Drive		Clarkesville	TN	37043	Montgomery	Ambulatory Surgery Center
8	Mid-State Endoscopy Center	1800 Medical Center Parkway	Suite 120	Murfreesboro	TN	37129	Rutherford	Ambulatory Surgery Center
9	Physicians Pavilion Surgery Center	1115 Dow Street	Suite A	Murfreesboro	TN	37130	Rutherford	Endoscopy Center
10	Patient Partners Surgery Center	545 StoneCrest Parkway		Smyrna	TN	37167	Rutherford	Ambulatory Surgery Center
11	Franklin Surgery Center	890 North Blue Jay Way		Gallatin	TN	37066	Sumner	Ambulatory Surgery Center
12	Lebanon Endoscopy Center	9160 Carothers Parkway	Suite 100	Franklin	TN	37067	Williamson	Ambulatory Surgery Center
13	Providence Surgery Center	100 Physician's Way	Suite 340	Lebanon	TN	37090	Wilson	Endoscopy Center
14	Providence Surgery Center	5002 Crossings Circle	Suite 110	Mt. Juliet	TN	37122	Wilson	Ambulatory Surgery Center

**Tab 4**

**Attachment A, 4**

**Management Agreement**

## MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into effective as of this 1<sup>st</sup> day of October, 2012 ("Effective Date"), by and between USP Tennessee, Inc., a Tennessee corporation ("Manager"), and TENN SM, LLC, a Tennessee limited liability company (the "Company"), with reference to the following facts:

### RECITALS

A. Manager and Saint Thomas Network, a Tennessee non-profit corporation f/k/a Saint Thomas Health Services ("STN"), are the sole members of Saint Thomas/USP Surgery Centers, L.L.C. ("JV"), a Tennessee limited liability company that is an owner of the Company.

B. The Company owns and operates an outpatient surgery center known as Providence Surgery Center, located at 5002 Crossing Circle, Mt. Juliet, Tennessee 37122 (the "Surgery Center").

C. Manager and the Company desire to enter into an agreement whereby Manager will manage the Surgery Center for the Company.

THEREFORE, the Company and Manager agree as follows:

### AGREEMENT

1. Management of the Surgery Center. Manager will conduct the day-to-day business of the Company in accordance with the terms and conditions of this Agreement, and is authorized to expend funds in accordance with the capital and operating budgets of the Company (each a "Budget"). In providing its services hereunder, Manager shall cause the Surgery Center to be operated and managed in a manner that furthers the charitable purposes of STN, and the charitable purposes of STN's tax-exempt affiliates. Notwithstanding any contrary provision contained in this Agreement, Manager shall not engage in any activity which, under the governing documents of the Company, requires the prior approval of the Company, STN, Ascension Health or any other entity that controls STN without first obtaining such approval.

2. Management Services.

(a) The Company hereby engages Manager, and Manager hereby accepts the engagement, to provide day-to-day management services to and for the Surgery Center, subject to oversight and control by the Company as provided in Section 2(f) below. Such services shall include but are not limited to the following services:

(i) Preparing all policies and procedures for the safe, efficient and lawful operation of the Surgery Center;

(ii) Designing, instituting, supervising and from time to time revising and amending management, operational, financial and informational systems in order to conduct the physical and administrative operations of the Surgery Center, including but not limited to those required for billing and collection of charges, accounting and purchasing. Manager shall cause to

be prepared and submitted in a proper manner and in a timely fashion all cost reports required to be submitted pursuant to the requirements of third party payors or any authority having jurisdiction over the Surgery Center;

(iii) Hiring, training, supervising and terminating all staff (including the recruitment of an Administrator of the Surgery Center), establishing, revising and maintaining protocols, wage scales, rates of compensation, employee benefits and staffing schedules, provided that all such employment policies and procedures shall comply with laws, rules and regulations governing workplace discrimination and provided that all medical and professional matters shall be the responsibility of the Company, the Medical Director and medical staff of the Surgery Center. After an initial transition period, (A) such Administrator and the Surgery Center employees shall be employed by Manager, or by another affiliate of USP Domestic Holdings, Inc., a Delaware corporation ("Parent"), and leased to the Company at cost (including the cost of all employee benefits); and (B) the Surgery Center employees shall participate in and be compensated through the employee benefit programs established from time to time by Parent;

(iv) Negotiating and entering into contracts for and on behalf of the Surgery Center in the usual course of business, including without limitation managed care contracts, group purchasing arrangements and other arrangements for payment for the delivery of health care services by the Surgery Center (subject to pricing parameters established by the Company and excluding contracts that require Company approval), radiology, laboratory and anesthesia contracts and contracts of insurance pursuant to the master insurance policies and programs maintained by Parent for its affiliated surgery centers, except for those contracts of insurance provided to the Company through an affiliate of STN;

(v) Subject to the Company's Governing Board (the "Board") approval, developing all promotional literature and brochures for the Surgery Center and implementing all advertising of the Surgery Center approved in any Budget, it being intended however that Manager shall not directly or indirectly provide marketing for the Surgery Center or bring patients or induce referrals to the Surgery Center;

(vi) Subject to the right of the Company to review and modify such charge structure, establishing, maintaining, revising and administering the overall charge structure for the Surgery Center, including but not limited to surgical charges, charges for all ancillary services and charges for supplies, medication and special services;

(vii) Administering the systems for the timely issuance of bills for services provided by the Surgery Center and for the timely collection of accounts and monies owed to the Surgery Center;

(viii) Administering the accounting procedures and controls, in accordance with generally accepted accounting principles, and the administration of systems for the preparation and safekeeping of records and books of account relating to the business and financial affairs of the Surgery Center;

(ix) Preparing for the Company's review and approval of annual Budgets;

(x) Establishing an ongoing evaluation of all safety and quality improvement aspects of the Surgery Center's operation (including without limitation submitting an

annual report to the Board on the compliance of the Surgery Center with the safety and quality improvement programs at the Surgery Center), and the implementation and administration of quality improvement programs designed to meet the safety and quality improvement metrics and other standards imposed by the Board or by licensing and certifying agencies and to bring about a high standard of surgical care and services in accordance with policies of, and resources available to, the Surgery Center;

(xi) Administering and supervising a program of regular maintenance and repair for the Surgery Center, consistent with the Budgets approved by the Company;

(xii) Ensuring that insurance coverages for the Surgery Center are procured through participation in Manager's insurance programs, except for those contracts of insurance provided to the Company through an affiliate of STN. The premiums for any such insurance shall be a cost and expense to be borne by the Company. All such insurance shall name the Company, Manager and such other individual, corporation, partnership, limited liability company, trust or other entity as may be requested by the Company as insureds or loss payees. All policies and certificates of insurance shall, at all times, be available for inspection by the Company. Manager shall promptly notify the Company of all actual or threatened legal claims or actions affecting the Company, the Surgery Center and shall coordinate all legal matters and proceedings with counsel for the Company;

(xiii) Doing or causing to be done all acts, procedures, authorizations and any and all other matters necessary, appropriate or related to obtaining and maintaining all necessary licenses, permits and approvals from all regulatory authorities having jurisdiction over the Surgery Center and/or its operations and obtaining and maintaining accreditation by The Joint Commission, including without limitation conducting a mock accreditation review in preparation for the next accreditation review by The Joint Commission; and

(xiv) Causing the Surgery Center to be operated in accordance with any reasonable efficiency metrics established by the Board and communicated to Manager, as and to the extent compliance with such efficiency metrics are within the reasonable control of Manager.

(b) In carrying out its duties, Manager shall manage cash flow, planning, accounts receivable and third party payor reimbursements.

(c) Manager shall undertake all of its obligations and duties hereunder for the account of the Company and not for the account of Manager, and Manager shall have no responsibility or liability for performing any duties that involve making payments or incurring expenses unless the Company makes adequate funds available therefor. In carrying out its duties hereunder, Manager shall be an independent contractor and shall not be subject to any right of control, or any control in fact, of the Company over the methods by which it carries out its duties. Neither this Agreement nor the exercise of any of the duties of Manager hereunder shall be deemed to create any partnership, joint venture, association or other relationship between the parties hereto other than that of independent contractors each as to the other.

(d) Manager shall have the authority to act as the agent of the Company and/or the Surgery Center in the procuring of licenses, permits and other approvals, the payment and collection of accounts and in all other activities necessary or useful to Manager in the carrying out of its duties as specified in this Agreement.

(e) Manager will use commercially reasonable efforts to operate within and to implement each Budget that is approved by the Company, and Manager is hereby authorized, without the need for further approval from the Company, to make the expenditures and to incur the obligations provided for in any such approved Budget. Any monthly expenses over a threshold to be established by the Company (to be expressed as a percentage of budgeted amounts) that are outside of an approved Budget shall require advance approval by the Company. Manager will use tracking systems to monitor costs and progress towards budgeted goals. If no operating or capital Budget is approved for any year, Manager is hereby authorized to continue expenditures in accordance with its prior business practices and policies, except that expenditures shall not exceed for such year 105% of the operating expenditures authorized in the operating Budget for the prior year without the Company's prior approval. Notwithstanding the foregoing, Manager is authorized to expend funds not provided for in an approved Budget to the extent such expenditures are necessary as a result of greater than budgeted caseload levels, contractual obligations of the Company or regulatory or other legal requirements.

(f) Anything in this Section 2 to the contrary notwithstanding, Manager expressly acknowledges and agrees that the Company at all times during the term of this Agreement shall exercise the ultimate control and direction of the operations of the Surgery Center. Manager shall operate within any reasonable parameters, policies and procedures adopted by the Company and communicated to Manager by the Company, so long as such parameters, policies and procedures do not, in Manager's reasonable judgment, jeopardize the quality of patient care provided at the Surgery Center or require Manager or the Company to engage in any illegal or unethical acts, or acts which do not further the charitable purposes of STN and its tax-exempt affiliates.

(g) The parties acknowledge and agree that STN will perform some of Manager's duties hereunder, including, but not limited to, managed care contracting and related support services, which services (and compensation therefor) shall be similar to the services currently provided by STN through JV in the Nashville, Tennessee market.

### 3. Term of Agreement.

(a) The term of this Agreement shall commence on the date first above written and, unless sooner terminated as provided in this Section 3, shall continue in effect for an initial ten year term and, so long as Manager or an affiliate of Manager continues to own (directly or indirectly) an ownership interest in the Surgery Center, one automatic ten year renewal term. Thereafter, this Agreement shall automatically be renewed for successive five year terms; provided, however, that Manager shall be terminated as Manager of the Surgery Center on the following terms: (1) at least six months prior to the end of the ten year renewal term or any subsequent five year renewal term (the "Notice Period"), STN and the other members who own a majority of the total ownership interests in the Company then owned by such other members may give notice to Manager that STN and such other owners have determined in good faith that they are dissatisfied with Manager's performance of its obligations as Manager related to financial, quality assurance/improvement and other operational matters, which notice identifies the dissatisfaction with such performance; (2) during the Notice Period, Manager shall work in good faith to correct its performance and/or provide a plan of action; and (3) at the end of the Notice Period, STN and such majority/owners may determine in good faith that they are still dissatisfied with Manager's performance, and this Agreement shall terminate as of the end of the five year term in which such

notice is given, and STN shall automatically be deemed the new Manager, upon the same terms as are set forth herein.

(b) This Agreement shall terminate in the event of a Default (as defined in Section 8 hereof) by one party, upon the nondefaulting party giving written notice of termination to the defaulting party; or in the event that Manager has committed fraud, embezzlement, gross misconduct or otherwise engages in conduct that results in a conviction of a felony crime, upon the Company giving 10 days' written notice of termination to Manager. If this Agreement is terminated pursuant to this Section 3(b), the Company may engage a new Manager with the consent of STN and a majority of the representatives of the physician members on the Board.

**4. Management Fees.**

(a) As Manager's fee for its management services hereunder, Manager shall receive monthly an amount equal to 6% of the net revenues of the Surgery Center during such month (or the portion thereof during which this Agreement is in effect). For this purpose, "net revenues" shall be the Surgery Center's gross revenues, less adjustments for contractual rates, charity care and an allowance for uncollectible accounts, all determined in accordance with generally accepted accounting principles. The fee for each month shall be paid on or before the 15th day of the succeeding month.

(b) In addition to the above management fees, Manager shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred by Manager on behalf of the Company, but Manager shall not be reimbursed for any of its indirect or overhead expenses. Such reimbursement shall include, but is not limited to, all costs of providing the Surgery Center employees pursuant to Section 2(a)(iii) hereof (including without limitation all compensation and employee benefit costs) and reasonable travel expenses of employees of Parent and its affiliates who make periodic business trips to the Surgery Center.

(c) Except as otherwise provided in this Agreement, all of the costs and expenses of maintaining and operating the Surgery Center and its facilities shall be expenses of the Surgery Center, for the account of the Company, and shall not be expenses of Manager.

**5. Books and Records.**

(a) Manager shall supervise the maintenance of the books of account covering the operations of the Surgery Center. The general ledger may, if Manager so elects, be maintained by Manager through any centralized accounting system maintained by Parent. Such books of account shall be maintained on an accrual basis in accordance with generally accepted accounting principles consistently applied.

(b) Manager shall prepare and furnish to the Company within 25 days after the close of each month an unaudited financial statement reflecting the operations of the Company for such month. Manager shall cause to be prepared and furnished within 45 days after the close of each fiscal year an unaudited balance sheet of the Company dated as of the end of the fiscal year and a related statement of income or loss for the Company for such fiscal year, all of which may (if the Company so elects) be certified in the customary manner by an independent certified public accountant approved by the Company. The expense of any such independent accountants shall be borne by the Company.

(c) Authorized agents of the Company shall have the right at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the books of account of the Company maintained by Manager. Such right may be exercised through any agent, independent public accountant or employee of the Company designated by the Company. The Company shall bear all expenses incurred in any examination it makes pursuant hereto.

6. **Representations of Manager.** Manager represents and warrants that it has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Tennessee, with full corporate power to own its properties and to conduct its business under the laws of the said State.

7. **Indemnification.**

(a) Manager does not hereby assume any of the obligations, liabilities or debts of the Company, except as otherwise expressly provided herein, and shall not, by virtue of its performance hereunder, assume or become liable for any of such obligations, debts or liabilities of the Company. The Company hereby agrees to indemnify and hold Manager harmless from and against any and all claims, actions, liabilities, losses, costs and expenses of any nature whatsoever, including reasonable attorneys' fees and other costs of investigating and defending any such claim or action, asserted against Manager on account of any of the obligations, liabilities or debts of the Company or the Surgery Center. The Company further agrees to defend and indemnify Manager and its officers, directors, employees and agents from and against any and all claims, actions, liabilities, losses, costs and expenses of any kind imposed on account of or arising out of actions taken in good faith by Manager or its officers, directors, employees or agents in what Manager or any such person reasonably believed to be within the scope of their responsibilities under this Agreement.

(b) Manager agrees to defend and indemnify the Company and its officers, directors, employees and agents from and against any and all claims, actions, liabilities, losses, costs and expenses of any kind imposed on account of or arising out of actions taken by Manager or its officers, directors, employees or agents in bad faith or that constitute gross negligence or willful misconduct.

8. **Default.** The following events shall each constitute a "Default" under this Agreement: (a) the filing of a voluntary petition in bankruptcy or for reorganization under any bankruptcy law, or a petition for the appointment of a receiver for all or any substantial portion of the property of either party hereto, or any voluntary or involuntary steps to dissolve or suspend the corporate powers of Manager, unless such steps to dissolve or suspend are promptly removed; (b) the consent by either party hereto to an order for relief under the federal bankruptcy laws or the failure to vacate such an order for relief within 60 days from and after the date of entry thereof; (c) the entry of any order, judgment or decree, by any court of competent jurisdiction, on the application of a creditor, adjudicating either party hereto as a bankrupt, or to be insolvent, or approving a petition seeking reorganization or the appointment of a receiver, trustee or liquidator of all or a substantial part of such entity's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of 60 days; (d) any failure by either party to perform any of the material covenants, conditions or obligations of this Agreement, including without limitations those contained in Section 1, 2 and 11 hereof, in any material respect if such a failure shall continue for a period of 30 days after delivery to the defaulting party, by the other party (or if the defaulting party is Manager, by the other party or STN) of a written notice specifying such failure, unless such

failure is not susceptible of being cured within such 30 day period and the defaulting party commences such cure within such period and diligently prosecutes said cure to completion; (e) Manager's commission of fraud or embezzlement or engagement in conduct that results in the conviction of a felony or crime; and (f) exclusion by Manager from participation in a federal healthcare program; provided, however, that STN shall have the right, on behalf of the Company, to provide Manager with written notice of an alleged default of Manager's obligations under the last two sentences of Section 1 hereof and to take all further actions on behalf of the Company pursuant to this Agreement in connection with any such alleged default, including without limitation giving written notice of termination pursuant to Section 3(b).

9. **Competitive Services.** It is hereby acknowledged that Manager and its affiliated companies are currently in the business of developing, owning and operating surgical hospitals, ambulatory surgery centers and other health facilities and providing ambulatory surgery center management services to the public apart from the services that Manager will provide to the Company under this Agreement. Nothing in this Agreement shall prohibit Manager or any of its affiliated companies from owning and operating surgical hospitals, ambulatory surgery centers or other health facilities or from providing such management services. The parties acknowledge and agree that nothing in this Section 9 is intended to affect, in any way, the parties' obligations under any other agreements.

10. **Assignment.** Except as specifically provided in this Section 10, Manager shall not have the right to assign its rights or delegate its duties hereunder to any unrelated organization unless it first obtains the written consent of the Company. Manager may assign this Agreement without consent (a) to a majority-owned subsidiary of Manager, (b) to a partnership, corporation or entity that directly or indirectly owns a majority of the outstanding equity securities of Manager or (c) to another partnership, corporation or entity that is, concurrently with such assignment, succeeding to substantially all of the assets and liabilities of Manager. All of the terms, provisions, covenants, conditions and obligations of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

11. **Additional Representations and Covenants.**

(a) The execution and performance of this Agreement by each party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Agreement constitutes the valid and enforceable obligation of each party in accordance with its terms.

(b) 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)) and the Stark law (42 U.S.C. §1395nn). 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 (other than services or supplies provided pursuant to this Agreement). The parties acknowledge that there is no requirement under this Agreement or any other agreement between the Manager or any affiliate thereof and the Company that any party refer any patients to health care providers or purchase any health care goods or services from any source (other than goods or services provided pursuant to this Agreement). 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 Manager or any of its affiliates (other than purchasing, leasing or ordering services pursuant to this Agreement). 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.

12. **Notices.** Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder shall be in writing and shall be deemed effective when personally delivered or, if mailed, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested. Unless changed by written notice given by either party to the other pursuant hereto, such notices shall be given to the Company at the following address:

TENN SM, LLC  
c/o Saint Thomas Network  
102 Woodmont Boulevard, Suite 700  
Nashville TN 37205  
Attention: Wesley O. Littrell

with a copy to

Bradley Arant Boult Cummings LLP  
Roundabout Plaza, 1600 Division Street, Suite 700  
Nashville, Tennessee 37203  
Attention: E. Berry Holt III

and such notices shall be given to Manager at the following address:

USP Tennessee, Inc.  
c/o United Surgical Partners International, Inc.  
15305 Dallas Parkway – Suite 1600-LB 28  
Addison, Texas 75001  
Attention: Chief Executive Officer

13. **Attorneys' Fees.** If any action at law or in equity is brought to enforce any of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys, fees and costs in addition to any other relief.

14. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties with respect to the management of the Surgery Center and supersedes any and all prior agreements, either oral or written, between the parties with respect thereto.

15. **Choice of Law; Enforceability.** This Agreement shall be governed by and construed in accordance with Tennessee law, without regard to its conflicts of law principles. The parties consent to the jurisdiction of the Federal District Court of Middle Tennessee for jurisdiction of any disputes. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby.

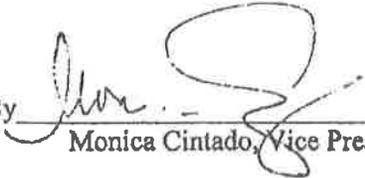
16. **Counterparts; Execution.** This Agreement may be executed in multiple counterparts which, when taken together, shall constitute one instrument. Signatures transmitted by facsimile or via other electronic transmission system shall be accepted as original signatures.

17. **HIPAA Compliance.** The parties agree that, in order to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated thereunder by the U.S. Department of Health and Human Services, Manager and its affiliates shall meet all requirements and obligations contained in the Business Associate Exhibit, attached hereto as Annex A and incorporated herein by this reference.

**[Signatures on next page]**

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

**USP TENNESSEE, INC.**

By  \_\_\_\_\_  
Monica Cintado, Vice President

**TENN SM, LLC**

By  \_\_\_\_\_  
Robert S. Biscan, Vice President

The undersigned agrees to be bound by Sections 2(a)(iii), 2(a)(iv) and 5 of the foregoing Management Agreement.

**USP DOMESTIC HOLDINGS, INC.**

By  \_\_\_\_\_  
Monica Cintado, Vice President

**ANNEX A**  
**Business Associate Exhibit**

This Business Associate Exhibit ("Exhibit") supplements and is made a part of the Management Agreement ("Agreement"), by and between TENN SM, LLC, a Tennessee limited liability company, which is a "Covered Entity" as defined in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Part 160 and 164 ("Privacy Rule"), and the Security Standards for the Protection of Electronic Protected Health Information (codified at 45 CFR Part 164, subparts A and C) (the "Security Rule"), and shall hereinafter be referred to as such, and USP Tennessee, Inc., a Tennessee corporation, which hereby acknowledges that it is a "Business Associate" as defined in the Privacy Rule or the Health Information Technology for Economic and Clinical Health Act at Title XIII of Public Law 111-5 ("HITECH"), and shall hereinafter be referred to as such.

**RECITALS**

A. Covered Entity and Business Associate wish to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and regulations promulgated thereunder by the U.S. Department of Health and Human Services ("HIPAA"), the Privacy Rule, the Security Rule, HITECH and other applicable privacy laws which protect a patient's privacy and the security and confidentiality of his/her protected health information ("PHI").

B. Under the Agreement, Business Associate provides services to the Covered Entity that involve the use and/or disclosure of certain PHI subject to protection under the Privacy Rule, the Security Rule and HITECH.

C. Under HIPAA and HITECH, Covered Entity and Business Associate are required to enter into a contract containing specific requirements restricting the use and disclosure of PHI.

**1. Definitions**

The terms used but not otherwise defined in this Exhibit shall have the same meaning ascribed to those terms in the Privacy Rule, the Security Rule or HITECH if applicable.

**2. Permitted Uses and Disclosures by Business Associate**

- (a) Except as otherwise limited in the Agreement and this Exhibit, Business Associate may use or disclose PHI on behalf of, or to perform functions, activities, or services to Covered Entity as specified in the Agreement. Business Associate shall not use or disclose PHI in a manner that would violate HIPAA or HITECH if done by Covered Entity, except as provided at subsections (b) and (c) of this Section 2.
- (b) Except as otherwise limited in the Agreement and this Exhibit, Business Associate may use or disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (i) the disclosure is required by law, or (ii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that such information will be held

confidentially and used or disclosed only for the purpose that the disclosure was made and that such person will prevent its further use or disclosure.

- (c) Except as otherwise limited in the Agreement and this Exhibit, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR §164.504(e)(2)(i)(B).

### **3. Obligations of Business Associate**

- (a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement, this Exhibit or as required by law.
- (b) Business Associate agrees to comply with the privacy and security requirements of the Privacy Rule, the Security Rule and HITECH as further detailed in this Exhibit, as and when required by 42 U.S.C. §§ 17931 and 17934.
- (c) Business Associate agrees to use appropriate safeguards to prevent further use or disclosure of PHI other than as provided for by the Agreement and this Exhibit.
- (d) Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the Agreement and this Exhibit.
- (e) Business Associate agrees to promptly report to Covered Entity any use or disclosure of PHI not provided for by the Agreement and/or this Exhibit, including any requests for inspection, copying or amendment of such information. In addition, Business Associate agrees, following discovery of a breach of unsecured PHI, to promptly notify Covered Entity of such breach as and when required by 42 U.S.C. § 17932.
- (f) Business Associate agrees to ensure in writing that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply to Business Associate with respect to such information.
- (g) Business Associate agrees to provide prompt access to PHI in designated record sets to Covered Entity whenever so requested by Covered Entity or, if directed by Covered Entity, to a Patient in order to meet the requirements of HIPAA. To the extent Business Associate maintains an electronic health record ("EHR") with respect to PHI on behalf of Covered Entity, Business Associate shall provide a copy of such PHI in electronic format as required to enable Covered Entity to fulfill its obligations under HITECH at 42 U.S.C. § 17935(e). If Patient requests directly from Business Associate (i) to inspect or copy his or her PHI, or (ii) disclosure of PHI to a third party, the Business Associate shall promptly notify Covered Entity's Privacy Official of such request and await such official's denial or approval of the request.
- (h) Business Associate agrees to promptly make amendment(s) to PHI requested by Covered Entity and shall do so in the time and manner requested by Covered Entity to enable it to meet the requirements of HIPAA. If Patient requests an amendment to his or her PHI

directly from Business Associate, Business Associate shall promptly notify Covered Entity's Privacy Official of such request and await such official's denial or approval of the request.

- (i) Business Associate agrees to promptly make its internal practices, books and records relating to the use and disclosure of PHI available to the Covered Entity or the Secretary, in a time and manner designated by the Covered Entity or the Secretary, to enable the Covered Entity or the Secretary to determine compliance with HIPAA.
- (j) Business Associate agrees to document and provide to Covered Entity all disclosures of PHI and information related to such disclosures as would be required for Covered Entity to enable it to meet privacy law requirements for an accounting of such disclosures. To the extent Business Associate maintains an EHR with respect to PHI on behalf of Covered Entity, such documentation shall include all disclosures of PHI for treatment, payment, and healthcare operations made three years prior to the request as and when required by 42 U.S.C. § 17935(c).
- (k) Business Associate agrees to cooperate with Covered Entity and its medical staff to preserve and protect the confidentiality of PHI accessed or used pursuant to the Agreement. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR §164.502(j)(1).
- (l) Business Associate agrees to maintain a record of all requests for inspection, copying or amendment(s) and requests for disclosure of PHI not provided for by the Agreement, including those initiated by a Patient, Covered Entity or third parties, and to promptly provide such documentation to Covered Entity upon request.
- (m) Business Associate agrees to comply with the conditions imposed by HITECH on which communications related to marketing may be treated as health care operations, as and when required by 42 U.S.C. § 17936(a).
- (n) Business Associate agrees to include, in any fundraising communication it sends on behalf of Covered Entity that is a healthcare operation as defined at 45 C.F.R. 164.501, a provision allowing the recipient to opt-out of further such communication and treat such election as a revocation, as and when required by 42 U.S.C. § 17936(b).
- (o) Business Associate agrees that, as and when required by 42 U.S.C. § 17935(d), it will not directly or indirectly receive remuneration in exchange for the PHI absent a valid authorization from the individual that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual unless an exception applies.

#### **4. Obligations of Covered Entity**

- (a) Covered Entity shall provide Business Associate with a copy of its privacy practices policy and any changes to such policy.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by a Patient to the use or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

**5. Restrictions Requested by Patients**

- (a) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed.
- (b) To the extent and when required by 42 U.S.C. § 17935(a), Covered Entity and Business Associate agree to comply with a request by a Patient to restrict disclosures to a health plan if the disclosure is for the purpose of payment or health care operations and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

**6. Security of Electronic PHI**

Business Associate will (i) implement, maintain and use appropriate and effective administrative, technical and physical safeguards to reasonably preserve the confidentiality, integrity, and availability of electronic PHI as required by the Security Standards; (ii) comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including 45 C.F.R. § 164.316 as and when required by HITECH; (iii) ensure that any agent, including a subcontractor, of Business Associate agrees to implement reasonable and appropriate safeguards to protect the electronic PHI; and (iii) report to Covered Entity any security incident immediately upon becoming aware of such incident.

**7. Minimum Necessary**

Covered Entity and Business Associate understand and agree that, as and when required by 42 U.S.C. § 17935(b), the minimum necessary standard, when applicable, requires Covered Entity and Business Associate to limit PHI they request, use, or disclose, to the extent practicable, to the limited data set, or, if needed, to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request until the Secretary of Health and Human Services issues guidance on what constitutes "minimum necessary," after which such guidance will apply. Prior to making a disclosure to which the minimum necessary standard applies, Business Associate agrees to determine what constitutes the minimum necessary to accomplish the intended purpose of the disclosure as and when required by 42 U.S.C. § 17935(b).

**8. Breach Pattern or Practice**

If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Exhibit, if the breach or violation continues despite the other party's reasonable steps taken to cure or end the breach or violation, and if termination of this Exhibit is not feasible, the party with knowledge of the pattern or practice shall report the problem to the Secretary of Health and Human Services as and when required by the Privacy Rule, the Security Rule and HITECH.

**9. Effect of Breach of Obligations**

Should Business Associate breach any of its obligations herein, Covered Entity shall provide Business Associate an opportunity to cure the breach and end the violation within the time specified by Covered Entity. If Business Associate does not cure the breach or end the violation as specified by Covered Entity, Covered Entity may immediately terminate the Agreement, without

prejudice to other legal remedies available to Covered Entity, notwithstanding anything to the contrary in the Agreement.

**10. Effect of Termination**

- (a) Upon termination of the Agreement, Business Associate shall promptly return to Covered Entity all PHI or, upon Covered Entity's request, destroy such data. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. Upon destruction of PHI, Business Associate shall certify in writing that such information has been destroyed.
- (b) If the return or destruction of PHI is infeasible, Business Associate shall promptly notify Covered Entity of the conditions that make such return or destruction infeasible. Upon mutual determination by the parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Exhibit to such data and shall limit its further use or disclosure to purposes that make its return or destruction infeasible.

**11. Regulatory References**

A reference in this Exhibit to HIPAA, HIPAA regulations or the Privacy Rule, the Security Rule or HITECH shall mean the law or regulation as in effect, including all amendments, at the time compliance is required.

**12. Amendment to Comply with Law**

The parties acknowledge that state and federal laws regarding health information and data security are undergoing rapid change and hereby mutually agree to amend the Agreement and/or this Exhibit from time to time as necessary to enable Covered Entity and Business Associate to comply with all legal requirements.

**13. Survival Provisions**

The respective obligations and rights of Business Associate and the Covered Entity relating to protecting the confidentiality of a patient's PHI shall survive the termination of the Agreement and/or this Exhibit.

**14. Interpretation**

Any ambiguity in the Agreement or this Exhibit shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA and applicable state and federal privacy laws.

**15. Conflicting Provisions**

The Agreement and all Exhibits, schedules and attachments thereto are intended to be read and construed in harmony with each other, but in the event that any provision in this Exhibit conflicts with the provisions of the Agreement or its attachments, the provisions in this Exhibit shall be deemed to control, and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein.

**16. Litigation Assistance**

In the event of litigation or administrative proceedings against Covered Entity related to the performance of obligations under this Agreement based on a claimed violation of HIPAA or any laws on privacy and data security, Business Associate, its employees, agents and subcontractors agree to cooperate and submit to deposition or testify in court as appropriate at no cost to Covered Entity, except where the Business Associate or its agent or subcontractor is the named adverse party.

**17. Mitigation Procedures**

Business Associate agrees to have procedures in place for mitigating, to the extent practicable, any harmful effect known of a use or disclosure of PHI in a manner contrary to law or to the provisions of this Exhibit or the Agreement.

**18. Sanction Procedures**

Business Associate agrees and understands that, to the extent practicable, it must develop a system of sanctions for any or its employees, subcontractors or agents who fail to comply with the restrictions of use and requirements to protect PHI provided for in this Exhibit or the Agreement.

---

## SECOND AMENDED AND RESTATED OPERATING AGREEMENT

of

### TENN SM, LLC *A Tennessee Limited Liability Company*

THIS SECOND AMENDED AND RESTATED OPERATING AGREEMENT, effective as of October 1, 2012, is an amendment and restatement in full of that certain Amended and Restated Operating Agreement, dated as of May 1, 2008, as amended to date (the "Original Operating Agreement"), and is entered into by and among Saint Thomas/USP Surgery Centers, L.L.C., a Tennessee limited liability company ("JV"), Charles R. Kaelin, M.D. ("Dr. Kaelin"), Robert S. Biscan ("Biscan") and each of the other individuals and entities whose names and addresses are set forth under the heading "Physician Members" on Schedule A attached hereto, as the same may be modified from time to time. JV, Biscan and the Physician Members named in Schedule A attached hereto, together with any persons hereafter becoming Members hereof and excluding any persons hereafter withdrawing from the Company as Members, from and after the time of such withdrawal, are hereinafter collectively referred to as the "Members."

#### DEFINITIONS

The following definitions shall be applicable to the terms set forth below as used in this Agreement:

"1933 Act" shall be as defined in Section 15.7(a).

"Act" means the Tennessee Limited Liability Company Act, as the same may be amended from time to time, and any successor to such Act.

"Affiliate" means with respect to a specified Person, any Person that directly or indirectly controls, is controlled by or is under common control with the specified Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Each of USP and Health System is an Affiliate of the JV.

"Affiliated Person" shall be as defined in Section 14.7(a).

"Agreed Value" shall be as defined in Section 15.11.

"Agreement" means this Second Amended and Restated Operating Agreement of TENN SM, LLC, a Tennessee limited liability company, as the same may be amended or modified from time to time in accordance with Article XIX hereof, together with any and all schedules, exhibits and attachments expressly referred to herein.

"Annual Eligibility Affirmation Statement" means the form of statement attached hereto as Schedule B.

**"Available Cash"** means, at the time of determination, all cash, demand deposits and short-term marketable securities received from the conduct of the Company's business or from capital transactions (including without limitation net insurance proceeds and proceeds from the sale, exchange, condemnation or other disposition of all or any part of Company property or any interest therein), less any sums or amounts reinvested or otherwise expended in the conduct of the Company's business, including reserves for working capital, replacements and capital improvements, reserves for repayments of debts (including without limitation debts owed to the Members) and additions to such amounts as the Governing Board shall reasonably determine are necessary or appropriate.

**"Capital Account"** means an account established and maintained for each Member in accordance with Section 7.3 hereof.

**"Capital Contributions"** means all cash sums and the Gross Asset Value of all other assets which the Members have contributed or will contribute to the capital of the Company.

**"Code"** means the Internal Revenue Code of 1986, as amended and in effect on the effective date hereof and, to the extent applicable, as subsequently amended or replaced.

**"Company"** shall mean the limited liability company entered into and formed pursuant to the Act and governed by this Agreement.

**"Company Minimum Gain"** shall be as defined in Section 9.6(d)(v).

**"EBITDA"** means earnings before interest (including imputed interest on capital leases), taxes, depreciation and amortization.

**"Economic Interest"** means the economic interest in the Company held by a Member or Interest Holder, but shall not include any other rights of a Member, including without limitation the right to vote or to participate in the management of the Company or any right to information concerning the business and affairs of the Company.

**"Governing Board"** shall be as defined in Section 14.1.

**"Gross Asset Value"** means, with respect to any asset of the Company, the asset's adjusted basis for federal income tax purposes; provided, however, that:

(a) the Gross Asset Value of any asset contributed by a Member or Interest Holder to the Company or distributed to a Member or Interest Holder by the Company shall be the gross fair market value of such asset (without taking into account Section 7701(g) of the Code), as reasonably determined by the Governing Board;

(b) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values as determined by Governing Board (without taking into account Section 7701(g) of the Code), as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member or Interest Holder in exchange for more than a *de minimis* contribution to the capital of the Company; (ii) upon the distribution by the Company to a retiring or continuing Member or Interest Holder of more than a *de minimis* amount of Company property including money in reduction of the interest in the Company of a Member or Interest Holder; and (iii) upon the termination of the Company within the meaning of Regulation §1.704-1(b)(2)(ii)(g); *provided, however,*

that adjustments pursuant to clause (i) and clause (ii) of this sentence shall be made only if the Governing Board reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and

(c) the Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and subparagraph (b) of the definition of "Net Income" or "Net Loss"; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (c) to the extent that the Governing Board determines that an adjustment pursuant to subparagraph (a) or (b) above is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this subparagraph (c).

"Health Laws" means applicable provisions of the federal Social Security Act (including federal Medicare and Medicaid Anti-Fraud and Abuse Amendments [42 U.S.C. § 1320a-7a and -7b] and the federal Physician Anti-Self Referral Law [42 U.S.C. § 1395nn]) and the Tennessee self referral and anti-kickback statutes, as these laws may now exist or hereafter be amended.

"Health System" shall mean Saint Thomas Network, a Tennessee non-profit corporation f/k/a Saint Thomas Health Services .

"Indemnified Parties" has the meaning set forth in Section 14.6(a).

"Interest Holder" shall mean a Person that holds an Economic Interest in the Company but has not been admitted as a Member.

"JV" means Saint Thomas/USP Surgery Centers, L.L.C., a Tennessee limited liability company that is owned by Health System and USP.

"Liquidator" means the party or parties actually conducting the liquidation of the Company in accordance with the first sentence of Section 17.1, whether the Governing Board, a liquidator or a liquidating committee.

"Majority in Interest of the Members" means such of the Members as shall own, at the time of any determination, a majority of all Membership Units then owned by Members.

"Management Agreement" shall mean that certain Management Agreement, in the form attached hereto as Schedule C, between the Company and USP.

"Managers" shall mean the members of the Governing Board.

"Member Nonrecourse Debt" shall be as defined in Section 9.6(d)(ii) hereof.

"Member Nonrecourse Debt Minimum Gain" shall be as defined in Section 9.6(d)(iii) hereof.

"Member Nonrecourse Deductions" shall be as defined in Section 9.6(d)(iv) hereof.

"Members" shall be as defined in the preamble of this Agreement.

**"Membership Units"** or **"Units"** shall mean a Member's entire interest in the Company, including the Member's Economic Interest, the right to vote on or participate in management of the Company (to the extent granted herein or pursuant to the Act) and the right to receive information concerning the business and affairs of the Company. There shall be 100 authorized Membership Units. The authorized number of Membership Units shall be automatically increased by the number of Units (if any) issued pursuant to Section 7.1(c)(ii) hereof. The outstanding ownership interests in the Company as of the date of this Agreement are hereby converted into said 100 Membership Units, which are currently held by the Members as described on Schedule A attached hereto. The number of authorized Membership Units from time to time is subject to splits, reverse splits and similar actions approved by the Governing Board (with the intent being that any such actions of the Governing Board shall not dilute the ownership interests of Biscan without the prior written consent of Biscan), and numbers of Membership Units set forth in this Agreement may be modified or revised from time to time as an administrative matter to reflect any such actions.

**"Net Income"** or **"Net Loss"** means, for each fiscal year, an amount equal to the Company's taxable income or loss, as the case may be, for such year determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), as adjusted as follows for purposes of computing Net Income or Net Loss:

(a) any deductions for depreciation, cost recovery or amortization attributable to any assets of the Company shall be determined by reference to their Gross Asset Value, except that if the Gross Asset Value of an asset differs from its adjusted tax basis for federal income tax purposes at any time during such year or other period, the deductions for depreciation, cost recovery or amortization attributable to such asset from and after the date during such year or period in which such difference first occurs shall bear the same ratio to the Gross Asset Value as of such date as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period from and after such date bears to the adjusted tax basis as of such date;

(b) any gain or loss attributable to the taxable disposition of any property shall be determined by the Company as if the adjusted tax basis of such property as of such date of disposition was such Gross Asset Value reduced by all amortization, depreciation and cost recovery deductions (determined in accordance with clause (a) above) which are attributable to said property;

(c) the computation of all items of income, gain, loss and deduction shall be made without regard to any basis adjustment under Section 743 of the Code which may be made by the Company;

(d) any receipts of the Company that are exempt from federal income tax and are not otherwise included in taxable income or loss shall be added to such taxable income or loss; and

(e) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Regulations Section 1.704-1(b) shall be subtracted from such taxable income or loss.

**"Nonrecourse Deductions"** shall be as defined in Section 9.6(d)(i) hereof.

**"Original Operating Agreement"** shall be as defined in the preamble of this Agreement.

**"Person"** includes any individual, profit or nonprofit corporation, association, partnership (general, limited or limited liability), joint venture, trust, estate, limited liability company or other legal entity or organization.

**"Physician Member"** shall mean a physician or other medical practitioner admitted to the medical staff of the Surgery Center who owns any Membership Units.

**"Physician Member Eligibility Requirements"** shall mean the requirement that each Physician Member must affirm in writing, in connection with the initial acquisition of Membership Units and, thereafter, by the execution and delivery to the Company within 30 days after the end of each calendar year following the opening of the Surgery Center (or such other 12 month period as the Governing Board may determine) of an Annual Eligibility Affirmation Statement, representing that:

- (a) the Physician Member agrees to fully inform each patient referred to the Surgery Center by the Physician Member of his or her investment interest in the Company;
- (b) one-third or more of the Physician Member's medical practice income for the prior 12 month period was derived from the performance of outpatient surgical procedures (defined for purposes hereof to be those surgical procedures that are on the list of Medicare covered procedures authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations);
- (c) the Physician Member performed at least one-third of his or her outpatient surgical procedures (defined as described in clause (b) above) during the prior 12 month period at the Surgery Center (or, if a new Physician Member, he or she expects to perform at least one-third of such procedures at the Surgery Center each year);
- (d) the Physician Member agrees to treat patients receiving medical benefits or assistance under any federal health care program (including Medicare and Medicaid) in a nondiscriminatory manner;
- (e) the Physician Member has not borrowed funds to acquire his or her Membership Units from the Company or from any other owner of the Company;
- (f) the Physician Member has not been excluded from participation in the Medicare, Medicaid or any other federal health care program;
- (g) the Physician Member must be personally involved with the provision of care or health services at the Surgery Center; and
- (h) the Physician Member must provide each patient referred to the Surgery Center by the Physician Member with a list of effective alternative entities and must clearly inform the patient that he or she has the option to use one of the alternative entities with the assurance that the Physician Member will not treat the patient differently if they do not choose the Surgery Center.

For purposes of clauses (b) and/or (c) above, the Governing Board in its sole discretion may establish a lower percent or other modification for an individual Physician Member based on a case-by-case analysis to the extent such lower percent or other modification is in compliance with federal and state laws and regulations. If the Governing Board establishes a lower percent or other modification, the Physician Member must consistently meet the lower percent or other modification.

**"Qualified Member"** means:

(a) each individual or entity who (i) meets the Physician Member Eligibility Requirements (or as to whom the Governing Board, in its sole discretion, has waived such requirements), (ii) is a Qualified Practitioner who is credentialed (or has applied for credentials) to provide medical services at the Surgery Center, (iii) meets certain net worth and income standards established by the Governing Board from time to time and (iv) is approved by the Governing Board;

(b) each trust, corporation and other entity controlled and owned solely by one or more individuals who would otherwise be Qualified Members; and

(c) Biscan, the JV and their respective Affiliates.

**"Qualified Practitioner"** means an individual who holds one of the following degrees: "M.D.," "D.O.," "D.P.M.," "D.M.D.," "D.D.S." or other degrees relating to health care designated by the Governing Board, and is currently licensed by the State of Tennessee to practice such health care profession for which the individual was trained, is capable of providing medical services at the Surgery Center, and has not been excluded from the Medicare, Medicaid or any other federal health care program and has not been assessed a civil monetary penalty in relation to false claims or an anti-kickback statute violation.

**"Regulations"** means the income tax regulations and temporary regulations promulgated by the Internal Revenue Service, Department of the Treasury, pursuant to the Code.

**"Relocation"** shall mean the relocation of the primary site of a Physician Member's medical practice to a location more than 40 miles away from the Surgery Center.

**"Retirement"** of a physician shall be deemed to occur at the time when the physician no longer performs surgical procedures.

**"State Securities Laws"** has the meaning set forth in Section 15.7(b).

**"Surgery Center"** means the outpatient surgery center currently known as Providence Surgery Center, located at 5002 Crossing Circle, Mt. Juliet, Tennessee 37122, that is owned and operated by the Company.

**"Surgery Center Property"** shall mean the Surgery Center facility and other improvements, leasehold interests, all equipment and all other real, personal and mixed property used in connection with the Surgery Center.

**"USP"** shall mean USP Tennessee, Inc., a Tennessee corporation.

**"USP Parent"** shall mean United Surgical Partners International, Inc., a Delaware corporation that is the parent company of USP.

## ARTICLE I

### Formation of Limited Liability Company

The Members formed a limited liability company pursuant to the Original Operating Agreement and the Act. The rights and liabilities of the Members shall be as provided in the Act, except as herein otherwise expressly provided. A Member's interest in the Company shall be personal property for all purposes. All real and other property owned by the Company shall be deemed owned by the Company as an entity, and none of the Members shall have any ownership of such property.

## ARTICLE II

### Name

The name of the Company shall be "TENN SM, LLC." The business of the Company shall be conducted under the name of "Providence Surgery Center", or such other name or names as may be designated from time to time by the Governing Board. The Governing Board shall take the actions required to comply with the Act and any assumed name act, fictitious name act or similar statute in effect in each jurisdiction or political subdivision in which the Company proposes to do business, and the Members agree to execute any document reasonably requested by the Governing Board in connection with that action.

## ARTICLE III

### Purpose

**Section 3.1. Primary Business.** The business of the Company is (1) to own, operate, improve, repair, maintain, manage, sublease, replace, rebuild, alter, remodel, restore, sell, lease, mortgage, hypothecate and otherwise use and deal with the Surgery Center, including the Surgery Center Property and other property, and (2) to engage in any and all activities related or incident thereto, including without limitation the acquisition, ownership, improvement, operation, sale, lease, sublease, mortgage or other use of or dealing with real, personal or mixed property.

**Section 3.2. Tax Exempt Status of Affiliate.** For so long as any direct or indirect owner of JV, including Health System, is tax exempt under Section 501(c)(3) of the Code, the Surgery Center will be operated and managed in a manner that complies with the Ethical and Religious Directives for the Catholic Health Care Services and other policies applicable to Health System and its hospital facilities and furthers the charitable, religious and community-based health care purposes, mission, vision and values of Health System and its Affiliates by promoting health and providing health care services for a broad cross-section of the community. Specifically, the Company and the Surgery Center will be operated and managed in a manner:

- (a) that provides access to patient care services based on medical necessity, without regard to the patient's race, creed, national origin, gender, payor service or ability to pay;
- (b) that provides access to patient care services to individuals covered by Medicare and/or Medicaid;
- (c) that treats beneficiaries of governmental programs, such as Medicare and Medicaid, in a nondiscriminatory manner;

(d) that is in accordance with the charity care policy of Health System, as in effect from time to time;

(e) that is in accordance with a conflict of interest policy acceptable to Health System;

(f) that requires a standard of quality patient care at the Surgery Center that is commensurate with the standard of quality patient care at Health System's hospitals;

(g) that requires physician credentialing criteria for the Surgery Center that meets or exceeds National Committee for Quality Assurances requirements;

(h) that follows Health System's policies in effect from time to time regarding prohibited medical procedures (for example abortions);

(i) that allows the Surgery Center to maintain all necessary licenses and accreditation in good standing with The Joint Commission or AAAHC, or comparable accrediting organizations for freestanding ambulatory surgery facilities;

(j) that provides reasonable levels of charity care based on both historical and actual need consistent with the level and policies of charity care services provided in the market by similar facilities owned and operated by Health System and its Affiliates; and

(k) that will not, in the reasonable opinion of Health System, on advice of Health System's legal and/or tax counsel, cause Health System or any of its tax exempt affiliates to act other than exclusively in furtherance of their respective tax exempt purposes or adversely affect their tax exempt status under section 501(c)(3) of the Code.

All Members are aware of the limitations on the actions of the Company due to the tax exempt status and charitable purpose of Health System, and each Member agrees that any decision of the Governing Board or USP (pursuant to the Management Agreement) to forego an action which would be inconsistent with the tax exempt status of Health System, or any decision of the Governing Board, JV or USP to take an action which furthers the charitable purposes of Health System over any profit making motives of the Company, shall not be a breach of the duty of loyalty or a breach of any fiduciary duty to the Company, notwithstanding that any such decision is not in the best interest of the Company. Specifically, in the event of a conflict between the operation of the Company or the Surgery Center in accordance with these charitable purposes and any duty to maximize profits, the Governing Board shall satisfy the charitable purposes of the Company without regard to the consequences for maximizing profitability. In furtherance of this provision, Health System may from time to time formulate and implement (or directly supervise USP and/or any and all Managers and officers of the Company in the implementation of) policies and procedures for the operation of the Surgery Center and community outreach activities to be implemented by the Company. USP (as manager) and the Surgery Center to promote the public health needs of the community, including without limitation standards, policies and procedures regarding admissions to the Surgery Center, indigent and charity care rendered through the Surgery Center, community education activities and other health services made accessible through the Surgery Center to the public. The Governing Board shall strive to fulfill the mission and purposes of the Company, which will be derived from the common mission, values and goals of the Health System. The Governing Board shall periodically, but not less than annually, monitor the activities and conduct of the Surgery Center with respect to (i) the quality of services rendered by the Surgery Center and (ii) the Company's compliance

with corporate compliance policies, integrity and ethical practices and all applicable laws, rules and regulations relative to the Company's operations and purposes.

#### ARTICLE IV

##### Names and Addresses of Members

The names and business or residence addresses of the Members are as set forth in Schedule A attached hereto, as the same may be modified from time to time to reflect changes in the information set forth therein.

#### ARTICLE V

##### Principal Place of Business

The principal place of business of the Company shall be at the Surgery Center. The Governing Board may in its sole discretion establish additional administrative offices of the Company.

#### ARTICLE VI

##### Term

The term of the Company shall be from the date of the filing of the Company's Articles of Organization in accordance with the Act and shall continue in perpetuity, unless and until the Company is liquidated in accordance with this Agreement or applicable law.

#### ARTICLE VII

##### Capital Contributions and Capital Accounts

###### **Section 7.1. Capital Contributions.**

(a) The Members as of the date of this Agreement (or their predecessors in interest) made Capital Contributions to the Company pursuant to the Original Operating Agreement. Promptly following the execution of this Agreement, the Company will sell a total of 14.81 Membership Units to new Physician Members at a purchase price of \$7,500 per Unit, which new Physician Members shall be approved by the Governing Board as provided in Section 14.1(b)(v)(R). Following the sale of said 14.81 Units, there shall be 100 Units issued and outstanding.

(b) In the event the Company has any authorized but unissued Membership Units, including Membership Units re-acquired by the Company pursuant to Article XV or if this Agreement is amended to increase the number of authorized Membership Units over and above the 100 initial authorized Membership Units in accordance with Section 19.1, and the Company proposes to issue and sell any such authorized but unissued Membership Units, the purchasers of such Membership Units shall make Capital Contributions in consideration for such Membership Units in the amounts determined by the Governing Board in its sole discretion to be the fair market value of such Membership Units.

(c) Without creating any rights in favor of any third party, after the initial Capital Contributions described in subsections (a) and (b) have been paid:

(i) If the Governing Board determines that additional capital is needed by the Company, the Company may request that the Members make one or more additional Capital

Contributions to fund the Company's cash needs if and to the extent additional Capital Contributions are approved separately by (A) JV and (B) Members who hold a majority of the outstanding Membership Units then held by Members other than JV. If either of said approvals is not obtained, the capital call has not been approved and shall not be implemented. If such additional Capital Contributions are first approved by the Governing Board pursuant to Section 14.1(b)(v)(1), the Governing Board shall notify the Members of the reasons for a proposed call for additional Capital Contributions, which notice shall include the amount of funds requested and the purpose therefor. If such additional Capital Contributions are approved by the Members in accordance with this Section 7.1(c)(i), then subject to subsection (ii) below, the Members shall contribute the amount called for within 30 days after notice is given thereof.

(ii) If any Member shall decide not to contribute within the prescribed time period all or any portion of any Capital Contribution requested pursuant to Section 7.1(c)(i), the Company may permit such of the Members that have made their additional Capital Contributions, in proportion to their respective pro rata ownership of Units or in such other percentages as they may agree, to advance the unfunded Capital Contributions. If a Capital Contribution is requested pursuant to Section 7.1(c)(i) and any Member does not contribute its pro rata share, then each Member that does make such an additional Capital Contribution pursuant to subsection (i) and/or (ii) shall be issued a number of Membership Units equal to the additional Capital Contribution made by such Member divided by the fair market value of the Membership Units, as determined by the Governing Board in its sole discretion.

(iii) The members acknowledge that the Governing Board and the Members have approved a capital call pursuant to this Section 7.1(c) in the amount of \$344,000, which capital call is to be funded by the Members on the date of this Agreement.

(d) Any transferee shall be credited for purposes hereof with any Capital Contribution previously made by the prior owner or owners of such Membership Units attributable to such Membership Units. Except under the circumstances as described and provided for in Section 7.1(c), no Member or Interest Holder shall have any obligation to make any additional Capital Contributions.

**Section 7.2. Limitation of Liability.** The liability of each Member or Interest Holder to the Company shall be limited to the amount of his or her Capital Contributions required by Section 7.1 and, except as otherwise provided for in the Act, no Member or Interest Holder shall have any further personal liability to contribute money to, or in respect of, the liabilities or the obligations of the Company, nor shall any Member or Interest Holder be personally liable for any obligations of the Company, except as may be provided in the Act. This Section 7.2 shall not affect the independent obligation of any Member pursuant to a written guarantee of, or other written commitment relating to, a Company obligation entered into by such Member.

**Section 7.3. Capital Accounts.** A Capital Account shall be established for each Member or Interest Holder and shall be maintained in accordance with the provisions of Code Section 704 and Regulations Section 1.704-1(b)(2)(iv) or any successor provisions, notwithstanding any other provisions of this Agreement. The Capital Account of each Member or Interest Holder shall consist of and be increased by the cash Capital Contributions and the Gross Asset Value of any other property contributed by such Member or Interest Holder to the capital of the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), and the amount of any Net Income allocated to such Member or Interest Holder, and shall be decreased by the amount of money distributed to such Member or Interest Holder by the Company (exclusive of a guaranteed payment within the meaning of Section 707(c) of the Code paid to such Member or Interest Holder), the Gross Asset Value of any portion of any property distributed to such Member or

Interest Holder by the Company (net of liabilities secured by such distributed property that such Member or Interest Holder is considered to assume or take subject to under Section 752 of the Code), and the amount of any Net Loss charged to such Member or Interest Holder. To the extent an adjustment to the tax basis of any Company asset is made pursuant to Code Sections 734(b) and 743(b), and such adjustment is required by Regulations Section 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts, the Capital Accounts of the Members shall be adjusted to reflect an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) which is specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Regulations. In the event the Gross Asset Values of Company assets are otherwise adjusted pursuant to the terms of this Agreement, the Capital Account of the Members shall be adjusted simultaneously to reflect the aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment and such gain or loss was allocated to the Members pursuant to the appropriate provisions of this Agreement. The foregoing Capital Account definition and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. The transferee of all or a portion of a Membership Unit or Economic Interest in the Company shall succeed to that portion of the transferor's Capital Account which is allocable to the portion of the Membership Unit or Economic Interest transferred.

**Section 7.4. Interest.** Except as specifically provided in this Agreement, no Member or Interest Holder shall be entitled to receive interest on such Member's or Interest Holder's Capital Contribution or Capital Account balance.

## ARTICLE VIII

### Distributions and Member Loans

**Section 8.1. Distributions of Available Cash.** Except as otherwise provided in Section 8.3, or elsewhere herein, Available Cash shall be distributed to the Members and Interest Holders according to the number of Membership Units owned by each such Member or Interest Holder (determined in accordance with Section 15.8 as to any Membership Units that have been transferred) as compared to the total number of Membership Units outstanding as of the first day of the month immediately preceding the month in which the distribution is made. The Company shall make distributions of Available Cash at such intervals or at such times as the Governing Board shall determine, which shall normally be monthly, to the extent of the Available Cash (if any) at the end of each month.

**Section 8.2. Treatment of Unwithdrawn Distributions.** If any Member or Interest Holder does not withdraw the whole or any part of his or her share of any cash distribution, such Member or Interest Holder shall not be entitled to receive any interest thereon unless such amount is deemed a loan in accordance with Section 8.3. Any such cash that is not withdrawn by a Member or Interest Holder shall not result in an increase in such Member's or Interest Holder's share of the capital, Net Income or Net Loss of the Company.

**Section 8.3. Loans to the Company.** Notwithstanding the foregoing, if any Member or Interest Holder, with the consent of Governing Board, advances any funds, agrees not to receive any distributions to which such Member or Interest Holder would otherwise be entitled or makes any other payment to or on behalf of the Company that is not required pursuant to the provisions hereof to cover operating or capital expenses of the Company which cannot be paid out of the Company's operating revenues, the amount thereof shall be deemed a loan to the Company by such Member or Interest Holder,

bearing interest from the date such loan was made until such loan is repaid at a market interest rate and on other loan terms equivalent to what an independent lender would impose, as determined by the Governing Board. Notwithstanding Section 8.1, all distributions of Available Cash shall first be paid to the Members or Interest Holders making such loans until all such loans have been repaid to such Members or Interest Holders, together with interest thereon as above provided and, thereafter, the balance of such distributions, if any, shall be made in accordance with the terms of Section 8.1. If distributions are insufficient to repay and return all such loans as provided above, the funds available from time to time shall first be applied pro rata to repay and retire the oldest loans first and, if any funds thereafter remain available, such funds shall be applied in a similar manner to remaining loans in accordance with the order of the dates on which they were made. As to loans made on the same date, each such loan shall be repaid in the proportion that such loan bears to the total loans made on said date.

**Section 8.4. Distributions of Tax Refunds.** Notwithstanding any other provision to the contrary, all amounts received by the Company as a refund of sales or property taxes as a result of the tax exempt status of Health System shall be paid 100% to Health System within 10 days of the receipt of the refund. Any distributions under this Section 8.4 shall not reduce Health System's distributions under any other Section of this Agreement. Any taxable income resulting pursuant to this Section 8.4 shall be allocated to Health System in proportion to the amount of the tax refunds distributed to Health System. Any expense attributable to accounting for and the preparation and filing of the refund request for taxes paid by the Company shall be economically borne by and allocated to Health System. The allocations and distributions set forth in this Section 8.4 are intended to maintain Capital Accounts in proportion to the Members' respective ownership of Membership Units and shall be interpreted consistently with such intent. In addition, in the event there is a reduction of taxes paid by the Company as a result of the tax exempt status of a direct or indirect Member (instead of a tax refund), distributions and allocations of income and expense directly related to such tax reduction shall be made in a manner consistent with this Section 8.4.

## ARTICLE IX

### Allocations of Income, Gain, Loss, Deduction and Credit

**Section 9.1. Allocations of Net Income, Loss, Gain, Etc.** Except as otherwise provided herein, all items of Net Income shall be allocated among the Members and Interest Holders pro rata in accordance with their proportion ownership of Membership Units (determined in accordance with Section 15.8 as to any Membership Units that have been transferred). Except as otherwise provided herein, all items of Net Loss shall be allocated among the Members and Interest Holders pro rata in accordance with their proportionate ownership of Membership Units. Notwithstanding the foregoing, the Company's gross income shall be allocated to Health System in an amount equal to any tax refunds distributed to Health System under Section 8.4 for the taxable year in which the distribution occurs.

**Section 9.2. Treatment of Contributed Property.** Notwithstanding anything contained in this Article IX to the contrary, solely for federal income tax purposes and not as a credit or charge to the Capital Account of a Member or Interest Holder, if any Member or Interest Holder contributes any property to the Company that has a Gross Asset Value that is in excess of or less than its adjusted basis for federal income tax purposes at the time of such contribution, then all gain, loss and deduction with respect to the contributed property shall be allocated among the Members so as to take account of the variation between the adjusted basis of such property and its initial Gross Asset Value as required under Code Section 704(c) and the Regulations thereunder. This Section 9.2 is intended to comply with Code Section

704(c) and the Regulations thereunder and shall be interpreted consistently with said Code Section 704(c) and Regulations.

**Section 9.3. Allocations Upon Transfer of Interests.** Upon the transfer of all or any part of an Economic Interest, Net Income and Net Loss shall be allocated between the transferor and transferee as they may agree, provided such method is in conformity with this Agreement and the methods prescribed by Section 706 of the Code and Regulations Section 1.706-1(c)(2)(ii). Any transferee of an Economic Interest shall succeed to the Capital Account of the transferor Interest Holder to the extent it relates to the transferred Economic Interest; provided, however, that if such transfer causes a termination of the Company pursuant to Section 708(b)(1)(B) of the Code, the Capital Accounts of all Interest Holders, including the transferee, shall be re-determined as of the date of such termination in accordance with Regulations Section 1.704(b). Subject to the provisions of Regulations Section 1.704-1(b), adjustments to the adjusted tax basis of Company property under Sections 734, 743 and 732(d) of the Code shall not be reflected in the Capital Account of the transferee Interest Holders or on the books of the Company, and subsequent Capital Account adjustments for distributions, depreciation, amortization and gain or loss with respect to such property shall disregard the effect of such basis adjustment. As provided in Section 9.2, a disparity between the tax basis of Company property and the basis of such property on the Company's books may result from a basis adjustment pursuant to Code Section 743 and, in the event such a disparity occurs, the allocations required by Code Section 704(c) and the Regulations will apply.

**Section 9.4. Reliance on Accountants.** The Governing Board and the Members may rely upon, and shall have no liability to the other Members or the Company if they do rely upon, the opinion of independent certified public accountants retained by the Company from time to time with respect to all matters within such independent certified public accountants' knowledge and expertise (including disputes with respect thereto) relating to computations and determinations required to be made under this Article IX or other provisions of this Agreement.

**Section 9.5. Amendment of Allocation Provisions.** Notwithstanding anything contained in this Article IX to the contrary, if the Company is advised by its counsel or accountants that the allocations provided by this Article IX are unlikely to be respected for federal income tax purposes, the Governing Board is granted the authority, without any approval or consent of the Members, to amend the allocation provisions of this Agreement, on advice of said counsel or accountants, to the minimum extent necessary to comply with the applicable principles of the Code and the Regulations thereunder.

**Section 9.6. Company Minimum Gain; Company Nonrecourse Debt.**

(a) Notwithstanding Section 9.1, if there is a net decrease in Company Minimum Gain for a Company taxable year, determined in accordance with Regulations Section 1.704-2(j)(2)(i), each Member or Interest Holder shall be allocated items of Company gross income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, the amount of such Member's or Interest Holder's share of the net decrease in Company Minimum Gain during such year determined in accordance with Regulations Section 1.704-2(g). This Section 9.6(a) is intended to comply with the minimum gain chargeback requirement of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) If there is a net decrease in Member Nonrecourse Debt Minimum Gain for a taxable year, determined in accordance with Regulations Section 1.704-2(i)(3), any Member or Interest Holder who has a share of Member Nonrecourse Debt Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(3), shall be allocated items of Company gross income and gain for such

year (and if necessary, subsequent years) in proportion to, and to the extent of, the amount of such Member's or Interest Holder's share of the net decrease in Member Nonrecourse Debt Minimum Gain during such year determined in accordance with Regulations Section 1.704-2(g). This Section 9.6(b) is intended to comply with the minimum gain chargeback requirement of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Any Nonrecourse Deductions for any Company taxable year shall be specially allocated to the Member or Interest Holder that bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such deductions are attributable, as provided in Regulations Section 1.704-2(i).

(d) For purposes of this Section 9.6, the following definitions shall apply:

(i) "Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(b)(1) and 1.704-2(c).

(ii) "Member Nonrecourse Debt" has the meaning assigned to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

(iii) "Member Nonrecourse Debt Minimum Gain" has the meaning assigned to the term "Partner Nonrecourse Debt Minimum Gain" in Regulations Section 1.704-2(I)(3).

(iv) "Member Nonrecourse Deductions" has the meaning assigned to the term "Partner Nonrecourse Deductions" in Regulations Section 1.704-2(i)(2). Member Nonrecourse Deductions are determined in accordance with Regulations Section 1.704-2(I)(2).

(v) "Company Minimum Gain" has the meaning set forth in, and shall be determined in accordance with, Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

provided, however, that the meanings of the above terms shall be determined by substituting the terms "Company" and "Member" for the terms "partnership" and "partner," respectively, in each place they appear therein and in Regulations or the Code referred to therein.

**Section 9.7. Elimination of Deficit Balances.** Notwithstanding Section 9.1, after the application of Section 9.6, and in the event any Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit balances in their Capital Accounts (excluding from such deficit balance amounts which Members are obligated to restore under this Agreement) created by such adjustments, allocations or distributions as quickly as possible and in a manner which complies with Regulations Section 1.704-1(b)(2)(ii)(d).

**Section 9.8. Adjustments After Special Allocations.** Any special allocations of items of Net Income pursuant to Sections 9.6 and 9.7 shall be taken into account in computing subsequent allocations of Net Income and Net Loss pursuant to this Article IX, so that the net amount of any items so allocated and the Net Income, Net Loss and all other items allocated to each Member or Interest Holder pursuant to this Article IX shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member or Interest Holder pursuant to the provisions of this Article IX if Sections 9.6 and 9.7 had not applied.

## ARTICLE X

### Books of Account, Records and Reports

**Section 10.1. Books and Records; Inspection.** Proper and complete records and books of account shall be kept by the Company in which shall be entered fully and accurately all transactions and other matters relative to the Company's business as are usually entered into records and books of account maintained by persons engaged in businesses of like character. The Company's books and records shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be kept on the accrual basis. The books and records shall be made available at the principal office of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives during reasonable business hours upon at least 24 hours advance written notice.

**Section 10.2. Tax Information.** Within 90 days after the end of each calendar year, the Company shall send each person who was a Member or Interest Holder in the Company at any time during the calendar year then ended all Company tax information as shall be necessary for the preparation by such holder of his or her federal income tax return. Further, on request by any Member, the Company will furnish such Member or Interest Holder with copies of all federal, state and local income tax returns or information returns, if any, which the Company is required to file; however, the cost thereof shall be borne by the requesting Member or Interest Holder.

**Section 10.3. Annual and Quarterly Financial Statements.** After the end of each fiscal year and each fiscal quarter, the Company shall send to each person who was a Member or Interest Holder in the Company as of the last day of such fiscal year or quarter, as the case may be, and who so requests in writing, an unaudited balance sheet as of the end of such period and a statement of income for such period, each of which shall be prepared on an accrual basis in accordance with generally accepted accounting principles consistently applied; provided, however, that at the request of the Governing Board such annual financial statements shall be audited by an independent accounting firm selected by the Governing Board. All independent accounting firm costs incurred in connection with auditing the Company's financial statements and/or the preparation of its tax returns shall be borne by the Company.

**Section 10.4. Tax Matters Member.** JV shall be, and is authorized to act as, the Company's "tax matters member," which shall have the meaning ascribed to the term "tax matters partner" pursuant to Regulations Section 1.704-2(b)(4), and in any similar capacity under state and local laws. Upon any withdrawal of the then appointed "tax matters member," the Governing Board shall appoint another Member as the "tax matters member" of the Company.

## ARTICLE XI

### Fiscal Year

The fiscal year of the Company shall end on the 31st day of December in each year.

## ARTICLE XII

### Company Funds

The funds of the Company shall be deposited in, and shall be subject to withdrawal from, such bank account or accounts, or invested in such interest bearing or non-interest bearing accounts, as provided in the Management Agreement or as otherwise designated by the Governing Board.

## ARTICLE XIII

### Status of Members

**Section 13.1. Limitation on Participation in Management.** Except as required by the Act or as otherwise provided in this Agreement, no Member, solely by virtue of his or her status as a Member, shall participate in the management or control of the Company's business, transact any business for the Company or have the power to act for or bind the Company, said powers being vested solely and exclusively in the Governing Board (subject to the rights and duties of USP under the Management Agreement). No Interest Holder shall have any right to participate in the management or control of the Company's business.

**Section 13.2. No Personal Liability.** Except as required by the Act, no Manager, Member or Interest Holder shall have any personal liability whatsoever, whether to the Company, to any of the Members or to the creditors of the Company, for the debts of the Company or any of its losses beyond the amount agreed to be contributed by him or her to the capital of the Company as set forth in this Agreement. The preceding sentence shall not, however, be construed to limit or prohibit, in any respect, the use by the Company of any undistributed funds of the Company (regardless of whether previously allocated to the account of any Member or Interest Holder) for the payment of Company obligations. Upon payment of the Capital Contributions for a Membership Unit as set forth in Section 7.1, such Membership Unit shall be fully paid and nonassessable. In no event will any Member or Interest Holder (or the successors in interest of a Member or Interest Holder) be required to make any capital or other contribution to the Company upon or following the dissolution of the Company by reason of the status of the Capital Account of such Member or Interest Holder (or his or her successors in interest).

**Section 13.3. Admission of Additional Members.** The Governing Board may admit additional Members to the Company; however, the admission of additional Physician Members shall be subject to a supermajority vote of the Governing Board in accordance with Section 14.1(b)(v)(R). Any additional Members shall obtain Membership Units and will participate in the management, Net Income, Net Loss, gain, deduction, credit and distributions of the Company as provided in this Agreement. An Interest Holder may be admitted as a substitute Member only in accordance with Article XV.

**Section 13.4. Termination of Membership Interest.** Upon the transfer of the Membership Units of a Member in violation of Article XV, the interest of such Member shall be terminated and thereafter that Member shall be an Interest Holder only unless such Membership Units are purchased by the Company or any other third party in accordance with Article XV. Each Member acknowledges and agrees that such termination or purchase of such Member's interest as a Member of the Company upon the occurrence of any of the foregoing events is not unreasonable under the circumstances existing as of the date hereof.

**Section 13.5. Voting Rights.** Except as otherwise expressly provided in this Agreement, the Members shall have no voting, approval or consent rights.

#### **Section 13.6 Member Meetings.**

(a) A quorum shall be present at a meeting of Members if at least a Majority in Interest of the Members are represented at the meeting in person or by proxy. However, with respect to a meeting at which any of the Physician Members are entitled to vote, a quorum shall be present if a Majority in Interest of the Members and at least one Physician Member are represented at the meeting in person or by proxy; provided that, even if Physician Members are entitled to vote at the meeting, if at any

two consecutive meetings a Majority in Interest of the Members is present but at least one Physician Member is not present, in person or by proxy, then a quorum shall be present at the next following meeting if a Majority in Interest of the Members is present, in person or by proxy, regardless of whether or not at least one Physician Member is present, in person or by proxy. A duly authorized individual representative or officer of an entity shall act on behalf of such entity. With respect to any matter, other than the election of the Governing Board and other than a matter for which the affirmative vote of the holders of a specified portion of the Units is required by the Act or this Agreement, the affirmative vote of one or more Members holding a majority of the Units present at a meeting of Members at which a quorum is present shall be the act of the Members.

(b) A meeting of the Members shall be held within 15 miles of the Surgery Center at the place specified in the notice of the meeting or waiver of notice thereof. Members may participate in a meeting by means of conference telephone or similar communications equipment as described in Section 14.1(b)(vi).

(c) Upon the approval of the Members present at a meeting properly called, the chair of the meeting shall have the power to adjourn the meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. The time and place of the holding of the adjourned meeting, which shall be held within 15 miles of the Surgery Center, shall be approved by a majority of the Members represented at the meeting. Upon the resumption of any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(d) An annual meeting (as distinguished from a special meeting) of the Members, for the appointment and election of Governing Board members and for the transaction of other business as may properly come before the meeting, shall be held at the place, on the date and at the time as the Governing Board shall fix and set forth in the notice of the meeting, which date shall be within 13 months after the date of organization of the Company or the last annual meeting of Members, whichever most recently occurred.

(e) Special meetings of the Members for any proper purpose or purposes may be called at any time by the Governing Board or any Member(s) holding at least 20% of the outstanding Units. Only business within the purpose described in the notice (or waiver of notice) required by this Agreement may be conducted at a special meeting of the Members. The Members may establish a schedule for and purposes of regular meetings of the Members at any other properly called meeting.

(f) Written notice stating the place, day and hour of each annual and special meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered in accordance with Article XVIII not less than 10 days before the date of the meeting by or at the direction of the Governing Board or Member(s) calling the meeting, to each Member entitled to vote at the meeting. A separate notice shall not be required for meetings scheduled by agreement of the Members, notice of which schedule and purposes is given to the Members in accordance with this Section 13.6(f) prior to the first such meeting. Notice satisfying the time periods set forth in this Section 13.6(f) for a meeting shall not be required if all Members execute a written waiver of notice for such meeting.

(g) The date on which notice of a meeting of Members called by the Governing Board is given shall be the record date for the determination of the Members entitled to notice of or to vote at the meeting, including any adjournment thereof.

(h) A Member may vote either in person or by proxy executed in writing by the Member or by such Member's duly authorized officer or attorney-in-fact. No proxy will be valid after 30 days from the date of its execution unless expressly provided in the proxy. A proxy will be revocable unless expressly provided therein to be irrevocable and unless made irrevocable by law. Each proxy is to be filed with the Secretary of the Company prior to or at the time of the meeting.

(i) All meetings of the Members shall be presided over by the chairman of the meeting, who shall be the Chairman of the Governing Board, unless absent, in which case the chairman shall be the President of the Company or, if the President is also absent, shall be determined by vote of a majority of the Units present at the meeting. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including the regulation of the manner of voting and the conduct of discussion, as the chair shall deem appropriate.

(j) Any action required or permitted to be taken at any meeting of Members may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Members holding that percentage of Units necessary to authorize the action. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

**Section 13.7. Certification Requirements.** Each Physician Member agrees to execute, certify, and submit to the Company, within 30 days after written request by the Governing Board or officer acting at the direction of the Governing Board, a written statement or similar certification, supported by such documentation as may be reasonably be requested, setting forth information and representations as to qualifications and eligibility to own interests in the Company, compliance with this Agreement (including without limitation compliance with the Physician Member Eligibility Requirements) and applicable law, and similar matters as the Governing Board may request from time to time. Without limiting the foregoing, each Physician Member, and each person required to submit an Annual Eligibility Affirmation Statement, shall provide within 30 days after written request such supporting information related to the Physician Member Eligibility Requirements as may reasonably be requested by the Company. Failure to complete and submit any such statement, certification and/or supporting documentation and information on a timely basis following request, or any other failure to comply with this Section 13.7, constitutes a breach of this Agreement giving rise to purchase or redemption rights under Section 15.9(b) of this Agreement, without limiting any other rights or remedies available to the Company.

#### ARTICLE XIV

##### Powers, Rights and Duties of the Managers

#### **Section 14.1. Management by Governing Board; Delegation.**

(a) Governing Board as the Managers. Subject to the rights and duties of USP set forth herein and in the Management Agreement, the business, property and affairs of the Company shall be managed under the direction of the Governing Board as described in Section 14.1(b) and any officers of the Company elected by the Governing Board, as described in Section 14.1(c). Said Governing Board members shall be the "managers" of the Company, as such term is defined in the Act.

**(b) Governing Board.**

**(i) Number; Appointment.** The Governing Board shall initially consist of three members (who need not be Members), two of whom shall be appointed by JV. Biscan shall be a member of the Governing Board so long as he owns at least 2.5% of the outstanding Membership Units. JV's initial representatives on the Governing Board shall be Corey Ridgway and Jason Beam. The Governing Board (A) shall be expanded to four members when there are at least four Physician Members, (B) shall be expanded to five members when there are at least seven Physician Members and (C) shall be expanded to six members if there are ten or more Physician Members. Likewise, the size of the Governing Board shall be contracted if the number of Physician Members falls below the thresholds described above. For example, if the Governing Board has been increased to six members pursuant to clause (C) above, but the number of Physician Members thereafter drops to nine, the number of Governing Board members shall be reduced to five members (as described in subsection (iv) below). The Physician Member representative(s) will be elected as provided in subsection (iii) below after the admission of new Physician Members that results in an increase in the size of the Governing Board as described above. One of the Governing Board members will be elected (by a majority vote of the Governing Board) as the Chairman of the Governing Board.

**(ii) Voting Power.** Each Governing Board member shall vote according to the percentage interest in the Company held by the Member or (in the case of the Governing Board members elected by the Physician Members) group of Members that appointed or elected such Governing Board member (with such percentage ownership interest to be determined by dividing the number of Units held by that Member or group of Members by the total number of outstanding Units), divided by the number of Governing Board members that the Member or group of Members appointed or elected. For example, since the JV has the right to elect two members of the Governing Board, each such Governing Board member shall have 50% of the voting power attributable to the JV. If any member of the Governing Board is not present at a meeting of the Governing Board, the voting power attributable to such absent member shall automatically be allocated to the other member or members of the Governing Board appointed by the same Member or group of Members who appointed the absent member of the Governing Board.

**(iii) Election of Physician Member Representatives.** In the elections of Governing Board members by the Physician Members, each Physician Member may vote for each open position (without cumulative voting) and the candidates receiving votes from Physician Members whose aggregate Membership Units are the greatest shall be elected. The Governing Board members elected by the Physician Members shall be elected for two-year terms.

**(iv) Removal and Replacement.** Each member of the Governing Board shall be subject to removal from the Governing Board by the party that appointed such Governing Board member or, in the case of a Governing Board member elected by the Physician Members, by the vote of Physician Members who own a majority of the Membership Units then owned by the Physician Members. In the event the size of the Governing Board is reduced due to a reduction in the number of Physician Members (as provided in clause (i) above), unless another Physician Member representative on the Governing Board is designated by Physician Members who own a majority of the Membership Units then owned by Physician Members, the most recently elected Physician Member representative on the Governing Board shall be automatically removed from the Governing Board. Upon the removal, resignation or death of any Governing Board member (other than a removal resulting from a reduction in size of the Governing Board), a replacement Member shall be appointed or elected by the Member or Members that appointed or elected such departed Governing Board member. Notwithstanding anything

herein to the contrary, so long as Biscan owns at least 2.5% of the outstanding Membership Units, Biscan cannot be removed as a Governing Board member without his prior written consent.

(v) **Vote Required for Actions.** Except as otherwise expressly provided in this Agreement, all actions of the Governing Board shall require approval by vote, or by action without a meeting (as described in clause (vii) below), by a majority of the voting power (as described in Section 14.1(b)(ii) above) of the elected and acting members of the Governing Board. Anything herein or in the Management Agreement to the contrary notwithstanding, the following actions shall require approval by the Governing Board:

- (A) approval of annual operating and capital expenditure budgets for the Surgery Center, and any significant changes to any item of income or expenditure set forth in a budget, including without limitation approval of any contract, lease or expenditure or incurring any indebtedness (including capital leases) involving a sum in excess of \$100,000 for any transaction or group of related transactions not provided for in an approved budget; provided, however, that no approval shall be required for variations in expenditure levels from that set forth in an approved operating budget if such variations either (x) result from the ordinary course of business of the Surgery Center (e.g., unexpected increases in caseload levels) and are not expected to cause a reduction in the annual EBITDA of the Company projected in the approved budget in an amount in excess of the lesser of \$100,000 or 10% of the projected EBITDA in the approved budget, (y) are the minimum required for the Surgery Center to maintain its licensure or accreditation or to comply with a legal requirement, consistent with the overall design of the Surgery Center or (z) are needed for implementation of charitable purposes or projects recommended by Health System pursuant to the last paragraph of this subsection (v);
- (B) selling all or substantially all of the property of the Company;
- (C) causing the Company to convert into a different form of entity or to enter into a merger with another entity;
- (D) changing the name of the Company or the Surgery Center (other than the name change provided for in Article II);
- (E) any borrowing, guaranteeing any indebtedness or creating or granting any lien or other encumbrance on any assets of the Company, other than borrowings and the related liens or encumbrances (x) contemplated under any approved budget or (y) of less than \$100,000;
- (F) an election to dissolve the Company pursuant to Section 16.1(c);
- (G) approval of any contracts or modifications of any contracts between the Company and any member of the medical staff of the Surgery Center, or (except as otherwise permitted by this Agreement or the Management Agreement) any Member or Affiliate of any Member;

- (H) any decision to file a petition requesting or consenting to an order for relief under the federal bankruptcy laws, or other actions with respect to the Company as a result of insolvency or the inability to pay debts generally as such debts become due;
- (I) requesting Members to make additional capital contributions to the Company;
- (J) approval of the Surgery Center entering into any capitation, global or risk-based managed care agreements or arrangements for the provision of medical services;
- (K) establishing policies for distributions of the Company's earnings to Members or approval of any non-cash distribution by the Company;
- (L) hiring an Administrator or appointing a Medical Director for the Surgery Center;
- (M) approval of any amendment in whole or in part of the Management Agreement;
- (N) any decision to cause the Company to buy or sell any interest in the Company pursuant to the rights granted under Article XV, or otherwise;
- (O) approval of all strategic plans for the Company and any proposed actions that are inconsistent with any approved strategic plan;
- (P) the commencement, settlement or dismissal of any lawsuit or other judicial or administrative proceeding (including any investigation) that is related, either directly or indirectly, to the Company which has an amount in controversy or settlement value of \$100,000 or more;
- (Q) any change in the nature of the business of the Company or any decision to carry on any other business not directly related to the ownership and operation of the Surgery Center;
- (R) admission of any new Member to the Company or the issuance of any Membership Units (or any other equity or ownership interest in the Company) by the Company; and
- (S) determining the fair market value of any Membership Units issued pursuant to Section 7.1.

Notwithstanding the foregoing, in the event that Health System determines in good faith that the Governing Board has failed or may fail to cause the Company to conduct its activities so that the charitable and religious purposes of Health System take precedence over the profit making motives of the Company pursuant to Section 3.2 above, Health System shall be empowered and authorized to unilaterally require the Company and the Governing Board to take such actions, or to refrain from such actions, that are necessary or appropriate to preserve and protect Health System or any of its Affiliates' tax-exempt status. In addition, a supermajority vote of the Governing Board consisting of the approval of

Managers holding at least 85% of the total number of votes of the Governing Board (determined in accordance with Section 14.1(b)(ii) above) shall be required for the matters described in clauses (B), (C), (D), (F), (I), (M), (Q) and (R) (with respect to the admission of new Physician Members) above.

(vi) **Governing Board Meetings.** Meetings of the Governing Board may be called by any member of the Governing Board. A schedule of regular meetings shall be established at the beginning of each year. Regularly scheduled meetings shall not require any advance notice. All of the meetings shall be held upon seven days notice by mail or 48 hours notice delivered personally or by telephone, e-mail or facsimile transmission. A notice of a special meeting shall state the purpose of such special meeting. Notice of a meeting need not be given to any member of the Governing Board who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior to its commencement, the lack of notice to such member. All such waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting. Meetings of the Governing Board may be held at any place within or without the State of Tennessee that has been designated in the notice of the meeting or at such place as may be approved by the Governing Board. Governing Board members may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Governing Board members participating in such meeting can hear one another. Participation in a meeting in such manner constitutes a presence in person at such meeting.

(vii) **Action Without Meeting.** Any action required or permitted to be taken by the Governing Board may be taken by the Governing Board members without a meeting if Governing Board members necessary to take such action at a duly called and held meeting at which all Governing Board members are in attendance consent in writing to such action. All such actions by written consent shall have the same force and effect as the requisite vote of the Governing Board members at a duly called and held meeting. Notice of any such actions taken in this manner shall be provided to the Governing Board members who were not a party to such written consent.

(viii) **Compensation of Governing Board Members.** Governing Board members shall not be entitled to any compensation for the performance of their duties in that capacity. The Company shall reimburse the Governing Board members for their out-of-pocket expenses incurred in attending Governing Board meetings or taking any actions specifically authorized by the Governing Board; provided, however, that so long as such meetings are held within 15 miles of the Surgery Center, such out-of-pocket expenses shall not include any travel expenses, except for travel expenses associated with attendance of meetings by the Governing Board members appointed by JV.

(c) **Officers.** The Governing Board may elect officers of the Company and delegate duties and authority to such officers. If any officer is elected without an express statement of the duties and authority of such officer, the duties and authority of such officer shall be the same as those given to an equivalent officer of a Tennessee business corporation under the Tennessee Business Corporation Act. Initially, the following officers of the Company are elected: Monica Cintado, President; Corey Ridgway, Vice President; Robert S. Biscan, Vice President; and John J. Wellik, Vice President, Secretary and Treasurer.

(d) **Management Agreement; Guaranty Fees.** The Company and USP shall enter into the Management Agreement, and USP is hereby authorized to perform its duties and take the actions that are required or permitted under said agreement. In addition, the Company may enter into agreements with any Member or third party to provide services to or on behalf of the Company and to sell supplies to the Company, but any such transaction with a Member or an Affiliate of a Member (other than

*de minimus* transactions) is subject to the requirement that the consideration paid by the Company shall be no greater than the amount for which USP reasonably believes the Company could obtain such services or supplies from an independent party in an arm's length transaction. In addition, if Health System, USP Parent or any of their Affiliates agrees to guaranty any indebtedness or lease obligations of the Company with the approval or at the request of the Governing Board, then the Physician Members shall be offered the opportunity to provide their personal guarantees of a pro rata portion of such indebtedness or lease obligation, and each guarantor shall be entitled to a guaranty fee that is consistent with fair market value, as determined by the mutual agreement of the Governing Board and the JV.

(e) **Medical Advisory Committee.** The Governing Board will establish a Medical Advisory Committee. The members of the Medical Advisory Committee will be appointed by and report to the Governing Board. The members of the Medical Advisory Committee will be the Medical Director and physicians who utilize the Surgery Center on a regular basis. The Medical Advisory Committee will be responsible for making recommendations to the Governing Board relating to (i) matters of clinical policy, (ii) credentialing, (iii) quality of care at the Surgery Center and (iv) other issues associated with patient care activities at the Surgery Center, as determined by the Governing Board.

**Section 14.2. Power and Authority.** Without limiting the generality of Section 14.1, but subject to the express limitations set forth elsewhere in this Agreement, the Governing Board shall have all necessary powers to manage and carry out the purposes, business, property and affairs of the Company and to do on behalf of the Company all things which, in the Governing Board's sole judgment, are necessary, proper or desirable to carry out the aforementioned duties and responsibilities.

**Section 14.3. Devotion of Time.** No Governing Board member is obligated to devote all of his or her time or business efforts to the affairs of the Company. The Governing Board members shall devote such time to the Company business as they shall deem appropriate for the operation of the Company. Nothing in this Agreement shall preclude the employment of any agent, third party or Affiliate to provide services in respect of the Company's properties or business, subject to the control of the Governing Board or USP under the Management Agreement, as applicable.

**Section 14.4. Liability of Governing Board Members.** No Governing Board member shall be liable to the Company or to any Member or Interest Holder for any loss or damage sustained by the Company, any Member or Interest Holder, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, reckless or intentional misconduct or a knowing violation of law by the Governing Board member. The Governing Board members shall perform their managerial duties in good faith, in a manner they reasonably believe to be in the best interests of the Company, its Members and Interest Holders. No Governing Board member that so performs the duties of a Governing Board member shall have any liability by reason of being or having been a Governing Board member of the Company or having performed any such duty.

**Section 14.5. Reliance on Agents.** In performing their duties, the Governing Board members shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, of attorneys, accountants and other employees or agents of the Company who the Governing Board member reasonably believe to be reliable and competent in the matters presented.

#### Section 14.6. Indemnification and Insurance.

(a) To the fullest extent permitted by law, the Company will indemnify each Member (but not relating to such Member in her or her capacity as a physician performing medical procedures), its Affiliates, the members, owners, directors, officers, employees and agents of each Member and its Affiliates, each officer of the Company, each Governing Board member and the Liquidator (each an "Indemnified Party" and collectively the "Indemnified Parties"), and defend, save and hold each Indemnified Party harmless, from and in respect of, all (i) fees, costs and expenses incurred in connection with or resulting from any claim, action or demand against an Indemnified Party (including any claim, action or demand arising under common law or statute), including attorneys' fees, that arise out of or in any way relate to the Company or its subsidiaries, or their respective properties, business or affairs, or that arise by reason of any of them being a Governing Board member, officer, employee or agent of a Member or the Company (provided that, in such capacity, such person was performing services on behalf of the Company) or a director, officer or employee of any Affiliate of a Member (whether or not such person continues to serve in such capacity at the time such claim, action or demand is brought or threatened), and (ii) all claims, actions and demands and any losses or damages resulting therefrom (including all claims, actions and demands arising under common law or statutes), including amounts paid in settlement or compromise of any claim, action or demand; provided, however, that this indemnity will not extend to conduct by an Indemnified Party if it is determined by a court of competent jurisdiction that the person acted so as to be liable for actual fraud, willful misfeasance, gross negligence or reckless disregard of the duties involved in the conduct of his office, which liability will survive the person's ceasing to serve in such capacity and any dissolution of the Company. The foregoing is intended to satisfy the requirements of the Act that indemnification be authorized prior to indemnifying any person. The foregoing right of indemnification will be in addition to any rights to which the Indemnified Parties may otherwise be entitled and will inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each Indemnified Party.

(b) The Company shall pay the expenses incurred by an Indemnified Party in defending a civil or criminal action, suit or proceeding, other than an action brought by the Company, upon receipt of an undertaking by the Indemnified Party to repay payments made by the Company if the Indemnified Party is determined not to be entitled to indemnification therefor as provided herein. The Governing Board will have the power on behalf of the Company to indemnify, on terms generally consistent with this Section 14.6, any other person who serves at the request of a Member as a director, officer or employee of, or consultant to, an Affiliate of the Company or a Member, against any liabilities that may be incurred by reason of the person's being an officer or employee of, or consultant to, an Affiliate of the Company or a Member. Any right of indemnity granted under this Section 14.6 may be satisfied only out of the assets of the Company and no Member will be personally liable with respect to any claim for indemnification.

(c) The Company will have the power to purchase and maintain insurance in reasonable amounts on behalf of the Company and the Indemnified Parties against any liability incurred by them in their capacities as such, whether or not the Company has the power to indemnify them against such liability. The Company may purchase and maintain insurance for the protection of any Indemnified Party against similar liabilities, whether or not the Company has the power to indemnify such person against such liabilities.

#### **Section 14.7. Competing Activities.**

(a) Neither this Agreement nor the Management Agreement shall preclude or limit, in any respect, the right of JV, Health System, USP, USP Parent or Biscan or any Affiliate of JV, Health System, USP, USP Parent or Biscan, or any shareholder, member, owner, officer or director of JV, Health System, USP, USP Parent or Biscan or any of their respective Affiliates (each, an "Affiliated Person") to engage or invest in any business activity of any nature or description, including those which may be the same as or similar to the business of the Company or the Surgery Center and in direct competition therewith;

(b) Any such activity may be engaged in by any Affiliated Person independently or with others, and may include the ownership and/or operation of other surgical facilities or related medical facilities for such Affiliated Person's own account or the account of others, including any partnership, limited liability company or other entity organized by the Affiliated Person;

(c) Neither the Company nor any Member or Interest Holder shall have any right, by virtue of this Agreement or the relationship created hereby, in or to such other ventures or activities, or to the income or proceeds derived therefrom, and the pursuit of such ventures, even if competitive with the business of the Company, shall not be deemed wrongful or improper; and

(d) Each Affiliated Person shall have the right to take for its own account (individually or as a trustee) or to recommend to others any investment opportunity.

**Section 14.8. Section 754 Election.** In the event of a transfer of all or part of a Membership Unit as described in Code Section 743, the Company may elect, pursuant to Section 754 of the Code, or corresponding provision of subsequent law, to adjust the basis of the Company's property as provided by Section 734 or 743 of the Code. Each of the Members will upon request supply the information necessary to properly give effect to any such election.

### **ARTICLE XV**

#### **Transfer of Interests by Members**

**Section 15.1. General Prohibition.** Except for sales (a) that are made pursuant to Section 7.1, (b) that are otherwise approved by the Governing Board or (c) that are otherwise provided for in this Article XV, and notwithstanding any provision contained in the Act to the contrary, no Member or Interest Holder shall have the right to transfer his or her Membership Units and no Member shall have the right to have a transferee admitted as a substituted Member in respect of such Membership Units without, in either instance, obtaining the prior written consent of the Governing Board, which may be withheld in its sole and absolute discretion. Except as otherwise approved by the Governing Board, any transfer permitted hereunder may be made only to a Qualified Member. This Section 15.1 and Section 15.2 below shall not apply to the JV or any of its Affiliates.

**Section 15.2. Right of First Refusal.** A Member may not, without the prior consent of the Governing Board (which consent may be withheld at the Governing Board's sole discretion), sell, assign or transfer the whole or any part of his or her Membership Units to any person or entity. In addition, except as otherwise provided in any written agreement approved by JV and Biscan, before any such Membership Unit is assigned, sold or transferred, the assigning Member shall first offer the Company (or any Qualified Member or Qualified Members designated by the Governing Board) and, if the Company declines such offer, then the JV (or its designee) shall have the right to acquire the interest on the same

terms and for the same price that the assigning Member offers or proposes to offer such Membership Units; provided, however, that if any such offer is accepted, the entire interest being offered must be purchased. The Company and JV may assign any right to purchase Units that arises under this Article XV to any other Qualified Member. If the Company (or any Qualified Member or Qualified Members designated by the Governing Board) does not elect to acquire the entire interest offered within 20 days after their receipt of the offer, and if JV (or its designee) does not elect to acquire the entire interest offered within 15 days after the expiration of said 20 day period, the part that they do not acquire may be sold by the Member upon the same terms and for the same price offered to the Company and JV at any time within 90 days after the expiration of such 15 day period. In addition to the foregoing, any Member who desires to transfer his or her Membership Units shall arrange for the transferee to be bound by the provisions of this Agreement, as it may then be amended, by having such transferee execute two counterparts of an instrument of assignment satisfactory in form to the Company and by delivering the same to the Company together with any other information that may be required by counsel to the Company to determine whether the proposed transfer complies with applicable federal and state securities or other laws or regulations. It is understood that the transferee shall be required to pay any and all reasonable filing and recording fees, legal fees, accounting fees and other charges and fees incurred by the Company and its counsel as a result of any such transfer.

**Section 15.3. Sale to JV or the Company.** Any Member may sell his or her Membership Units at any time to JV or to the Company at a price and upon such terms as may be agreed to by such parties.

**Section 15.4. Disposition upon Termination of Marriage.** If the marital relationship of a Member is terminated by divorce or the death of the Member's non-Member spouse (with the intent being that the death of a Member's spouse who was also a Member shall be governed by Section 15.9(a)) and such Member does not succeed to his or her spouse's interest (if any) in their Membership Units, such Member shall have the option to purchase all of his or her spouse's interest in such Membership Units, and such spouse or the executor or administrator of the spouse's estate shall be obligated to sell such Membership Units. The price at which such Membership Units shall be purchased shall be an amount equal to the Agreed Value (as defined in Section 15.11 below), which shall be payable in cash. Such option must be exercised within 90 days after such death or divorce. If the Member fails to exercise such option within said 90 day period (including without limitation any failure resulting from a determination that the preceding provisions of this Section 15.4 are not enforceable against the Member's spouse or estate), such failure shall constitute an offer by the Member and his or her spouse or estate to sell all of their Membership Units at the Agreed Value, and the provisions of Sections 15.2 and 15.10 shall apply to such offer. The date of the offer shall be the 91st day after such death or divorce.

**Section 15.5. Involuntary Disposition.** Prior to or upon any involuntary disposition of any Membership Units by a Member, the Member who owns such Membership Units or his or her representative shall send written notice thereof to the Company by certified or registered mail, return receipt requested, disclosing in full the nature and details of such involuntary disposition, and such notice shall be deemed to be an offer by such Member to sell such Membership Units for the Agreed Value, and the provisions of Sections 15.2 and 15.10 shall apply to such offer. Failure to send any such notice shall not affect the applicability or operation of the other provisions of this Article XV. The various options to purchase the Membership Units pursuant to this Article XV shall continue following any transfer or disposition of the Membership Units, whether pursuant to this Agreement or otherwise.

**Section 15.6. Transfers Affecting Tax Status.** Anything contained herein to the contrary notwithstanding, without the prior approval of the Governing Board, no Member may assign the

whole or any part of his or her Membership Units, and no attempted or purported transfer or assignment of any Membership Units (whether or not such assignee or transferee is admitted as a Member) shall be effective if it prejudices or affects, or would prejudice or affect, the continuity of the Company for purposes of Section 708 of the Code. The Company is expressly authorized to enforce this provision by notifying the Members that all transfers or assignments will be suspended for a period of up to 12 months whenever interests totaling 49% or more in interest of the Company have been effectively transferred in any 12 month period. Prior to any such transfer or assignment becoming effective, the Governing Board may require an opinion of counsel to the effect that, except as may result from any basis adjustment made pursuant to Section 14.8 above, the transfer will not adversely affect the Company or any of the nontransferring Members, and such transferor or assignor shall be responsible for paying said counsel's fee for the opinion.

**Section 15.7. Compliance with Securities Laws.** All Members acknowledge that the Membership Units have not been registered under (a) the Securities Act of 1933, as amended (the "1933 Act"), in reliance on the exemptions afforded by Section 3(a)(11) and Section 4(2) of the 1933 Act, or (b) the securities laws of the State of Tennessee (the "State Securities Laws") in reliance on an exemption afforded by the Uniform Limited Offering Exemption or other similar exemption adopted pursuant to the State Securities Laws. Therefore, to preserve said exemptions and notwithstanding anything contained herein to the contrary, the Members hereby agree that interests in the Company shall be nontransferable and nonassignable except in compliance with the registration provisions of the 1933 Act and the State Securities Laws, or an exemption or exemptions therefrom, and any attempted or purported transfer or assignment in violation of the foregoing shall be void and of no effect. As an additional condition precedent to any assignment or other transfer of any interest in the Company, the Company may require an opinion of counsel reasonably satisfactory to the Company that such assignment or transfer will be made in compliance with the registration provisions of the 1933 Act and the State Securities Laws or exemptions therefrom, and such transferor or assignor shall be responsible for paying said counsel's fee for the opinion.

**Section 15.8. Effective Date of Transfer; Substitution of Assignees as Members.** Unless otherwise agreed by the assignor, the assignee and the Company, each assignment or transfer of Membership Units shall be effective as follows: (a) if the Governing Board actually receives an instrument of assignment that is satisfactory in form to the Governing Board and is duly executed by the assignor and the assignee, during the first 15 days of any calendar month, the assignment shall be effective as of the first day of such calendar month; and (b) if such an instrument of assignment is actually received by the Governing Board during the remainder of such calendar month, the assignment shall be effective as of the first day of the next calendar month; however, no attempted assignment or transfer shall be effective or recognized by the Company or the Members until all the requirements of this Article XV have been satisfied. If and when the consent of the Governing Board to the admission of such transferee is secured and the other requirements of this Article XV are satisfied, the transferee shall be admitted as a substituted Member as to the Membership Units thus transferred, and each Member hereby consents to such admission. Unless and until any transferee is admitted as a substituted Member, his or her status and rights shall be limited to the rights of an Interest Holder. Upon the effectiveness of an assignment of a Membership Unit and the consent of the Governing Board to the admission of the assignee as a Member under this Section 15.8, the Company shall execute, file and record with the appropriate governmental agencies such documents (including amendments to this Agreement), if any, as are required to accomplish the admission of the transferee as a substituted Member. Any person admitted as a Member shall be subject to and bound by all the provisions of this Agreement as if originally a party to this Agreement.

### **Section 15.9. Options to Purchase.**

(a) In the event of the death, Retirement, Relocation, dissolution, mental incompetency or legal disability of a Physician Member (or an Interest Holder), the Company (or any Qualified Member or Qualified Members designated by the Governing Board) shall have the option and, if the Company does not exercise such option, JV (or its designee) shall have the option to purchase such Physician Member's Membership Units pursuant to the provisions of Section 15.2 as if such Physician Member had made an offer to sell his or her Membership Units at a price equal to the Agreed Value of said Membership Units, determined as of the date such option is exercised.

(b) If any Physician Member either (i) fails to maintain his or her credentials to provide services at the Surgery Center or (ii) at any time ceases to meet the Physician Member Eligibility Requirements, as evidenced by the Physician Member's failure or inability to execute and deliver an Annual Eligibility Affirmation Statement in the form attached hereto as *Schedule B* within 30 days after the end of any 12 month period that is designated by the Governing Board for purposes of this Section 15.9(b)(ii), then in each such case, such Physician Member shall be deemed to have made an offer to sell all of his or her Membership Units. Upon the occurrence of any such event, the Company and JV shall have the right to purchase such Physician Member's Membership Units pursuant to the provisions set forth in Section 15.2 as if such Physician Member had made an offer to sell his or her Membership Units for a purchase price equal to the Agreed Value.

(c) The closing of any transaction pursuant to this Section 15.9 shall take place, the purchase price shall be paid and the selling Member's Membership Units shall be transferred and assigned in accordance with the terms and provisions of Section 15.10.

(d) This Section 15.9 shall not apply to JV or any of its Affiliates (other than with respect to their repurchase rights granted hereunder) or to Biscan.

### **Section 15.10. Repurchase Procedures.**

(a) Except as expressly set forth in Section 15.13, the purchase price for Membership Units to be acquired pursuant to this Article XV shall be payable in cash to the transferor of such Membership Units. In addition, the buyer shall indemnify the seller with respect to any personal guarantees or other commitments of the seller relating to the business of the Company.

(b) The closing of the sale shall be held at the principal place of business of the Company within 30 calendar days after the date JV or the Company exercises its right to purchase such interest. At the closing of the sale, the buyer shall pay the purchase price to the seller and the seller (or his or her legal representative) shall convey the Membership Units to be sold, free and clear of all encumbrances, by executing and delivering a form of Assignment of Membership Units provided by the Company; provided, however, that in the event the seller fails to execute and deliver such an Assignment of Membership Units, the Membership Units to be transferred shall be deemed transferred for all purposes on the date the buyer tenders payment therefor to the Company (or in the event JV or the Company is the buyer, the date the Company notifies the seller that a check or, if applicable, shares of USP Parent for such purchase price is available upon delivery of an executed Assignment) and the seller shall have no further interest in the Company, other than the right to receive such purchase price (without interest) upon execution and delivery of an appropriate Assignment form as required herein. All costs and expenses of said transfer, including any legal fees of the Company, shall be borne and paid by the selling party, and the

Company is authorized to apply any other obligations payable to the selling party to the payment or reimbursement of such costs and expenses.

**Section 15.11. Agreed Value.** The "Agreed Value" of any Member's Membership Units in the Company shall mean the greater of (a) the book value attributable to such Membership Units, where book value is total assets less total liabilities of the Company, as set forth in the most recent of the Company's regularly prepared financial statements and shall be determined in accordance with generally accepted accounting principles consistently applied, or (b) if sufficient credible documentation is available to perform such calculation the sum of (i) the amount originally paid by the Member for such Membership Units, plus (ii) any additional capital contributed to the Company attributable to such Membership Units (such as through a capital call), plus (iii) the Member's Net Income allocated to such Membership Units, minus (iv) the Member's Net Losses allocated to such Membership Units, minus (v) the Member's distributions allocated to such Membership Units (the "Member's Net Investment"). If sufficient credible documentation is not made available to the Company for the purposes of performing the calculation set forth in clause (b) above, then the Agreed Value shall be the amount determined pursuant to clause (a) above. Notwithstanding the foregoing, in no event shall the Agreed Value exceed the "Appraised Value" for such Units. The "Appraised Value" shall mean a price per Unit equal to the fair market value of the Company divided by the number of Units issued and outstanding at the end of the last month immediately preceding the month when the notice of intent to purchase is delivered. As used herein, the "fair market value" of the Company will be the value of the Company determined by an independent appraisal firm that is approved by the Governing Board and the costs of which shall be borne by the Company. Any questions with respect to accounting procedures or valuation not controlled by this Agreement shall be resolved by the independent accountants then engaged by the Company.

**Section 15.12. Physician Member Non-Competition Covenant.**

(a) Each Physician Member agrees that, so long as such Physician Member owns any Membership Units and for a one year period following such Physician Member's disposition of all of his or her Membership Units, such Physician Member will not, directly or indirectly, engage anywhere within 15 miles of the Surgery Center in the development, management or ownership of ambulatory surgery centers or surgical hospitals, in providing administrative or consulting services to any ambulatory surgery center or surgical hospital, or in any other business that would be competitive with the business conducted by the Company or the Surgery Center (including without limitation acute care hospitals and doctors' offices or any other facility where surgical procedures customarily performed in hospitals or licensed outpatient surgical centers are performed) or acquire or retain any "financial interest" (as defined below) in any business which is so engaged; *provided, however*, that (i) no Physician Member shall be restricted from performing surgery at any other facility or otherwise practicing medicine in a private practice which may utilize such competing facilities from time to time, so long as the Physician Member does not have a financial interest in any such competing facility, (ii) no Physician Member shall be prevented from participating on any hospital medical staff committee, office or board so long as no compensation (other than customary fees for membership on general oversight or quality assurance committees) is paid to such Physician Member for services directly related to any such hospital's outpatient surgery or endoscopy facility or program, (iii) this Section 15.12 shall not apply to any ownership interest held by a Physician Member that is listed on Schedule D attached hereto, or with respect to future new Physician Members, an ownership interest held by such Physician Member in a competing facility that is disclosed to and approved by the Company prior to the Company's acceptance of a subscription for Membership Units from such Physician Member, (iv) this Section 15.12 shall not apply to the continuation of the practice of any Physician Member who is a surgeon personally performing surgical procedures in his or her office for which no separate facility fee, technical components, tray fee or "payment differential"

(i.e., a professional fee that is greater than the professional fee that would be received if the procedure were performed at the Surgery Center) is charged and that are the types of procedures that have been performed in such Physician Member's office during the 12 month period prior to such Physician Member's initial acquisition of any Membership Units, and (v) this Section 15.12 shall only apply to Physician Members.

(b) For purposes of this Agreement, "financial interest" shall include (i) interests held by family members or trusts for the benefit of any family member and (ii) any financial relationship with a competing entity, whether as an employee, agent, director, security holder (except for investments made through mutual funds or the ownership of any outstanding shares of a publicly held corporation purchased through a broker on an established stock exchange or the Nasdaq system at an original cost of not more than \$25,000), creditor, consultant or otherwise.

(c) If any Member violates the non-competition covenant set forth in this Section 15.12, such Member shall thereupon be deemed to have made an offer to sell his or her Membership Units at a price equal to the lesser of (i) 50% of the Agreed Value for such Membership Units and (ii) the Member's Capital Account balance, which offer shall be governed by the terms of Sections 15.2 and 15.10 hereof. In addition, upon breach of any provision of this Section 15.12, the Company will be entitled to injunctive relief, since the remedy at law would be inadequate and insufficient, and the Company will be entitled to such monetary damages as it can show it has sustained by reason of such breach.

(d) If any provision in this Section 15.12, or any part thereof, is held to be unenforceable because of the duration of such provision or the area covered thereby, the parties agree that the court making such determination will have the power to reduce the duration and/or area of such provision, and/or to delete specific words or phrases, and in its reduced form such provision will then be enforceable and will be enforced.

**Section 15.13. Repurchase Obligation Upon Change in Law.** If any law is passed or regulation or government ruling adopted after the date of this Agreement which prohibits or has the effect of prohibiting a referring physician from being a Physician Member, the Company and the affected Physician Member agree to use their commercially reasonable efforts to restructure the referring physician's relationship with the Company in such a manner that will avoid such illegality and, to the extent practicable, will preserve the existing financial and business relationships among them. If despite such efforts no such restructuring is agreed upon, the Company agrees to purchase, and the Physician Member agrees to sell, the Membership Units held by such Physician Member for a purchase price equal to the Agreed Value of such interest. The purchase price will be payable in cash or, at the option of the Governing Board with the approval of USP Parent, in shares of newly issued, unregistered common stock of USP Parent (or, if such common stock has been converted into or exchanged for the common stock of another corporation before such payment is required to be made hereunder, the common stock of such other corporation), which shall be "restricted shares" for purposes of federal and state securities laws, valued at (a) the average closing sales price for such shares on the principal public market for which they are traded over the five trading days ending on the fifth trading day prior to the closing of such purpose and sale or (b) if such common stock is not then listed for trading on the Nasdaq Stock Exchange, the New York Stock Exchange or the American Stock Exchange, the fair market value of such common stock as determined by the issuer's board of directors.

**Section 15.14. Ownership of Membership Units for Certain Purposes.** In case any Membership Units (other than Membership Units held by JV or any of its Affiliates) are held by an entity or by two or more persons as joint tenants or tenants in common, the Governing Board shall designate the

individual(s) who shall be treated as the owner of such Membership Units for purposes of determining the rights of the Company and the other Members under this Article XV and all voting rights attributable to such Membership Units.

## ARTICLE XVI

### Dissolution of the Company

**Section 16.1. Dissolution Events.** The happening of any one of the following events shall work an immediate dissolution of the Company:

- (a) The bankruptcy of the Company;
- (b) The sale or other disposition of all or substantially all the assets of the Company; or
- (c) The supermajority vote of the Governing Board to dissolve pursuant to Section 14.1(b)(v)(F).

**Section 16.2. Deemed Bankruptcy of the Company.** For purposes of this Agreement, the "bankruptcy" of the Company shall be deemed to have occurred upon the happening of any of the following:

- (a) The filing of an application by the Company for, or the Company's consent to, the appointment of a trustee in bankruptcy or receiver of all or a substantial portion of its assets;
- (b) The filing by the Company of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due;
- (c) The making by the Company of a general assignment for the benefit of creditors;
- (d) The filing by the Company of an answer admitting the material allegation of, or its consenting to, or defaulting in answering a bankruptcy petition filed against it in any bankruptcy proceeding; or
- (e) The entry by any court of competent jurisdiction of an order for relief of the Company under Chapter Seven of 11 U.S.C. (the Bankruptcy Code), the entry of an order, judgment or decree having a similar effect under any other applicable law or the entry of an order, judgment or decree appointing a trustee of the assets of the Company, and any such order, judgment or decree continuing unstayed and in effect for a period of 60 days after such entry.

## ARTICLE XVII

### Winding Up and Termination of the Company

**Section 17.1. Winding Up; Appointment and Powers of Liquidator.** If the Company is dissolved pursuant to Section 16.1, a liquidator or liquidating committee selected by the Governing Board or, if no such liquidator or liquidating committee is so selected, the Governing Board (the "Liquidator") shall commence to wind up the affairs of the Company and to liquidate and sell its assets. The Liquidator

shall have sufficient business expertise and competence to conduct the winding up and termination of the Company and, in the course thereof, to cause the Company to perform any contracts which the Company has theretofore or (subject to the limitations hereinafter set forth) may thereafter enter into. The Liquidator shall proceed with such liquidation in as expeditious a manner as is reasonably practicable. The Liquidator shall have full right and unlimited discretion to determine the time, manner and terms of sale or sales of Company property pursuant to such liquidation with due regard to the activity and condition of the relevant market and general financial and economic conditions. The Liquidator (if other than the Governing Board) appointed as provided herein shall be entitled to receive such compensation for its services as shall be agreed upon by the Liquidator and a Majority in Interest of the Members. The Liquidator may resign at any time by 15 days prior written notice and may be removed at any time, with or without cause, by written notice of removal signed by a Majority in Interest of the Members. Upon the death, dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all the rights, powers and duties of the original Liquidator) shall be appointed within 30 days thereafter by vote of a Majority in Interest of the Members, evidenced by written appointment and acceptance. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the "Liquidator" are authorized to continue under the provisions hereof, and every reference herein to the "Liquidator" will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided. Except as expressly provided in this Article XVII, the Liquidator appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Governing Board under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the liquidation and dissolution of the Company as provided for herein, including, without limitation, the following specific powers:

(a) The power to continue to manage and operate any business of the Company during the period of such liquidation or dissolution proceedings, excluding, however, the power to make and enter into contracts which may extend beyond the period of liquidation.

(b) The power to make sales and incident thereto to make deeds, bills of sale, assignments and transfers of assets and properties of the Company; provided, that the Liquidator may not impose personal liability upon any of the Members under any such instrument.

(c) The power to borrow funds as may, in the good faith judgment of the Liquidator, be reasonably required to pay debts and obligations of the Company or operating expenses, and to execute and/or grant deeds of trust, mortgages, security agreements, pledges and collateral assignments upon and encumbering any of the Company properties as security for repayment of such loans or as security for payment of any other indebtedness of the Company; provided, however, that the Liquidator shall not have the power to create any personal obligation on any of the Members to repay such loans or indebtedness other than out of available proceeds of foreclosure or sale of the properties or assets as to which a lien or liens are granted as security for payment thereof.

(d) The power to settle, release, compromise or adjust any claims asserted to be owing by or to the Company, and the right to file, prosecute or defend lawsuits and legal proceedings in connection with any such matters.

**Section 17.2. Liquidator Appointed by Court.** If within 30 days following the date of dissolution or other time period provided in Section 17.1 above a Liquidator or successor Liquidator has not been appointed in the manner provided therein, any interested party shall have the right to make application to the appropriate court in the county in which the Surgery Center is located for appointment of such Liquidator or successor Liquidator, and the said court shall be fully authorized to appoint and designate such Liquidator or successor Liquidator who shall have all the powers, duties, rights and authorities of the Liquidator herein provided.

**Section 17.3. Reserves.** After making payment or provision for payment of all debts and liabilities of the Company and all expenses of liquidation, the Liquidator may set up, for a period not to exceed two years after the date of dissolution, such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.

**Section 17.4. Payment of Expenses; Distributions.** Upon the winding up and termination of the business and affairs of the Company, its assets (other than cash) shall be sold, its liabilities and obligations to creditors and all expenses incurred in its liquidation shall be paid. Notwithstanding the provisions of Article VIII, the net proceeds from such sales (after deducting all selling costs and expenses in connection therewith), together with (at the expiration of the two year period referred to therein) the balance of any reserve account referred to in Section 17.3 above, shall be distributed among the Members and Interest Holders in proportion to, and to the extent of, their respective positive balances in their Capital Accounts (after taking into account all Capital Account adjustments for the taxable year of liquidation and the allocations of Net Income and Net Loss, if any, resulting from the liquidation transactions in accordance with Article IX).

**Section 17.5. Liquidation Financial Statement.** Within a reasonable time following the completion of the liquidation of the Company's properties, the Liquidator shall supply to each of the Members and Interest Holders a statement which shall set forth the assets and the liabilities of the Company as of the date of complete liquidation, each Member's and Interest Holder's pro rata portion of distributions pursuant to Section 17.4, and the amount retained as reserves by the Liquidator pursuant to Section 17.3.

**Section 17.6. No Recourse; In-Kind Distributions.** Each Member and Interest Holder shall look solely to the assets of the Company for all distributions with respect to the Company and his or her Capital Contribution thereto (including the return thereof) and share of profits or losses thereof, and shall have no recourse therefor (upon dissolution or otherwise) against the Company or the Liquidator. No Member or Interest Holder shall have any right to demand or receive property other than cash upon dissolution and termination of the Company. All Company property shall be sold upon liquidation of the Company or distributed in kind to the Members and Interest Holders, at the sole discretion of the Liquidator. Any such in kind distribution need not be made on a pro rata basis so long as the value of the assets and cash (if any) distributed to each Member and Interest Holder is in compliance with this Article XVII. In the event any Company property is distributed in kind, each Member and Interest Holder shall be deemed to have received his or her proportionate share of each asset so distributed, determined in accordance with his or her positive Capital Account balance, as adjusted to take into account any unrealized gains or losses at the time distribution, as though such Company property had been sold immediately prior to its distribution for an amount equal to its fair market value, as reasonably determined by the Liquidator, and taking into account all distributions of proceeds pursuant to this Article XVII.

**Section 17.7. Termination and Dissolution.** Upon the completion of the liquidation of the Company and the distribution of all Company funds and assets, the Company shall terminate and the

Liquidator shall (and is hereby given the power and authority to) execute, acknowledge, swear to and record all documents required to effectuate the dissolution and termination of the Company.

**Section 17.8. Technical Tax Termination.** A technical tax termination under any applicable provisions of federal or state income tax laws shall not cause a dissolution of the Company. If the Company "terminates" for federal income tax purposes as a result of a transfer of 50% or more of the profits and capital interests in the Company, the following is deemed to occur: (a) the Company contributes all of its assets and liabilities to a new limited liability company in exchange for an interest in the new limited liability company; (b) immediately thereafter, the terminated Company distributes the interest in the new limited liability company to the purchasing Member or Members and the other remaining Members in proportion to their respective interests in the terminated company in liquidation of the Company; and (c) the business of the terminated Company is continued by the new limited liability company.

**Section 17.9. Liquidation of Interests.** A Member's or Interest Holder's interest in the Company shall be deemed liquidated for purposes of this Article XVII upon the liquidation of the Company or on the date of liquidation of the Membership or Economic Interest in the Company under Regulations Section 1.761-1(d). A liquidation for such purposes shall occur upon a termination of the Company under Code Section 708(b)(1) or upon the cessation of the Company as a going concern as defined in Regulations Section 1.704-1(b)(2)(ii)(g).

## ARTICLE XVIII

### Notices

To be effective, all notices, requests and demands under this Agreement must be in writing and must be given by (1) depositing same in the United States mail, postage prepaid, certified, registered or express, return receipt requested, (2) confirmed facsimile transmission, (3) overnight courier service with tracking capability or (4) delivering same in person and receiving a signed receipt therefor. For purposes of notice, the addresses of the Members and Interest Holders shall be as set forth on Schedule A attached to this Agreement (as the same may be modified from time to time to reflect issuances and transfers of Membership Units and address changes pursuant hereto) and the address of the Company shall be as set forth in Article V. Notices, requests and demands mailed in accordance with the foregoing shall be deemed to have been given and made three days following the date so mailed. All notices, demands and requests sent by facsimile shall be effective and deemed served on the date of the facsimile confirmation. All notices, requests and demands sent by overnight courier service shall be effective and deemed served on the day after being deposited with such overnight courier service. Notices, requests and demands made by personal delivery shall be deemed to have been given and made upon receipt. Any Member or Interest Holder may designate a different address to which notices, requests or demands shall thereafter be directed by written notice given in the manner hereinabove required and directed to the Company at its offices as hereinabove set forth.

## ARTICLE XIX

### Amendment of Operating Agreement

**Section 19.1. Amendment; Restrictions.** This Agreement may be modified or amended at any time by an approval in writing signed by JV and, so long as the Members other than the JV own at least 20% of the issued and outstanding Units, Members who own a majority of the Membership Units then held by the Members other than the JV; provided, however, that, without the express, written consent of

each Member affected thereby; no such modification or amendment shall change any Member's right of limited liability.

**Section 19.2. Amendment by Governing Board.** The Governing Board shall have the authority to amend this Agreement without any vote or other action by the other Members (a) as provided in Section 9.5, (b) for purposes of reflecting issuances or transfers of Membership Units and Economic Interests (including revising Schedule A to reflect any such issuances or transfers or to revise or correct any other information set forth in Schedule A), (c) for purposes of forming, qualifying or continuing the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct business, (d) to the minimum extent deemed necessary or appropriate by the Governing Board to bring the Company and this Agreement into compliance with any future federal or state laws or administrative regulations that are duly enacted and that restrict physician investment, or that define the conditions under which physicians may invest, in privately held health care companies (such as the Company) to which they refer patients; except that no such amendment may be adopted without the express, written consent of each Member affected thereby if such modification or amendment would change the interest of such Member in the capital, profits, losses or cash distributions of the Company or his or her rights of contribution or withdrawal with respect thereto.

**Section 19.3. Amendment of Articles of Organization.** In the event this Agreement shall be amended pursuant to this Article XIX, the Company shall amend the Articles of Organization of the Company to reflect such change if it deems such amendment of the Articles of Organization to be necessary or appropriate.

## ARTICLE XX

### Power of Attorney

Each of the Members and Interest Holders does hereby irrevocably constitute and appoints JV, or its successor, his or her true and lawful attorney in fact and agent, to execute, acknowledge, verify, swear to, deliver, record and file, in such Member's or Interest Holder's name, place and stead, all instruments, documents and certificates which may from time to time be required by the laws of the United States of America, the State of Tennessee, or any political subdivision or agency thereof, to effectuate, implement and continue the valid existence of the Company, including without limitation the power and authority to execute, verify, swear to, acknowledge, deliver, record and file (1) all certificates and other instruments (including the Articles of Organization, counterparts of this Agreement and amendments thereto) which JV deems appropriate to form, qualify or continue the Company as a limited liability company in the State of Tennessee, (2) all instruments which JV deems appropriate to reflect any amendment to this Agreement made in accordance with the terms of this Agreement, (3) all conveyances and other instruments which JV deems appropriate to reflect the dissolution and termination of the Company pursuant to the terms of this Agreement, including the writing required by the Act to cancel the Company's Articles of Organization filed with the Tennessee Secretary of State and any other governmental agencies, (4) all instruments relating to the admission of any additional or substituted Member, and (5) a certificate of assumed name and such other certificates and instruments as may be necessary under the fictitious or assumed name statutes from time to time in effect in the State of Tennessee and all other jurisdictions in which the Company conducts or plans to conduct business. Said agent and attorney in fact shall not, however, have the right, power or authority to amend or modify this Agreement when acting in such capacities, except to the extent authorized herein. The power of attorney granted herein shall be deemed to be coupled with an interest, shall be irrevocable, shall survive the death, dissolution, bankruptcy, incompetency or legal disability of a Member or Interest Holder and shall extend

to the heirs, successors and assignees of such Member or Interest Holder; and may be exercised by said agent and attorney in fact for all Members and Interest Holders (or any of them) by listing all (or any) of the Members or Interest Holders required to execute any such instrument, and executing such instrument acting as attorney in fact for all (or any one) of them or in such other manner, including by facsimile signature, as said agent and attorney in fact may deem appropriate. Each Member and Interest Holder hereby agrees to be bound by any representations made by JV acting in good faith pursuant to such power of attorney, and each Member and Interest Holder hereby waives any and all defenses which may be available to contest, negate or disaffirm any action of JV taken in good faith under such power of attorney.

## ARTICLE XXI

### Legal Compliance

**Section 21.1. Corporate Practice of Medicine.** Nothing contained in this Agreement is intended to (a) constitute the use of a medical license for the practice of medicine by anyone other than a licensed physician, (b) aid the Company or any other entity in the practice of medicine when in fact the entity is not authorized to practice medicine or (c) do any other act or create any other arrangements in violation of the Tennessee Medical Practice Act.

**Section 21.2. Health Laws.** The Members enter into this Agreement with the intent of conducting their relationship in full compliance with applicable state, local and federal laws, including but not limited to the Health Laws. Notwithstanding any unanticipated effect of any of the provisions of this Agreement, no Member or any Person acting on behalf of the Company will intentionally conduct himself or itself under the terms of this Agreement in a manner that would constitute a violation of the Health Laws.

**Section 21.3. Referral Policy.** Other than the requirement to become and remain a Qualified Member, nothing contained in this Agreement will require (directly or indirectly, explicitly or implicitly) any Member to refer or direct any patients or other business to the Surgery Center as a precondition to receiving the benefits set forth in this Agreement or distributions under this Agreement or in establishing the valuation of a Membership Unit.

## ARTICLE XXII

### Miscellaneous

**Section 22.1. Waiver of Partition Rights.** The Members and Interest Holders agree that the Company's properties are not and will not be suitable for partition. Accordingly, each of the Members and Interest Holders hereby irrevocably waives any and all rights that he may have to maintain any action for partition of any of the Company's property.

**Section 22.2. Entire Agreement.** This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof and supersedes any prior agreement or understanding among them. This Agreement may not be modified or amended in any manner other than as set forth herein.

**Section 22.3. Governing Law.** This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Tennessee.

**Section 22.4. Successors and Assigns.** Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their legal representatives, heirs, administrators, executors, successors and assigns.

**Section 22.5. Construction.** Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter.

**Section 22.6. Captions.** Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit or extend the scope or intent of this Agreement or any provision hereof.

**Section 22.7. Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**Section 22.8. Counterpart Execution; Execution.** Separate copies of this Agreement may be executed by the parties hereto, with the same effect as though all parties had signed the same copy of this Agreement. Facsimile signatures or signatures delivered via other electronic transmission system shall have the same effect as manually executed signatures.

**Section 22.9. Further Assurances.** Each party hereto agrees to execute, with acknowledgment or affidavit, if required, any and all documents and writings which may be necessary or expedient in connection with the creation of the Company and the achievement of its purposes, specifically including all such agreements, certificates, tax statements, tax returns and other documents as may be required of the Company or its Members or Interest Holders by the laws of the United States of America, the State of Tennessee or any political subdivision or agency thereof.

**Section 22.10. Weekends and Holidays.** If any due date contained herein falls on a Saturday, Sunday or Bank holiday, the due date shall be deemed to be the following business day.

**Section 22.11. Articles of Organization.** The Company shall not be required to deliver or mail copies of the Articles of Organization of the Company, or any amendments thereto, to the Members, but the Company shall provide copies thereof to any Member upon written request therefor.

**Section 22.12. No Representation Regarding Tax Effects.** None of the Company, any Member, Interest Holder or any representative or agent of the Company or any Member makes any representation, warranty, guarantee or other assurance to any Member, Interest Holder, the Company or others regarding the federal or state income tax effects of this Agreement on the Company or its Members.

[Signatures on next page]

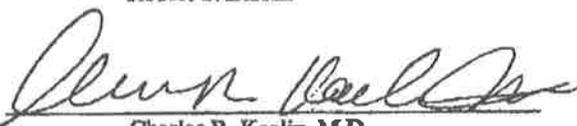
**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amended and Restated Operating Agreement as of the date first above written.

**SAINT THOMAS/USP SURGERY CENTERS,  
L.L.C.**

By

  
Monica Cintado, Vice President

  
Robert S. Biscan

  
Charles R. Kaelin, M.D.

[Other Physician Member signatures will be set forth on their respective Subscription Agreements entered into in connection with any offering of Membership Units, or on assignment forms or other similar documents that refer to this Agreement.]

SCHEDULE A

MEMBERS AND INTERESTS

Members	Address	Number of Membership Units <sup>i</sup>
Saint Thomas/USP Surgery Centers, L.L.C.	15305 Dallas Parkway Suite 1600 – LB 28 Addison, Texas 75001	22.218
Robert S. Biscan	5210 Maryland Way Suite 100 Brentwood, TN 37027	58.713
<b>Physician Members</b> Charles R. Kaclin, M.D.	910 Moreland Hills Drive Mt. Juliet, TN 37122	4.259
	<b>TOTALS</b>	<b>85.19</b>

---

<sup>i</sup> Schedule A will be amended to reflect the sale of 14.81 newly issued Units to new physician investors.

## SCHEDULE B

### ANNUAL ELIGIBILITY AFFIRMATION STATEMENT

The undersigned, who is a member of TENN SM, LLC, a Tennessee limited liability company (the "Company"), or an owner of such member, hereby represents, warrants and agrees as follows:

1. At all times in which I have had a direct or indirect ownership interest in the Company, I have fully informed, and I agree that I will continue to fully inform, each patient referred by me to Providence Surgery Center (the "Surgery Center") that I have an investment interest in the Surgery Center.

2. During the 12 calendar months immediately preceding the date of this Statement:

(a) I have derived at least one-third of my medical practice income from the performance of outpatient surgical procedures (as defined below); and

(b) I have performed at least one-third of my outpatient surgical procedures at the Surgery Center.

For purposes hereof, the term "outpatient surgical procedures" means those surgical procedures that are on the list of Medicare covered procedures authorized to be performed in ambulatory surgical centers under applicable Medicare regulations.

3. I agree that, with respect to any and all federal health care programs in which I participate (including Medicare and Medicaid), I will agree to treat patients receiving benefits or assistance under such programs in a nondiscriminatory manner.

4. I have not borrowed funds to acquire my ownership interest in the Company from the Company or any other owner of the Company.

5. I have not been excluded from participation in the Medicare, Medicaid or any other federal health care program.

6. At all times in which I have had a direct or indirect ownership interest in the Company, I have been and I agree that I will continue to be personally involved with the provision of care to each patient that I refer to the Surgery Center.

Schedule B

7. At all times in which I have had a direct or indirect ownership interest in the Company, I have been and I agree that I will continue to provide each patient that I refer to the Surgery Center with a list of effective alternative entities and clearly inform the patient that he or she has the option to use one of the alternative entities with the assurance that the I will not treat the patient differently if they do not choose the Surgery Center.

Agreed to by the undersigned this \_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Physician Member)

\_\_\_\_\_  
(Type or Print Name of Physician Member)

**Schedule B**



**Tab 5**

**Attachment A, 6**

**Site Entitlement**

1st Floor  
Surgery Center Space  
Suite 110  
6,994 Sq. Ft.

**RESTATED LEASE AGREEMENT**  
**Medical Office Building**

This Lease Agreement (this "Lease"), made and entered into as of the 1st day of October, 2004 is by and between Sports Docs, LLC, a Tennessee limited liability company (the "Landlord"), and Tenn SM, LLC, a Tennessee limited liability company (the "Tenant").

1. **PREMISES.** In consideration of the rents, mutual covenants and agreements set forth herein, the Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises located in that certain three (3) story medical office building (herein called the "Building"), located on that certain parcel of land described in Exhibit A-1, which premises are located on the first floor, Suite 110 of the Building and consist of approximately Six Thousand Nine Hundred Ninety-Four (6,994) rentable square feet (herein called the "Premises"). The Premises are more particularly shown on the floor plan attached hereto as Exhibit A. The rentable square feet of the Premises shall include both the area within the Premises and Tenant's proportionate share of the common areas of the Building, and the exact number of rentable square feet in the Building and in the Premises shall be determined by Landlord by the Lease Term Commencement Date and shall be memorialized in the Lease Term Commencement Date letter attached as Exhibit D. Tenant shall execute and deliver such Lease Term Commencement Date letter to Landlord within ten (10) days of Landlord's request therefor.

2. **TERM.** The term of this Lease (the "Lease Term") shall commence on the earliest of (i) the date on which the Tenant opens the Premises for business, (ii) on the date on which a certificate of occupancy on the interior improvements of the Premises is issued by the appropriate governmental authority, or (iii) the date the Landlord's architect certifies that the interior improvements to the Premises have been substantially completed (the earliest of such dates being the "Lease Term Commencement Date"), and shall continue for a term of three (3) years thereafter. The estimated Lease Term Commencement Date is October 1, 2005.

3. So long as Tenant is not in default under the terms and conditions of this Lease, both at the time of the exercise of this option to renew and at the expiration of the initial Term of this Lease, or if applicable, the expiration of the first Extended Term, as hereinafter defined, Tenant shall have nine consecutive options to extend the Term of this Lease for an additional term of Three (3) years each, subsequent to the initial Term (respectively, the "First Extended Term" and the "Second Extended Term"; collectively, the "Extended Term"). The Extended Term shall be on and subject to the same terms, covenants and conditions as herein contained, except for Base Rent, which shall be determined as hereinafter provided. The option shall be exercised only by written notice from Tenant to Landlord and given no less than six (6) months prior to the expiration of the initial Term or the First Extended Term, if applicable. Should Tenant elect not to exercise the First Extended Term, then the Second Extended Term shall not apply and shall be terminated. Annual Base Rent per rentable square foot for the Extended Term shall be an amount equal to one hundred three (103%) percent of the annual Base Rent in effect for the last year of the initial Term or the last year of the First Extended Term, if applicable. Each year during the Extended Term the annual Base Rent per rentable square foot shall be increased by three (3%) percent of the Base Rent payable for the immediately preceding Lease Year.

4. **BASE RENT.** Tenant shall pay to Landlord annually as Base Rent (herein so called), without notice, demand, counterclaim, abatement, deduction or setoff, except as elsewhere provided herein, the initial sum of One Hundred Twenty-Nine Thousand Six Hundred Sixty-Eight and 76/100 Dollars (\$129,668.76) (subject to adjustment based on the actual number of rentable square feet in the Premises and as otherwise hereinafter provided); provided, that after determination of the total rentable square feet of the Premises pursuant to Section 1 hereof, the annual Base Rent payable hereunder shall be adjusted to be an initial amount equal to the product of (i) Eighteen and 54/100 Dollars (\$18.54) times (ii) the total number of rentable square feet in the Premises. Base Rent shall be paid in advance in equal monthly installments in the initial amount of Ten Thousand Eight Hundred

Five and 73/100 Dollars (\$10,805.73) (subject to adjustment based on the actual number of rentable square feet in the Premises and as otherwise provided herein) on the first day of each and every calendar month during the Lease Term; provided, however, the Base Rent payable for the first complete month of the Lease Term shall be payable in advance on the date of execution of this Lease; and, provided, further, that in the event the Lease Term commences on a day other than the first day of a calendar month, then upon the Lease Term Commencement Date Tenant shall pay to Landlord a pro rata portion of Base Rent for that portion of the calendar month remaining from the Lease Term Commencement Date to the first day of the next following calendar month.

Each twelve (12) month period commencing on the Lease Term Commencement Date or any anniversary thereof is referred to herein as a "Lease Year"; provided, however, that if the Lease Term Commencement Date is any day other than the first day of a month, then the Lease Years shall each be a twelve (12) month period commencing on the first day of the following month and each anniversary thereof, and the first Lease Year shall include the remainder of the month in which the Lease Term Commencement Date occurs. Base Rent payable for each Lease Year after the first Lease Year shall increase to an amount equal to 103% of the Base Rent payable for the immediately preceding Lease Year.

**5. ADDITIONAL RENTAL.** In addition to the Base Rent as specified in this Lease, Tenant agrees to pay to Landlord as additional rent ("Additional Rent") Tenant's proportionate share of the total Operating Expenses (as hereinafter defined) for each calendar year during the Lease Term. Tenant's proportionate share shall be an amount which shall be a fraction, the numerator of which is the total rentable square feet of space within the Premises and the denominator of which is the total rentable square feet of space included within the Building. If the Lease Term includes only a portion of any calendar year, Tenant's obligation to pay Additional Rent for such calendar year shall be prorated accordingly.

For the purposes of determining Additional Rent, "Operating Expenses" shall mean all of Landlord's actual costs and expenses of every kind and nature, paid or incurred for a particular calendar year or portion thereof, for or in connection with owning, operating, maintaining, repairing, replacing and protecting the Building and the property upon which the Building is located (collectively the "Property") as more fully described specifically, but without limitation, in Exhibit B. Notwithstanding any other provision in the Lease, if the Building is not at least ninety-five percent (95%) occupied during any calendar year during the Lease Term, an adjustment shall be made in computing the Operating Expenses for such year for all purposes under the Lease so that the Operating Expenses shall be computed for such year as though the Building had been ninety-five percent (95%) occupied during such year.

Provided that no default by Tenant under this Lease has occurred and is continuing and that no event has occurred and is continuing which with the giving of notice or passage of time, or both, would constitute a default by Tenant under this Lease, Tenant, at its expense, shall have the right no more frequently than once per calendar year following thirty (30) days prior written notice to Landlord, to audit Landlord's books and records relating to Operating Expenses at Landlord's office during Landlord's normal office hours. Any such audit shall be performed either personally by the Tenant or through an independent certified public accounting firm or other firm not engaged on a contingent fee basis.

Itemized categories of Operating Expenses are more particularly, but without limitation, described in Exhibit B attached hereto and incorporated herein. Tenant's proportionate share of Operating Expenses for the remainder of the calendar year after the Lease Term Commencement Date and for each subsequent calendar year shall be estimated by Landlord, and written notice thereof shall be given to Tenant not later than the first day of the calendar year; provided, however, that Landlord's failure to deliver such estimate prior to such date shall not limit Tenant's obligation to pay its proportionate share of Operating Expenses hereunder, in which event Tenant shall continue to pay its proportionate share of Operating Expenses hereunder based upon the most recent estimate of Operating Expenses previously delivered by Landlord hereunder until Landlord subsequently delivers the revised estimate for the then current calendar year. Tenant agrees to pay Landlord each month, at the same time the Base Rent is due, an amount equal to one-twelfth (1/12) of the estimated annual Additional Rent due.

If real estate taxes, or any portion of Operating Expenses including utility, janitorial or other services increase during a calendar year, Landlord may revise the estimated Additional Rent during such year.

After the end of each calendar year, Landlord shall prepare and deliver to Tenant a statement showing Tenant's total amount of actual Additional Rent. Within thirty (30) days after receipt of the aforementioned statement, Tenant agrees to pay Landlord, or if Tenant has overpaid, Landlord shall credit against the next Additional Rent payment or payments due from Tenant, as the case may be, the difference between Tenant's actual Additional Rent due for the preceding calendar year and the estimated Additional Rent paid by Tenant during such year.

6. **RENT PAYMENT.** The Base Rent, Additional Rent and all payments under this Lease to be made by Tenant to Landlord (collectively referred to hereinafter as the "Rent") shall be made payable to, and mailed or personally delivered to Landlord at the address designated in writing by Landlord. No payment by Tenant or receipt by Landlord of a lesser amount than the entire payment due under this Lease shall be considered anything other than a payment on account of the earliest Rent due.

If any Rent or other payment under this Lease is not paid when due, Landlord shall notify Tenant and Tenant shall have five (5) days from the date of delivery of Landlord's notice to deliver all Rent then due without penalty; provided, however, that nothing contained herein shall be deemed to consent to Tenant's late payment of Rent, nor to limit Landlord's rights or remedies as a result of any late payment of Rent. Tenant shall be allowed not more than once in any twelve (12) consecutive month period to cure a late payment of Rent without penalty as provided above. If either (1) Tenant fails to cure timely by making the payment, or (2) upon a second instance within any twelve (12) consecutive month period that Tenant fails to pay rent by the fifth (5<sup>th</sup>) day of the month when due, then all accrued but unpaid Rent then due shall bear interest until paid at a rate equal to the lesser of (i) twelve percent (12%) simple interest per annum or (ii) the highest rate permitted by applicable law; and in addition, the Rent payment shall be subject to a four percent (4%) late service charge if not paid on or before the tenth (10th) day of each month. However, this provision shall not relieve Tenant from any default.

If applicable, Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed on Rent payments by any city, county, state or other governmental body having authority, such payments to be in addition to all other payments required to be paid to Landlord by Tenant under the terms of this Lease. Any such payment shall be paid concurrently with the payment of the Rent upon which such tax is based.

7. **DELIVERY OF PREMISES.**

(a) Landlord anticipates the Premises will be completed by the estimated Lease Term Commencement Date set forth in Section 2 of this Lease, but Tenant understands Landlord cannot guarantee completion by that date. If the Lease Term Commencement Date is delayed by causes that are beyond Landlord's control, Tenant agrees that completion of the Premises and the Lease Term Commencement Date will be extended accordingly, Landlord will not have to make, provide or compensate Tenant for any accommodations or costs as a result of any delays, and any such delays will not permit Tenant to cancel or amend this Lease, or diminish any of Tenant's obligations under this Lease. Landlord shall provide to Tenant not less than thirty (30) days advance notice of the estimated actual completion date for the Premises.

(b) Tenant agrees that no representations, statements or warranties expressed or implied have been made by or on behalf of Landlord with respect to the Premises or the completion thereof except as contained in this Lease. Except for completion and the shell building and the work to be performed by Landlord, if any, at Tenant's sole expense pursuant to the Work Letter Agreement attached hereto as Exhibit C, Tenant agrees that Landlord shall not be obligated to make any improvements or alterations to the Premises prior to the Lease Term Commencement Date. Upon the Lease Term Commencement Date, Tenant shall accept the Premises in its existing condition and state of repair, except for matters not completed as required by the Work Letter Agreement which are disclosed to Landlord in writing within thirty (30) days after Tenant takes possession of the Premises.

(c) By taking possession of the Premises, Tenant shall be deemed to have acknowledged that Tenant's Construction Work (as defined in Exhibit C) substantially conforms to the plans and specifications

for such work, except for matters not completed as required by the Work Letter Agreement which are disclosed to Landlord in writing within thirty (30) days after Tenant takes possession of the Premises.

(d) If Tenant's Construction Work is performed by Landlord's Contractor as determined by the Work Letter Agreement attached as Exhibit C, Landlord shall cause the repair or replacement of any defects in material or workmanship in Tenant's Construction Work, if any, if Landlord receives written notification of such defect from Tenant within the period of one (1) year after the Lease Term Commencement Date. Tenant's sole and exclusive remedy against Landlord shall be for the repair and replacement of defects of material and workmanship as provided herein, and Landlord shall not be responsible for any defect of any nature in Tenant's Construction Work installed by Landlord of which Landlord is not so notified within such one (1) year period. **LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF HABITABILITY, SUITABILITY FOR COMMERCIAL PURPOSES, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH TENANT'S CONSTRUCTION WORK EXCEPT THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 6. TENANT'S SOLE REMEDY FOR THE BREACH OF ANY APPLICABLE WARRANTY SHALL BE THE REMEDY SET FORTH IN THIS SECTION 6(d).** Tenant agrees that no other remedy, including without limitation, incidental or consequential damages for lost profits, injury to person or property, or any other incidental or consequential loss shall be available to Tenant.

(e) If, on the other hand, Tenant's Construction Work is performed by Tenant's Contractor as determined by the Work Letter Agreement attached as Exhibit C, Tenant shall cause the repair or replacement of any defects in material or workmanship in Tenant's Construction Work, if any, within the period of one (1) year after the date of substantial completion of Tenant's Construction Work. If Tenant's Construction Work is performed by Tenant's Contractor, Tenant agrees Landlord shall not be responsible for any defect of any nature in Tenant's Construction Work. Upon Tenant's occupancy of the Premises, Tenant shall deliver to Landlord an assignment of construction warranties, in form and substance acceptable to Landlord and duly executed and acknowledged by Tenant, which shall assign to Landlord all warranties from Tenant's contractors. If the consent of the contractors is required for the effectiveness of such assignment, Tenant shall secure such contractors' written consent to the assignment of warranties.

(f) When the Lease Term Commencement Date has been determined, Tenant shall execute, acknowledge and deliver to Landlord the written statement attached hereto as Exhibit D specifying the Lease Term Commencement Date.

(g) Prior to the Lease Term Commencement Date, Tenant shall not put any property in the Premises or enter the Premises or interfere with the progress of construction or with workmen, and Tenant shall not permit such entry or interference by others. Landlord will not be liable for any injury resulting from Tenant's breach of this paragraph. However, if Tenant shall occupy the Premises prior to the Lease Term Commencement Date with Landlord's consent, but not open for business, such occupancy by Tenant shall be deemed to be that of a tenant under all of the terms, covenants, and conditions of this Lease, except that the obligation to pay Rent shall not be due and payable until the Lease Term Commencement Date.

(h) If a casualty occurs to the Premises and/or the Building prior to the Lease Term Commencement Date that causes the Premises not to be fit for Tenant to conduct its business, Landlord may, at Landlord's option, either cancel this Lease, in which event this Lease shall become void and of no effect, or rebuild as soon as possible, in which event this Lease shall remain in full force and effect but Tenant shall not be liable for any Rent or payment of any cost until the earlier of the date Tenant occupies the Premises and is able to conduct its business therein or the date on which a certificate of occupancy on the interior improvements of the Premises is issued by the appropriate governmental authority. However, under no circumstances shall Tenant have any interest in any insurance proceeds attributable to said casualty. In the event of a casualty, if Landlord cannot obtain all utilities, permits and authorizations necessary to reconstruct the Building and/or the interior improvements in accordance with the plans and specifications therefor or complete reconstruction of the Building within a reasonable time, Landlord may

terminate this Lease by delivering written notice thereof to Tenant, in which event Landlord and Tenant shall have no further obligations or liabilities under this Lease.

**8. SECURITY DEPOSIT.** Tenant shall deposit with Landlord on the date Tenant executes this Lease, the sum of N/A and 00/100 Dollars (\$ -0-) (the "Security Deposit"), to be held by Landlord as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that such Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any default by Tenant, Landlord, without prejudice to any other remedy, may (but shall not be required to) apply such Security Deposit against any arrearages of Base Rent, Additional Rent or other amounts payable hereunder, or any other damage, injury, expense or liability caused to Landlord by such default on the part of Tenant. Should all or any portion of the Security Deposit be used for the purposes described above during the Lease Term, then Tenant shall remit to Landlord on the first of the month following notice of such use the amount necessary to restore the Security Deposit to its original balance. Tenant's failure to restore the Security Deposit upon notice of the Landlord shall be a material breach of this Lease, and shall constitute a default hereunder without further notice or cure period.

No interest shall be payable on the Security Deposit and no requirement shall be placed upon Landlord to keep the Security Deposit separate from its general funds.

In the event of a sale of the Building or a leasing of all or substantially all of the Building, Landlord shall have the right to transfer said Security Deposit to such purchaser, owner or lessee, and Landlord shall thereupon be released by Tenant from all liability for the return of such Security Deposit, for which Tenant agrees to look solely to the new purchaser, owner or lessee for the return of said Security Deposit. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

If Tenant shall fully and faithfully perform every provision of the Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant; provided, that Landlord shall not be obligated to return said Security Deposit until Tenant has provided Landlord with its new address for delivery of such Security Deposit.

**9. USE OF PREMISES.** Tenant represents and warrants to Landlord that its business is to provide services as a healthcare provider. Tenant shall use and occupy the Premises throughout the Lease Term solely for the purpose of operating and maintaining a physician's office for providing any direct and ancillary services related to examining and treating patients, and for no other purpose whatsoever. Tenant will not use the Premises or any part thereof for any Precluded Diagnostic Imaging Services (as defined on Exhibit E hereto) or for any other use prohibited or restricted in Exhibit E attached hereto. Tenant recognizes that these restrictions on the use of the Premises are a material consideration for Landlord to enter into this Lease.

Tenant shall comply with all laws, ordinances, rules and regulations pertaining to the use and occupation of the Premises. Tenant shall also comply with any use restrictions or declarations of restrictive covenants affecting the Premises which are of record in the real estate records in the county in which the Premises are located on the date hereof or which are otherwise disclosed on Exhibit E hereto. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Building in which said Premises may be located, or cause a cancellation of any insurance policy covering said Building. Tenant shall not commit, or suffer to be committed, any waste upon said Premises or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in the Building in which the Premises may be located.

**10. ENVIRONMENTAL COMPLIANCE.** Tenant warrants that it shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought, kept or used in or about Premises by Tenant, its subtenants, agents, employees, contractors, or invitees except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession. Tenant shall cause all such materials to be stored, used and disposed of in compliance with all applicable federal, state and local laws, including, without limitation, laws governing Hazardous Materials. If the presence of any Hazardous Materials on, in or under the Premises caused or permitted by Tenant, its subtenants, agents, employees, contractors or invitees results in any

contamination of the Premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Materials, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Materials on, in or under the Premises or any release or suspected release or threat of release of any such Hazardous Materials in the air, soil, surface water or ground water. Without limitation of any other provisions herein, Tenant agrees that it shall, at its sole cost and expense, (i) obtain and maintain in full force and effect all Environmental Permits (as hereinafter defined) that may be required from time to time under any Environmental Laws (as hereinafter defined) applicable to Tenant's use and occupancy of the Premises, and (ii) be and remain in compliance with all terms and conditions of all such Environmental Permits and with all Environmental Laws applicable to Tenant or the Premises.

As used herein, the term "Environmental Permits" means, collectively, any and all permits, consents, licenses, approvals and registrations of any nature at any time required pursuant to, or in order to comply with, any Environmental Law. "Hazardous Materials" as such term is used in this Lease means any hazardous or toxic materials, substances or wastes, as now or hereafter designated, regulated or listed pursuant to any Environmental Law, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls and freon and other chlorofluorocarbons. As used herein, the term "Environmental Law" means any past, present or future federal, state, local or foreign statutory or common law, or any regulation, ordinance, code, plan, order, permit, grant, franchise, concession, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (1) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials into the environment (including, without limitation, air, surface water, groundwater or land), or (2) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials, including without limitation, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act as such Acts have been or are hereafter amended from time to time. Hazardous Materials shall also include Medical Waste (as hereinafter defined). As used herein, the term "Medical Waste" shall mean and include those wastes which are generated in the diagnosis, treatment or immunization of humans or related research, or in the preparation and administration of chemotherapy agents, together with all such other wastes which are defined pursuant to any medical or biological waste regulations which have been or may hereafter be promulgated by any governmental agency or authority with jurisdiction over the Premises or the Tenant's use thereof or business conducted therein, and as further set forth in any Laws now or hereafter applicable to the Landlord, Tenant or the Premises.

**TENANT SHALL INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, CONSULTANT FEES, COURT COSTS AND REASONABLE ATTORNEYS' FEES, ARISING OUT OF TENANT'S BREACH OF THE FOREGOING ENVIRONMENTAL COMPLIANCE WARRANTY. FURTHER, TENANT AGREES TO INDEMNIFY, DEFEND AND HOLD LANDLORD HARMLESS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, CONSULTANT FEES, COURT COSTS AND REASONABLE ATTORNEYS' FEES, ARISING FROM OR CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY (I) ANY RELEASE OF HAZARDOUS MATERIALS BY TENANT OR ANY TENANT PARTIES (AS HEREINAFTER DEFINED) ON THE PREMISES OR IN THE BUILDING DURING THE LEASE TERM; OR (II) TENANT'S FAILURE TO COMPLY WITH ANY ENVIRONMENTAL LAWS WITH RESPECT TO THE PREMISES OR THE TENANT'S OPERATIONS THEREIN. FOR PURPOSES OF THE INDEMNITY PROVISIONS HEREOF OR ANY OTHER INDEMNITY OBLIGATIONS OF TENANT HEREIN, ANY ACTS OR OMISSIONS OF TENANT, OR BY TENANT'S AGENTS, REPRESENTATIVES, CONTRACTORS, SUBTENANTS, ASSIGNS, INVITEES OR ANY OTHER OCCUPANT OF THE PREMISES (COLLECTIVELY, THE "TENANT PARTIES") WHETHER OR NOT THEY ARE NEGLIGENT, INTENTIONAL, WILLFUL OR UNLAWFUL SHALL BE STRICTLY ATTRIBUTABLE TO TENANT. TENANT'S OBLIGATIONS**

**PURSUANT TO THE FOREGOING WARRANTY AND INDEMNITY SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.**

Notwithstanding anything to the contrary herein, Tenant shall have no obligation to indemnify Landlord for any claims, liabilities, losses and expenses arising out of any Hazardous Materials placed, stored or used in the Building by Landlord or its agents, employees or contractors.

**11. UTILITIES, TELECOMMUNICATIONS, MAINTENANCE AND SERVICES.** Landlord agrees to furnish the Premises with heat and air conditioning, as a part of the Operating Expenses, during Normal Hours of Operation, while Tenant is not in default under any of the provisions of this Lease, and subject to the regulations of the Building wherein the Premises are situated. As a part of the Operating Expenses, Landlord shall furnish elevator services, water and normal electric current for lighting, ordinary medical equipment and business appliances. Landlord may impose a reasonable charge for any utilities and services, including without limitation, air conditioning, electrical current, and water, provided by Landlord by reason of any substantial use of the Premises at any time other than the Normal Hours of Operation for the Building, or for any use beyond that which Landlord agrees herein to furnish such services and utilities or because of special electrical, cooling and ventilating needs created by Tenant's telephone equipment, computers and other equipment or uses. For purposes of this Lease, the term "Normal Hours of Operation for the Building" shall mean 7:00 a.m. to 7:00 p.m. Mondays through Fridays, and 7:00 a.m. to 1:00 p.m. on Saturdays, exclusive of the normal business holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Landlord shall (i) maintain and repair the plumbing within the Premises, except where a repair to same is needed as a result of Tenant's, its employees' or invitees' negligence or misuse; (ii) be responsible for the removal of Tenant's trash, but said trash shall be placed by Tenant in its containers which shall be located within the Premises; (iii) maintain in good order and repair and in a clean and orderly condition the roof, exterior walls and public areas in the Building of which Premises are a part, together with any parking area owned or leased by Landlord which is adjacent to the Building; (iv) provide five (5) days per week cleaning services to the Premises. Landlord shall not be liable for failure to furnish, or the stoppage or interruption of such services when such failure, or stoppage or interruption of services is caused by conditions beyond the control of Landlord, or by accidents, repairs or strikes; nor shall such failure, or stoppage or interruption of such services constitute an eviction of Tenant or allow an abatement of Rent. Notwithstanding any of the provisions of this paragraph, Tenant shall be responsible for the lawful removal and cost of removing medical, special or infectious wastes from the Premises.

In consultation and cooperation with Tenant, Landlord shall provide a central telecommunications cabling distribution system for the Building which will be made available to a provider(s) of telecommunication services (voice and data) for use by tenants of the Building. Tenant shall consult and coordinate with Landlord regarding any other telecommunications service provider(s) desired by Tenant, subject to the approval of Landlord, which shall not be unreasonably withheld. Landlord shall obtain and install such other telecommunications service provider employing the Building's central telecommunications cabling system at Tenant's sole cost and expense. Landlord agrees that in no event shall the expenses incurred by Tenant with respect to telecommunications services provided by Landlord's selected provider be in excess of those which Tenant would have otherwise incurred had Tenant obtained and installed such services for its own account. In no event shall Tenant (i) use or install in the Premises any wireless communications equipment (other than the use of wireless telephones); or (ii) use or install any telecommunications equipment (including wireless communications equipment, antennae, and/or satellite equipment) or associated cabling and conduit in the Premises, the Building or on the roof or façade of the Building except through the Building's central telecommunications cabling distribution system without the prior written approval of Landlord.

Landlord may, at its option and at the sole cost and expense of Tenant or from proceeds of Tenant's insurance, repair or replace any damage done to the Building or any part thereof, ordinary wear and tear excepted, caused by Tenant, Tenant's agents, employees, licensees, invitees or visitors; Tenant shall pay the actual cost thereof plus a ten percent (10%) administrative fee to Landlord within thirty (30) days after receipt of reasonable documentation of actual costs. Tenant further agrees to maintain and keep the interior of the Premises in good repair and condition at Tenant's expense. Tenant agrees at the expiration or earlier termination of this Lease, by lapse of time or otherwise, to deliver up the Premises to Landlord in as good condition as it existed on the date of possession

by Tenant, ordinary wear and tear alone excepted, and Landlord shall have the right to re-enter and resume possession of the Premises whether or not the Premises are vacated by Tenant.

**12. ALTERATION OF PREMISES.** Tenant shall maintain the Premises in good condition and shall not alter, repair or change the Premises without the prior written consent of the Landlord, which consent shall not be unreasonably withheld; provided, that in no event shall Tenant make any changes to the Premises, which would affect any system or installation of the Building or which would be visible from the exterior of the Building. Any alterations to the Premises shall be constructed and installed only by Landlord and its contractors.

**13. INSURANCE.** Landlord agrees, as an Operating Expense, to maintain in full force and effect throughout the entire term of this Lease general fire and extended coverage insurance including vandalism and commercial general liability insurance. To the extent Landlord also maintains any insurance in any way connected with the Premises, Landlord's insurance shall be excess coverage and Tenant's insurance shall be primary coverage.

Tenant agrees to maintain and keep in force during the term hereof, without expense to Landlord, with an insurance company with general policy holder's rating of not less than A and a financial rating of not less than Class X as rated in the most current Best's Insurance Reports and qualified to do business in the state in which the Premises are located or other company acceptable to Landlord, commercial general liability insurance, in the name of Tenant and naming Landlord as an additional insured, against any liability for injury to or death of persons resulting from any occurrence in or about the Premises and for damage to property in such amounts as may from time to time be customary with respect to similar properties in the same area, but in any event not less than One Million and No/100 Dollars (\$1,000,000.00) for each occurrence and, in case of property damage, not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00) for any one occurrence. All such policies shall provide that they shall not be canceled nor coverage reduced by the insurer without first giving at least thirty (30) days' prior written notice to Landlord.

To the extent of any and all insurance maintained by either Landlord or Tenant in any way connected with the Premises, Landlord and Tenant hereby waive on behalf of their respective insurance carrier any right of subrogation that may exist or arise as against the other party to this Lease.

**14. INDEMNIFICATION OF LANDLORD.** Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, hereby waives all claims against Landlord for damages to goods, wares, merchandise and property in and about said Premises and for injuries to persons in or about said Premises or the property of which the Premises are a part, from any cause beyond Landlord's control. Tenant shall indemnify, protect, defend and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, judgments and suits arising from Tenant's use, occupancy or enjoyment of the Premises and its facilities or the conduct of Tenant's business or from any activity, work or things done, permitted or suffered by Tenant or any Tenant Parties in or about the Premises and Tenant shall pay Landlord's reasonable attorneys' fees and litigation costs in connection therewith. Tenant agrees to pay for all damages to the Building, as well as all damage to the tenants or occupants thereof caused by the Tenant's negligence, misuse, or neglect of said Premises or appurtenances. Notwithstanding anything to the contrary herein, Tenant shall not be obligated to indemnify, protect, defend and hold Landlord harmless from and against any claims, liabilities, losses, damages, judgments and suits arising from the willful misconduct of Landlord or its agents, employees or contractors.

**15. MECHANIC'S LIENS.** Tenant shall not suffer or permit any mechanic's liens or materialman's liens to be filed against the real property of which the Premises form a part nor against the Tenant's leasehold interest in the Premises without providing adequate security to Landlord or a bond for the lien not later than five (5) business days after any such lien has been filed.

**16. ABANDONMENT OF PREMISES.** Tenant shall not vacate or abandon the Premises for a period greater than sixty (60) days at any time during the Lease Term and if Tenant shall abandon, vacate or surrender the Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to the Tenant and left on the Premises shall be deemed abandoned, at the option of the Landlord.

17. **LANDLORD'S RIGHT OF ENTRY.** Landlord or its agents shall have the right to enter the Premises at reasonable times in order to examine it, to show it to prospective tenants, lenders, ground lessors, and purchasers, or to make such decorations, repairs, alterations, improvements or additions as Landlord shall deem necessary or desirable. Landlord will give Tenant reasonable notice of its requirements, and will be responsible for conducting such work so as not to unreasonably impair Tenant's use and enjoyment of the Premises.

18. **DESTRUCTION OF PREMISES, EMINENT DOMAIN.**

(a) In the event of a complete or partial destruction of the Premises during the term of this Lease from any cause, Landlord shall forthwith repair the same, provided such repair can be made within one hundred twenty (120) days under laws and regulations, and in such event Rent will be abated until the damage is repaired, in proportion to the part of the Premises which is so rendered untenable, unless such damage was caused by the negligence or willful misconduct of Tenant, or the agents, employees or invitees of Tenant. If such repairs cannot be made within one hundred twenty (120) days, Landlord shall have the right to terminate this Lease. In addition to the above, in the event that the Building is destroyed to the extent of greater than sixty percent (60%) of the replacement cost thereof, Landlord may elect to terminate this Lease, whether or not the Premises are insured, by written notice to Tenant. A total destruction of the Building in which the said Premises are situated shall automatically terminate this Lease. Notwithstanding the foregoing, if any portion of the Premises or the Building shall be damaged by fire or other casualty resulting from the negligence or willful misconduct of Tenant, or the agents, employees, licensees or invitees of Tenant, such damage shall be repaired by and at the expense of Tenant under the direction and supervision of Landlord, and Rent shall continue without abatement.

(b) If any action or proceeding is commenced for the condemnation of the Building or any portion thereof, or if Landlord is advised in writing by any government (federal, state or local) agency or department or bureau thereof, or any entity or body having the right or power of condemnation, of its intention to condemn all or any portion of the Building at the time thereof, Landlord may, without any obligation or liability to Tenant, and without affecting the validity and existence of this Lease other than as hereafter expressly provided, agree to sell and/or convey to the condemnor. Tenant shall have no claim against Landlord nor be entitled to any part or portion of the amount that may be paid or awarded as a result of the sale, for the reasons as aforesaid, or condemnation of the Building or any part or portion thereof. Tenant shall be entitled to seek to recover as against the condemnor, and Landlord shall have no claim for or thereto, for Tenant's trade fixtures and any removable structures and improvements erected and made by Tenant to or upon the Premises which Tenant is entitled to remove at the expiration of this Lease. If only a part of the Building is condemned and taken and the Premises or the remaining portion thereof is not suitable for purposes for which Tenant has leased said Premises, as determined in Tenant's reasonable discretion, either Landlord or Tenant shall have the option to terminate this Lease at the time of such taking. If by such condemnation and taking only a part of the Building is taken, and the Premises or the remaining part thereof is suitable for the purposes for which Tenant has leased said Premises, as determined in Tenant's reasonable discretion, this Lease shall continue, but the rental shall be reduced in an amount proportionate to the percentage that the floor area of that portion of the Premises taken by eminent domain, if any, bears to the floor area of the entire Premises.

19. **BANKRUPTCY.** If a general assignment is made by Tenant (or any guarantor of Tenant's obligations under this Lease) for the benefit of creditors, or any action is taken by or against Tenant (or any guarantor of Tenant's obligations under this Lease) under any insolvency or bankruptcy act, or if a receiver is appointed to take possession of all or substantially all of the assets of Tenant (or any guarantor of Tenant's obligations under this Lease) (and Tenant or any such guarantor fails to terminate such receivership within sixty (60) days after such appointment), or if Tenant (or any guarantor of Tenant's obligations under this Lease) is adjudicated bankrupt, or if Tenant (or any guarantor of Tenant's obligations under this Lease) admits in writing that it cannot meet its obligations as they become due, or if Tenant (or any guarantor of Tenant's obligations under this Lease) is declared insolvent according to any law, or the interest of Tenant under this Lease is levied on under execution or other legal process, then Tenant shall be in default under this Lease and Landlord shall be entitled to all remedies available under Section 19.

20. **DEFAULT BY TENANT.** If Tenant fails to (i) perform or observe any covenant (other than the covenant to pay Rent or any other sums due hereunder) to be performed by Tenant under this Lease and continues to fail to perform or observe same for a period of fifteen (15) days after receipt of written notice from Landlord pertaining thereto (or a reasonable period of time (but in any event not to exceed thirty (30) days), using due diligence, if such default cannot be cured within said fifteen (15) day period, so long as Tenant commences to cure such default within such fifteen (15) day period and thereafter diligently pursues such cure to completion), or (ii) pay any Rent or other sum due hereunder within five (5) days after the date such payment is due; then Tenant shall be deemed to be in default of this Lease and Landlord, at its option, may exercise any one or more of the following remedies, in addition to all other rights or remedies it may have at law or in equity:

(a) **Termination of Lease.** Landlord may terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall pay to Landlord the sum of: (i) all Rent accrued hereunder through the date of termination; (ii) all amounts due under Section 19(e) or any other provision of this Lease; and (iii) an amount equal to (A) the total Rent that Tenant would have been required to pay for the remainder of the Lease Term discounted to present value at a per annum rate equal to the Prime Rate (as used herein, "Prime Rate" shall be the per annum interest rate publicly announced by a federally insured bank selected by Landlord in the state in which the Premises is located as such bank's prime, base or general reference rate of interest).

(b) **Termination of Possession.** Landlord may terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord: (i) all Rent accrued hereunder to the date of termination of possession; (ii) all amounts due from time to time under Section 19(e) or any other provision of this Lease; and (iii) all Rent and other sums required hereunder to be paid by Tenant during the remainder of the Lease Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. If Landlord elects to proceed under this Section 19(b), Landlord may remove all of Tenant's property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. If Landlord elects to proceed under this Section 19(b), Landlord shall use commercially reasonable efforts to relet the Premises on such terms as Landlord in its reasonable discretion may determine (including, without limitation, a term different from the Lease Term, rental concessions, and alterations to, and improvements of, the Premises); however, Landlord shall not be obligated to expend funds in connection with reletting the Premises, nor to relet the Premises before leasing other portions of the Building, and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing and credit criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Lease Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Lease Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 19(b). If Landlord elects to proceed under this Section 19(b), it may at any time elect to terminate this Lease under Section 19(a).

(c) **Perform Acts on Behalf of Tenant.** Landlord may, but shall not be obligated to, perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any reasonable expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), plus interest thereon at the Default Rate.

(d) **Alteration of Locks.** Additionally, with or without notice, and to the extent permitted by law, Landlord may alter locks or other security devices at the Premises to deprive Tenant of access thereto.

(e) Payment by Tenant. Upon any default, Tenant shall pay to Landlord all reasonable costs incurred by Landlord (including, without limitation, court costs and reasonable attorneys' fees and expenses) in: (i) obtaining possession of the Premises; (ii) removing and storing Tenant's or any other occupant's property; (iii) repairing, restoring, altering, remodeling or otherwise putting the Premises into condition acceptable to a new tenant; (iv) reletting all or any part of the Premises (including brokerage commissions, cost of tenant improvements work, and other costs incidental to such reletting); (v) performing Tenant's obligations which Tenant failed to perform; and (vi) enforcing or advising Landlord of its rights, remedies and recourses arising out of the default.

(f) No Waiver. Landlord's acceptance of Rent following a default shall not waive Landlord's rights regarding such default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

(g) Cumulative Remedies. Any and all remedies set forth in this Lease: (i) shall be in addition to any and all other remedies Landlord may have at law or in equity; (ii) shall be cumulative; and (iii) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future.

**21. DEFAULT BY LANDLORD.** Except as otherwise provided in this Lease, Landlord shall be in default under this Lease if Landlord fails to perform any of its obligations hereunder and said failure continues for a period of thirty (30) days after receipt of written notice thereof from Tenant to Landlord (unless such failure cannot reasonably be cured within thirty (30) days and Landlord shall have commenced to cure said failure within said thirty (30) days and continues diligently to pursue the curing of the same). If Landlord shall be in default under this Lease and, as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the right, title and interest of Landlord in the Building as the same may then be encumbered and Landlord shall not be liable for any deficiency. In no event shall Tenant have the right to levy execution against any property of Landlord other than its interest in the Building or to terminate this Lease as a result of a default by Landlord.

**22. RULES AND REGULATIONS.** The Tenant shall comply with all reasonable rules and regulations now or hereinafter adopted by the Landlord during the existence of this Lease. Current rules and regulations governing Tenant's conduct in the Building are attached hereto as Exhibit F. Landlord may, from time to time, change such rules and regulations as it deems appropriate.

**23. NOTICE.** All notices or consents required or permitted under this Lease shall be given in writing and delivered in person or by United States mail, by certified or registered mail, return receipt requested, in which case it shall be deemed delivered two (2) days after deposit in the U.S. mail. Notice to the Landlord and Tenant shall be delivered or sent to the addresses set forth below:

Landlord's address:

Sports Docs, LLC  
1430 West Baddour Parkway  
Suite A  
Lebanon, TN 37087-2514

with a copy to:

Baker Donelson Bearman Caldwell & Berkowitz, P.C.  
211 Commerce Street  
Suite 1000  
Nashville, TN 37201  
Attn: John A. Gupton III

Tenant's address prior to Commencement Date:

c/o 1430 West Baddour Parkway  
Suite A  
Lebanon, TN 37087-2514

Tenant's address subsequent to Commencement Date:

Tenn SM, LLC  
To Be Determined, Suite 100  
Mt. Juliet, TN 37122

24. **ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublease all or any part of the Premises, by operation of law or otherwise, nor shall Tenant grant a license or enter into an agreement of possession with or without consideration without the prior written consent of Landlord.

25. **RELOCATION.** Landlord may, at Landlord's expense, relocate Tenant within the Building, to space which is comparable in size, utility and condition to the Premises. If Landlord relocates Tenant, Landlord shall reimburse Tenant for Tenant's reasonable out-of-pocket expenses for moving Tenant's furniture, equipment, and supplies from the Premises to the relocation space and for reprinting Tenant's stationery of the same quality and quantity as Tenant's stationery supply on hand immediately before Landlord's notice to Tenant of the exercise of this relocation right; provided, that in no event shall Landlord be obligated to reimburse Tenant for any such expense in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Upon such relocation, the relocation space shall be deemed to be the Premises and the terms of this Lease shall remain in full force and shall apply to the relocation space. No amendment or other instrument shall be necessary to effectuate the relocation contemplated by this Section; however, if requested by Landlord, Tenant shall execute an appropriate amendment document within ten (10) business days after Landlord's written request therefor. If Tenant fails to execute such relocation amendment within such time period, or if Tenant fails to relocate within the time period stated in Landlord's relocation notice to Tenant (or, if such relocation space is not available on the date specified in Landlord's relocation notice, as soon thereafter as the relocation space becomes available and is tendered to Tenant), then Landlord may terminate this Lease by notifying Tenant in writing thereof at least sixty (60) days prior to the termination date contained in Landlord's termination notice. Time is of the essence with respect to Tenant's obligations under this Section.

26. **ATTORNEYS' FEES.** In the event of any legal or equitable action arising out of this Lease, the prevailing party shall be entitled to recover all fees, costs and expenses, together with reasonable attorneys' fees incurred in connection with such action.

27. **GOVERNING LAW.** This Lease shall be governed by the laws of the State of Tennessee.

28. **BROKERS.** Tenant represents and warrants to Landlord that Tenant has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that Tenant knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Tenant hereby agrees to indemnify the Landlord for any breach of the warranty given by Tenant in this Section.

**29. SUBORDINATION AND ATTORNMENT.** This Lease is subject and subordinate to any lease wherein Landlord is lessee (including, without limitation, any ground lease) and to any mortgages or deeds of trust which may now or hereafter be placed upon or affect the property or Building of which the Premises are a part (individually referred to as a "Mortgage"), and to all renewals, modifications, consolidations, replacements and extensions thereof. In furtherance of such subordination, Tenant shall execute any document that Landlord or Landlord's lender or ground lessor, if any, may reasonably request.

In the event of the sale or assignment of Landlord's interest in the Premises, Tenant shall attorn to and recognize such purchaser or assignee as Landlord under this Lease. In furtherance of such attornment, Tenant shall execute any document that Landlord or such purchaser or assignee may reasonably request.

Tenant agrees that, notwithstanding any provision hereof to the contrary, the terms of any Mortgage or security instrument shall govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligations of Landlord to restore the Building in which the Premises are situated, insofar as they may apply to such mortgagee, shall be limited to insurance proceeds or eminent domain awards received by such mortgagee after the deduction of all costs and expenses incurred in obtaining such proceeds or awards.

Upon notification by Landlord of the name and address of any such mortgagee, Tenant hereby agrees to give to such mortgagee copies of all notices of Landlord default(s) under this Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to such mortgagee. The mortgagee shall have the right to remedy any Landlord default under this Lease, or to cause any default of Landlord under this Lease to be remedied, and for such purpose Tenant hereby grants the mortgagee such additional period of time as may be reasonable to enable mortgagee to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by the mortgagee of any term, covenant, condition or agreement to be performed by Landlord under this Lease with the same force and effect as though performed by Landlord. No Landlord default under this Lease shall exist or shall be deemed to exist (i) as long as such mortgagee, in good faith, shall have commenced to cure such default within the above-referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by such mortgagee, as long as such mortgagee, in good faith, shall have notified Tenant that it intends to institute proceedings under its Mortgage or security documents, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. In the event of the termination of this Lease by reason of any default thereunder by Landlord, upon the mortgagee's written request, given within thirty (30) days after any such termination, Tenant, within fifteen (15) days after receipt of such request, shall execute and deliver to such mortgagee or its designee or nominee a new lease of the Premises for the remainder of the term of this Lease upon all of the terms, covenants and conditions of this Lease.

Further, without limiting the foregoing and without the necessity of any additional documentation (unless Landlord or any mortgagee requests reaffirmation of the following by separate agreement which Tenant agrees to execute), for the benefit of each such mortgagee, Tenant agrees that, in the event that any such mortgagee succeeds to the interest of Landlord under this Lease, such mortgagee shall not: (A) be liable for any act or omission of Landlord or any prior landlord under this Lease; or (B) be subject to any defense, set-offs, counter-claims or offsets which Tenant may have against any prior landlord (including Landlord); or (C) be bound by any payment of Rent, which Tenant may have paid for more than one (1) month in advance of the due date hereunder to any prior landlord hereunder (including Landlord); or (D) be bound by any obligation to make any payment to Tenant which was required to be made prior to the time such mortgagee succeeds to Landlord's interest; or (E) be accountable for any monies deposited with any prior landlord (including Landlord) (including security deposits), except to the extent same are actually received by said mortgagee; or (F) be bound by any surrender, termination, amendment, restatement or modification of this Lease made without the consent of said mortgagee; or (G) otherwise have any liability, duty or obligation whatsoever under this Lease, or under any extension or renewal hereof, either by virtue of any assignment of leases or rents granted by Landlord to said mortgagee or the subsequent collection of rents thereunder, until said mortgagee, or its designee or nominee becomes the fee owner of the Property, and then only for such periods during which such mortgagee or its designee or nominee actually owns the Property.

30. **ESTOPPEL CERTIFICATES.** Tenant shall, upon not less than ten (10) days prior request by Landlord or any mortgagee of Landlord, execute, acknowledge and deliver to Landlord or such mortgagee, as the case may be, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); that Landlord is not in default and has fully performed its obligations hereunder; the dates to which the rent and any other charges have been paid in advance; and such other matters as Landlord may reasonably request.

31. **QUIET ENJOYMENT.** Landlord warrants that Tenant shall have quiet enjoyment of the Premises free from any eviction or interference by Landlord if Tenant pays the Rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Tenant.

32. **SIGNS.** Except as described in Exhibit G, Tenant shall not display any other signs or identifying mark on the Building or the property on which the Building is located, without prior written approval of Landlord. All signs and lettering shall conform in all respects to the sign and/or lettering standards established by Landlord. Landlord shall provide and install, at Tenant's cost, all letters, numerals or Tenant suite plaques at doors to the Premises. Landlord shall also include Tenant's name on the Building directory. Any changes requested by Tenant to suite plaque or the Building directory shall be at Tenant's cost.

33. **HOLDING OVER.** In the event Tenant or any of its subtenants or assignee retains possession of the Premises after the expiration or earlier termination of this Lease without Landlord's consent, such possession shall be an unlawful detainer, and no tenancy or interest shall result from such possession. An unauthorized holding over shall be subject to immediate eviction and removal, and Landlord, in addition to all other remedies available to it hereunder shall have the right to receive as liquidated damages for all the time Tenant shall so retain possession of the Premises or any part thereof, an amount equal to twice the Base Rent specified in this Lease, as applied to such period, together with Additional Rent and all other payments required hereunder, provided that Tenant shall nonetheless be a tenant at sufferance.

34. **LANDLORD'S EXPENSES.** In addition to other provisions herein, Tenant agrees and shall pay and/or reimburse Landlord's reasonable costs and expenses, including legal fees, incurred or resulting from and relating to requests by Tenant for approval or consent under this Lease of any subletting or assignment. Such expenses and fees shall be paid by Tenant within thirty (30) days of the submission of a statement for the same.

35. **CONDITIONS PRECEDENT.** The parties hereby acknowledge that Landlord's obligations under this Lease are conditioned on Landlord or the developer of the Building securing all necessary zoning, building and other regulatory permits and approvals for the construction of the Building and the use thereof for medical office purposes. Consequently, in the event Landlord or the developer of the Building has not obtained such zoning, building and other regulatory permits or approvals by November 1, 2004, then in such event, Landlord may terminate this Lease by delivering written notice thereof to Tenant, in which event Landlord and Tenant shall have no further obligations or liabilities under this Lease.

36. **FINANCIAL STATEMENTS.** Within fifteen (15) days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements certified to be true and correct by the Tenant's Chief Financial Officer. If Tenant is a publicly traded corporation, Tenant may satisfy its obligations hereunder by providing to Landlord Tenant's most recent annual and quarterly reports. Tenant will discuss its financial statements with Landlord and, following the occurrence of a default hereunder, will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Tenant shall not be required to deliver the financial statements required under this Section 35 more than once in any twelve (12) month period unless requested by Landlord's Mortgagee or a prospective buyer or lender with respect to the Building or if a default occurs.

37. **GENERAL PROVISIONS.** (i) The waiver by Landlord of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of Rent hereunder shall not be construed to be a waiver of any breach by Tenant of any term, condition or covenant of this Lease; (ii) It is understood and agreed that

the remedies herein given to Landlord shall be cumulative, and the exercise of any one remedy of Landlord shall not be to the exclusion of any other remedy herein or to the exclusion of any other remedy available to Landlord at law or in equity; (iii) Subject to the provisions as to assignment, the covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto; (iv) Time is of the essence of this Lease; (v) Landlord has made no representations or promises whatsoever with respect to the Premises, except those contained herein, and no other person, firm or corporation has at any time had any authority from Landlord to make any representations or promises on behalf of Landlord; (vi) The captions of paragraphs of this Lease are for convenience only, and do not in any way limit or amplify the terms and provisions of this Lease; and (vii) If any term, covenant, condition or provision of this Lease is held by a court competent of jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**38. WAIVER OF TRIAL BY JURY.** LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE OR THE OBLIGATIONS EVIDENCED HEREBY, OR ANY OTHER DOCUMENT OR INSTRUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF LANDLORD AND TENANT IN ENTERING INTO THIS LEASE.

**39. CONFIDENTIALITY.** Landlord and Tenant acknowledge that the terms and conditions of this Lease are to remain confidential, and may not be disclosed to anyone, by any manner or means, directly or indirectly, other than to each party's respective attorneys, accountants or lenders, without the other party's prior written consent or as and to the extent required by applicable law or court order. Consent by either party to any disclosures shall not be deemed to be a waiver on the part of such party of any prohibition against any future disclosure.

**40. LANDLORD TRANSFER.** Landlord may transfer any portion of the Building and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer.

**41. LANDLORD'S LIABILITY.** The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Building, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency. Additionally, to the extent allowed by law, Tenant hereby waives any statutory lien it may have against Landlord or its assets, including without limitation, the Building.

**42. LANDLORD'S LIEN.** In addition to any constitutional or statutory landlord's lien now in effect or hereafter enacted, Tenant grants to Landlord, to secure performance of Tenant's obligations hereunder, a security interest in all of Tenant's property situated in or upon, or used in connection with, the Premises or the Building, and all proceeds thereof (collectively, the "Collateral"), and the Collateral shall not be removed from the Premises or the Building without the prior written consent of Landlord until all obligations of Tenant under this Lease have been fully performed. Such personalty thus encumbered includes specifically all trade and other fixtures for the purpose of this Section 41 and inventory, equipment, contract rights, accounts receivable and the proceeds thereof. Upon the occurrence of a default, Landlord may, in addition to all other remedies, without notice or demand except as provided below, exercise the rights afforded to a secured party under the Uniform Commercial Code of the state in which the Premises are located (the "UCC"). To the extent the UCC requires Landlord to give to Tenant notice of any act or event and such notice cannot be validly waived before a default occurs, then five (5) days' prior written notice thereof shall be reasonable notice of the act or event. In order to perfect such security interest, Landlord may file any financing statement or other instrument necessary at Tenant's expense at the state and county Uniform Commercial Code filing offices. Tenant grants to Landlord a power of attorney to execute and file any financing statement or other instrument necessary to perfect Landlord's security interest under this Section 41, which power is

coupled with an interest and is irrevocable during the Lease Term. Landlord may also file a copy of this Lease as a financing statement to perfect its security interest in the Collateral. Within ten (10) days following written request therefor, Tenant shall execute financing statements to be filed of record to perfect Landlord's security interest in the Collateral. The Landlord's lien and the security interest granted hereunder shall survive the expiration or earlier termination of this Lease, until all obligations of Tenant have been fully performed.

43. **REFUSAL SPACE.** Landlord and Tenant acknowledge that there is currently approximately 2,800 square feet of office space on the first floor of the Building (hereinafter the "Refusal Space"). Landlord acknowledges that Tenant may wish to expand the Premises and lease a portion or portions of the Refusal Space. Tenant, however, acknowledges that Landlord must be in a position to lease the Refusal Space to other tenants. In order to accommodate Tenant's desires regarding the Refusal Space and Landlord's requirement for future leasing of the Refusal Space, Landlord shall grant to Tenant the right of refusal to lease the Refusal Space during the Extended Term in accordance with the terms and conditions contained herein. In the event Landlord obtains a written offer from a prospective tenant to lease all or any portion of the Refusal Space and Landlord desires to accept such offer, then Landlord shall submit to Tenant in writing all of the material terms and conditions of such proposed offer to lease (hereinafter referred to as the "Offer") and Tenant shall have the right and option to lease the Refusal Space covered by the Offer upon the same monetary terms and conditions, including any offer of free rent and leasehold improvement allowances, as embodied in the copy of such Offer submitted to Tenant by Landlord but upon such other non-monetary terms and conditions as in this Lease and for a term expiring as of the date of the expiration of this Lease or the Extended Term; provided, however, in no event shall the Base Rent for the Refusal Space be less than the Base Rent per rentable square foot being paid at the time of Tenant's occupancy of the Refusal Space. In the event the remaining months in the Lease Term or any extension thereof, are less than the number of months in the term embodied in the Offer, then such free rent and leasehold improvement allowances shall be reduced to the amounts that bear the same ratio to the free rent and leasehold improvement allowances embodied in the Offer as the remaining months in the Lease Term bears to the number of months of the term embodied in the Offer. If Tenant shall elect to exercise its right to lease the Refusal Space covered by the Offer, written notice of such election shall be given to Landlord within ten (10) business days from the time that Tenant first received a copy of the Offer from Landlord (hereinafter referred to as the "Offer Period"), which notice by Tenant shall specify a date that Tenant shall lease the space covered by the Offer, which date shall be not less than thirty (30) nor more than ninety (90) days after the giving of notice thereof.

(a) Upon the exercise of its right to lease the Refusal Space covered by the Offer, Landlord and Tenant shall enter into a written agreement modifying and supplementing this Lease and specifying that the Refusal Space is a part of the Premises and under this Lease and containing other appropriate terms and provisions relating to the addition of such area to this Lease, including, without limitation, increasing, adjusting or augmenting Base Rent as a result of the addition of such space.

(b) If a right to lease pursuant to this Section shall not be exercised within the Offer Period or shall be waived (no notice is deemed to be a waiver of such right), then Landlord shall have the right to offer such space described in the offer to the prospective tenant, and if such transaction is consummated, Tenant's rights under this Section shall automatically terminate as to the Refusal Space described in the offer and be of no further force or effect as to the Refusal Space described in the offer.

(c) Notwithstanding the foregoing right of refusal and any other provision of this Lease to the contrary, such right of refusal is conditioned upon (i) this Lease being in full force and effect and no Event of Default under this Lease has occurred and is continuing, and (ii) some portion of the Refusal Space covered by the Offer being on the first floor and thereafter adjacent to the Premises. If Tenant fails to exercise the foregoing right of refusal as provided in and in strict accordance with the terms of this Section, or if conditions (i) in this subsection (c) are not entirely satisfied, the foregoing right of refusal shall automatically terminate and be of no further force or effect, or if exercised, shall be null and void.

(d) Tenant shall not have the right to assign its right of refusal to any sublessee of the Premises or any portion thereof or to any assignee of this Lease, nor may any such sublessee or assignee exercise or enjoy the benefit of such right of refusal, provided, however, this provision shall not apply as to those parties Tenant has the right to assign to without Landlord's consent as set forth above.

Notwithstanding any other term or provision of this Section or elsewhere in this Lease, expressed or implied, it is understood and agreed by Tenant that (i) the rights and interests in and to the Refusal Space and all portions thereof granted by Landlord to Tenant in this Section are, in all respects, subject and subordinate to all prior rights, (ii) Landlord shall not be liable for the failure or inability of Tenant to exercise or benefit from any or all rights granted in this Section with respect to said Refusal Space or any portion thereof by reason of such superior rights and options of existing tenants, and (iii) Tenant shall not be entitled to any compensation, consolation, consideration, replacement of such space, or any other remedy from or against Landlord by reason of such failure or inability.

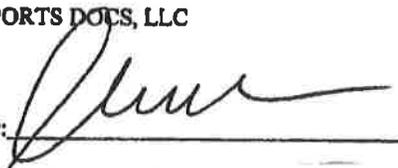
**44. MULTIPLE COUNTERPARTS.** To facilitate execution, this Lease may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Lease to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

[Multiple signature pages attached]

**THE PARTIES HERETO have executed this Lease as of the date of the signature of the last party to execute this lease.**

**LANDLORD:**

**SPORTS DOCS, LLC**

By: 

**Name: Charles R. Kaslin**

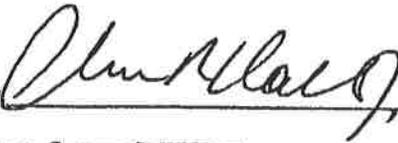
**Title: Chief Manager**

**Date: October 1, 2004**

THE PARTIES HERETO have executed this Lease as of the date of the signature of the last party to execute this lease.

**TENANT:**

Tenn SM, LLC

By 

Name: ~~Gregory S. White~~

Title: ~~President & Secretary~~  
Chief Manager

Date: ~~October 1, 2004~~  
w/ 11/04

**EXHIBIT A**  
**FLOOR PLAN OF PREMISES**

Exhibit A



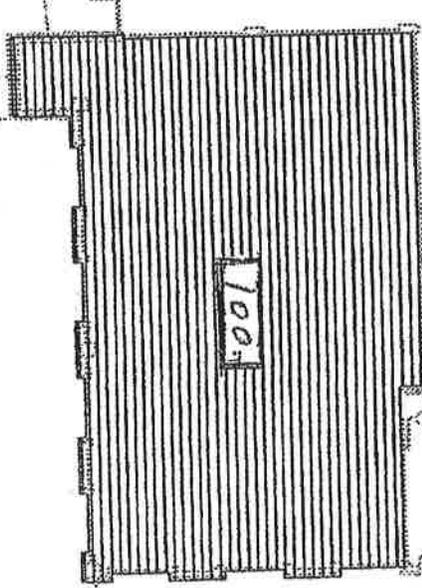
Suite 110

Tennessee Sports Med & Orthopedics

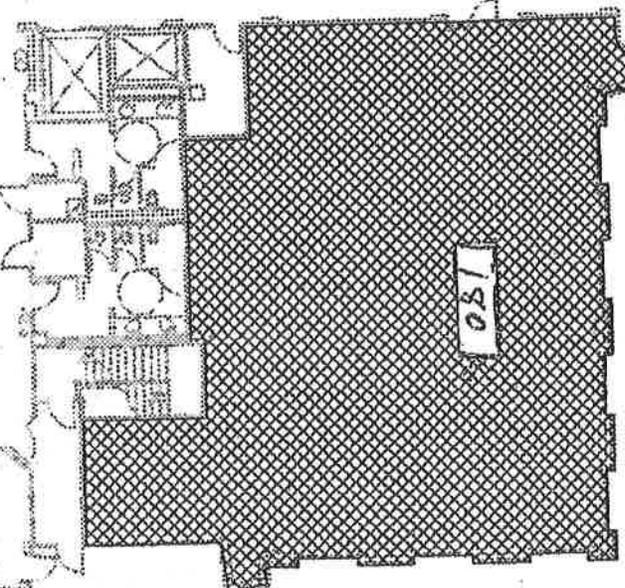
1st Floor

WALKWAY TO STAIRS

ROOM 101 TO 104  
J:\31-4517-02 KM\Drawings\CO1



100



150



EXHIBIT A-1

LEGAL DESCRIPTION

Commencing at an iron pin found (IPF) on the southerly right-of-way of Adams Lane, said pin being the northeasterly corner of A. H. Johnson, as recorded in Deed Book 840, Page 254, R.O.W.C., thence with Johnson's easterly line S 01° 47' 18" W, 410.06 feet to the point of beginning of the herein described property: thence with a new line, severing the property of South Mount Juliet Holdings as recorded in Deed Book 966, Page 1817, R.O.W.C., with a new line S 82° 13' 30" E, 387.95 feet to an iron pin set (IPS) on the westerly right-of-way of a proposed road; thence with said right-of-way the following calls: S 07° 46' 30" W, 47.18 feet to an IPS, with a curve to the left, said curve having a radius of 400.00 feet, a length of 353.56 feet and a chord and bearing and distance of S 17° 32' 48" E, 342.16 feet to an IPS; thence leaving said right-of-way and with a new line, S 46° 31' 54" W, 422.80 feet to an IPS in the easterly line of said Johnson; thence with Johnson's easterly line, the following calls: N 25° 12' 40" W, 432.99 feet to an IPF; N 01° 47' 18" E, 324.75 feet to the point of beginning, containing 5.14 acres, more or less, as surveyed on May 3, 2004 by Arrowhead Survey, by J. Mark Cantrell, TN RLS 1859.

## EXHIBIT B

### OPERATING EXPENSES

#### A. Operating Expenses shall include, without limitation:

(i) all taxes, assessments, excises, tax levies, fees and all governmental charges, but excluding penalties of any kind, whether general or special of every character in respect of the Property which may be assessed on or be a lien upon Landlord's interest in the Property, or any occupancy, operation, use or possession of, sales from or activity conducted on or in connection with the Property; reasonable costs and expenses of contesting the validity or amount of such taxes, assessments, fees and charges; insurance premiums; water, sewer, electrical and other utility charges; service and other charges incurred in the operation and maintenance of the Property including the elevators and the heating, ventilation and air-conditioning system; cleaning and other janitorial services; costs of all tools, supplies and materials; costs of repair and general maintenance, including without limitation, any reasonable depreciation charges applicable to all equipment used in repairing and maintaining the Property; landscape maintenance costs; security services; data processing services; costs of alarm services, fire protection, sprinklers and window cleaning; maintenance and operation of parking facilities; license, permit and inspection fees; the office rent and commercially reasonable salaries and compensation of all employees engaged in the operation, maintenance and security of the Property including taxes, insurance and benefits relating thereto; trash removal; garage maintenance and operating costs (to the extent such service is not provided at no cost by Tenant or an Affiliate of Tenant pursuant to the Reciprocal Easement Agreement between Landlord and Tenant); to the extent only that it exceeds the limits of, or is not a covered risk under any applicable insurance policy of Landlord, damages, penalties, costs and expenses (including without limitation, attorneys' fees and expenses which are reasonable and necessary) incurred by Landlord by reason of any accident, injury to or death of persons or loss of property occurring on or about the Property or adjoining sidewalks in excess of applicable insurance policies of Landlord; legal fees and accounting costs, including costs of audits of the Operating Expenses;; costs of complying with all legal requirements applicable to the Property (including the cost of any capital improvements made to the Building by Landlord that are required under any governmental law or regulation that was not in effect at the time it was constructed); and, in general, all other costs and expenses which would generally be regarded as operating and maintenance costs and expenses that would normally be amortized over a period not to exceed five (5) years; and

(ii) the cost of any capital improvements made to the Building by Landlord that reduce Operating Expenses, such cost to be amortized over such reasonable period as Landlord shall determine with a return on capital at the then current interest rate on the unamortized balance or at such higher interest rate as may have been paid by Landlord on funds borrowed for the purpose of constructing such capital improvements. However, the portion of any increase in annual Operating Expenses shall never exceed the amount of reduction in the annual Operating Expenses attributable to such improvements.

B. Operating Expenses shall not include: (i) Federal and State taxes imposed upon or measured by the gross receipts or income of Landlord (unless a future change in the method of taxation causes any franchise, gross receipts, income, profit or other tax to be levied against Landlord in substitution in whole or in part for or in lieu of or in addition to any tax included as an Operating Expense hereunder and, in such event, any such tax shall (with appropriate adjustments where necessary) be deemed to be Operating Expenses for the purposes hereof); (ii) payments made by tenants of the Building, either to third parties or to Landlord, under agreements for direct reimbursement for services (e.g., separately metered utilities, separate contracted janitorial services, property taxes directly reimbursed to Landlord, sales taxes on Rent (as defined in Section 5 of the Lease) paid directly by any tenant, etc.); and (iii) the cost of repairs, restoration or other work occasioned by fire, windstorm or other casualty, but only to the extent same are paid for with the proceeds of insurance; services reimbursed to Landlord by tenants; capital acquisitions; penalties and legal expenses incurred by Landlord due to Landlord's gross negligence, willful misconduct or violations of governmental laws or regulations; expenses incurred for the renovation of space for new tenants (except Building standard repairs or construction); depreciation allowance; or interest and principal payments on mortgages and other non-operating debts of Landlord.

EXHIBIT C

WORK LETTER AGREEMENT

1. General Provisions

1.1 Landlord shall provide Tenant an improvement allowance (the "Allowance") of ~~Thirty and No/100 Dollars (\$30.00)~~ <sup>0 - 100</sup> per rentable square foot for work in preparing the Premises for Tenant's use ("~~Tenant's Construction Work~~"). The Allowance shall be available solely for the construction costs of leasehold improvements (the "Construction Costs") and no portion thereof shall be used for furniture, personal property, working capital, free rent or other such purposes.

1.2 Prior to taking occupancy of the Premises, Tenant shall reimburse Landlord for any amount by which the Construction Costs of Tenant's Construction Work exceeds the Allowance. Tenant agrees that in the event Tenant defaults in the payment of the costs of Tenant's Construction Work in excess of the Allowance, Landlord (in addition to all other remedies) has the same rights as in the event of default of payment of Rent under the Lease.

1.3 If Tenant's Construction Work has not been substantially completed (as hereinafter defined) by            due to omission, delay or default by Tenant or anyone acting under or for Tenant, including but not limited to (a) Tenant's failure to approve plans, or (b) changes to the space plan and working drawings requested by Tenant prior to or after the commencement of Tenant's Construction Work, the obligations of Tenant under this Lease (including, without limitation, the obligation to pay Rent) shall nonetheless commence as of           , 20    . As used herein, the term "substantially completed" shall mean that the Tenant's Construction Work has been completed as certified by Landlord's architect, except for normal "punch-list" items which can reasonably be completed after Tenant has taken possession of the Premises without substantial interference with Tenant's business.

1.4 If, by the date specified in Section 1.3 of this Work Letter, the Premises are not substantially completed due to default on the part of Landlord, then as Tenant's sole remedy for the delay in Tenant's occupancy of the Premises, the Lease Term Commencement Date shall be delayed and the Rent herein provided shall not commence until the earlier of (a) the date on which Tenant opens the Premises for business, or (b) the date on which Tenant's Construction Work is "substantially completed" (as hereinabove defined).

1.5 Under no circumstances whatsoever will Tenant or Tenant's authorized representatives (including Tenant's Design Consultants) ever alter or modify or in any manner disturb any system or installation of the Building, including, but not limited to, fire or smoke rated partitions, Central plumbing systems, Central electrical systems, Central heating, ventilating and air conditioning systems, Central fire protection and fire alert systems, Central building maintenance systems, Central structural systems, elevators and anything located within the Central core of the Building. Only with Landlord's express written permission and under the direct supervision of Landlord or Landlord's Contractor shall Tenant or Tenant's authorized representative alter, modify or in any manner disturb any Branch of any such Central system or installation of the Building which is located within the Premises, including, but not limited to Branch plumbing system, Branch electrical system, Branch heating, ventilating and air conditioning system, and Branch fire protection and alert system. For purposes of this Section 1.5, the term "Central" shall be defined as that portion of the Building system or component which is within the core and/or common to and/or serves or exists for the benefit of other tenants in the Building, and shall include but not be limited to main fire loops on each floor of the Building and duct work to the VAV box. For purposes of this Section 1.5, the term "Branch" shall be defined as that portion of any Building system or component which serves to connect or extend Central systems into the Premises.

1.6 All design, construction and installation of Tenant's Construction Work shall conform to the requirements of applicable building, plumbing, electrical and fire codes and the requirements of any authority having jurisdiction over or with respect to such work, as such codes and requirements may from time to time be amended or supplemented. Furthermore, all such design, construction and installation of Tenant's Construction Work is subject to the prior written approval of Landlord.

1.7 Tenant agrees to use, as a part of Tenant's Construction Work, Building standard materials including, but not limited to, Building standard corridor doors, VAV boxes, hardware, lights or other materials unless other corridor doors, VAV boxes, hardware or lights are requested by Tenant and approved in writing by Landlord.

1.8 Tenant acknowledges that Landlord has entered into this Lease in reliance on the diligent and good faith cooperation of Tenant in the timely completion of Tenant's Construction Work, so as to ensure that the Premises are ready for Tenant's use when anticipated by Tenant. Tenant hereby covenants and agrees that it will cooperate with Landlord, diligently and in good faith, to complete the Tenant work process in a timely manner in accordance with the schedules established by Landlord.

1.9 Tenant understands dimensions to be shown in the plans and specifications for the Building, and in any leasing brochure, are approximate and may change due to field conditions.

## 2. Preliminary Design Consultant Decisions

2.1 Within ten (10) days after the date on which this Lease is executed by Tenant, Tenant shall inform Landlord in writing whether Tenant will use the services of Landlord's architect, engineers and interior designers (collectively, "Landlord's Design Consultants") in designing Tenant's space plan for the Premises or whether Tenant will retain, at its sole cost and expense, Tenant's own architect, engineers and interior designers ("Tenant's Design Consultants"). Landlord and Tenant agree that if Tenant elects to use Landlord's Design Consultants, the provisions of Section 3.1 of this Work Letter shall apply to this Lease; and if Tenant elects to retain Tenant's Design Consultants, the provisions of Section 3.2 of this Work Letter shall apply to this Lease.

## 3. Preparation of Conceptual Space Plan, Final Space Plan and Construction Documents

3.1 Landlord's Design Consultants: Tenant shall cooperate with Landlord in developing plans and specifications for Tenant's Construction Work, which plans and specifications shall be prepared by Landlord's Design Consultants. Tenant agrees to meet with Landlord's architect on four occasions in accordance with the schedule to be provided by Landlord's architect for the purpose of developing such plans and specifications for Tenant's Construction Work. Tenant agrees to make and communicate design decisions to Landlord's architect in a timely fashion. The plans and specifications for Tenant's Construction Work shall be subject to the prior approval of Landlord (which approval shall not be unreasonably delayed or withheld). The cost of the foregoing four (4) consultation meetings with Landlord's architect shall be paid for by Landlord and shall not be applied against the Allowance. Any additional architectural design meetings with Tenant (which are requested by Tenant) shall be paid for by Tenant.

3.1.1 Landlord's Design Consultants shall provide the following services at Landlord's sole cost and expense: (a) preparation of a Conceptual Space Plan; (b) preparation of Final Space Plan; (c) preparation of Construction Documents; and (d) assistance in selection of basic finishes from the standard finish packages offered by Landlord. The foregoing services shall be provided to Tenant at Landlord's sole cost and expense and shall not be applied against the Allowance. Any additional services requested by Tenant from Landlord's Design Consultants shall be provided to Tenant at Tenant's sole cost and expense.

3.1.2 Landlord's architect will prepare a "Conceptual Space Plan" establishing the conceptual design of the Premises which illustrates the scale and relationship of the components of the Premises. The Conceptual Space Plan shall be based on the "Space Allocation and Cost Program" approved by Landlord and Tenant, which Space Allocation and Cost Program is attached hereto as Schedule I and incorporated by reference into this Work Letter. Tenant agrees to cooperate with Landlord's architect, furnishing all reasonable information and material concerning Tenant's organization, staffing, growth expectations, physical facility needs, equipment inventory and other information and material necessary for the architect to efficiently and expeditiously prepare the Conceptual Space Plan. The Conceptual Space Plan must be

approved in writing by both Landlord and Tenant not later than thirty (30) days after the date on which the Lease is fully executed.

3.1.3 Within twenty-one (21) days after Tenant approves the Conceptual Space Plan, Landlord's architect shall submit Final Space Plan for Tenant's approval. Tenant shall have seven (7) days to approve or deliver written comments regarding the Final Space Plan to Landlord. The "Final Space Plan" shall illustrate and describe the refinement of the design of the Premises; and establish the scope, relationship, size and appearance of the Premises by means of plans, sections and elevations. Once approved by Tenant, if any changes to the Final Space Plan are requested subsequently by Tenant, Tenant shall pay for the cost of making such changes.

3.1.4 Within twenty-one (21) days of Tenant's approval of the Final Space Plan, Landlord's architect shall submit Construction Documents for Tenant's approval. Tenant shall have seven (7) days to approve or deliver written comments regarding the Construction Documents to Landlord. The "Construction Documents" shall set forth in detail the requirements for construction of the Premises and shall include drawings and specifications that establish in detail the quality of materials and systems required for the Premises. Once approved by Tenant, if any changes to the Construction Documents are requested subsequently by Tenant, Tenant shall pay for the cost of making such changes.

3.1.5 With respect to interior design services, Landlord and Tenant agree that if Tenant selects one of the standard finish packages offered by Landlord, the cost of interior design services for such standard finishes shall be paid by Landlord and shall not be applied against the Allowance. If, however, Tenant does not choose one of the standard finish packages offered by Landlord, Tenant may hire its own interior designer, at Tenant's sole cost, or may retain the services of Landlord's interior designer. Tenant shall be responsible to coordinate the efforts of Tenant's own interior designer with Landlord's architect and the project contractor to insure that no delays are caused to either the planning or construction of Tenant's Construction Work.

#### 4. Completion of Premises

4.1 Not later than ten (10) days after this Lease is executed by both parties, Tenant shall inform Landlord in writing whether Tenant will use the services of Landlord's contractor ("Landlord's Contractor") in constructing the improvements in the Premises or whether Tenant will hire its own contractor ("Tenant's Contractor"). Landlord and Tenant agree that if Tenant elects to use Landlord's Contractor, the provisions of Section 4.2 of this Work Letter shall apply to this Lease; and if Tenant elects to hire Tenant's Contractor, the provisions of Section 4.3 of this Work Letter shall apply to this Lease. Notwithstanding anything to the contrary herein, Tenant shall be required to use Landlord's Contractor if construction of Tenant's Construction Work is commenced prior to the date of "substantial completion" of the shell of the Building. The shell of the Building shall be deemed "substantially completed" when the shell has been completed as certified by Landlord's architect, except for normal "punch list" items.

#### 4.2 Landlord's Contractor:

4.2.1 All work involved in completion of Tenant's Construction Work shall be carried out by Landlord's Contractor, at Tenant's sole expense (subject to Landlord's obligation to provide the Allowance), under the sole direction of Landlord. Tenant shall cooperate with Landlord and Landlord's Contractor to promote the efficient and expeditious completion of such work.

4.2.2 Tenant and Landlord acknowledge and agree that the "Space Allocation and Cost Program" approved by Landlord and Tenant and attached hereto as Schedule 1 includes a "Space Allocation and Cost Statement" which estimates the cost of Tenant's Construction Work. Landlord guarantees that the cost of Tenant's Construction Work shall not exceed the amount set forth in the Space Allocation and Cost Statement provided the following conditions are satisfied: (a) Tenant shall deliver an executed Lease, in form and substance, acceptable to Landlord for the Premises by \_\_\_\_\_; and

(b) no changes are made to the design of the Premises as set forth in the Space Allocation and Cost Program at Tenant's request.

4.2.3 If the conditions described in Section 4.2.2 are not satisfied or if the Space Allocation and Cost Statement is not attached as a part of Schedule 1, the cost of Tenant's Construction Work shall be determined as follows: Within thirty (30) days after receipt of the approved Construction Documents, Landlord will submit to Tenant written estimates of the cost of Tenant's Construction Work. Tenant shall accept or reject in writing such cost estimates within five (5) days. If Tenant rejects or fails to respond to such cost estimates within such five (5) day period, Landlord shall not carry out any of Tenant's Construction Work set forth in the Construction Documents until approval thereof is received. In the event that Tenant rejects or fails to respond to such cost estimates within such five (5) day period, Tenant shall have until the tenth (10th) day following such five (5) day period in which to cause Tenant's or Landlord's architect, as the case may be (the "Project Architect"), at Tenant's sole cost, to submit revised Final Space Plan and Construction Documents, if necessary. Upon receipt of the revised Design and Construction Documents, Landlord shall have fourteen (14) days to obtain new bids from Landlord's Contractor. Tenant agrees that Tenant is responsible for any and all reasonable increases in the costs of Tenant's Construction Work resulting from governmental requirements in connection with Tenant's Construction Work, whether such increases occur before the cost estimates are initially submitted to Tenant, or after all final bids have been taken and such cost estimates have been approved by Tenant.

4.2.4 During the construction work process, if there are any changes in Tenant's Construction Work requested by or on behalf of Tenant, from the work as reflected in the Construction Documents, each such change must receive the prior written approval of Landlord and must be paid for by Tenant. In such event, upon substantial completion of the Premises, Tenant shall, at its sole cost and expense, cause the Project Architect to prepare and deliver to Landlord "as-built" drawings of Tenant's Construction Work reflecting the changes made to the previously approved Construction Documents.

4.2.5 The Allowance shall be disbursed by Landlord in accordance with the draw requirements of Landlord or Landlord's construction lender.

4.2.6 Tenant acknowledges and agrees that Landlord reserves the right, without Tenant's consent and without liability to Tenant, to make any modifications, changes or omissions to the Construction Documents, as long as same does not substantially and adversely affect Tenant. Tenant further acknowledges and agrees that Landlord reserves the right, without Tenant's consent and without liability to Tenant, to make any modification, changes or omissions to the Construction Documents, if same are required by any governmental or quasi-governmental authority or utility. Tenant also acknowledges and agrees that Landlord may, regarding the Premises, substitute materials, equipment, cabinets, fixtures, appliances, and/or floor coverings with items of similar or greater quality, utility, value, and/or color without Tenant's consent and without liability to Tenant. Tenant understands the location of telephone, electric and other utility outlets are subject to change. Tenant understands materials such as brick, wood, wood grain, carpeting, paint, cabinets, cultured marble, tile, mica, and the like, are subject to shading and gradation and may vary from samples, models or color charts, and from piece to piece, and Landlord will not be liable for such variation. Tenant acknowledges and agrees that Landlord will have complete discretion in "finishing details."

**EXHIBIT D**  
**COMMENCEMENT DATE LETTER**

[Landlord's Letterhead]

Sports Docs LLC  
1430 W. Balderson Pike  
Suite A  
Lebanon TN 37087

Re: Lease Agreement, dated Oct 1<sup>st</sup>, 2008 between Sports Docs LLC  
("Landlord") and Terra SM, LLC ("Tenant")

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

The purpose of this letter is to confirm the following:

- (i) The Lease Term Commencement Date for the referenced Lease Agreement is December 1  
2005.
- (ii) The Term of the Lease expires on 11/30/08.
- (iii) The Premises consist of 6777 rentable square feet. The total rentable area of the Building is \_\_\_\_\_ rentable square feet and the Premises is agreed to be \_\_\_\_\_ percent (\_\_\_\_%) thereof.

Please acknowledge your agreement with the provisions of this letter by signing the extra copy of this letter and returning the same to the undersigned.

Sincerely yours,

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

ACKNOWLEDGED AND AGREED TO BY:

TENANT:

Terra SM LLC  
By: [Signature]  
Print Name: Charles R. Kachera, Jr.  
Print Title: Chief Manager  
Date: \_\_\_\_\_

**EXHIBIT E**

**PROHIBITED USES**

A. **Prohibited Uses.**

1. Any purpose other than for the practice of medicine or medically related services for the care and treatment of humans;
2. The operation of a pharmacy, other than for Tenant's own use (i.e., there shall be no sale to parties other than the patients of Tenant), a gift shop, a flower shop or food services.
3. Such restrictions as set forth in the Declaration of Reciprocal Easements and Restrictions recorded at Book 1050, page 1939-1955, Register's Office for Wilson County, Tennessee as a public record affecting the Premises, including but not limited to any use as an orthopedic medical or any surgical facility, occupational medicine, workmen's compensation facility, radiological imaging center, physical or occupational therapy center, or any use that would compete directly or indirectly with the orthopaedic business of Sports Docs, LLC, its successors, assigns or affiliates, including any other non-competing medical use which provides periodically services which are prohibited by this provision.

**EXHIBIT F**  
**RULES AND REGULATIONS**

1. No animals shall be kept in or about the Premises.
2. Tenant shall not use the water closets and other plumbing fixtures for any purposes other than those for which they were constructed, and shall not place any debris, rubbish, rags or other substances therein. All damage resulting from any misuse of the fixtures shall be borne by the Tenant whose servants, employees, agents, customers, contractors, subtenants, assignees, patients, invitees, or licensees shall have caused the same.
3. Tenant shall not place any furniture, equipment, records, trash or other objectionable material in the common areas other than in an appropriate refuse container.
4. Tenant or his employees shall not make or commit any indecent or improper acts while on the property or make any unseemly or disturbing noises or disturb or interfere with neighboring occupants of the Building or the Premises or those having business with them, whether by use of any musical instrument, radio, loud speaker, singing, or in any other way. Tenant or his employees shall not throw anything out of the doors or windows of the Premises.
5. The Premises shall not be used for the sale of merchandise in the ordinary course of business, or for the sale at auction of merchandise, goods or property of any kind to persons who are not patients of the tenant, except as ancillary to medical services that are provided.
6. Landlord does not assume any responsibility, and shall not be held liable, for any damage or loss to any automobile or personal property in the parking lot or for any injury sustained by any person in the parking lot.
7. The entry, corridors, and stairways shall not be obstructed by Tenant, nor used by Tenant for any purpose other than ingress or egress to and from Tenant's offices, nor must employees of Tenant loiter or congregate therein. The floors and windows that reflect or admit light into passageways in common areas shall not be covered or obstructed by Tenant.
8. Landlord reserves the right to make such other and further rules and regulations as permitted by the Lease.
9. Tenant shall not, without the written consent of Landlord, place a load upon any floor of the Building that exceeds 80 pounds per square foot. Tenant shall not, without the written consent of Landlord, add equipment that requires additional air conditioning, electrical or other facilities for installation or operation in excess of normal services for the Building.
10. Tenant will not permit or suffer any signs, advertisement or notices to be displayed, inscribed upon or affixed on any part of the outside of the Premises or on windows or doors or on the adjacent street. Directory boards and Premises identification signs shall be provided by Landlord. Signage on entry doors will be provided by Landlord consistent with signage standards within the Building.
11. In the event that Tenant should from time to time, or at any time, require heating or air-conditioning in the Premises after the hours specified in the Lease, Landlord agrees to provide the same to Tenant provided Tenant shall give Landlord at least twelve (12) hours advanced notice of the need for after-hours heating or cooling. The charge for such after-hours heating and cooling shall be at a rate per hour determined by Landlord from time to time. Landlord may either publish such rates or will provide the same to Tenant upon request. All charges for after-hours heating and cooling requested by Tenant shall be additional rent under this Lease and due and payable with the next monthly installment of Rent.

**EXHIBIT G**  
**SIGN CRITERIA**

[To be added]

### Sign Criteria

Tenant shall be entitled, at Landlord's sole cost and expense, to identification signage outside of the Premises on the floor on which Premises are located. The location, quality, design, style, lighting and size of such signage shall be consistent with the Landlord's building standard signage program. Tenant shall be entitled to one (1) line on the Building directories located in the Building to display Tenant's name and location in the Building.

Tenant shall have the right, subject to all applicable laws and regulations, to install and insure, at Tenant's sole cost and expense, Tenant's signage on the face of the Building and on the monument sign serving the Building, provided Tenant must first obtain Landlord's written approval of the design and location of such sign, which approval shall not be unreasonably withheld, qualified or delayed. Tenant shall be permitted to use, at no cost to Tenant, the electronic face of the monument sign serving the Building (the "Electronic Reader Board"). Landlord represents and warrants that Tenant may place its name and logo on the Electronic Reader Board and the same shall be displayed with reasonable frequency, duration and prominence. No signage or other advertising materials shall be displayed on the Electronic Reader Board with greater frequency, duration or prominence than Tenant's signage and other advertising. If Tenant desires to display any message other than its name and logo on the Electronic Reader Board, the same must be approved by Landlord, which approval shall not be unreasonably withheld, qualified or delayed.

Except for Seton Corporation d/b/a Baptist Hospital, Richland Internal Medicine and STHS Heart, LLC, Landlord has not granted any third party the right to install signage on the face of the Building. Except for Saint Thomas Health Services, Landlord shall not permit any other Competitive Health System or tenant within the Building to place signage or marketing materials on the exterior of the Building.

**EXHIBIT C TO ESTOPPEL CERTIFICATE  
SUBLEASE RENT ROLL**

None.

**EXHIBIT D TO ESTOPPEL CERTIFICATE  
EXCEPTIONS**

None.

## FIRST AMENDMENT TO RESTATED LEASE AGREEMENT

THIS FIRST AMENDMENT TO RESTATED LEASE AGREEMENT ("Amendment") is dated as of October 31, 2008 (the "Effective Date") between WINDROSE TSM I PROPERTIES, LLC, a limited liability company organized under the laws of the State of Delaware ("Landlord"), and TENN SM, LLC, a limited liability company organized under the laws of the State of Tennessee ("Tenant").

### RECITALS

A. Tenant entered into that certain Restated Lease Agreement dated as of October 1, 2004 ("Lease"), whereby Sports Docs, LLC, a Tennessee limited liability company, leased to Tenant Suite 110 in the office building located at 5002 Crossing Circle, Mt. Juliet, Tennessee ("Premises").

B. Landlord is the successor in interest of Sports Docs, LLC.

C. The Lease provides nine (9) consecutive options to extend the Lease Term for an additional term of three (3) years each. Tenant desires to exercise its first option to extend the Lease Term.

D. Landlord and Tenant desire to amend and modify the Lease to extend the Lease Term and to amend certain other terms and conditions of the Lease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Definitions. Any capitalized terms not defined in this Amendment shall have the meaning set forth in the Lease.

2. Premises. Section 1 of the Lease is hereby amended to read in its entirety as follows:

1. **PREMISES**. In consideration of the rents, mutual covenants and agreements set forth herein, the Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises located in that certain three (3) story medical office building (herein called the "**Building**"), located on that certain parcel of land described in Exhibit A-1, which premises are located on the first floor, Suite 110 of the Building and deemed to consist of Seven Thousand Two Hundred Forty-One (7,241) rentable square feet (herein called "**the Premises**"). The Premises are more particularly shown on the floor plan attached hereto as Exhibit A. The rentable square feet of the Premises shall include both the area within the Premises and Tenant's proportionate share of the common areas of the Building.

3. Term. Section 2 of the Lease is hereby amended to read in its entirety as follows:

2. **TERM.** The term of this Lease (the "Lease Term") commenced on December 1, 2005 ("Lease Term Commencement Date"), and shall continue through November 30, 2011.

4. Extension of Term. Section 3 of the Lease is hereby amended to read in its entirety as follows:

So long as Tenant is not in default under the terms and conditions of this Lease, both at the time of the exercise of this option to renew and at the expiration of the then effective Lease Term, Tenant shall have eight (8) consecutive options to extend the Lease Term for an additional term of three (3) years each, (each an "Extended Term"). The Extended Term shall be on and subject to the same terms, covenants and conditions as herein contained, except for Base Rent, which shall be determined as hereinafter provided. The option shall be exercised only by written notice from Tenant to Landlord and given no less than six (6) months prior to the expiration of the then effective Lease Term. Annual Base Rent per rentable square foot for an Extended Term shall be an amount equal to one hundred three (103%) percent of the annual Base Rent in effect for the last year of the then effective Lease Term. Each Lease Year during an Extended Term the annual Base Rent per rentable square foot shall be increased by three (3%) percent of the Base Rent payable for the immediately preceding Lease Year.

5. Base Rent. Section 4 of the Lease is hereby amended to add the following paragraph:

Commencing December 1, 2008, the Base Rent shall be One Hundred Forty-Six Thousand Seven Hundred Two and 66/100 Dollars (\$146,702.66) payable in twelve (12) equal monthly installments of Twelve Thousand Two Hundred Twenty-Five and 22/100 Dollars (\$12,225.22).

6. Additional Rental. The first paragraph of Section 5 of the Lease is hereby amended to add the following:

Notwithstanding anything to the contrary set forth herein, the amount of Controllable Operating Costs (as defined below) included in the calculation of Operating Expenses for each subsequent calendar year in the Term shall not increase by more than five percent (5%) over the amount of Controllable Operating

Costs included in the calculation of Operating Expenses for the preceding calendar year. "Controllable Operating Costs" shall mean all Operating Expenses, less and except those expenses related to janitorial costs, utility costs, insurance costs, taxes, management fees and weather related maintenance costs (including, but not limited to, snow and ice removal). There shall be no cap on the amount of janitorial costs, utility costs, insurance costs, taxes, management fees and weather related maintenance costs included in the calculation of Operating Expenses for any calendar year and Tenant shall be responsible for Tenant's proportionate share of all such Operating Expenses. For the purpose of calculating Tenant's Additional Rent, Landlord, in its reasonable discretion, shall adjust electricity and janitorial costs and expenses to include only those costs and expenses attributable to the common areas of the Property.

7. Work Letter Agreement. The Work Letter Agreement attached to the Lease as Exhibit C is hereby deleted in its entirety and replaced with the Work Letter Agreement attached to this Amendment and incorporated by reference herein as Exhibit C. Section 7 of the Lease is hereby amended to add the following paragraph:

Not later than eight (8) months following October 31, 2008, Tenant shall complete and finish out the Premises as an ambulatory surgery center (the "Tenant Improvements") in accordance with the terms and conditions of the Work Letter Agreement attached hereto as Exhibit C.

8. Utilities; Cleaning Services. The first two paragraphs of Section 11 of the Lease shall be amended to read in their entireties as follows:

Tenant shall cause, at Tenant's sole cost and expense, the construction of the heating, ventilation and air conditioning ("HVAC") system to the Premises to be separate from the HVAC system of the Building. Tenant shall contract for in its own name, pay and discharge when due and before delinquent, all charges for electricity, power, gas, telephone, oil, water and other utilities used or consumed upon the Premises during the Lease Term, or any extension thereof for its utilities; or, Tenant shall install, at Tenant's sole expense, separate utility sub-meters in the Premises and Landlord shall invoice Tenant for all charges for utilities that are separately metered. Landlord will contract for utility services that are centrally metered and such expenses will be included as part of Operating Expenses. Landlord reserves the right to charge Tenant and other tenants of the Building applicable costs with respect to usage of Building services and utilities at times other than during standard business hours, on such basis as Landlord may reasonably determine for the purpose of properly allocating

the costs of such services and utilities in accordance with the usage thereof.

Landlord shall (i) maintain and repair the plumbing within the Premises, except where a repair to the same is needed as a result of Tenant's, its employees' or invitees' negligence or misuse; (ii) be responsible for the removal of Tenant's trash, but said trash shall be placed by Tenant in its containers which shall be located within the Premises; and (iii) maintain in good order and repair and in a clean and orderly condition the roof, exterior walls and public areas in the Building of which Premises are a part, together with any parking area owned or leased by Landlord which is adjacent to the Building. Landlord shall not be liable for failure to furnish, or the stoppage or interruption of such services when such failure, or stoppage or interruption of services is caused by conditions beyond the control of Landlord, or by accidents; repairs or strikes; nor shall such failure, or stoppage or interruption of such services constitute an eviction of Tenant or allow an abatement of Rent. Notwithstanding any of the provisions of this paragraph, Tenant shall be responsible for the lawful removal and cost of removing medical, special or infectious wastes from the Premises.

9. Exhibit A. The floor plan of the Premises attached as Exhibit A to the Lease is hereby deleted in its entirety and replaced with the Exhibit A attached hereto and incorporated by reference herein.

10. Affirmation. Except as specifically modified by this Amendment, the terms and provisions of the Lease are hereby affirmed and shall remain in full force and effect.

11. Binding Effect. This Amendment will be binding upon and inure to the benefit of the successors and permitted assigns of Landlord and Tenant.

12. Further Modification. The Lease may be further modified only by writing signed by Landlord and Tenant.

13. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original hereof, but all of which will constitute one and the same document.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date first set forth above.

Signed and acknowledged in the presence of:

Signature Rosanne Piretti  
Print Name ROSANNE PIRETTI

Signature Virginia Williams  
Print Name VIRGINIA WILLIAMS

**WINDROSE TSM I PROPERTIES, LLC**  
a Delaware limited liability company

By: WMP TSM I Management, LLC  
Its: Managing Member

By: [Signature]  
Title: Senior Vice President

Signature Susan Alcega  
Print Name SUSAN ALCEGA

Signature Sandra Paston  
Print Name Sandra Paston

**TENN SM, LLC**  
a Tennessee limited liability company

By: [Signature]

Title: Manager

STATE OF Tennessee

COUNTY OF Davidson

Personally appeared before me, Jill Starr, a Notary Public for the state and county aforesaid, William G. Southwick with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the Manager of ~~WMP TSM I Management, LLC, the Managing Member of Windrose TSM I Properties, LLC~~, the maker, and is authorized by the maker to execute this instrument on behalf of the maker.

WITNESS my hand and seal at office this 7 day of November, 2008.

Jill Starr  
NOTARY PUBLIC

My Commission Expires: July 26, 2009



STATE OF Florida

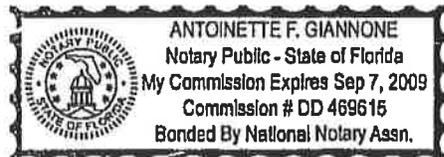
COUNTY OF Palm Beach

Personally appeared before me, Antoinette Giannone, a Notary Public for the state and county aforesaid, Michael A. Noto, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purposes therein contained, and who further acknowledged that he/she is the Sr. Vice Pres. of ~~WMP TSM I Management, LLC, the Managing Member of Windrose TSM I Properties, LLC~~, the maker, and is authorized by the maker to execute this instrument on behalf of the maker.

WITNESS my hand and seal at office this 15<sup>th</sup> day of November, 2008.

Antoinette Giannone  
NOTARY PUBLIC

My Commission Expires: 9-7-09



**EXHIBIT A**

**FLOOR PLAN OF THE PREMISES**

(See attached.)

## EXHIBIT C

### WORK LETTER AGREEMENT – TENANT WORK LETTER

Tenant shall perform the Tenant Improvements referred to in that certain First Amendment to Restated Lease Agreement dated as of October 31, 2008 (the "First Amendment") in the Premises in accordance with the term and conditions of this Work Letter Agreement. Capitalized terms used herein, unless otherwise defined in the First Amendment, shall have the meaning assigned to them in the Lease. Landlord and Tenant agree that the Tenant Improvements shall be performed as follows:

1. **Tenant Improvements.** Subject to the provisions of the Lease and this Exhibit, Tenant shall proceed diligently to cause the Tenant Improvements to be substantially completed within eight (8) months of the Effective Date of the First Amendment. The Tenant Improvements shall incorporate Landlord's building standard items to be provided by Landlord. All Tenant Improvements shall be performed by architects, engineers and contractors hired by Tenant and approved by Landlord.

2. **Plans.**

(a) Tenant agrees to cause its interior space planner, SUSMAN FISALE ONE (the "Interior Space Planner"), to prepare and deliver to Landlord, on or before \_\_\_\_\_, architectural, mechanical and electrical working drawings and specifications for the Tenant Improvements to be performed in the Premises (collectively, the "Plans") which Plans shall have been approved in writing by Tenant. Tenant's Plans shall be subject to Landlord's approval and the approval of any local governmental agency which requires approval. If Landlord does not approve the Plans, Landlord shall advise Tenant generally of the changes required in such Plans so that they will meet Landlord's approval. Within ten (10) business days after Tenant's receipt of such advice Tenant shall cause the Interior Space Planner to deliver to Landlord revised Plans which are acceptable to Landlord and/or said local governmental agency. Landlord reserves the right to disapprove any Plans or reserve approval of items shown thereon pending its review and approval of other plans and specifications, and to condition its approval upon Tenant making revisions to the Plans or supplying additional information. Tenant agrees that any review or approval by Landlord of any Plans with respect to any Tenant Improvements is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant or any other person with respect to the adequacy, correctness or sufficiency thereof.

(b) Within twenty (20) days of Landlord's approval of Tenant's Plans, Tenant shall determine the cost of the Tenant Improvements and deliver to Landlord a pricing schedule (the "Pricing Schedule") setting forth a schedule of the cost of the Tenant Improvements. Upon Landlord's receipt of the Pricing Schedule, Landlord shall review the costs shown therein and notify Tenant in writing of its approval of the Pricing Schedule. Tenant shall revise the Pricing Schedule from time to time to reflect any cost increases or decreases necessitated by any revisions to Plans as requested by Tenant and approved by Landlord, or as required by any local governmental agencies. Landlord shall approve or disapprove in writing such revised costs shown in the Pricing Schedule within five (5) business days after Tenant submits the revised

Pricing Schedule to Landlord. If Landlord approves the revisions to the Plans and the revised Pricing Schedule, the Tenant Improvements to be performed shall be deemed to include the revisions to the Tenant Improvements shown in the revised Plans and the total costs of such revisions to the Tenant Improvements and Plans requested by Tenant shall be paid by Tenant.

(e) The Plans shall be revised, and the Tenant Improvements shall be changed, to incorporate any revisions to the Plans required by any local governmental agency or by any local governmental field inspector. The cost of any such revisions or changes shall be included in the cost of the Tenant Improvements.

(d) Tenant, at Tenant's expense, shall: (i) obtain all permits, approvals and certificates required by any governmental authorities; (ii) furnish to Landlord duplicate original policies or certificates thereof of worker's compensation insurance (covering all persons to be employed by Tenant and any contractors and subcontractors, in connection with such Tenant Improvements) and commercial general liability insurance (including premises operation, bodily injury, personal injury, death, independent contractors, products and completed operations, broad form contractual liability and broad form property damage coverages) in such form, with such companies, for such periods and in such amounts as Landlord may reasonably approve, naming Landlord and its agents, its property manager and any mortgagee, as additional insureds; (iii) upon completion of such Tenant Improvements, Tenant shall obtain certificates of completion of such Tenant Improvements required by any governmental authority and shall furnish Landlord with copies thereof, together with the "as built" plans and specifications therefore as approved by Landlord and any other documents required by Landlord or its lender, including but not limited to unconditional final releases and contractors' final affidavits. All materials and equipment to be incorporated into the Premises as a result of any Tenant Improvements shall be of first quality and no such materials or equipment shall be subject to any lien, encumbrance, chattel mortgage, title retention or security agreement.

**3. Cost of the Tenant Improvements.** Tenant shall pay for all costs, expenses and fees required for the Work, and Tenant shall be responsible for any excess costs resulting from any approved and revised Pricing Schedule. Landlord is not contributing any funds towards the cost of the Work.

**4. Miscellaneous.**

(a) **Other Tenant Improvements Obligations.** Landlord has no agreement with Tenant to perform any Tenant Improvements with respect to the Premises. Any additional tenant improvements in the Premises which Tenant may be permitted by Landlord to perform after substantial completion of the Tenant Improvements shall be done at Tenant's sole cost and expense and in accordance with the terms and conditions of the Lease, including any such other requirements as Landlord deems necessary or desirable.

(b) **Additional Building Requirements.** If the Plans require the construction and installation of more fire hose cabinets or telephone/electrical closets than the number regularly provided by Landlord in the core of the Building in which the Premises are located, Tenant agrees to pay all costs and expenses arising from the construction and installation of such additional fire hose cabinets or telephone/electrical closets.

(c) **Additional Space.** This Exhibit shall not be deemed applicable to any additional office space added to the original Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Premises or any additions thereto in the event of a renewal or extension of the original Lease Term of this Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplemental thereto.

(d) **Tenant's Representative.** Tenant has designated HEALTHMARK PROPERTIES its sole representative with respect to the matters set forth in this Exhibit, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Exhibit.

(e) **Landlord's Representative.** Landlord has designated \_\_\_\_\_ as its sole representative with respect to the matters set forth in this Exhibit, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Exhibit.

(f) **Tenant's Default.** If Tenant has been in default under the Lease or any provision of this Exhibit at any time, then, in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to terminate the Tenant Improvements.

(g) **Tenant's Failure to Pay.** Failure by Tenant to pay any sums described in this Exhibit in full within ten (10) days after receipt of an invoice for such sums shall constitute a material breach of this Lease by Tenant, giving rise to all remedies available to Landlord under this Lease and at law for nonpayment of rent.

(h) **Defects.** Notwithstanding anything to the contrary in the Lease, Landlord shall have no responsibility to Tenant or its assignees or subtenants for any defects in construction, for any defect or failure attributable to any design professional, or for failure of the Tenant Improvements to comply with any restrictions or applicable laws.

(i) **Ownership of Tenant Improvements, Fixtures.** All improvements to the Premises made pursuant to this Exhibit, whether paid for by Landlord or Tenant, shall be at all times the property of Landlord. Such improvements shall not be trade fixtures and shall not be removable by Tenant, notwithstanding Tenant's obligation to pay insurance premiums, ad valorem taxes or installation costs attributable to such improvements. All fixtures, excepting trade fixtures, attached to the Building by the Tenant shall revert to and become the absolute property of the Landlord, unless Landlord, in its sole discretion, agrees in writing at the termination of this Lease to allow Tenant to remove such fixtures. If Tenant removes any fixture, Tenant shall bear all costs of restoring the Premises to its condition prior to the installment of such fixture. Landlord shall incur no liability for improvements to the Premises as a consequence of such fixture acceding to the Building.



## SECOND AMENDMENT TO RESTATED LEASE AGREEMENT

THIS SECOND AMENDMENT TO RESTATED LEASE AGREEMENT ("Second Amendment") is dated as of June 29, 2011 between WINDROSE TSM I PROPERTIES, LLC, a limited liability company organized under the laws of the State of Delaware ("Landlord"), and TENN SM, LLC, a limited liability company organized under the laws of the State of Tennessee ("Tenant").

### RECITALS

A. Tenant entered into that certain Restated Lease Agreement dated as of October 1, 2004, as amended by a First Amendment to Restated Lease Agreement dated October 31, 2008 ("Lease"), whereby Sports Docs, LLC, a Tennessee limited liability company, leased to Tenant Suite 110 in the office building located at 5002 Crossing Circle, Mt. Juliet, Tennessee ("Premises").

B. Landlord is the successor in interest of Sports Docs, LLC.

C. Landlord and Tenant desire to amend and modify the Lease to extend the Term and to amend certain other terms and conditions of the Lease as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Definitions. Any capitalized terms not defined in this Second Amendment shall have the meaning set forth in the Lease.

2. Term. Section 2 of the Lease is hereby amended to read in its entirety as follows:

2. Term. The term of this Lease (the "Lease Term") commenced on December 1, 2005 ("Lease Term Commencement Date"), and shall continue through November 30, 2016.

4. Extension of Term. Section 3 of the Lease is hereby amended to read in its entirety as follows:

So long as Tenant is not in default under the terms and conditions of this Lease, both at the time of the exercise of this option to renew and at the expiration of the then effective Term of this Lease, Tenant shall have two (2) consecutive options to extend the Term of this Lease for an additional term of five (5) years each, (each an "Extended Term"). The Extended Term shall be on and subject to the same terms, covenants and conditions as herein contained, except for Base Rent, which shall be determined as hereinafter provided. The option shall be exercised only by written

notice from Tenant to Landlord and given no less than six (6) months prior to the expiration of the then effective Term. Annual Base Rent per rentable square foot for an Extended Term which shall be increased to the fair market rental rate in the Mt. Juliet, Tennessee area ("Fair Market Rental Rate"). If this Lease is extended, then Lease Term shall include any such extended period.

If Landlord and Tenant are unable to agree on the Fair Market Rental Rate for the Extended Term within thirty (30) days of receipt by Landlord of the extension notice for the Extended Term, Landlord and Tenant each, at its cost and by giving notice to the other party, shall appoint a competent and impartial commercial real estate broker (hereinafter "Broker") with at least five (5) years' full-time commercial real estate brokerage experience in the geographical area of the Premises to set the Fair Market Rental Rate for the Extended Term. If either Landlord or Tenant does not appoint a Broker within ten (10) days after the other party has given notice of the name of its Broker, the single Broker appointed shall be the sole Broker and shall set the Fair Market Rental Rate for the Extended Term. If two (2) Brokers are appointed by Landlord and Tenant as stated in this paragraph, they shall meet promptly and attempt to set the Fair Market Rental Rate. In addition, if either of the first two (2) Brokers fails to submit their opinion of the Fair Market Rental Rate within the time frames set forth below, then the single Fair Market Rental Rate submitted shall automatically be the initial monthly Base Rent for the Extended Term and shall be binding upon Landlord and Tenant. If the two (2) Brokers are unable to agree within twenty (20) days after the second Broker has been appointed, they shall attempt to select a third Broker, meeting the qualifications stated in this paragraph within ten (10) days after the last day the two (2) Brokers are given to set the Fair Market Rental Rate. If the two (2) Brokers are unable to agree on the third Broker, either Landlord or Tenant by giving ten (10) days' written notice to the other party, can apply to the Presiding Judge of the Superior Court of the county in which the Premises is located for the selection of a third Broker who meets the qualifications stated in this paragraph. Landlord and Tenant each shall bear one-half (1/2) of the cost of appointing the third Broker and of paying the third Broker's fee. The third Broker, however selected, shall be a person who has not previously acted in any capacity for either Landlord or Tenant. Within ten (10) days after the selection of the third Broker, both Landlord and Tenant shall submit to the third Broker their Broker's determination of the Fair Market Rental Rate. Within twenty five (25) days after the selection of the third Broker, the third Broker shall select one of the two Fair Market Rental Rates submitted by the first two Brokers as the Fair Market Rental Rate for the

Extended Term. The determination of the Fair Market Rental Rate by the third Broker shall be binding upon Landlord and Tenant.

5. Base Rent. Section 4 of the Lease is hereby amended to add the following paragraph:

Commencing December 1, 2011, the Base Rent shall be One Hundred Thirty-Eight Thousand Three Hundred Three and 12/100 Dollars (\$138,303.12) payable in twelve (12) equal monthly installments of Eleven Thousand Five Hundred Twenty-Five and 26/100 Dollars (\$11,525.26). Commencing December 1, 2012, Base Rent shall increase as set forth in this Section 4.

6. Utilities; Cleaning Services. The first two paragraphs of Section 11 shall be amended to read in their entireties as follows:

The Tenant's ventilation and air conditioning ("HVAC System") to the Premises has been constructed by Tenant to be separate from the HVAC system of the Building. Landlord shall install, at Landlord's sole expense, separate utility sub-meters in the Premises and Landlord shall invoice Tenant for all charges for utilities that are separately metered. Landlord will contract for utility services that are centrally metered and such expenses will be included as part of Operating Expenses. Landlord reserves the right to charge Tenant and other tenants of the Building applicable costs with respect to usage of Building services and utilities at times other than during standard business hours, on such basis as Landlord may reasonably determine for the purpose of properly allocating the costs of such services and utilities in accordance with the usage thereof. In no event shall Landlord charge in excess of the actual cost to Landlord of such utilities and services. For the purpose of calculating Tenant's Additional Rent, Landlord, in its reasonable discretion, shall adjust electricity and janitorial costs and expenses to include only those costs and expenses attributable to the Common Area of the Property.

Landlord shall (i) maintain and repair the plumbing within the Premises, except where a repair to same is needed as a result of Tenant's, its employees' or invitees' negligence or misuse; (ii) be responsible for the removal of Tenant's trash, but said trash shall be placed by Tenant in its containers which shall be located within the Premises; and (iii) maintain in good order and repair and in a clean and orderly condition the roof, exterior walls and public areas in the Building of which Premises are a part, together with any parking area owned or leased by Landlord which is adjacent to the Building. Landlord shall not be liable for failure to furnish, or the stoppage or interruption of such services when such failure, or

stoppage or interruption of services is caused by conditions beyond the control of Landlord, or by accidents; repairs or strikes; nor shall such failure, or stoppage or interruption of such services constitute an eviction of Tenant or allow an abatement of Rent, except only to the extent such an interruption or stoppage of services continues for a period of five (5) consecutive days for reasons other than the negligence or willful misconduct of Tenant or force majeure, in which event Rent shall be abated to the extent that is fair and reasonable under the circumstances. Notwithstanding any of the provisions of this paragraph, Tenant shall be responsible for the lawful removal and cost of removing medical, special or infectious wastes from the Premises. Landlord shall also provide the janitorial services as set forth in Schedule 1 .

7. Commission. Upon execution of this Second Amendment, Landlord shall pay a commission to Case Commercial Real Estate Partners in accordance with a separate commission agreement.

8. Schedule 1. The Lease is hereby amended to add a new Schedule 1 as set forth in the Schedule 1 attached hereto and made a part hereof.

9. Affirmation. Except as specifically modified by this Second Amendment, the terms and provisions of the Lease are hereby affirmed and shall remain in full force and effect.

10. Binding Effect. This Second Amendment will be binding upon and inure to the benefit of the successors and permitted assigns of Landlord and Tenant.

11. Further Modification. The Lease may be further modified only by writing signed by Landlord and Tenant.

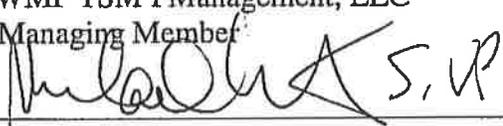
12. Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be deemed an original hereof, but all of which will constitute one and the same document.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment as of the date first set forth above.

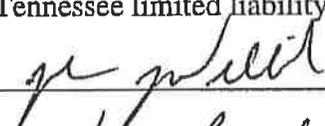
**WINDROSE TSM I PROPERTIES, LLC**  
a Delaware limited liability company

By: WMP TSM I Management, LLC  
Its: Managing Member:

By: 

Title: **Michael A. Noto, Sr. Vice President**

**TENN SM, LLC**  
a Tennessee limited liability company

By: 

Title: Vice President

**THIS INSTRUMENT PREPARED BY:**

Lindsey H. Milam, Esq.  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43604-5573

## SCHEDULE 1

### Janitorial Specifications For Tennessee Sports Medicine & Orthopaedics

#### Daily Services:

1. Vacuum carpeted areas.
2. Sweep and damp mop hard surface floors.
3. Empty waste containers and replace liners as necessary.
4. Spot clean partition glass.
5. Spot clean both sides of clear glass doors.
6. Dust file cabinet top surfaces.
7. Spot clean walls around switches, doorframes, and glass partitions.
8. Turn off lights and secure offices when completed.
9. Spot clean small carpet spots (a carpet spot consists of 3 inches round or smaller).  
**Note:** areas consisting of more than 10 spots may require being shampooed and/or extracted.

#### Weekly Services:

1. Clean both sides of clear glass doors.
2. Dust hard to reach areas. (Coat racks and the like)

#### Monthly Services:

1. Dust window blinds.
2. Corner vacuum hard to reach areas.

**\*Note:** Company papers or personal items on desks will not be removed or disturbed to Clean.

**Tab 6**

**Attachment A, 13**

**Medicare Participation**



**CIGNA Government Services**  
 P.O. Box 25226  
 Nashville, TN 37202-5226

June 1, 2009

RCVD JUN 03 2009

TENN SM, LLC  
 12981 MEADOW VIEW  
 OLIVE BRANCH, MS 38654

DEAR TENN SM, LLC:

We are pleased to inform you that your Medicare enrollment application is approved. Listed below is the information reflected in your Medicare enrollment record, including your National Provider Identifier (NPI) and Provider Transaction Access Number (PTAN).

If you are an existing Medicare provider and currently do not submit claims electronically, or are new to the Medicare program and plan on filing claims electronically, please contact our customer service department. To start billing the Medicare program, you must use your NPI on all Medicare claim submissions. Your PTAN is also activated for use and will be the required authentication element for all inquiries to customer service representatives (CSRs), written inquiry units and the Interactive Voice Response (IVR) system for inquiries concerning claims status, beneficiary eligibility and to check status or other supplier related transactions, therefore keep your PTAN secure. Because the PTAN is not considered a Medicare legacy identifier, do not report this identifier to the National Plan and Provider Enumeration System (NPPES) as an "other" provider identification number.

Please verify the accuracy of the Medicare Enrollment Information below. If the information is inaccurate, or if you have questions, please call our customer service department at 866-824-8572.

**Medicare Enrollment Information:**

Individual Provider\Supplier name:	N/A
Individual Provider\Supplier NPI:	N/A
Individual Provider\Supplier PTAN:	N/A
Group Provider\Supplier name:	TENN SM, LLC
DBA name:	N/A
Group Provider\Supplier NPI:	1235395385
Group Provider\Supplier PTAN:	3287013
Practice Location:	5001 CROSSING CIRCLE, STE. 110 MT. JULIET, TN 37122-8471
Specialty:	Ambulatory Surgical Center
You are enrolled as:	Participating Provider
Effective Date:	05/19/2009

You are required by regulations found at 42 CFR §424.516 to submit updates and changes to your enrollment information in accordance with specified timeframes. Reportable changes include, but are not limited to changes in: (1) legal business name (LBN)/tax identification number (TIN), (2) practice location, (3) ownership, (4) authorized/delegated officials, (5) changes in payment information such as changes in electronic funds transfer information, and (6) final adverse legal actions, including felony convictions, license suspensions or revocations of a health care license, an exclusion or debarment from participation in Federal or State health care program, or a Medicare revocation by a different Medicare contractor.

Providers billing Medicare are subject to random, post-payment reviews under the comprehensive Error Rate Testing (CERT) program. These reviews determine if claims are filed and paid in compliance with Medicare coverage, coding and billing rules. Providers can learn further about this program by visiting the Centers for Medicare and Medicaid Services website at: <http://www.cms.hhs.gov/CERT>.

Please visit our website at [www.cignagovernmentservices.com](http://www.cignagovernmentservices.com) for additional information about the Medicare program, including billing, fee schedules, and Medicare policies and regulations. Information is also available at the Centers for Medicare and Medicaid Services' (CMS) Web site at [www.cms.hhs.gov/home/medicare.asp](http://www.cms.hhs.gov/home/medicare.asp).

Sincerely,

Provider Enrollment

Reference Number: 8502

**Attachment B**

**Plot Plan  
Service Area Access  
Schematics**

**Tab 7**

**Attachment B, III.(A)**

**Plot Plan**



**Tab 8**

**Attachment B, III.(B).1**

**Service Area Access**



Relax & Ride

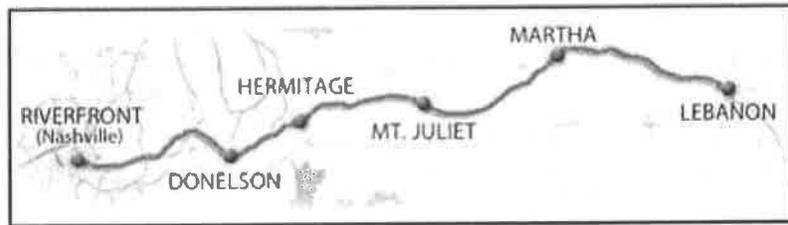


[FAQs](#) | [Online Sales](#) | [Text Links](#)

Select Language

### RTA Train Stations



**Riverfront Station**  
Riverfront Station is the destination station for the Music City Star



regional train. It is located at **108 1st Avenue South** in downtown Nashville at the foot of Broadway, adjacent to the Flag Court and the Shelby Street Pedestrian Bridge. The station does not include parking facilities; however, space is incorporated into the facility to accommodate efficient connections between regional rail and MTA bus services. Complimentary bus service is provided from the station to nearby areas.

**Donelson Station**  
Donelson Station is located at **2705 Lebanon Pike**. It is directly



north of the intersection of Donelson Pike and Bluefield Avenue and is adjacent to Fifty Forward with direct access to the Park & Ride lot from Donelson Pike. Route 6 Lebanon Pike and Route 34 Opry Mills buses operated by the Nashville MTA also serve the Park & Ride lot. Approximately 230 parking spaces are provided.

**Hermitage Station**  
Hermitage Station is located at **4121 Andrew Jackson Parkway**.



**Mt. Juliet Station**  
Mt. Juliet Station is located at **22 East Division Street**. Approxima



It is directly off of Andrew Jackson Parkway near Old Hickory Boulevard. Route 6 Lebanon Pike buses operated by the Nashville MTA also serve the Park & Ride lot. Approximately 280 parking spaces are provided.

tely 220 parking spaces are provided and has direct access from Division Street.

Martha Station  
Martha Station is located at **65 Martha Circle** (State



Route 109 and Powell Grove Road) in Lebanon. It opened as a temporary station when Music City Star service first began due to pending track realignment for improvements to Highway 109. Construction of the permanent station began in December 2009 and was completed in February 2011. Approximately 74 parking spaces are provided.

Lebanon Station  
Lebanon Station is the origination point for the Music



City Star's East Corridor Regional Rail line. It is located at **334 W. Baddour Parkway**. Early morning train service begins here and makes stops at the other stations along the route before arriving at Riverfront Station in downtown Nashville. Lebanon Station is located on an old factory site, which is bordered by Baddour Parkway, Greenwood Street and Hill Street. Approximately 140 parking spaces are provided with direct access off of Baddour Parkway.

**Regional Transportation Authority of Middle Tennessee**

430 Myatt Drive ~ Nashville, TN 37115 phone: **(615) 862-8833** fax: **(615) 862-6208**  
email: [rta@nashville.gov](mailto:rta@nashville.gov)

In association with (Tennessee Department of Transportation), (Federal Transit Administration), and (Nashville Area Metropolitan Planning Organization)  
RTA is a and a

**Tab 9**

**Attachment B, IV**

**Schematics**



**Attachment C**

**Service Area Map  
Medically Underserved Areas  
Medicare Rate Comparisons  
Service Area TennCare Population  
Support Letters  
Verification of Funding  
Balance Sheet and Income Statement  
Facility License  
Accreditation**

**Tab 10**

**Attachment C  
Need - 1**

**Service Area Map**



**Tab 11**

**Attachment C  
Need - 1**

**Medically Underserved Areas**



**Tab 12**

**Attachment C  
Need - 1**

**Medicare Rate Comparisons**

CPT	Description	Avg Commercial ASC	Est. Avg Commercial HOPD	Medicare	Medicare HOPD
42826	Removal of tonsils	\$ 2,767	\$ 3,432	\$ 855	\$ 1,946
42820	Remove tonsils and adenoids	\$ 2,568	\$ 3,185	\$ 855	\$ 1,946
69436	Create eardrum opening	\$ 1,792	\$ 2,222	\$ 855	\$ 1,267
49505	Prp i/hem Intt reduc >5 yr	\$ 2,719	\$ 3,371	\$ 1,382	\$ 2,675
58671	Laparoscopy tubal block	\$ 2,987	\$ 3,704	\$ 1,902	\$ 3,779
36561	Insert tunneled cv cath	\$ 2,367	\$ 2,935	\$ 1,188	\$ 2,236
45378	Diagnostic colonoscopy	\$ 1,607	\$ 1,992	\$ 398	\$ 790
43239	Upper gi endoscopy biopsy	\$ 1,607	\$ 1,992	\$ 394	\$ 746
59820	Care of miscarriage	\$ 2,397	\$ 2,972	\$ 984	\$ 1,846
58671	Laparoscopy tubal block	\$ 2,987	\$ 3,704	\$ 1,902	\$ 3,779
58558	Hysteroscopy biopsy	\$ 1,954	\$ 2,423	\$ 984	\$ 1,846
15823	Revision of upper eyelid	\$ 2,302	\$ 2,855	\$ 746	\$ 1,407
66984	Cataract surg w/lot 1 stage	\$ 3,258	\$ 4,041	\$ 923	\$ 1,753
64721	Carpal tunnel surgery	\$ 1,768	\$ 2,193	\$ 736	\$ 1,384
29881	Knee arthroscopy/surgery	\$ 2,719	\$ 3,371	\$ 1,267	\$ 2,152
28080	Removal of foot lesion	\$ 1,954	\$ 2,423	\$ 770	\$ 1,744
28296	Correction of bunion	\$ 2,403	\$ 2,980	\$ 1,267	\$ 2,676
28285	Repair of hammertoe	\$ 2,197	\$ 2,725	\$ 770	\$ 1,744

**Tab 13**

**Attachment C  
Need - 4**

**Service Area TennCare Population/Demographic Data**

**Service Area TennCare Population  
July 2016**

<b>Service Area Counties</b>	<b>TennCare Enrollees</b>	<b>2016 Population</b>	<b>% Enrolled</b>
Wilson	20,067	129,094	15.5%
Davidson	154,343	680,427	22.7%
Rutherford	52,654	318,638	16.5%
<b>Total SA</b>	<b>227,064</b>	<b>1,128,159</b>	<b>20.1%</b>

Sources: Tennessee Department of Health, Division of Policy, Planning and Assessment; Bureau of TennCare

**Tab 14**

**Attachment C  
Need - 1**

**Support Letters**

ED HAGERTY  
MAYOR

JAMES MANESS  
VICE-MAYOR

KENNY MARTIN  
CITY MANAGER

# CITY OF MT. JULIET

COMMISSIONERS

BRIAN ABSTON  
ART GILES  
RAY JUSTICE



Tennessee Health Services and Development Agency  
Attention: Melanie Hill  
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor  
Nashville, TN 37243

Dear Ms. Hill:

I am writing to give my support for CON application and the expansion of Providence Surgery Center in Mt. Juliet, Tennessee to make it a multi-specialty center with both Orthopedics/Pain and ENT.

Mt. Juliet is one of the fastest growing cities in the state and was recently recognized 16<sup>th</sup> on the list of Boom Towns in the nation. Mt. Juliet was the only Tennessee City listed in the top 16. Just recently both Under Armour and Fed-Ex opened brand new state of the art facilities in Mt. Juliet. Both will employ hundreds and eventually thousands of employees and Under Armour is now considering a second facility in MJ as well. These facilities range from 1.1 million square feet to 500k square feet and the growth doesn't stop with residential, warehouse, manufacturing and distribution.

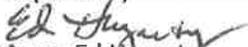
Mt. Juliet is also growing its Class-A office operations and its retail base as well. Mt. Juliet could soon see another 200k square feet of new retail space added over the next twelve months and the addition of five big box retailers and several junior anchors.

We are a blessed close knit family oriented and proud community focused on family and enhanced quality of life and service for our citizens. As such, it is our desire to enhance services on every level for our citizens in every way we can. Mt. Juliet's current growth rate is approximately 18 percent with the national average being 4 percent. So as you can tell Mt. Juliet is rapidly growing. As we speak multiple new subdivisions are being built in our great city, while more have made application to our regional planning commission.

There are literally hundreds of new citizens moving into our community monthly and there are no signs the positive and welcomed growth is going to slow anytime soon. That growth brings the need to grow the services and conveniences our citizens not only want and desire, but services and conveniences they deserve and need.

As the Mayor of Mt. Juliet I respectfully request consideration and support of this Certificate of Need Application for Providence Surgery Center in Mt. Juliet, Tennessee. If approved, this multi-specialty center CON would enable Dr. Kaelin and his wonderful staff to better serve and meet the ongoing needs of Mt. Juliet, Tennessee, and Wilson County.

Respectfully and Sincerely,

  
Mayor Ed Hagerty



**Regional ENT**  
**ASSOCIATES, PC**  
EAR, NOSE & THROAT SPECIALISTS

**Lebanon Office**  
206A Babb Dr.  
Lebanon, TN 37087  
Office: (615) 444-6667  
Fax: (615) 444-7772

**Gallatin Office**  
300 Steam Plant Rd., Ste 450  
Gallatin, TN 37066  
Office: (615) 452-6100  
Fax: (615) 444-7058

**John L. Tate, M.D.**

**Leslie Allen, FNP-C**

Tennessee Health Services And Development Agency  
Attn: Melanie Hill  
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor  
Nashville, TN 37243

Dear Ms. Hill:

It is my pleasure to write a letter supporting the expansion to multi-specialty of Providence Surgery Center in Mt. Juliet, Tennessee. As a practicing Otolaryngologist, the addition of these services is needed in the community and will better meet the ongoing needs of Wilson County. Significant growth is occurring with several entities moving business operations to the Wilson County/Mt Juliet area.

This expansion will have a positive effect on my practice, and physicians and patients in surrounding communities. The majority of my procedures, which are comprised of the removal of tonsils and adenoids and ear tubes, do not require a hospital stay, and due to the inconvenience and higher infection rates of hospitals I prefer an ambulatory surgery center for these cases. Providence Surgery Center is accredited by The Joint Commission, Medicare certified, and is fully licensed by the state of Tennessee. Performing my cases at the Providence Surgery Center will also provide my patients lower out of pocket costs. For example, a tonsillectomy costs \$2,767 at an ASC versus \$3,432 at an HOPD. The facility offers a high nurse to patient ratio, low infection rates, patient safety, and a 100% patient satisfaction rating, all paramount to a positive patient and physician experience.

The expansion will improve access for patients and physicians in the rapidly growing areas in Wilson County and neighboring communities. I can't emphasize enough the positive impact on my practice's ability to maximize my efficiency while allowing greater convenience and choice for my patients.

I am excited and encouraged by the opportunity it affords physicians, the community and the overall health and well-being of the residents of Wilson County.

Sincerely,

John Tate, MD



---

Foot Care of Lebanon  
100 Physicians Way, Suite 210  
Lebanon, TN 37090

(615) 453-5440  
Toll-Free 1-888-354-5440  
Fax 615-453-5441

*Tennessee Health Services And Development Agency  
Attn: Melanie Hill  
502 Deaderick Street, Andrew Jackson Bldg., 9<sup>th</sup> Floor  
Nashville, TN 37243*

*Dear Ms. Hill:*

*It is my pleasure to write a letter supporting the expansion to multi-specialty of Providence Surgery Center in Mt. Juliet, Tennessee. As a practicing Podiatrist, the addition of these services is needed in the community and will better meet the ongoing needs of Wilson County, as there is significant growth occurring with several entities moving business operations to the Wilson County/Mt Juliet area.*

*This expansion will have a positive effect on my practice, physicians and patients in the surrounding communities. The majority of my procedures, which varies from amputations to bone surgeries of the foot, do not require a hospital stay and due to the inconvenience and higher infection rates of hospitals, I prefer an Ambulatory Surgery Center for these cases. Providence Surgery Center is accredited by The Joint Commission, Medicare Certified and is fully licensed by the state of Tennessee. The facility offers a high nurse to patient ration, low infection rates, patient safety, and a 100% patient satisfaction rating which all paramount to a positive patient and physician experience.*

*The expansion will improve access for patients and physicians in the rapidly growing areas in Wilson County and neighboring communities. I cannot emphasize enough the positive impact on my practice's ability to maximize my efficiency. Not only will performing my cases at the Providence Surgery Center will lower the out of pocket for my patients, but it will allow greater convenience and choice for my patients.*

*I am excited and encouraged by the opportunity it affords physicians, the community and the overall health and well-being of the residents of Wilson County.*

*Sincerely,*

*Yong S. Suh, D.P.M., ABPS*

---

YONG SUH, D.P.M., FACFAS



# Saint Thomas Heart

[www.saintthomasheart.com](http://www.saintthomasheart.com)

LEBANON ♦ MT. JULIET

ROBERT C. WOODS, M.D.

ANDRE C. OLIVIER, M.D.

Tennessee Health Services and Development Agency  
Attn: Melanie Hill  
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor  
Nashville, TN 37243

Dear Ms. Hill:

I am writing to voice my support for the expansion of Providence Surgery Center in Mt. Juliet, Tennessee to a multi-specialty center. As Mt. Juliet's only Cardiologist, having a safe and convenient location for outpatient surgical procedures would be beneficial to my patients.

As it stands, I have to do procedures such as electrical cardioversions, pacemaker generator change-outs and loop recorder implantations in the hospital setting. These facilities are miles away from my office, often inconvenient to my patients and pose a higher financial burden to my patients. These procedures are usually less than 30 minutes in duration.

As you know, Mt. Juliet is one of the fastest growing communities in the state and the country. We are bracing for continued growth in the Providence area with the addition of several large corporations like Fed EX, Amazon and Under Armor. The new home/apartment construction rate is very high. There are currently no hospitals in Mt. Juliet. Healthcare availability must keep pace with population growth.

This expansion will have a positive effect on my practice and improve access for my patients. It will allow me to maximize my efficiency while allowing greater convenience and choice for my patients. Other benefits of an ambulatory surgery center over a traditional hospital include a higher nurse to patient ratio, lower infection rates, cost savings and higher patient satisfaction.

I am excited and encouraged by Providence Surgery Center's expansion efforts. I believe it will positively impact the overall health and well-being of the residents of Wilson County.

Sincerely,

Andre C. Olivier, MD

**Tab 15**

**Attachment C**  
**Economic Feasibility - 2**

**Verification of Funding**

**Tab 16**



August 11, 2016

Melanie Hill, Executive Director  
Tennessee Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

RE: Certificate of Need Application – Providence Surgery Center

Dear Ms. Hill:

Providence Surgery Center is a member of the network of facilities partially owned by Saint Thomas/USP Surgery Centers, LLC. Saint Thomas/USP Surgery Centers, LLC is a joint venture between Saint Thomas Health and United Surgical Partners International (USPI) that owns 36.67% of Providence Surgery Center. This joint venture entity has a centralized cash management program for managing and investing operating funds for this network of facilities.

This letter is to confirm that Saint Thomas/USP Surgery Centers, LLC has available funds to cover the projected cost of \$235,387 required to implement the project proposed for Providence Surgery Center.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa R. Davis".

Lisa R. Davis, CFO  
Saint Thomas Health

A handwritten signature in black ink, appearing to read "M. Corey Ridgway".

M. Corey Ridgway, Market President  
USPI

**Attachment C**  
**Economic Feasibility - 10**

**Balance Sheet and Income Statement**

**Mt. Juliet, TN**  
**Tennessee SM, LLC**  
**Balance Sheet**  
**May 2016**  
(in thousands)

	<i>May-16</i>
<b>ASSETS</b>	
<b>Current assets</b>	
Cash and cash equivalents	\$15
Accounts receivable	250
Allowance for contractals	(19)
Allowance for bad debts	(82)
Net accounts receivable	149
Inventories	44
Prepaid expenses and other current assets	20
Total current assets	228
<b>Property, plant and equipment</b>	
Land	0
Buildings and improvements	1,181
Equipment	898
Furniture & fixtures	1
Accumulated depreciation	(1,715)
Total property, plant and equipment	364
<b>Other noncurrent assets</b>	
Total other noncurrent assets	0
<b>Total assets</b>	<b>\$593</b>
<b>LIABILITIES AND CAPITAL</b>	
<b>Current liabilities</b>	
Accounts payable	\$386
Due to/from affiliates	389
Accrued salaries and benefits	34
Short-term debt	0
Current portion of long-term debt	143
Other current liabilities	34
Total current liabilities	987
<b>Noncurrent liabilities</b>	
Long-term debt	455
Total noncurrent liabilities	455
<b>Partners'/members' capital</b>	(849)
<b>Total liabilities and capital</b>	<b>\$593</b>

Unaudited - for internal use only

**Mt. Juliet, TN**  
**Tennessee SM, LLC**  
**Income Statement**  
**May 2016**  
**(in thousands)**

	<i>Last 12 months</i>
<b>REVENUE</b>	
Net revenue	1,638
<b>EXPENSES</b>	
Personnel costs	414
Drugs and medical	727
Other Operating Expenses	460
Provision for bad debts	60
Lease and rent expense	178
Management fee expense	95
Total operating expenses	1,932
Depreciation expense	86
Interest expense (income)	34
Total non-operating expenses	120
<b>Pretax income (loss)</b>	<b>(414)</b>
Income taxes	3
<b>Net income (loss)</b>	<b>(\$417)</b>

**Tab 17**

**Attachment C**  
**Contribution to the Orderly Development of Health Care – 7.(b)**

**Facility License**

# Board for Licensing Health Care Facilities



State of Tennessee

License No. 0000000199

## DEPARTMENT OF HEALTH

*This is to certify, that a license is hereby granted by the State Department of Health to*

*to conduct and maintain*

TENN SM, LLC

an Ambulatory Surgical Treatment Center PROVIDENCE SURGERY CENTER

Located at 5002 CROSSING CIRCLE, SUITE 110, MOUNT JULIET

County of WILSON, Tennessee.

*This license shall expire* MAY 30, 2017, *and is subject*

*to the provisions of Chapter 11, Tennessee Code Annotated. This license shall not be assignable or transferable, and shall be subject to revocation at any time by the State Department of Health, for failure to comply with the laws of the State of Tennessee or the rules and regulations of the State Department of Health issued thereunder.*

*In Witness Whereof, we have hereunto set our hand and seal of the State this* 12TH *day of* APRIL, 2018.

*In the Speciality(ies) of:* ORTHOPEDICS

PAIN MANAGEMENT AND REHABILITATION



By *Justin J. Davis, MPH*  
DIRECTOR, DIVISION OF HEALTH CARE FACILITIES

By *[Signature]*  
COMMISSIONER

**Tab 18**

**Attachment C**  
**Contribution to the Orderly Development of Health Care - 7.(b)**

**Accreditation**



January 15, 2016

Troy Damewood  
Administrator  
Providence Surgery Center  
5002 Crossings Circle, Suite 110  
Mount Juliet, TN 37122

Joint Commission ID #: 485391  
Program: Ambulatory Health Care  
Accreditation  
Accreditation Activity: Unannounced On site  
ESC  
Accreditation Activity Completed: 01/14/2016

Dear Mr. Damewood:

The Joint Commission would like to thank your organization for participating in the accreditation process. This process is designed to help your organization continuously provide safe, high-quality care, treatment, and services by identifying opportunities for improvement in your processes and helping you follow through on and implement these improvements. We encourage you to use the accreditation process as a continuous standards compliance and operational improvement tool.

The Joint Commission is granting your organization an accreditation decision of Accredited for all services surveyed under the applicable manual(s) noted below:

Comprehensive Accreditation Manual for Ambulatory Health Care

This accreditation cycle is effective beginning June 17, 2015. The Joint Commission reserves the right to shorten or lengthen the duration of the cycle; however, the certificate and cycle are customarily valid for up to 36 months.

Please visit [Quality Check®](#) on The Joint Commission web site for updated information related to your accreditation decision.

We encourage you to share this accreditation decision with your organization's appropriate staff, leadership, and governing body. You may also want to inform the state or regional regulatory services, and the public you serve of your organization's accreditation decision.

Please be assured that The Joint Commission will keep the report confidential, except as required by law. To ensure that The Joint Commission's information about your organization is always accurate and current, our policy requires that you inform us of any changes in the name or ownership of your organization or the health care services you provide.

Sincerely,

Mark G. Pelletier, RN, MS

Chief Operating Officer

Division of Accreditation and Certification Operations

**Attachment D**

**Copy of Published Public Notice  
Letter of Intent**

**Tab 19**

**Attachment D**

**Copy of Published Public Notice**

Continued from last column

OR THEIR OFFICE. THIS SALE IS SUBJECT TO ANY UNPAID TAXES, IF ANY, ANY PRIOR LIENS OR ENCUMBRANCES, LEASES, EASEMENTS AND ALL OTHER MATTERS WHICH TAKE PRIORITY OVER THE DEED OF TRUST UNDER WHICH THIS FORECLOSURE SALE IS CONDUCTED, INCLUDING MATTERS WHICH TAKE PRIORITY OVER THE DEED OF TRUST UNDER WHICH THIS FORECLOSURE SALE IS CONDUCTED, INCLUDING PRIORITY OF ANY FIXTURE FILING, IF THE U.S. DEPARTMENT OF THE INTERIOR, TREASURY/INTERNAL REVENUE SERVICE, THE STATE OF TENNESSEE DEPARTMENT OF REVENUE, OR THE STATE OF TENNESSEE DEPARTMENT OF LABOR AND WORK FORCE DEVELOPMENT ARE LISTED AS INTERESTED PARTIES IN THE ADVERTISEMENT, THEN THE NOTICE OF THIS FORECLOSURE IS BEING GIVEN TO THEM, AND THE SALE WILL BE SUBJECT TO ALL APPLICABLE GOVERNMENTAL ENTITIES RIGHT TO REDEEM THE PROPERTY, ALL AS REQUIRED BY 26 U.S.C. 7425, T.C.A. 67-1-1433, AND 28 U.S.C. 2410 (C). THE NOTICE REQUIREMENTS OF T.C.A. 35-5-101 ET SEQ. HAVE BEEN MET.

THE RIGHT IS RESERVED TO ADJOURN THE DAY OF THE SALE TO ANOTHER DAY, TIME AND PLACE CERTAIN WITHOUT FURTHER NOTICE.

Continued from last column

NOT REPRESENTATION/RESPONSIBILITY OF TRUSTEE(S) OR TRUSTEE(S) OR THEIR OFFICE. THIS SALE IS SUBJECT TO ANY UNPAID TAXES, IF ANY, ANY PRIOR LIENS OR ENCUMBRANCES, LEASES, EASEMENTS AND ALL OTHER MATTERS WHICH TAKE PRIORITY OVER THE DEED OF TRUST UNDER WHICH THIS FORECLOSURE SALE IS CONDUCTED, INCLUDING PRIORITY OF ANY FIXTURE FILING, IF THE U.S. DEPARTMENT OF THE INTERIOR, TREASURY/INTERNAL REVENUE SERVICE, THE STATE OF TENNESSEE DEPARTMENT OF REVENUE, OR THE STATE OF TENNESSEE DEPARTMENT OF LABOR AND WORK FORCE DEVELOPMENT ARE LISTED AS INTERESTED PARTIES IN THE ADVERTISEMENT, THEN THE NOTICE OF THIS FORECLOSURE IS BEING GIVEN TO THEM, AND THE SALE WILL BE SUBJECT TO ALL APPLICABLE GOVERNMENTAL ENTITIES RIGHT TO REDEEM THE PROPERTY, ALL AS REQUIRED BY 26 U.S.C. 7425, T.C.A. 67-1-1433, AND 28 U.S.C. 2410 (C). THE NOTICE REQUIREMENTS OF T.C.A. 35-5-101 ET SEQ. HAVE BEEN MET.

THE RIGHT IS RESERVED TO ADJOURN THE DAY OF THE SALE TO ANOTHER DAY, TIME AND PLACE CERTAIN WITHOUT FURTHER NOTICE.

Continued from last column

**TERMS: 10% Down Day Of Sale, Balance Due in 30 Days.**  
10% Buyer's Premium. Drive Out And Make Your Inspections!  
From Nashville, I-24 West to Exit 59, Left on Bell Road,  
Proceed 1.3 Miles to Property On Right.

**James R. Cash II Auctions**  
AUCTIONEERS & REAL ESTATE BROKERS  
615-406-8508 / 615-785-8982  
www.JamesRCash.net | #5802

Public Notices

Public Notices

**ADVERTISEMENT FOR BIDS**

Bids are invited for General Contract for the Work of following description: Examining documents at Designer's office or Plan Rooms. Plan Deposits from Designer per Instructions to Bidders. Plan Deposits of \$25,000 cashier's check payable to STATE OF TENNESSEE. Bid Security may or more must be licensed per state law. For more information, contact: Net-Discrimination policy project: Readiness Center HVAC and Energy Updates, Tennessee National Guard, Columbia, Maury County, Tennessee; SBC Project No. 361014-01-2015. Bids Received At: William R. Snodgrass Tennessee Tower, Conference Center North, Room 3.126 (Conference Room G), 3rd Floor, 312 Rosa L. Parks Avenue, Nashville, Tennessee 37243-1102 Until: 1:00 p.m. Local Time (Central Time) On: Tuesday, August 30, 2016. Plan Rooms: Dodge Data & Analytics, Nashville, Tennessee; Associated General Contractors, Nashville, Tennessee; Nashville Contractors Association, Nashville, Tennessee; CMD, Notcross, Georgia, Plan Deposit Amount: \$1,000.00. Designer: OLG Engineering, Inc., 301 Industrial Boulevard, Tullahoma, Tennessee 37388; Contact: Tim Little, Phone: (931) 454-9940. Pre-Bid Conference: At the Facility, on August 16, 2016 at 1:00 p.m., Local Time (Central Time).

0001-49299

**NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED**

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that Tenn SM, LLC d/b/a Providence Surgery Center, an existing ambulatory surgical treatment center (ASTC) provider, owned by: Tenn SM, LLC with an ownership type of limited liability company and to be managed by: USP Tennessee, Inc. intends to file an application for a Certificate of Need for the conversion of the existing ASTC, which is limited to orthopedic and pain procedures, to a multispecialty ASTC at 5092 Crossing Circle, Suite 110 in Mount Juliet, TN, 37122 (Wilson Co.). No renovation or new construction is required. No major medical equipment will be purchased. As part of the project, the existing two operating rooms and one procedure room will be redesignated as part of a multispecialty ASTC. Total project costs are estimated to be \$235,387. The anticipated date of filing the application is August 15, 2016. The contact person for this project is Byron R. Trauger, Esq., Counsel to Applicant, who may be reached at Trauger & Tuke, 222 Fourth Avenue North, Nashville, TN 37219, 615-256-8585. Upon written request by interested parties, a local Fact-Finding public hearing shall be conducted. Written requests for hearing should be sent to:

Health Services and Development Agency  
Andrew Jackson Building, 9th Floor  
502 Decatur Street  
Nashville, Tennessee 37243

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(C)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

**Tab 20**

**Attachment D**

**Letter of Intent**

TRAUGER & TUKE  
ATTORNEYS AT LAW  
THE SOUTHERN TURF BUILDING  
222 FOURTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37219-2117  
TELEPHONE (615) 256-8585  
TELECOPIER (615) 256-7444

AUG 10 10 40 AM '16

August 10, 2016

By hand delivery

Melanie M. Hill  
Executive Director  
Tennessee Health Services & Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

RE: Tenn SM, LLC d/b/a Providence Surgery Center ASTC Letter of Intent

Dear Ms. Hill:

Enclosed please find three originals and two copies of the Letter of Intent for the referenced project on behalf of our client Tenn SM, LLC d/b/a Providence Surgery Center. Publication of Intent was published in this morning's *Tennessean*, which is a newspaper of general circulation in Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson and Wilson Counties in Tennessee, and it is anticipated that the filing of the certificate of need application will occur within five days. Please date stamp the two copies and return them to me.

Very truly yours,

  
Byron R. Trauger

BRT:kmm

Enclosures





## State of Tennessee

### Health Services and Development Agency

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243

[www.tn.gov/hsda](http://www.tn.gov/hsda)

Phone: 615-741-2364

Fax: 615-741-9884

---

September 1, 2016

Byron Trauger, Esq.  
Trauger and Tuke  
222 Fourth Avenue North  
Nashville, TN 37219

RE: Certificate of Need Application -- TN SM, LLC. d/b/a Providence Surgery Center - CN1608-031

The conversion of an existing ambulatory surgical treatment center (ASTC), which is limited to orthopedic and pain procedures, to a multi-specialty ASTC located at 5002 Crossing Circle, Suite 110, Mount Juliet, (Wilson County), TN 37122. The ASTC will include two operating rooms and one procedure room that will be re-designated as part of the proposed multi-specialty ASTC. The estimated project cost is \$235,387.

Dear Mr. Trauger:

This is to acknowledge the receipt of supplemental information to your application for a Certificate of Need. Please be advised that your application is now considered to be complete by this office.

Your application is being forwarded to Trent Sansing at the Tennessee Department of Health for Certificate of Need review by the Division of Policy, Planning and Assessment. You may be contacted by Mr. Sansing or someone from his office for additional clarification while the application is under review by the Department. Mr. Sansing's contact information is [Trent.Sansing@tn.gov](mailto:Trent.Sansing@tn.gov) or 615-253-4702.

In accordance with Tennessee Code Annotated, §68-11-1607, et seq., as amended by Public Chapter 780, the 60-day review cycle for this project will begin on September 1, 2016. The first 60 days of the cycle are assigned to the Department of Health, during which time a public hearing may be held on your application. You will be contacted by a representative from this Agency to establish the date, time and place of the hearing should one be requested. At the end of the 60-day period, a written report from the Department of Health or its representative will be forwarded to this office for Agency review. You will receive a copy of their findings. The Health Services and Development Agency will review your application on December 14, 2016.

Mr. Trauger, Esq.  
September 1, 2016  
Page 2

Any communication regarding projects under consideration by the Health Services and Development Agency shall be in accordance with T.C.A. § 68-11-1607(d):

- (1) No communications are permitted with the members of the agency once the Letter of Intent initiating the application process is filed with the agency. Communications between agency members and agency staff shall not be prohibited. Any communication received by an agency member from a person unrelated to the applicant or party opposing the application shall be reported to the Executive Director and a written summary of such communication shall be made part of the certificate of need file.
- (2) All communications between the contact person or legal counsel for the applicant and the Executive Director or agency staff after an application is deemed complete and placed in the review cycle are prohibited unless submitted in writing or confirmed in writing and made part of the certificate of need application file. Communications for the purposes of clarification of facts and issues that may arise after an application has been deemed complete and initiated by the Executive Director or agency staff are not prohibited.

Should you have questions or require additional information, please contact me.

Sincerely,



Melanie M. Hill  
Executive Director

cc: Trent Sansing, TDH/Health Statistics, PPA



**State of Tennessee**  
**Health Services and Development Agency**

Andrew Jackson, 9<sup>th</sup> Floor, 502 Deaderick Street, Nashville, TN 37243  
[www.tn.gov/hsda](http://www.tn.gov/hsda) Phone: 615-741-2364 Fax: 615-741-9884

---

MEMORANDUM

TO: Trent Sansing, CON Director  
Office of Policy, Planning and Assessment  
Division of Health Statistics  
Andrew Johnson Tower, 2nd Floor  
710 James Robertson Parkway  
Nashville, Tennessee 37243

FROM: Melanie M. Hill *MHill*  
Executive Director

DATE: September 1, 2016

RE: Certificate of Need Application  
TN SM, LLC. d/b/a Providence Surgery Center - CN1608-031

Please find enclosed an application for a Certificate of Need for the above-referenced project.

This application has undergone initial review by this office and has been deemed complete. It is being forwarded to your agency for a sixty (60) day review period to begin on September 1, 2016 and end on November 1, 2016.

Should there be any questions regarding this application or the review cycle, please contact this office.

Enclosure

Enclosure

cc: Byron Trauger, Esq.

TRAUGER & TUKE  
ATTORNEYS AT LAW  
THE SOUTHERN TURF BUILDING  
222 FOURTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37219-2117  
TELEPHONE (615) 256-8585  
TELECOPIER (615) 256-7444

August 10, 2016

**By hand delivery**

Melanie M. Hill  
Executive Director  
Tennessee Health Services & Development Agency  
Andrew Jackson Building, 9th Floor  
502 Deaderick Street  
Nashville, TN 37243

RE: Tenn SM, LLC d/b/a Providence Surgery Center ASTC Letter of Intent

Dear Ms. Hill:

Enclosed please find three originals and two copies of the Letter of Intent for the referenced project on behalf of our client Tenn SM, LLC d/b/a Providence Surgery Center. Publication of Intent was published in this morning's *Tennessean*, which is a newspaper of general circulation in Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson and Wilson Counties in Tennessee, and it is anticipated that the filing of the certificate of need application will occur within five days. Please date stamp the two copies and return them to me.

Very truly yours,



Byron R. Trauger

BRT:kmn

Enclosures



State of Tennessee
Health Services and Development Agency

Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

www.tn.gov/hstda Phone: 615-741-2364 Fax: 615-741-9884

LETTER OF INTENT

The Publication of Intent is to be published in the Tennessean which is a newspaper of general circulation in Wilson, Davidson, Rutherford, Tennessee, on or before 08/10, 2016 for one day.

This is to provide official notice to the Health Services and Development Agency and all interested parties, in accordance with T.C.A. § 68-11-1601 et seq., and the Rules of the Health Services and Development Agency, that:

Tenn SM, LLC d/b/a Providence Surgery Center, an existing ambulatory surgical treatment center (ASTC) provider, owned by: Tenn SM, LLC with an ownership type of limited liability company

and to be managed by: USP Tennessee, Inc. intends to file an application for a Certificate of Need for the [PROJECT DESCRIPTION BEGINS HERE]: conversion of the existing ASTC, which is limited to orthopedic and pain procedures, to a multispecialty ASTC at 5002 Crossing Circle, Suite 110 in Mount Juliet, TN, 37122

(Wilson Co.). No renovation or new construction is required. No major medical equipment will be purchased.

As a part of the project, the existing two operating rooms and one procedure room will be redesignated as a part of a multispecialty ASTC. Total project costs are estimated to be \$235,387.

The anticipated date of filing the application is: August 15, 2016.

The contact person for this project is Byron R. Trauger, Esq. Counsel to Applicant

who may be reached at: Trauger & Tuke 222 Fourth Avenue North

Nashville (City)

TN (State)

37219 (Zip Code)

615 /256-8585 (Area Code / Phone Number)

[Handwritten Signature]

[Handwritten Date: August 10, 2016]

brt@tnlaw.net (E-mail Address)

The Letter of Intent must be filed in triplicate and received between the first and the tenth day of the month. If the last day for filing is a Saturday, Sunday or State Holiday, filing must occur on the preceding business day. File this form at the following address:

Health Services and Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, Tennessee 37243

The published Letter of Intent must contain the following statement pursuant to T.C.A. § 68-11-1607(c)(1). (A) Any health care institution wishing to oppose a Certificate of Need application must file a written notice with the Health Services and Development Agency no later than fifteen (15) days before the regularly scheduled Health Services and Development Agency meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application must file written objection with the Health Services and Development Agency at or prior to the consideration of the application by the Agency.

# Supplemental #1 -Original-

TN SM, LLC d/b/a  
Providence Surgery Center

CN1608-031



**August 26, 2016**

**8:38 am**

71 Vickery Street  
Atlanta, Georgia 30075  
Telephone 770-394-8465  
Facsimile 770-394-5470  
www.thestrategyhouse.net

August 26, 2016

Via Hand Delivery

Phillip Earhart, HSD Examiner  
Health Services and Development Agency  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN37243

RE: Certificate of Need Application CN1608-031  
TN SM, LLC d/b/a Providence Surgery Center

Dear Mr. Earhart:

Thank you for your letter of August 19, 2016 requesting clarification or additional discussion in regard to the CON application referenced above. Responses are provided in triplicate by the requested deadline of 4:00 p.m., Friday, August 26, 2016.

**1. Section B, (Project Description) Item 1**

What type of surgeries will take place in the operating rooms and what types of procedures will take place in the procedure rooms?

**Response:** Only pain procedures will take place in the procedure room initially, with gastroenterology procedures potentially being added in the future. All other specialties (e.g., cardiology, general surgery, obstetrics/gynecology, otolaryngology/ENT, orthopedics, podiatry, etc.) will use the operating rooms.

Please identify which hospitals that the surgeons expecting to use the ASTC have admitting privileges. Will all the surgeons expected to utilize the facility be able to follow their patients in the case of an emergency transfer?

**Response:** Yes, the medical staff bylaws require that all surgeons be able to follow their patients in the case of an emergency transfer. As indicated in **Attachment 1**, here, Providence Surgery Center ("PSC") has a transfer agreement with TriStar Summit Medical Center. According to Google maps, the facilities are approximately a six mile drive apart via I-40 or Highway 265/Central Pike.

It is noted TN Orthopedics, CN1605-019 will also be heard at the December 2016 Agency meeting for the establishment a multi-specialty ambulatory surgical treatment center located at 101 Physicians Way, Lebanon, (Wilson County), TN 37090, and will include three operating rooms and one procedure room. Is there a need for two multi-specialty ASTCs in Wilson County?

**Response:** Providence Surgery Center has not opposed the project referenced above. PSC is responding to a separate demand for services expressed by area physicians, different from those supporting TN Orthopedics. Furthermore, PSC can complete its project without constructing additional operating rooms or incurring significant capital costs. Conversion of existing, quality resources to meet an area need is highly efficient, cost effective and contributes to the orderly development of health care.

## 2. Section B, Project Description Item III.A.(Plot Plan)

The plot plan is noted. Please provide a *basic* legible plot plan that provides the size of the site (in acres), location of the structure on the site, the location of the proposed construction, and the names of streets, roads, highways that cross or border the site.

**Response:** Please see the basic plot plan in **Attachment 2**. The size of the site (5.14 acres) is also found in Exhibit A-1 at Tab 5 of the original CON application.

**3. Section B, Project Description, Item IV (Floor Plan)**

The floor plan is noted. Please discuss any plans for areas designated as future build-out areas.

**Response:** There are no plans at this time for future build-out areas. The site is essentially landlocked. Adjacent imaging services are very expensive to relocate if displaced by PSC.

**4. Section C, Need Item 1(Specific Criteria -ASTC) Item 1.**

When does the applicant expect to meet 884 cases per operating room and 1,867 cases per procedure room?

**Response:** As indicated in the response to Question 9, below, PSC's projected operating room cases simply cannot be accommodated in a single OR. In addition, two ORs are necessary for physician efficiency (i.e., reduced downtime) between cases.

Simply adding ENT alone, as conservatively projected here, will more than double historical OR cases. Other specialty physicians have submitted their letters of support. Within one year, or two at the most, these other specialties are expected to fully utilize the two existing ORs at PSC.

As noted in the latest ASTC standards and criteria, a single procedure room is considered a reasonable supplement to ASTC operating rooms and may not always "meet the base guidelines contained here." This is expected to be the case with PSC's facility. PSC's procedure room was originally approved for pain procedures as an adjunct to orthopedic surgical procedures. This relationship has not and will not change.

It is noted on page 15 of the application case projections for Year One and Year Two appear to be based solely on the addition of ENT physicians. If so, why not just add that specialty (ENT) rather than apply for a multi-specialty ASTC? Please explain.

**Response:** For many physicians and patients, the existing ASTC options are in Nashville (Davidson County). Dr. Andre Olivier (cardiology) is a prime example. Though his office is located across the hall from PSC, he must take his surgical patients to Nashville. Not only is this inefficient for

physicians, patients and families, but it also disrupts the continuity of patient care. The demand projections presented in the CON application were conservative to start. Additional support has been documented from physicians practicing in specialties other than ENT.

**5. Section C, Need Item 1(Specific Criteria -ASTC) Item 2.**

Please complete the following table for Year 2 of the proposed project

Operating Rooms	Procedures	Procedures/ Room	Minutes Used	Average Turnaround Time	Schedulable minutes*	% of Schedulable Time Used
Operating Room #1	858	858	55,770 (@65)	25,740 (@30)	81,510	60.4%
Operating Room #2	857	857	55,705 (@65)	25,710 (@30)	81,415	60.3%
Procedure Room	334	334	10,020 (@30)	5,010 (@15)	15,030	11.1%
Total Surgical Suite	2,049	683	121,495	56,460	177,955	43.9%

\* defined as the summation of the minutes by each room available for scheduled cases

Example: 7:30 AM to 4:30 PM, 5 days per week, 50 weeks/ year, equates to 9 hrs/day X 60 min/hr = 540 minutes/day X 5 days/week = 2,700 minutes / week X 50 weeks/year=135,000 schedulable minutes/room X the number of rooms=surgical suite schedulable capacity

**6. Section C, Need Item 1(Specific Criteria -ASTC) Item 9**

It is noted the table on page 23 reflects a total of 1,716 cases in Year Two while the Projected Data Chart reflects 1,715 cases in Year Two. Please clarify.

**Response:** Page 23 has a slight rounding error. A revised page 23 is provided in **Attachment 3**.

7. Section C, Need Item 3

Please provide a map of the entire state of Tennessee on 8 ½" x 11" sheet of paper designating the applicant's declared service area counties. Please provide distinctive highlighting/ markings to readily differentiate the service area counties from the other non- service area counties. Also, please label the name of each county.

**Response:** An additional state/service area map is provided in **Attachment 4**.

8. Section C, Need Item 5

For each of the surgeons expected to utilize the proposed surgery center please identify for 2015 the locations where surgeries were performed and the number of surgical cases at each facility.

**Response:** As the surgeons are not employees of PSC, the applicant does not have access to this type of data. Furthermore, this information is not reported in public databases such as the ASTC Joint Annual Report ("JAR").

The 2015 ASTC utilization table is noted. Please provide utilization for each of the most recent three years of data available using the table below.

**Response:** Please see **Attachment 5** for 2013 - 2015 ASTC utilization in the applicant's existing and proposed service area.

Please revise the table on page 29 by indicating if the listed ASTC's are single specialty or multi-specialty and submit a replacement page.

**Response:** The type of ASTC is so noted on the replacement page. Please see **Attachment 3**.

9. Section C, Need Item 6

Please provide surgical case projections by specialty using the table below:

Specialty	# of Surgeons	Year 1 OR Cases	Year 1 PR Cases	Year 2 OR Cases	Year 2 PR Cases
Orthopedics	7	557		652	
General Surgery					
ENT	4	623		729	
Podiatry					
OB/GYN					
Plastic Surgery					
Dental					
Pain Mgmt.	2		286		334
<b>Total</b>	<b>13</b>	<b>1,180</b>	<b>286</b>	<b>1,381</b>	<b>334</b>

10. Section C, Economic Feasibility, Item 4. (Historical Data Chart)

Please indicate the type of utilization (cases, patients, etc.) data in Line A. in the Historical Data chart.

**Response:** "Cases" are reported in both the Historical and Projected Data charts.

The Historical Data Chart shows no Provision for Charity Care. Please explain.

**Response:** The joint venture agreement with Saint Thomas Health has provisions for charity care. Charity care has not been tracked well and is included in the line item for bad debt instead.

11. Section C. Economic Feasibility Item 4 (Projected Data Chart)

The Projected Data Chart shows no Provision for Charity Care. Please explain.

**Response:** The joint venture agreement with Saint Thomas Health has provisions for charity care. Charity care has not been tracked well and,

for consistency of reporting, is included in the line item for bad debt instead.

There appears to be addition errors in the total operating expenses columns in Year One and Year Two. Please revise and resubmit.

**Response:** Though the totals are correct, the operating expense subtotals have been revised. Please see **Attachment 3**.

## 12. Section C. Economic Feasibility Item 5

There appears to be calculation errors in calculating the project's average gross charge, average deduction from operating revenue, and average net charge for both the Historical and Projected Data Charts. Please revise.

**Response:** Calculations can be affected by the treatment of bad debt as either a deduction or an expense. Revised calculations have been made with bad debt as a deduction. Please see **Attachment 3**.

## 13. Section C. Economic Feasibility Item 7

What factors has contributed to an operating loss since 2014 for the applicant.

**Response:** Due to the existing CON restrictions, namely surgical specialties limited to orthopedics and pain only, PSC has suffered from low volume and cannot meet all the ASTC demand in and around Mt. Juliet.

In addition, ASTCs like PSC are reimbursed for services at lower rates than comparable hospital HOPDs.

Removal of these surgical specialty restrictions, without constructing any new facilities, will therefore enhance access to lower-cost ASTC services for Medicare, TennCare and other payer groups.

**14. Section C. Economic Feasibility Item 10**

Regarding the submitted Balance Sheet, please explain why current liabilities in the amount of \$987,000 exceed current assets of \$228,000.

**Response:** Due to low volume and lower reimbursement rates, PSC has had negative cash flow. These operating losses have been funded by both Saint Thomas Health and USPI.

**15. Section C. Contribution to Orderly Development Item 1**

Please indicate if the applicant has transfer agreements with any hospitals in the proposed service area.

**Response:** Yes, as indicated in **Attachment 1**, PSC has a transfer agreement with TriStar Summit Medical Center. According to Google maps, the facilities are approximately a six mile drive apart via I-40 or Highway 265/Central Pike.

**16. Section C, Orderly Development, Item 7.d**

Please provide a copy of the applicant facility's most recent licensure survey, including any deficiencies cited, and a copy of the approved plan of correction, if applicable.

**Response:** Please see **Attachment 6** for a copy of The Joint Commission's unannounced inspection earlier this year with no deficiencies found. Also included is the June 2016 Department of Health survey. Though several deficiencies were immediately corrected, a few are awaiting final Department sign-off of PSC's plan of correction.

**17. Project Completion Forecast Chart**

The applicant projects an agency decision date of October 26, 2016 which is incorrect. If deemed complete this month, this application will be scheduled to be heard December 14, 2016. Please submit a revised Project Completion Forecast Chart with the corrected dates.

**Response:** The agency decision date has been revised. This affects the project's start date only slightly as no construction or renovation is required to add other surgical specialties. Please see **Attachment 3**.

Thank you for the opportunity to present this supplemental information. A signed affidavit is presented in **Attachment 7**.

Warm regards,

THE STRATEGY HOUSE, INC.



Robert M. Limyansky  
Partner

attachments

cc: Corey Ridgway, Market President, USPI  
Byron Trauger, Esq., Trauger & Tuke

**August 26, 2016**

**8:38 am**

**Attachment 1**

PATIENT TRANSFER AGREEMENT

THIS PATIENT TRANSFER AGREEMENT ("Agreement") is made and entered into by and between Tennessee Sports Medicine Surgery Center, LLC ("Center") and Summit Medical Center (Hospital).

HCA Health Services of TN, Inc. dba *prophylaxis* WITNESSETH:

WHEREAS, Hospital operates to provide access to patient care for the residents of its service area; and

WHEREAS, Center is established for the purpose of providing ambulatory surgical care to residents of its service area; and

WHEREAS, Hospital and Center (the "Parties") have determined to enter into this Agreement in order to ensure continuity of care and treatment appropriate to the needs of each patient and to facilitate the transfer of patients between the respective Parties.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Hospital and Center agree as follows:

1. TERM. The term of this Agreement be one (1) year, effective January 1, 2009 and shall automatically renew for additional one (1) year terms on an annual basis unless terminated as provided herein.
2. PURPOSE OF AGREEMENT. The purpose of this Agreement is to provide for the orderly transfer of patients between Parties so as to facilitate the provision of appropriate and efficient care to patients.
3. PATIENT TRANSFER. The need for transfer of a patient pursuant to this Agreement shall be determined by the patient's attending physician. When such determination has been made and the consent of the patient or individual acting on the patient's behalf has been obtained, the transferring physician shall contact the receiving Party and request acceptance of the patient. Each Party agrees to accept the patient as promptly as possible provided that all conditions for transfer and admission are met and that it has the medical staff, personnel, equipment, financial resources, patient services, and space to accommodate the patient. Prior to moving any patient, the transferring Party must receive confirmation from the receiving Party that it can accept the patient.
4. PROVISION OF INFORMATION TO EACH PARTY. Each Party shall provide the other with the names and titles of persons authorized to initiate, confirm, and accept the transfer of patients on its behalf. The Parties agree to

**August 26, 2016**

**8:38 am**

provide each other information concerning the type of resources available and the type of patients and health conditions that the receiving Party is able to accept.

5. TRANSFER CONSENT. The transferring Party shall be responsible for obtaining consent to transfer from the patient or individual acting on the patient's behalf prior to transferring the patient.
6. UNSTABLE MEDICAL CONDITIONS. Except as hereafter provided, no patient shall be transferred pursuant to this Agreement who is in unstable condition.

An unstable patient may be transferred pursuant to this Agreement: (1) upon the request of the patient, or individual acting on the patient's behalf, after the patient or representative has been advised of the services available at the transferring Party and the risks/benefits of transfer; or, (2) upon written certification by the transferring physician that the medical benefits reasonably expected from the provision of appropriate medical treatment at the receiving Party outweigh any increased risk to the patient.

The transferring Party shall make every reasonable effort commensurate with staffing and facilities to stabilize the patient and minimize the risks to the patient's health.

7. MEDICAL RECORDS. Each Party agrees to provide the other upon transfer, or in the case of emergency transfer as promptly thereafter as possible, medical and administrative information including, where appropriate, the following:
  - a. Patient's name, address, telephone number, age, and name, address, and telephone number of the next of kin;
  - b. History of the injury or illness necessitating the transfer, and, in the case of an emergency condition, observations of signs or symptoms, and the preliminary diagnosis, if any;
  - c. The written consent of the patient, or individual acting on the patient's behalf, to the transfer, or the written certification of the transferring physician as above described;
  - d. Condition upon transfer;
  - e. Vital signs at time of transfer;
  - f. Treatment provided to the patient prior to transfer including any medications administered;

**August 26, 2016**

**8:38 am**

- g. Laboratory and x-ray findings;
- h. Fluids given, by type and volume, immediately prior to transfer;
- i. Name, address, and phone number of physician transferring or authorizing the transfer of the patient;
- j. Name of physician/designee at receiving Party who has accepted the transfer and to whom the patient is to be transferred and;
- k. Name of physician/designee at receiving Party who has been contacted about the Patient;
- l. Patient's third party billing information and
- m. Any additional information required by this Agreement or any applicable state regulation.

In the case of an emergency, particularly where the patient is unstable, this information shall be provided by the most expeditious means including telephonically, facsimile and, if reasonably possible, prior to or at the time of the arrival of the patient at the receiving Party, to be followed as soon as possible with originals or useable photocopies of the originals. Each Party further agrees that in the case of an emergency, or where the patient is unstable, the patient will be accompanied by a member of the transferring staff who will make themselves available to give verbal report and aide in family support.

Each Party agrees to supplement the above information as necessary for the proper care of the patient during transport and treatment following transfer.

8. CONFIDENTIALITY. The Parties agree that all medical records of patients undergoing transfer shall be treated as confidential so as to comply with all state and federal laws, rules and regulations regarding the confidentiality of patient records. In addition, each Party shall maintain the confidentiality of patient identifiable information and shall not disclose such information to third parties unless disclosure is agreed upon by both parties and consented to by the patient or responsible person, or otherwise required by law. In the event that the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or regulations promulgated pursuant to HIPAA shall require specific language to be inserted in this Agreement, the parties hereby agree that this Agreement shall be deemed amended to the extent required by such regulations on the effective date of such regulations.

**August 26, 2016****8:38 am**

9. PAYMENT FOR SERVICES. The patient is primarily responsible for payment for care rendered by either Party. Each Party shall be responsible only for collecting its own payment for services rendered to the patient. No clause of this Agreement shall be construed to authorize either Party to look to the other for payment for services rendered to a patient transferred pursuant to this Agreement, except to the extent that such liability would exist separate and apart from this Agreement.
10. TRANSPORTATION OF PATIENT. The transferring Party shall be primarily responsible for providing or arranging for the transportation of the patient and the appropriate care of the patient during transportation. The receiving Party's responsibility for patient care shall commence upon arrival of the patient at the receiving Party. In the event that the receiving Party utilizes its own transportation service or otherwise arranges to transport the patient, then the receiving Party's responsibility for the patient's care shall begin upon the receiving Party's acceptance of the patient prior to transport. Any patient transferred to Hospital shall be accompanied by a Center registered nurse.
11. ADVERTISING AND PUBLIC RELATIONS. Neither Party shall use the name of the other Party in any promotional or advertising material unless review and approval of the intended advertisement shall first be obtained from the other Party. Neither Party shall make any statements or representations of any special relationship between them by virtue of this Agreement or represent that a patient enjoys any benefit from this Agreement which is not available at other facilities.
12. LIABILITY. Each Party shall be responsible for the acts and omissions of its own management, employees, agents or independent contractors and shall not be responsible for the acts and omissions of the management, employees, agents or independent contractors of the other Party.
13. INSURANCE. Each Party, at its own expense shall secure and maintain, or cause to be secured and maintained, comprehensive general liability insurance, professional liability insurance, and property damage insurance covering itself and its management, employees, agents and independent contractors providing minimum limits of liability as is usual and customary.
14. INDEPENDENT CONTRACTOR STATUS. Both Parties are independent contractors. Neither Party is authorized or permitted to act as an agent or employee of the other. Nothing in this Agreement shall in any way alter the control of the management, assets, and affairs of the respective Parties. Neither Party, by virtue of this Agreement, assumes any liability for any debts or obligations of either a financial or legal nature incurred by the other Party to this Agreement.

15. TERMINATION OF AGREEMENT.

- a. *Voluntary Termination.* This Agreement may be terminated by either Party at any time, and for any reason, by giving thirty (30) days written notice of its intention to withdraw from this Agreement, and by ensuring the continuity of care to Patients who already are involved in the transfer process. The terminating Party will be required to meet its commitments under the Agreement to all patients for whom the other Party has begun the transfer process in good faith.
- b. *Involuntary Termination.* This Agreement shall be terminated immediately upon the occurrence of any of the following:
  - i. Either Party is damaged to such an extent that its business is terminated or temporarily interrupted to the extent that it cannot accept or provide adequate care to patients;
  - ii. Either Party loses its license or accreditation;
  - iii. Either Party is no longer able to provide the service contemplated by this Agreement;
  - iv. Either Party is in default under any of the terms of this Agreement.

16. NOTICE. Any notice required to be given under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, to the Parties as follows:

To Hospital: Summit Medical Center  
5655 Frist Blvd  
Hermitage, TN 37076

To Center: Tennessee Sports Medicine  
Surgery Center, LLC  
5002 Crossing Circle  
Mt. Juliet, TN 37122

With a Copy to: HealthMark Partners, Inc.  
40 Burton Hills Blvd  
Suite 300  
Nashville, TN 37215

17. FINANCIAL RECORDS – ACCESS. The Parties agree to retain and make available upon request for a period of four (4) years after the furnishing of such services as described in this contract, the contract, books, documents and records which are necessary to certify the nature and extent of the cost thereof when requested by the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives.

If the Parties carry out any duties of this contract through a subcontract with a related organization valued at \$10,000 or more over a 12 month period, the subcontract shall also provide that the Secretary of Health and Human Services or the Comptroller General may have access to the subcontract and the subcontractor's books, documents and records necessary to verify the costs of the subcontract for a period of four (4) years after the services have been furnished.

This Provision relating to the above retention and production of documents is included because of possible application of Section 1395x(v)(1)(1) of the Social Security Act to this Agreement. If this section should be found inapplicable, then this clause shall be deemed to be inoperative and without force and effect.

18. ASSIGNMENT. Either Party hereto without the express written consent of the other Party shall not assign this Agreement in whole or in part; provided, however, that either Party fully may assign this Agreement to any successor in interest without the written consent of the other Party.
19. AMENDMENT. This agreement may be amended only by written agreement signed by the Parties hereto.
20. GOVERNING LAW. This Agreement is made and entered into in the State of Tennessee and shall be governed and construed in accordance with the laws of the State of Tennessee and the United States of America.
21. AGREEMENT NOT EXCLUSIVE. This Agreement is not exclusive and either Party is free to enter into such other and similar contracts with other parties as they, in their sole discretion, shall deem necessary or desirable. Nothing herein shall be construed as limiting the right of either Party to refer or transfer any patients to any institution or facility and nothing herein shall be construed as requiring or contemplating any compensation or remuneration in any form between the Parties arising from, or related to, the transfer or referral of any patient for any reason.
22. INVALID PROVISION. In the event that any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be deemed to continue to be binding upon the Parties hereto

**August 26, 2016**

**8:38 am**

in the same manner as if the invalid or unenforceable provision was not a part of this Agreement.

- 23. WAIVER. No waiver or any terms or condition of this Agreement by either Party shall be deemed in a continuing or further waiver of the same term or condition or a waiver of any other term or condition of this Agreement.
- 24. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the Parties and contains all of the agreements between them with respect to the subject matter thereof and supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof.
- 25. BINDING AGREEMENT. This Agreement shall be binding upon the Parties and their successors or assigns.
- 26. HEADINGS. The headings to the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit, or expand express provisions of this Agreement

IN WITNESS WHEREOF, The Parties have caused this Agreement to be executed as of the day and year first above written.

Summit Medical Center

By: Mary Ann Angles  
Title: Chief Nursing Officer

Date: 7.11.08

Tennessee Sports Medicine Surgery Center, LLC

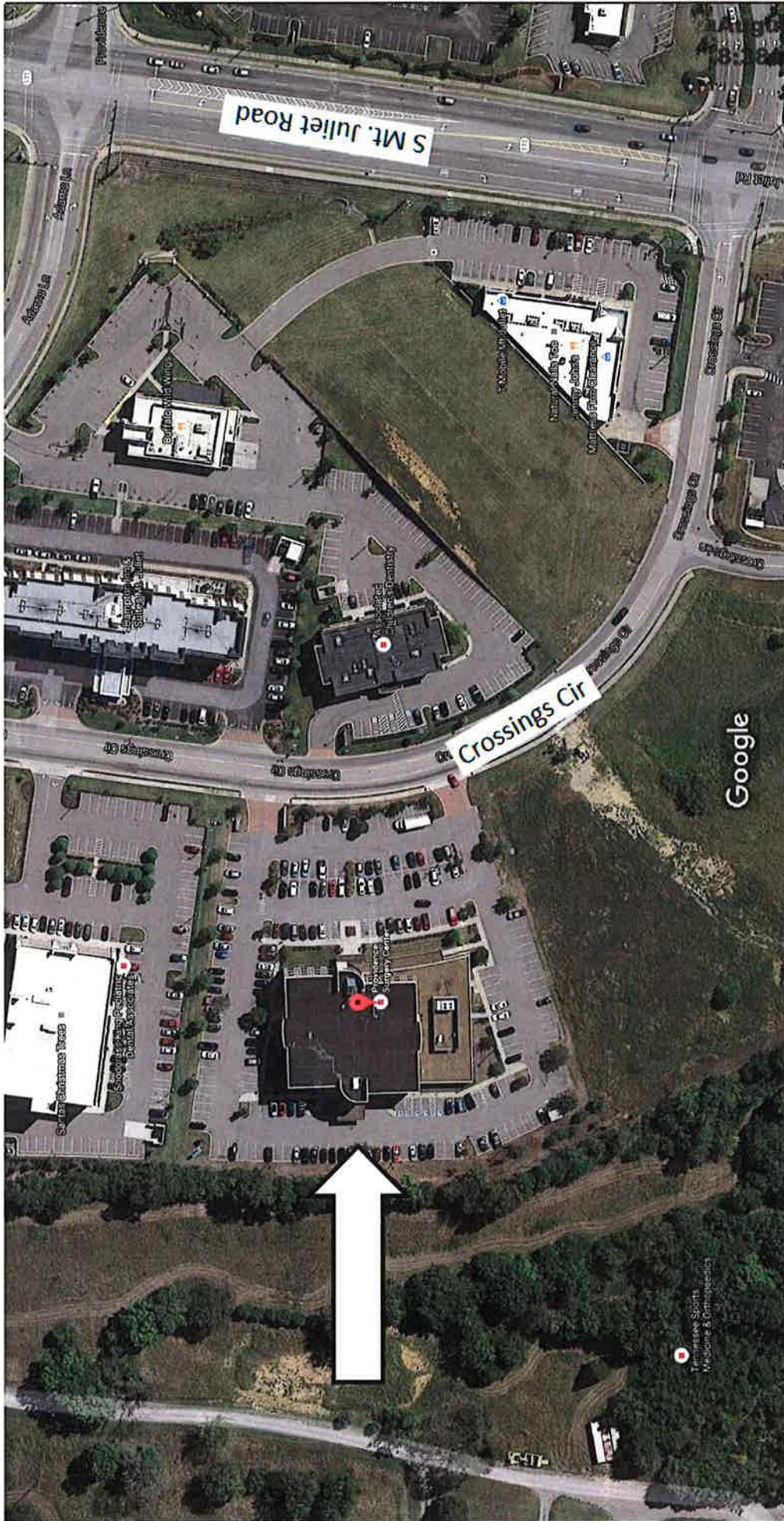
By: Chitra S. Sankar-Gole  
Title: VP Clinical Operations

Date: 7/21/08

**August 26, 2016**

**8:38 am**

**Attachment 2**



August 26, 2016

8:32 AM

Imagery ©2016 DigitalGlobe, Map data ©2016 Google 50 ft

Google

Site Acreage: 5.14

Providence Surgery Center  
5002 Crossing Circle, Suite 110  
Mt. Juliet, TN 37122

## **Attachment 3**

In summary, these data demonstrate that:

- The service area’s projected population change of 7.3% from 2016 to 2020 is almost twice the rate for Tennessee overall (4.3%).
- Wilson County, where Providence is located and the project’s primary service area, has the highest median age (40.2 years). It is also the wealthiest, with the least amount of poverty.

All assumptions, including the specific methodology by which utilization is projected, is provided in the response to Question 1, above.

Alternatives to this latest Providence project are few in number. As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas (“MUAs”) (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

9. Access and Economic Efficiencies. An application to establish an ambulatory surgical treatment center or to expand existing services of an ambulatory surgical treatment center must project patient utilization for each of the first eight quarters following completion of the project. All assumptions, including the specific methodology by which utilization is projected, must be clearly stated.

**RESPONSE:** All assumptions, including the specific methodology by which utilization is projected, is provided in the response to Question 1, above. Quarterly patient volumes are based upon United Surgical Partner’s extensive experience managing ASTCs throughout the nation generally and at Providence specifically.

**Providence Surgery Center  
Projected Cases by Quarter**

Projection	Year	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Total
Cases	1	341	360	375	390	1,466
Cases	2	405	420	435	456	1,715

Source: Internal records

10. Patient Safety and Quality of Care; Health Care Workforce.

- a. An applicant should be or agree to become accredited by any accrediting organization approved by the Centers for Medicare and Medicaid Services, such as

**August 26, 2016****8:38 am**

5. Describe the existing or certified services, including approved but unimplemented CONs, of similar institutions in the service area. Include utilization and/or occupancy trends for each of the most recent three years of data available for this type of project. Be certain to list each institution and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: admissions or discharges, patient days, and occupancy. Other projects should use the most appropriate measures, e.g., cases, procedures, visits, admissions, etc.

**RESPONSE:** As stated previously, there are no multispecialty ASTCs in the primary service area (Wilson County). The three existing ASTCs in Wilson County are restricted to only a handful of specialties – gastroenterology, ophthalmology, orthopedics and pain management. Furthermore, the existing ASTCs in the secondary service area are above or near the 70% minimum utilization standard.

#### 2015 ASTC Utilization in the Providence Service Area

County	Single/Multi Specialty	Zip Code	Facility Name	ORs	OR Cases	OR Cases per OR
Davidson	Single	37076	Associated Endoscopy	0	0	0
	Multi	37211	Premier Orthopaedic Surg Cntr	2	2,165	1,083
	Single	37211	Southern Endoscopy Center	0	0	0
	Multi	37076	Summit Surgery Center	5	4,105	821
	Single	37013	Tennessee Pain Surgery Center	1	1,514	1,514
Wilson	Single	37090	Lebanon Endoscopy Center	0	0	0
	Multi	37122	Providence Surgery Center	2	542	271
	Single	37087	Wilson County Eye Surgery Center	1	987	987
Rutherford	Single	37130	Mid-State Endoscopy Center	0	0	0
	Multi	37129	Middle TN Ambulatory Surg Center	6	5,837	973
	Multi	37167	Physicians Pavillion Surgery Center	4	1,991	498
	Single	37167	Spine and Pain Surgery Center, LLC	0	0	0
	Multi	37129	Surgicare of Murfreesboro Med Clinic	3	4,034	1,345
	Single	37129	Williams Surgery Center (podiatry)	1	56	56
			<b>Total Prim Svc Area (14 facilities)</b>	<b>25</b>	<b>21,231</b>	<b>849</b>

Source: Tennessee Department of Health - JARs 2015

Consistent with its prior CON approvals (CN0411-103 and CN1006-028) to improve patient access, Providence is now seeking approval for its modification under the ASTC access special considerations found in Sections 11.a and 11.b of this rule.

- All three service area counties are federally-designated medically underserved areas ("MUAs") (Wilson – entire county; Davidson and Rutherford – partial county)
- Providence has a noteworthy history of providing care to both Medicare and TennCare MCO patients.

**August 26, 2016**

**8:38 am**

2. Identify the funding sources for this project.  
Please check the applicable item(s) below and briefly summarize how the project will be financed.  
**(Documentation for the type of funding MUST be inserted at the end of the application, in the correct alpha/numeric order and identified as Attachment C, Economic Feasibility-2.)**

- A. Commercial loan--Letter from lending institution or guarantor stating favorable initial contact, proposed loan amount, expected interest rates, anticipated term of the loan, and any restrictions or conditions;
- B. Tax-exempt bonds--Copy of preliminary resolution or a letter from the issuing authority stating favorable initial contact and a conditional agreement from an underwriter or investment banker to proceed with the issuance;
- C. General obligation bonds—Copy of resolution from issuing authority or minutes from the appropriate meeting.
- D. Grants--Notification of intent form for grant application or notice of grant award; or
- E. Cash Reserves (**Tab 15**, Saint Thomas Health has funds available for the project)
- F. Other—Identify and document funding from all other sources.

3. Discuss and document the reasonableness of the proposed project costs. If applicable, compare the cost per square foot of construction to similar projects recently approved by the Health Services and Development Agency.

**RESPONSE:** Not applicable. There will be no construction or modification of the existing facility.

4. Complete Historical and Projected Data Charts on the following two pages--**Do not modify the Charts provided or submit Chart substitutions!** Historical Data Chart represents revenue and expense information for the last *three (3)* years for which complete data is available for the institution. Projected Data Chart requests information for the two (2) years following the completion of this proposal. Projected Data Chart should reflect revenue and expense projections for the **Proposal Only** (*i.e.*, if the application is for additional beds, include anticipated revenue from the proposed beds only, not from all beds in the facility).

**RESPONSE:** Please refer to the completed charts on the following pages.

5. Please identify the project's average gross charge, average deduction from operating revenue, and average net charge.

**RESPONSE:** Average gross patient charge per case, as reported in the Historical Data Chart for 2015, was \$10,814. The average deduction from gross patient charges was \$8,380, resulting in an average net charge per case of \$2,434 (with rounding).

Average gross patient charge per case, as reported in the Projected Data Chart and based on Year 2 projections, is \$10,609. The average deduction from gross patient charges was \$8,399, resulting in an average net charge per case of service of \$2,210. Despite the addition of surgical services, the projected net charges per case are actually projected to be lower with the increased patient case volume.

**HISTORICAL DATA CHART**

Give information for the last *three (3)* years for which complete data are available for the facility or agency. The fiscal year begins in January.

	Year 2013	Year 2014	Year 2015
A. Utilization Data (Cases)	<u>790</u>	<u>662</u>	<u>692</u>
B. Revenue from Services to Patients			
1. Inpatient Services	<u></u>	<u></u>	<u></u>
2. Outpatient Services	<u>\$8,541,845</u>	<u>\$6,859,277</u>	<u>\$7,483,178</u>
3. Emergency Services	<u></u>	<u></u>	<u></u>
4. Other Operating Revenue (Specify)	<u></u>	<u></u>	<u>581</u>
<b>Gross Operating Revenue</b>	<u>\$8,541,845</u>	<u>\$6,859,277</u>	<u>\$7,483,759</u>
C. Deductions from Gross Operating Revenue			
1. Contractual Adjustments	<u>\$6,216,658</u>	<u>\$4,940,348</u>	<u>\$5,733,228</u>
2. Provision for Charity Care	<u>0</u>	<u>0</u>	<u>0</u>
3. Provisions for Bad Debt	<u>120,772</u>	<u>95,733</u>	<u>65,609</u>
<b>Total Deductions</b>	<u>\$6,337,430</u>	<u>\$5,036,081</u>	<u>\$5,798,837</u>
<b>NET OPERATING REVENUE</b>	<u>\$2,204,415</u>	<u>\$1,823,196</u>	<u>\$1,684,922</u>
D. Operating Expenses			
1. Salaries and Wages	<u>\$457,832</u>	<u>\$395,742</u>	<u>\$419,438</u>
2. Physician's Salaries and Wages	<u></u>	<u></u>	<u></u>
3. Supplies	<u>677,029</u>	<u>752,713</u>	<u>776,290</u>
4. Taxes	<u>17,018</u>	<u>-7,680</u>	<u>2,606</u>
5. Depreciation	<u>299,792</u>	<u>296,206</u>	<u>88,276</u>
6. Rent	<u>147,692</u>	<u>161,818</u>	<u>174,035</u>

**August 26, 2016****8:38 am**

7.	Interest, other than Capital	<u>                    </u>	<u>                    </u>	<u>                    </u>
8.	Management Fees:			
	a. Fees to Affiliates	<u>132,265</u>	<u>109,392</u>	<u>101,095</u>
	b. Fees to Non-Affiliates	<u>                    </u>	<u>                    </u>	<u>                    </u>
9.	Other Expenses (Specify)			
	Anesthesia Expense	<u>0</u>	<u>0</u>	<u>7</u>
	Purchased Services	<u>153,539</u>	<u>137,988</u>	<u>134,197</u>
	Utilities and Maintenance	<u>163,492</u>	<u>169,640</u>	<u>224,696</u>
	Other Miscellaneous	<u>44,012</u>	<u>45,304</u>	<u>38,407</u>
	<b>Total Operating Expenses</b>	<u>\$2,092,671</u>	<u>\$2,061,123</u>	<u>\$1,959,047</u>
E.	Other Revenue (Expenses) - Net (Specify)	<u>                    </u>	<u>                    </u>	<u>                    </u>
	<b>NET OPERATING INCOME (LOSS)</b>	<u>\$111,744</u>	<u>(237,927)</u>	<u>(274,125)</u>
F.	Capital Expenditures			
1.	Retirement of Principal	<u>\$127,815</u>	<u>\$141,775</u>	<u>\$160,456</u>
2.	Interest	<u>69,588</u>	<u>55,628</u>	<u>36,947</u>
	<b>Total Capital Expenditures</b>	<u>\$197,403</u>	<u>\$197,403</u>	<u>\$197,403</u>
	<b>NET OPERATING INCOME (LOSS)</b>			
	<b>LESS CAPITAL EXPENDITURES</b>	<u>(\$85,659)</u>	<u>(\$435,330)</u>	<u>(\$471,528)</u>

**August 26, 2016****8:38 am****PROJECTED DATA CHART**

Give us information for the two (2) years following the completion of this proposal. The fiscal year begins in January.

	2017	2018
A. Utilization Data (Cases)	<u>1,466</u>	<u>1,715</u>
B. Revenue from Services to Patients		
1. Inpatient Services	<u>                    </u>	<u>                    </u>
2. Outpatient Services	<u>\$15,727,969</u>	<u>\$18,193,820</u>
3. Emergency Services	<u>                    </u>	<u>                    </u>
4. Other Operating Revenue (Specify)	<u>                    </u>	<u>                    </u>
<b>Gross Operating Revenue</b>	<u>\$15,727,969</u>	<u>\$18,193,820</u>
C. Deductions from Gross Operating Revenue		
1. Contractual Adjustments	<u>\$12,332,604</u>	<u>\$14,265,966</u>
2. Provision for Charity Care	<u>0</u>	<u>0</u>
3. Provisions for Bad Debt	<u>118,705</u>	<u>137,475</u>
<b>Total Deductions</b>	<u>\$12,451,309</u>	<u>\$14,403,441</u>
<b>NET OPERATING REVENUE</b>	<u>\$3,276,660</u>	<u>\$3,790,379</u>
D. Operating Expenses		
1. Salaries and Wages	<u>\$650,600</u>	<u>\$663,612</u>
2. Physician's Salaries and Wages	<u>                    </u>	<u>                    </u>
3. Supplies	<u>1,296,090</u>	<u>1,322,012</u>
4. Taxes	<u>26,806</u>	<u>59,672</u>
5. Depreciation	<u>98,000</u>	<u>98,000</u>
6. Rent	<u>180,000</u>	<u>187,272</u>

**SUPPLEMENTAL #1****August 26, 2016****8:38 am**

7.	Interest, other than Capital		
8.	Management Fees:		
	a. Fees to Affiliates	229,366	219,335
	b. Fees to Non-Affiliates		
8.	Other Expenses (Specify)		
	Anesthesia Expense	0	0
	Purchased Services	154,510	157,600
	Utilities and Maintenance	292,000	297,840
	Other Miscellaneous	62,435	63,664
	<b>Total Operating Expenses</b>	<b>\$2,989,807</b>	<b>\$3,069,007</b>
E.	Other Revenue (Expenses) – Net (Specify)		
	<b>NET OPERATING INCOME (LOSS)</b>	<b>\$286,853</b>	<b>\$721,372</b>
F.	Capital Expenditures		
1.	Retirement of Principal	\$183,858	\$190,914
2.	Interest	13,545	6,489
	<b>Total Capital Expenditures</b>	<b>\$197,403</b>	<b>\$197,403</b>
	<b>NET OPERATING INCOME (LOSS)</b>		
	<b>LESS CAPITAL EXPENDITURES</b>	<b>\$89,450</b>	<b>\$523,969</b>

**August 26, 2016****8:38 am**

6. A. Please provide the current and proposed charge schedules for the proposal. Discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the proposed project and the impact on existing patient charges.

**RESPONSE:** Average gross patient charge per case, as reported in the Historical Data Chart for 2015, was \$10,814. The average deduction from gross patient charges was \$8,380, resulting in an average net charge per case of \$2,434 (with rounding).

Average gross patient charge per case, as reported in the Projected Data Chart and based on Year 2 projections, is \$10,609. The average deduction from gross patient charges was \$8,399, resulting in an average net charge per case of service of \$2,210.

Despite the addition of surgical services, the projected net charges per case are actually projected to be lower with the increased patient case volume. Approval of the modification of conditions at Providence Surgery Center will favorably impact existing patient charges.

B. Compare the proposed charges to those of similar facilities in the service area/adjoining service areas, or to proposed charges of projects recently approved by the Health Services and Development Agency. If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

**RESPONSE:** Information is provided in **TAB 12**. As an ASTC reimbursed as a freestanding ASC, Providence Surgery Center offers a clear cost advantage compared to hospital-based ASCs like Tennova Healthcare - Lebanon. This extends to patient co-payments and deductibles.

7. Discuss how projected utilization rates will be sufficient to maintain cost-effectiveness.

**RESPONSE:** Providence Surgery Center has been operating at a loss since 2014. Its proposed modification of conditions is financially feasible and represents a cost-effective alternative to hospital-based outpatient services. As indicated in the Projected Data Chart, projected utilization will be sufficient to allow Providence Surgery Center to operate efficiently and effectively.

8. Discuss how financial viability will be ensured within two years; and demonstrate the availability of sufficient cash flow until financial viability is achieved.

**RESPONSE:** As indicated in the Projected Data Chart, projected cash flow will ensure financial viability within two years and over the long-term.

9. Discuss the project's participation in state and federal revenue programs including a description of the extent to which Medicare, TennCare/Medicaid, and medically indigent patients will be served by the project. In addition, report the estimated dollar amount of revenue and percentage of total project revenue anticipated from each of TennCare, Medicare, or other state and federal sources for the proposal's first year of operation.

**RESPONSE:** The facility currently participates in the TennCare MCOs operating in Middle Tennessee and has a history of providing care regardless of payor source. During the first year of operation, the facility's payor mix is anticipated to be 11.8% Medicare, 14.5% TennCare, and 0.3% self pay. This amounts to a projected \$1,855,900 in Medicare gross charges in Year 1 and \$2,280,556 in TennCare gross charges in Year 1.

**PROJECT FORECAST COMPLETION CHART**

Enter the Agency projected Initial Decision date, as published in T.C.A. § 68-11-160€ 12/14/2016

Assuming the CON approval becomes the final agency action on that date; indicate the number of days from the above agency decision date to each phase of the completion forecast.

	<b>DAYS REQUIRED</b>	<b>Anticipated Date (MONTH/YEAR)</b>
1. Architectural and engineering contract signed	N/A	
2. Construction documents approved by the Tennessee Department of Health	N/A	
3. Construction contract signed	N/A	
4. Building permit secured	N/A	
5. Site preparation completed	N/A	
6. Building construction commenced	N/A	
7. Construction 40% complete	N/A	
8. Construction 80% complete	N/A	
9. Construction 100% complete (approved for occupancy)	N/A	
10. *Issuance of license	30	Jan-17
11. *Initiation of service	0	Jan-17
12. Final Architectural Certification of Payment	N/A	
13. Final Project Report Form (HF0055)	N/A	

\* For projects that do NOT involve construction or renovation: Please complete items 10 and 11 only.

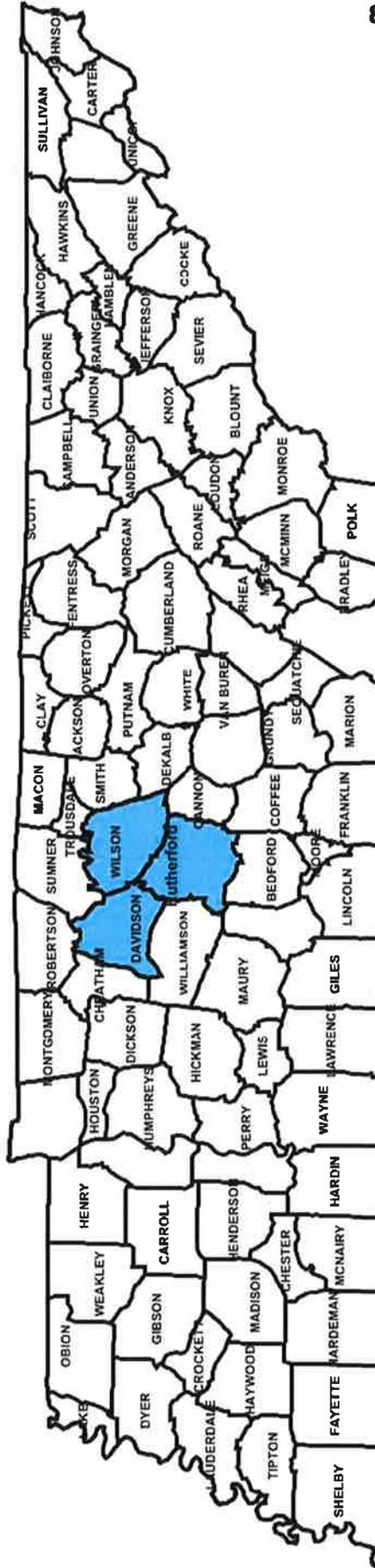
**Note: If litigation occurs, the completion forecast will be adjusted at the time of the final determination to reflect the actual issue date.**

**August 26, 2016**

**8:38 am**

**Attachment 4**

# Service Area Counties



■ Service Area Counties

**August 26, 2016**

**8:38 am**

**Attachment 5**

**3 County Zip Code Service Area ASTC Patient Utilization  
2013-2015**

County	Single Specialty ASTC	2013			2014			2015			
		Oper. Rms	Proc. Rms	Cases	Oper. Rms	Proc. Rms	Cases	Oper. Rms	Proc. Cases	Proc. Rooms	Proc. Cases
Davidson	Associated Endoscopy	0	3	4,438	0	3	5,031	0	0	3	5,453
Davidson	Southern Endoscopy Center	0	3	2,695	0	3	2,711	0	0	3	3,356
Davidson	Tennessee Pain Surgery Center	1	3	9,985	1	3	8,169	1	1,514	3	6,060
Wilson	Lebanon Endoscopy Center	0	2	2,140	0	2	1,893	0	0	2	1,931
Wilson	Wilson County Eye Surgery Center	1	1	1,145	1	1	1,262	1	987	1	356
Rutherford	Mid-State Endoscopy Center	0	2	1,632	0	2	3,209	0	0	2	2,160
Rutherford	Spine and Pain Surgery Center, LLC	0	0	0	0	1	92	0	0	1	841
Rutherford	Williams Surgery Center (podiatry)	1	0	56	1	0	67	1	56	0	0
Service Area	Single-Specialty Subtotal	3	14	22,091	3	15	22,434	3	2,557	15	20,157
	<b>Multi-specialty ASTCs</b>										
Davidson	Premier Orthopaedic Surg Cntr (ortho & spine)	2	0	2,295	2	0	2,543	2	2,165	0	0
Davidson	Summit Surgery Center	5	1	5,474	5	1	5,339	5	4,105	1	264
Wilson	Providence Surgery Center (ortho & spine)	2	1	771	2	1	707	2	542	1	131
Rutherford	Middle TN Ambulatory Surg Center	6	1	6,552	6	1	6,275	6	5,837	1	873
Rutherford	Physicians Pavilion Surgery Center	4	1	3,032	4	1	2,823	4	1,991	1	568
Rutherford	Surgicare of Murfreesboro Med Clinic	3	3	8,521	3	3	8,867	3	4,034	3	5,456
Service Area	Multi-specialty ASTCs Subtotal	22	7	26,645	22	7	26,554	22	18,674	7	7,292
	<b>Grand Total</b>	<b>25</b>	<b>21</b>	<b>48,736</b>	<b>25</b>	<b>22</b>	<b>48,988</b>	<b>25</b>	<b>21,231</b>	<b>22</b>	<b>27,449</b>

Source: JARS of Ambulatory Surgical Treatment Centers 2013 - 2015

**Attachment 6**

**August 26, 2016**

**8:38 am**



Providence Surgery Center  
5002 Crossings Circle, Suite 110  
Mount Juliet, TN 37122

**Organization Identification Number: 485391**

**Unannounced On site ESC: 1/14/2016 - 1/14/2016**

## Report Contents

### Executive Summary

#### Requirements for Improvement

Observations noted within the Requirements for Improvement (RFI) section require follow up through the Evidence of Standards Compliance (ESC) process. The timeframe assigned for completion is due in either 45 or 60 days, depending upon whether the observation was noted within a direct or indirect impact standard. The identified timeframes of submission for each observation are found within the Requirements for Improvement Summary portion of the final onsite survey report. If a follow-up survey is required, the unannounced visit will focus on the requirements for improvement although other areas, if observed, could still become findings. The time frame for performing the unannounced follow-up visit is dependent on the scope and severity of the issues identified within the Requirements for Improvement.

#### Opportunities for Improvement

Observations noted within the Opportunities for Improvement (OFI) section of the report represent single instances of non-compliance noted under a C category Element of Performance. Although these observations do not require official follow up through the Evidence of Standards Compliance (ESC) process, they are included to provide your organization with a robust analysis of all instances of non-compliance noted during survey.

#### Plan for Improvement

The Plan for Improvement (PFI) items were extracted from your Statement of Conditions™ (SOC) and represent all open and accepted PFIs during this survey. The number of open and accepted PFIs does not impact your accreditation status, and is fully in sync with the self-assessment process of the SOC. The implementation of Interim Life Safety Measures (ILSM) must have been assessed for each PFI. The Projected Completion Date within each PFI replaces the need for an individual ESC (Evidence of Standards Compliance) so the corrective action must be achieved within six months of the Projected Completion Date. Future surveys will review the completed history of these PFIs.

**August 26, 2016**

**8:38 am**

## Executive Summary

**Program(s)**

Ambulatory Health Care Accreditation

**Survey Date(s)**

01/14/2016-01/14/2016

As a result of the survey conducted on the above date(s), there are no survey findings identified. Your official report will be posted to your organization's confidential extranet site.

If you have any questions, please do not hesitate to contact your Account Executive.

Thank you for collaborating with The Joint Commission to improve the safety and quality of care provided to patients.

## **Requirements for Improvement – Summary**

Observations noted within the Requirements for Improvement (RFI) section require follow up through the Evidence of Standards Compliance (ESC) process. The timeframe assigned for completion is due in either 45 or 60 days, depending upon whether the observation was noted within a direct or indirect impact standard. The identified timeframes of submission for each observation are found within the Requirements for Improvement Summary portion of the final onsite survey report. If a follow-up survey is required, the unannounced visit will focus on the requirements for improvement although other areas, if observed, could still become findings. The time frame for performing the unannounced follow-up visit is dependent on the scope and severity of the issues identified within the Requirements for Improvement.

As a result of the accreditation activity conducted, there were no Requirements for Improvement identified.

## **Opportunities for Improvement – Summary**

Observations noted within the Opportunities for Improvement (OFI) section of the report represent single instances of non-compliance noted under a C category Element of Performance. Although these observations do not require official follow up through the Evidence of Standards Compliance (ESC) process, they are included to provide your organization with a robust analysis of all instances of non-compliance noted during survey.

As a result of the accreditation activity conducted, there were no Opportunities for Improvement identified.

## Plan for Improvement - Summary

The Plan for Improvement (PFI) items were extracted from your Statement of Conditions™ (SOC) and represent all open and accepted PFIs during this survey. The number of open and accepted PFIs does not impact your accreditation status, and is fully in sync with the self-assessment process of the SOC. The implementation of Interim Life Safety Measures (ILSM) must have been assessed for each PFI. The Projected Completion Date within each PFI replaces the need for an individual ESC (Evidence of Standards Compliance) so the corrective action must be achieved within six months of the Projected Completion Date. Future surveys will review the completed history of these PFIs.

Number of PFIs: 0

A full description of your organization's locked PFIs can be found within the Statement of Conditions on your organization's Joint Commission Connect Extranet and will be included in the final report which will be posted to your organization's extranet site.

**SUPPLEMENTAL #1****August 26, 2016****8:38 am**

July 12, 2016

Mr. Troy A. Damewood, Administrator  
Providence Surgery Center  
5002 Crossing Circle, Suite 110  
Mount Juliet, TN 37122

Provider Number: 44C0001169

Dear Mr. Damewood:

Enclosed is the Statement of Deficiencies developed as the result of the survey conducted at Providence Surgery Center on June 27 - 29, 2016.

In accordance with CFR Title 42 §488.28(b), you are requested to submit a Plan of Correction within ten (10) calendar days after receipt of this letter with acceptable time frames for correction of the cited deficiencies. **Your Plan of Correction is due in this office by July 22, 2016.** Corrective action should be achieved no later than **August 13, 2016**, the 45th day from the date of the survey. Please notify this office when these deficiencies are corrected. A revisit may be conducted to verify compliance. Once corrective action is confirmed, a favorable recommendation for recertification will be considered.

Your POC must contain the following:

- What corrective action(s) will be accomplished for those patients found to have been affected by the deficient practice;

**SUPPLEMENTAL #1****August 26, 2016****8:38 am**

Mr. Troy A. Damewood

July 12, 2016

Page 2

- How you will identify other patients having the potential to be affected by the same deficiency practice and what corrective action will be taken;
- What measures will be put into place or what systemic changes you will make to ensure that the deficient practice does not recur; and,
- How the corrective action(s) will be monitored to ensure the deficient practice will not recur; i.e., what quality assurance program will be put into place.

Please remember the administrator's signature and date signed must be on the appropriate line at the bottom of form CMS 2567 Statement of Deficiencies/Plan of Correction. Please be advised that under the disclosure of survey information provisions, the Statement of Deficiencies will be available to the public.

Should you have any questions or if there is any way this office may be of assistance, please do not hesitate to call.

Sincerely,



Tamra Turberville, R.N.  
Regional Administrator  
East TN Health Care Facilities

TT:cvb

Enclosure

**SUPPLEMENTAL #1**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016

8:38 am

PRINTED: 07/06/2016

FORM APPROVED

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001180	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____	(X3) DATE SURVEY COMPLETED  06/29/2016
--	--	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X6) COMPLETION DATE
--------------------	--	---------------	---	----------------------

Q 105	<p>416.44(c) EMERGENCY EQUIPMENT</p> <p>The ASC medical staff and governing body of the ASC coordinates, develops, and revises ASC policies and procedures to specify the types of emergency equipment required for use in the ASC's operating room. The equipment must meet the following requirements:</p> <p>(1) Be immediately available for use during emergency situations. (2) Be appropriate for the facility's patient population. (3) Be maintained by appropriate personnel.</p> <p>This STANDARD is not met as evidenced by: Based on review of facility policy, observation, and interview, the facility failed to ensure expired intravenous fluids were not available for patient use.</p> <p>The findings included:</p> <p>Review of facility policy "Expired Medications" dated 1/09, revealed "...the purpose of this policy is to establish consistent guidelines to ensure that the facility has a mechanism in place to remove all expired medications from medication storage areas where they may be administered to a patient...once per month the medication nurse will check all medications within the facility for expiration dates...once per month the consulting pharmacist will check all medications for expiration date..."</p> <p>Observation of the emergency cart on 6/28/16 at 10:20 AM, in the Post Anesthesia Care Unit (PACU), revealed the following expired intravenous fluids: (3) 1000 ml (milliliters) of 0.9 % Normal Saline (intravenous fluids) with an expiration date of 4/16; (1) 500 cc bag of</p>	Q 105	<p>All expired medications and supplies were removed from stock and discarded appropriately. Clinical coordinator will review medications on 1st day of calendar month, remove expired medications and attach document findings on pharmacy audit tool. Policy reviewed with staff. Administrator will provide ongoing monitoring for compliance.</p>	7/14/16
-------	---	-------	---	---------

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE 	TITLE Administrator	(X8) DATE 7/21/16
---	------------------------	----------------------

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See Instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016: 07/06/2016  
FORM APPROVED  
8:38 am OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____	(X3) DATE SURVEY COMPLETED  06/29/2016
--	--	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 6002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
--------------------	--	---------------	---	----------------------

Q 105	Continued From page 1 Hetastarch (plasma volume expander) with an expiration date of 3/16. Further observation revealed (1) 50 ml bottle of Ultrasound lubricant with an expiration date of 5/15.	Q 105		
Q 161	416.47(a) ORGANIZATION  The ASC must develop and maintain a system for the proper collection, storage, and use of patient records.  This STANDARD is not met as evidenced by: Based on medical record review and interview, the facility failed to maintain a medical record for 1 patient record (#8) of 21 records requested for review.  The findings included:  Upon entry into the facility on 6/27/16, medical record #4081 was requested along with 20 other medical records for review.  Interview with the Administrator on 6/29/16 at 10:00 AM, in the breakroom, confirmed the record could not be found for review.	Q 161	As of today the MR has NOT been located.  STAFF AND physicians EDUCATED TO policy regarding CHARTS. A medical records sign out log has been INITIATED and staff has been educated on use.  Administrator will monitor for compliance and perform monthly audit of 20% of records. going forward.	7/21/16
Q 162	416.47(b) FORM AND CONTENT OF RECORD  The ASC must maintain a medical record for each patient. Every record must be accurate, legible, and promptly completed. Medical records must include at least the following:	Q 162		

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016  
8:38 am

PRINTED: 07/06/2016  
FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____	(X3) DATE SURVEY COMPLETED  06/29/2016
--	--	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
Q 162	<p>Continued From page 2</p> <p>(1) Patient identification.</p> <p>(2) Significant medical history and results of physical examination.</p> <p>(3) Pre-operative diagnostic studies (entered before surgery), if performed.</p> <p>(4) Findings and techniques of the operation, including a pathologist's report on all issues removed during surgery, except those exempted by the governing body.</p> <p>(5) Any allergies and abnormal drug reactions.</p> <p>(6) Entries related to anesthesia administration.</p> <p>(7) Documentation of properly executed informed patient consent.</p> <p>(8) Discharge diagnosis.</p> <p>This STANDARD is not met as evidenced by: Based on review of facility policy, medical record review, and interview, the facility failed to ensure a verbal order was signed by the physician for 1 patient (#11) and failed to ensure the medical record was complete for 1 patient (#1) of 20 patients reviewed.</p> <p>The findings included:</p> <p>Review of the facility's Admission Policy, last revised on 11/10, revealed "...verbal orders will be signed by the ordering physician..."</p> <p>Medical record review revealed Patient #11 was admitted to the facility on 3/10/16 for a Carpel Tunnel Release and discharged from the facility the same day.</p> <p>Medical record review of the Pre-Operative Orders revealed the Registered Nurse (RN) received a verbal order from the physician to implement the pre-operative orders on 2/24/16 at</p>	Q 162	<p>Reviewed policy with staff, physicians and medical director.</p> <p>Staff will ensure physician signatures with date, time completed appropriately.</p> <p>Monthly chart audits will occur on 10% or 10 charts, whichever number is greater. Findings will be reviewed with MEC/governing board and actions taken as defined by Facility by-laws</p>	7/19/16

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016  
8:38 am  
PRINTED: 07/06/2016  
FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  D. WING _____	(X3) DATE SURVEY COMPLETED  06/29/2016
NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 6002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122	
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
Q 162	Continued From page 3 9:05 AM. Further review revealed the verbal order was not signed by the physician.  Interview with the facility Administrator on 6/29/16 at 11:15 AM, in the break room, confirmed the verbal order was not signed by the physician.  Medical record review revealed Patient #1 was admitted to the facility on 6/26/16 for a Left Lumbar 4-Sacral 1 Radiofrequency Ablation (surgical pain procedure) and was discharged the same day.  Medical record review of the Day Surgery Post-Op orders and Progress Notes with no date or time, revealed no documentation of progress notes, post-op orders, or discharge orders.  Interview with the facility Administrator on 6/29/16 at 11:15 AM, in the break room room, confirmed there were no discharge orders or post-operative notes written by the physician.	Q 162		
Q 241	416.61(a) SANITARY ENVIRONMENT  The ASC must provide a functional and sanitary environment for the provision of surgical services by adhering to professionally acceptable standards of practice.  This STANDARD is not met as evidenced by: Based on observation, review of manufacturer's recommendations, review of facility policy, and interview, the facility failed to ensure the facility's glucometer (device used to measure blood glucose levels) was a medically approved device for use on multiple patients; failed to ensure expred Intravenous fluids were not available for	Q 241		

**SUPPLEMENTAL #1**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016 ID: 07/06/2016  
8:38 am FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED  06/29/2016
NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 6002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
Q 241	<p>Continued From page 4</p> <p>patient use; failed to follow standard infection control guidelines for the wearing of surgical attire; and failed to maintain a sanitary environment for glove use.</p> <p>The findings included:</p> <p>Observation on 6/27/16 at 11:00 AM, in the pre-operative area, revealed 1 blood glucose monitor.</p> <p>Review of the blood glucose monitor manufacturer's recommendations revealed "...the [named blood glucose machine] is intended to be used by a single person and should not be shared...the system is intended to be used by a single person and should not be shared..." Further review revealed "...the meter and lancing device should never be used by more than one person. Do not share the meter and lancing device with anyone, including family member due to the risk of infection from blood borne pathogens. Do not use on multiple patients..."</p> <p>Review of the facility's blood glucose monitoring logs revealed the machine had been used the previous day on a patient. Further review revealed Quality Assurance checks had been performed each day the machine was used on a patient.</p> <p>Interview with the facility's Administrator on 6/27/16 at 11:15 AM, in the pre-operative area, revealed "...we always use a single lancet device on each patient but the machine is used on any patient for which a blood glucose level is needed..." Further interview confirmed the blood glucose machine was used for all patients and confirmed the manufacturer's recommendations</p>	Q 241	<p>Non-compliant blood glucose monitor removed from service. Glucometer approved for use by healthcare professionals has been obtained. Policy, procedure, competency has been updated and staff trained on use.</p> <p>FOA 501K statement on file for glucometer.</p>	7/22/16	

**SUPPLEMENTAL #1**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016: 07/06/2016  
8:38 am FORM APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____	(X3) DATE SURVEY COMPLETED  06/29/2016
--	--	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
--------------------	--	---------------	---	----------------------

Q 241	<p>Continued From page 5 revealed the machine was not to be used on multiple patients.</p> <p>Observation on 6/28/16 at 11:00 AM, in the pain procedure room, revealed (2) needles used for epidural administration with an expiration date of 4/15.</p> <p>Interview with the facility Administrator on 6/28/16 at 11:30 AM, in the PACU, confirmed the needles were expired and were available for patient use.</p> <p>Observation of the PACU on 6/28/16 at 11:13 AM, revealed the delivery person from the contracted outside linen service delivering clean scrubs to the changing rooms. Continued observation at 11:20 AM, revealed the delivery person exited the changing rooms wearing gloves and carrying a full dirty linen bag. Further observation revealed the delivery person sat the dirty linen bag down on the floor in front of the covered clean linen cart and proceeded to lift the cover of the clean linen cart. Further observation revealed the contracted delivery person was sorting and taking inventory for replacement linen touching the clean linen with the dirty gloves.</p> <p>Interview with the Administrator on 6/28/16 at 11:30 AM, in the PACU, confirmed the delivery person was not to be wearing dirty gloves when touching the clean linen.</p> <p>Review of facility policy "Surgical Attire", last revised 4/12, revealed "... head covers: the facility center provides a variety of paper head covers for use in surgery and located in the locker rooms...a clean head cover is worn daily..."</p> <p>Observation on 6/28/16 at 2:40 PM, in the men's</p>	Q 241	<p>Expired supplies immediately removed from inventory. Supplies will be checked on 1st operational day of month by materials manager. It and document findings on Expired Supplies Log. Visible labels placed on bins denoting earliest expiration date. Staff educated to policy regarding expired supplies. Ongoing monitoring will be performed by administrator.</p> <hr/> <p>linen provider contacted and notified of findings. On-spot correction made at time of findings. Staff to provide visual monitor of provider and notify administrator of any deficiency. Staff educated.</p>	<p>7/19/16</p> <p>7/19/16</p>
-------	--	-------	--	-------------------------------

**SUPPLEMENTAL #1**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016 07/06/2016

8:38 am FORM APPROVED

OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED  06/29/2016
NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 8002 GROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
Q 241	Continued From page 6 locker room, revealed a trash can with a surgical cap located in the trash can. Further observation revealed the Certified Surgical Technician (CST) walked through the men's locker room, took the dirty surgical cap out of the dirty trash can where dirty shoe covers were located, placed the dirty surgical cap on his head and walked into the clean operative area where proper surgical attire was required. Further observation revealed the CST went into the dirty contaminated equipment room, cleaned the dirty soiled equipment, and then entered the sterile side with the same surgical cap on the CST's head.  Interview with the CST on 6/28/16 at 3:00 PM, in the break room, confirmed the CST took the used dirty surgical cap from the dirty trash can and placed the dirty cap on his head prior to entering the operative area where proper surgical attire was required.  Interview with the facility's Administrator on 6/28/16 at 3:01 PM, in the break room, confirmed the facility's policy for proper surgical attire and standard infection control guidelines was not followed.	Q 241	<i>Reviewed policy with all staff regarding surgical attire and infection control. Infection control nurse will monitor for compliance and report finding at quarterly IC meeting.</i>	7/19/16	
Q 262	416.52(a)(2) PRE-SURGICAL ASSESSMENT  Upon admission, each patient must have a pre-surgical assessment completed by a physician or other qualified practitioner in accordance with applicable State health and safety laws, standards of practice, and ASC policy that includes, at a minimum, an updated medical record entry documenting an examination for any changes in the patient's condition since completion of the most recently documented medical history and physical assessment,	Q 262			

**SUPPLEMENTAL #1**

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

August 26, 2016: 07/06/2016  
FORM APPROVED  
8:38 am OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001160	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED  06/29/2016
NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 6002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE	
Q 262	Continued From page 7 Including documentation of any allergies to drugs and biologicals.  This STANDARD is not met as evidenced by: Based on medical record review and interview, the facility failed to ensure a pre-procedure assessment was completed prior to a surgical intervention for 1 patient (#18) of 20 patients reviewed.  The findings included:  Medical record review revealed Patient #18 was admitted to the facility on 6/2/16 for a Right Ankle Distal Fibula Open Reduction Internal Fixation (ORIF) and was discharged the same day.  Medical record review of the pre-procedure History and Physical dated 6/2/16 revealed the physician signed the assessment but no date or time was documented to indicate when the assessment was performed.  Interview with the facility Administrator on 6/29/16 at 11:15 AM, in the break room, confirmed the physician failed to document a time or date to indicate when the pre-procedure assessment was performed.	Q 262	Reviewed policy with staff, physicians and medical director. Staff will ensure physician documentation, signatures, with date; time completed appropriately. Monthly chart audits will occur on 10% or 10 charts, whichever number is greater. Findings will be reviewed with MEC/governance board and actions taken as defined by facility by laws	7/19/16	
Q 266	416.62(c)(2) DISCHARGE - ORDER  [The ASC must -] Ensure each patient has a discharge order, signed by the physician who performed the surgery or procedure in accordance with applicable State health and safety laws, standards of practice, and ASC policy,	Q 266			

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING _____  B. WING _____		(X3) DATE SURVEY COMPLETED  06/29/2016
NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER			STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X8) COMPLETION DATE	
Q 266	Continued From page 8  This STANDARD is not met as evidenced by: Based on review of facility policy, medical record review, and interview, the facility failed to ensure a discharge order was written for 1 patient (#1) of 20 patients reviewed.  The findings included:  Review of facility policy Pre-Operative/Post-Operative Visits last revised on 4/09, revealed "...PACU [Post Anesthesia Care Unit] staff cannot discharge the patient without a written or verbal discharge order from the anesthesiologist and a written discharge order signed by the physician who performed the surgery or procedure in accordance with applicable State and safety laws, standards of practice, and ASC [Ambulatory Surgery Center] policy..."  Medical record review revealed Patient #1 was admitted to the facility on 6/26/16 for a Left Lumbar 4-Sacral 1 Radiofrequency Ablation (surgical pain procedure) and was discharged the same day.  Medical record review of the Day Surgery Post-Op orders and Progress Notes with no date or time, revealed no documentation of discharge orders.  Interview with the facility Administrator on 6/29/16 at 11:15 AM, in the break room room, confirmed there were no discharge orders written by the physician.	Q 266	Reviewed policy with staff, physicians and medical director. Staff will ensure physician documentation of orders, signatures with date. Time are completed appropriately  Monthly chart audits will occur on 10% or 10 charts, whichever number is greater. Findings will be reviewed with MEL/GIB and actions taken as defined by facility bylaws.	7/29/16	

**August 26, 2016** PD: 07/08/2016  
**8:38 am** FORM APPROVED

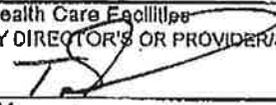
Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  TNP535199	(X2) MULTIPLE CONSTRUCTION A. BUILDING: _____  B. WING _____	(X3) DATE SURVEY COMPLETED  08/29/2016
--	---	---	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
A 002	1200-8-10 No Deficiencies  During a State Licensure Survey completed 6/29/16, no deficiencies were cited under 1200-8-10, Standards for Ambulatory Surgical Treatment Centers.	A 002		

Division of Health Care Facilities  
 LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE ..



TITLE  
*ADMINISTRATOR*

(X6) DATE

*7/22/16*

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR MEDICARE & MEDICAID SERVICES

**SUPPLEMENTAL #1**  
PRINTED: 06/30/2016  
**August 26, 2016** APPROVED  
OMB NO. 0938-0391

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  44C0001169	(X2) MULTIPLE CONSTRUCTION A. BUILDING 01 - MAIN BUILDING  B. WING _____	8:38 am (X3) DATE SURVEY COMPLETED  06/28/2016
--	--	---	---

NAME OF PROVIDER OR SUPPLIER

PROVIDENCE SURGERY CENTER

STREET ADDRESS, CITY, STATE, ZIP CODE

5002 CROSSING CIRCLE SUITE 110  
MOUNT JULIET, TN 37122

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETION DATE
K9999	FINAL OBSERVATIONS  During the Life Safety survey conducted on 06/28/2016, no deficiencies were cited under the Life Safety Code.	K9999		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE



TITLE

ADMINISTRATOR

(X6) DATE

7/22/16

Any deficiency statement ending with an asterisk (\*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See Instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

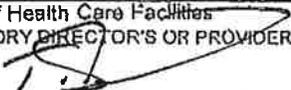
Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  TNP535199	(X2) MULTIPLE CONSTRUCTION A. BUILDING: 01 - MAIN BUILDING  B. WING _____	(X3) DATE SURVEY COMPLETED  06/28/2016
--	---	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
A 801	<p>1200-8-10-.08 (1) Building Standards</p> <p>(1) An ASTC shall construct, arrange, and maintain the condition of the physical plant and the overall ASTC environment in such a manner that the safety and well-being of the patients are assured.</p> <p>This Rule is not met as evidenced by: Based on observations the facility failed to maintain the overall environment.</p> <p>The findings included:</p> <p>Observation on 06/28/2016 at 10:03 AM, revealed a ceiling tile not seated properly in the janitorial closet.</p> <p>This finding was verified and acknowledged by the administrator on 06/28/2016.</p>	A 801	<p><i>Notified building maintenance, property manager. Walk through of facility occurred and ceiling tiles seated accordingly.</i></p>	7/14/16
A 818	<p>1200-8-10-.08 (18) Building Standards</p> <p>(18) It shall be demonstrated through the submission of plans and specifications that in each ASTC a negative air pressure shall be maintained in the soiled utility area, toilet room, janitor's closet, dishwashing and other such soiled spaces, and a positive air pressure shall be maintained in all clean areas including, but not limited to, clean linen rooms and clean utility rooms.</p> <p>This Rule is not met as evidenced by: Based on observations, the facility failed to maintain negative air pressure.</p>	A 818	<p><i>Notified property manager, building maintenance and HVAC contractor. Quote received and approved to install appropriate ventilation to obtain neg. pressure environment.</i></p>	8/11/16

Division of Health Care Facilities  
 LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE



TITLE

*ADMINISTRATOR*

(X6) DATE

*7/22/16*

Division of Health Care Facilities

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:  TNP535199	(X2) MULTIPLE CONSTRUCTION A. BUILDING: 01 - MAIN BUILDING  B. WING _____	(X3) DATE SURVEY COMPLETED  06/28/2016
--	---	--	--

NAME OF PROVIDER OR SUPPLIER  PROVIDENCE SURGERY CENTER	STREET ADDRESS, CITY, STATE, ZIP CODE 5002 CROSSING CIRCLE SUITE 110 MOUNT JULIET, TN 37122
---	---

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X6) COMPLETE DATE
A 818	Continued From page 1  The findings included:  Observation on 06/28/2016 at 10:14 AM, revealed the Bio-Hazard room did not have negative air pressure.  This finding was verified and acknowledged by the administrator on 06/28/2016.	A 818		
A 901	1200-8-10-.09 (1) Life Safety  (1) Any ambulatory surgical treatment center which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.  This Rule is not met as evidenced by: Based on observations, the facility failed to comply with applicable building and fire safety regulations.  The findings included:  1. Observation on 06/28/2016 at 09:57 AM, revealed the medical records room door held open by a wedge. NFPA 80, 5.2.13 (2010 Edition)  2. Observation on 06/28/2016 at 10:00 AM, revealed the Anesthesia closet was held open by a shelf. NFPA 80, 5.2.13 (2010 Edition)  These findings were verified and acknowledged by the administrator on 06/28/2016.	A 901	<i>Immediately upon findings, door props removed. STAFF educated and signage placed regarding door to remain closed. Administrator to monitor for compliance</i>	<i>7/19/16</i>

**August 26, 2016**

**8:38 am**

**Attachment 7**

**August 26, 2016**

**8:38 am**

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF Williamson

NAME OF FACILITY: TN SM, LLC d/b/a Providence Surgery Center

I, Michael Corey Ridgway, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

MCR VP  
Signature/Title

Sworn to and subscribed before me, a Notary Public, this the 25<sup>th</sup> day of August, 2016, witness my hand at office in the County of Davidson, State of Tennessee.

Lori Marlar  
NOTARY PUBLIC

My commission expires September 10, 2018.

HF-0043

Revised 7/02



# Supplemental #2 -Original-

TNTN SM, LLC d/b/a  
Providence Surgery Center

CN1608-031



**August 30, 2016**

**1:20 pm**

71 Vickery Street  
Atlanta, Georgia 30075  
Telephone 770-394-8465  
Facsimile 770-394-5470  
www.thestrategyhouse.net

August 30, 2016

Via Hand Delivery

Phillip Earhart, HSD Examiner  
Health Services and Development Agency  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN37243

RE: Certificate of Need Application CN1608-031  
TN SM, LLC d/b/a Providence Surgery Center

Dear Mr. Earhart:

Thank you for your letter of August 26, 2016 requesting clarification or additional discussion in regard to the CON application referenced above. Responses are provided in triplicate by the requested deadline of 2:00 p.m., Tuesday, August 30, 2016.

**1. Section C, Need Item 1(Specific Criteria -ASTC) Item 2.**

It is noted the applicant completed the following table for Year 2 of the proposed project. However, please complete to match the Projected Year 2 case projections of the chart on page 30 of the original application.

**Response:** The table provided in the initial supplemental response should have totaled 1,715 cases, *including* procedure room cases. (Procedure room cases were inadvertently double-counted.) A corrected table is provided below.

Operating Rooms	Cases	Cases/ Room	Minutes Used	Average Turnaround Time	Schedulable minutes*	% of Schedulable Time Used
Operating Room #1	690	690	44,850 (@65)	20,700 (@30)	65,550	48.6%
Operating Room #2	691	691	44,915 (@65)	20,730 (@30)	65,645	48.6%
Procedure Room	334	334	10,020 (@30)	5,010 (@15)	15,030	11.1%
Total Surgical Suite	1,715	572	99,785	46,440	146,225	36.1%

\*defined as the summation of the minutes by each room available for scheduled cases

Example: 7:30 AM to 4:30 PM, 5 days per week, 50 weeks/ year, equates to 9 hrs/day X 60 min/hr = 540 minutes/day X 5 days/week = 2,700 minutes / week X 50 weeks/year=135,000 schedulable minutes/room X the number of rooms=surgical suite schedulable capacity

**2. Section C, Need Item 5**

It is understood the surgeons expected to utilize the proposed multi-specialty surgery center are not employees of PSC, and the applicant does not have public 2015 data of the locations where surgeries were performed and the number of surgical cases at each facility. However, please inquire with those physicians expected to utilize the proposed multi-specialty surgery center to provide a response to the above.

**Response:** There is an immediate need for multispecialty ASTC services in Wilson County. Anecdotally, physicians report that patients now served by various ASTCs and hospital HOPDs in Davidson County will be better served by expanded services at Providence Surgery Center. Wilson County residents do not have an ASTC option other than for endoscopy, ophthalmology and orthopedics, thus relegating them to the higher cost HOPD services at Tennova Healthcare - Lebanon (f/k/a University Medical Center). There are simply no multispecialty ASTCs in Wilson County presently.

Our physicians also report that demographic growth has been strong and is expected to continue to drive increased patient volumes at their

practices. Mt. Juliet is the largest and fastest growing community in Wilson County. Finally, the expanded services at Providence Surgery Center can be offered within just one day of approval.

Thank you for the opportunity to present this supplemental information. A signed affidavit is presented in **Attachment 1**.

Warm regards,

THE STRATEGY HOUSE, INC.



Robert M. Limyansky  
Partner

attachments

cc: Corey Ridgway, Market President, USPI  
Byron Trauger, Esq., Trauger & Tuke

**August 30, 2016**

**1:20 pm**

# **Attachment 1**

**August 30, 2016**

**1:20 pm**

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF Williamson

NAME OF FACILITY: TNSM, LLC d/b/a Providence Surgery Center

I, Michael Corey Riquelme, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

Michael Corey Riquelme VP  
Signature/Title

Sworn to and subscribed before me, a Notary Public, this the 30 day of August, 2016, witness my hand at office in the County of Davidson, State of Tennessee.

Lori Marlar  
NOTARY PUBLIC

My commission expires September 10, 2018.

HF-0043

Revised 7/02



# Supplemental #3 -Original-

TN SM, LLC dba  
Providence Surgery Center

CN1608-031

**August 31, 2016**

**1:41 pm**



71 Vickery Street  
Atlanta, Georgia 30075  
Telephone 770-394-8465  
Facsimile 770-394-5470  
www.thestrategyhouse.net

August 31, 2016

Via Hand Delivery

Phillip Earhart, HSD Examiner  
Health Services and Development Agency  
Andrew Jackson Building, 9<sup>th</sup> Floor  
502 Deaderick Street  
Nashville, TN37243

RE: Certificate of Need Application CN1608-031  
TN SM, LLC d/b/a Providence Surgery Center

Dear Mr. Earhart:

Thank you for your letter of August 30, 2016 requesting clarification or additional discussion in regard to the CON application referenced above. Responses are provided in triplicate by the requested deadline of 2:00 p.m., Wednesday, August 31, 2016.

**1. Section C, Need Item 1(Specific Criteria -ASTC) Item 2.**

It is noted the applicant completed the following table for Year 2 of the proposed project. However, the applicant incorrectly added all minutes together and placed the total in the schedulable minute's column. Please revise the following table that includes an additional column for "total minutes".

**Response:** The table provided in the initial supplemental response included total minutes in the schedulable minutes column. A revised table is provided below. There is no change to the projected percent of schedulable time used.

Operating Rooms	Cases	Cases/ Room	Minutes Used	Average Turnaround Time	Total minutes	Schedulable minutes*	% of Schedulable Time Used
Operating Room #1	690	690	44,850 (@65)	20,700 (@30)	65,550	135,000	48.6%
Operating Room #2	691	691	44,915 (@65)	20,730 (@30)	65,645	135,000	48.6%
Procedure Room	334	334	10,020 (@30)	5,010 (@15)	15,030	135,000	11.1%
Total Surgical Suite	1,715	572	99,785	46,440	146,225	405,000	36.1%

\*defined as the summation of the minutes by each room available for scheduled cases

Example: 7:30 AM to 4:30 PM, 5 days per week, 50 weeks/ year, equates to 9 hrs/day X 60 min/hr = 540 minutes/day X 5 days/week = 2,700 minutes / week X 50 weeks/year=135,000 schedulable minutes/room X the number of rooms=surgical suite schedulable capacity

**2. Section C, Need Item 5**

For each of the surgeons expected to utilize the proposed surgery center in Year One, please identify for 2015 the locations where surgeries were performed and the number of surgical cases at each facility. The applicant will need to request this information from each physician who has the information to address this question.

**Response:** Physicians in the specialties to be added are not currently investors or owners in the proposed project. Therefore, they have not been asked to compile or disclose confidential information related to the surgeons' facility utilization.

[remainder of page blank]

Thank you for the opportunity to present this supplemental information. A signed affidavit is presented in **Attachment 1**.

Warm regards,

THE STRATEGY HOUSE, INC.



Robert M. Limyansky  
Partner

attachments

cc: Corey Ridgway, Market President, USPI  
Byron Trauger, Esq., Trauger & Tuke

# Attachment 1

**August 31, 2016**

**1:41 pm**

**AFFIDAVIT**

STATE OF TENNESSEE

COUNTY OF Williamson

NAME OF FACILITY: TNSM, LLC d/b/a Providence Surgery Center

I, Michael Corey Ridgway, after first being duly sworn, state under oath that I am the applicant named in this Certificate of Need application or the lawful agent thereof, that I have reviewed all of the supplemental information submitted herewith, and that it is true, accurate, and complete.

*Michael Corey Ridgway*  
Signature/Title

Sworn to and subscribed before me, a Notary Public, this the 31<sup>st</sup> day of August, 2016, witness my hand at office in the County of Davidson, State of Tennessee.

*Lori Marl*  
NOTARY PUBLIC

My commission expires September 10, 2018.

HF-0043

Revised 7/02

