LETTER OF INTENT



State of Tennessee Health Facilities Commission

502 Deaderick Street, Andrew Jackson Building, 9th Floor, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 hsda.staff@tn.gov

LETTER OF INTENT

The Publication of Intent is to be published in The Tennessean, which is a newspaper of general circulation in Wilson County, Tennessee, on or before 04/15/2025 for one day.

This is to provide official notice to the Health Facilities Commission and all interested parties, in accordance with T.C.A. §68-11-1601 et seq., and the Rules of the Health Facilities Commission, that Lebanon Center for Outpatient Surgery, a/an Ambulatory Surgical Treatment Center (ASTC) – Multi-Specialty owned by Lebanon Surgicenter, LLC with an ownership type of Limited Liability Company and to be managed by Surgicare of Lebanon, LLC intends to file an application for a Certificate of Need for establishing a multispecialty ambulatory surgical treatment center (ASTC) consisting of approximately 17,350 square feet with two (2) operating rooms and one (1) procedure room. The facility will be licensed as an ASTC by the HFC. The surgical specialties to be offered at the ASTC will be General Surgery, ENT surgery, GI/Endoscopy, Orthopedic Surgery, Total Joint Replacement, Orthopedic Spine Surgery, Podiatry, and Pain Management Procedures. The facility will replace the existing TriStar Summit Hospital Outpatient Department. The address of the project will be 125 Willard Hagan Dr, Lebanon, Wilson County, Tennessee, 37090. The estimated project cost will be \$15,870,573.

The anticipated date of filing the application is 05/01/2025

The contact person for this project is Vice President - Operations Daniel Winkler who may be reached at Surgery Ventures, Powered by HCA Healthcare - 1000 Health Park Drive, Bldg. 3, Suite 500, Brentwood, TN 37027 – Contact No. 615-661-1474.

Daniel Winkler	04/15/2025	Daniel.Winkler@SurgeryVentures.com
Signature of Contact	Date	Contact's Email Address

The Letter of Intent must be received between the first and the fifteenth day of the month. If the last day for filing is a Saturday, Sunday, or State Holiday, filing must occur on the next business day. Applicants seeking simultaneous review must publish between the sixteenth day and the last day of the month of publication by the original applicant.

The published Letter of Intent must contain the following statement pursuant to T.C.A. §68-11-1607 (c)(1). (A) Any healthcare institution wishing to oppose a Certificate of Need application must file a written notice with the Health Facilities Commission no later than fifteen (15) days before the regularly scheduled Health Facilities Commission meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application may file a written objection with the Health Facilities Commission at or prior to the consideration of the application by the Commission, or may appear in person to express opposition. Written notice of opposition may be sent to: Health Facilities Commission, Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243 or email at hsda.staff@tn.gov.

HF 51 (Revised 6/1/2023)

RDA 1651



State of Tennessee Health Facilities Commission

502 Deaderick Street, Andrew Jackson Building, 9th Floor, Nashville, TN 37243

www.tn.gov/hsda Phone: 615-741-2364 hsda.staff@tn.gov

PUBLICATION OF INTENT

The following shall be published in the "Legal Notices" section of the newspaper in a space no smaller than two (2) columns by two (2) inches.

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED

This is to provide official notice to the Health Facilities Commission and all interested parties, in accordance with T.C.A. §68-11-1601 et seq., and the Rules of the Health Facilities Commission, that Lebanon Center for Outpatient Surgery, a/an Ambulatory Surgical Treatment Center (ASTC) – Multi-Specialty owned by Lebanon Surgicenter, LLC with an ownership type of Limited Liability Company and to be managed by Surgicare of Lebanon, LLC intends to file an application for a Certificate of Need for establishing a multispecialty ambulatory surgical treatment center (ASTC) consisting of approximately 17,350 square feet with two (2) operating rooms and one (1) procedure room. The facility will be licensed as an ASTC by the HFC. The surgical specialties to be offered at the ASTC will be General Surgery, ENT surgery, GI/Endoscopy, Orthopedic Surgery, Total Joint Replacement, Orthopedic Spine Surgery, Podiatry, and Pain Management Procedures. The facility will replace the existing TriStar Summit Hospital Outpatient Department. The address of the project will be 125 Willard Hagan Dr, Lebanon, Wilson County, Tennessee, 37090. The estimated project cost will be \$15,870,573.

The anticipated date of filing the application is 05/01/2025

The contact person for this project is Vice President - Operations Daniel Winkler who may be reached at Surgery Ventures, Powered by HCA Healthcare - 1000 Health Park Drive, Bldg. 3, Suite 500, Brentwood, TN 37027 – Contact No. 615-661-1474.

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CRITERIA AND STANDARDS

Attachment 1NR2 Criteria and Standards

1.NR2.

Overview and Context

History of TriStar Outpatient Surgery Services in Wilson County

HCA's TriStar Summit Medical Center is a 218-bed acute care hospital in Davidson County near the western border of Wilson County. It has long been a leading provider of outpatient surgery services for Wilson County patients. In 2024, TriStar Summit Medical Center performed 1,659 hospital-based outpatient surgeries on patients from Wilson County, which accounts for 41 percent of the hospital's total outpatient surgical cases – the highest percentage among all counties served by TriStar Summit Medical Center. Further, Summit Surgery Center, an ambulatory surgical treatment center ("ASTC") proximal to the campus of and affiliated with TriStar Summit Medical Center, performed 2,099 surgical cases for Wilson County patients – 39 percent of that facility's total cases, or more than one out of every three of its patients. In total, these two facilities alone performed more than 3,700 outpatient surgical cases for Wilson County patients in 2024. Including the hospital-based outpatient department ("HOPD") in Wilson County, TriStar Summit Surgery Center – Lebanon ("TriStar Summit HOPD"), which began performing outpatient surgeries on June 26, 2024, TriStar Summit-affiliated facilities served 4,074 Wilson County patients in 2024, as shown in Table 1N-1.1, below.

Table 1N-1.1
TriStar Summit Facilities - Wilson County Surgical Patients 2022-2024

Facility	2022	2023	2024
TriStar Summit Medical Center	1,641	1,666	1,659
Summit Surgery Center	1,867	1,888	2,099
TriStar Summit HOPD*			316
Total TriStar Summit Facilities	3,508	3,554	4,074

Source: 2022-2024 Joint Annual Reports ("JAR"), internal data.

Further, when totaling all five TriStar-affiliated ASTCs in Davidson County, as well as Physicians Pavilion Surgery Center, a TriStar affiliated ASTC in nearby Rutherford County, there were 2,915 Wilson County patients who traveled to Davidson or Rutherford County – i.e., outside of their home county – for surgery at a TriStar-affiliated ASTC in 2024.

^{*} TriStar Summit HOPD began performing surgeries on June 26, 2024.

Table 1N-1.2
Wilson County Surgical Patients at TriStar Davidson County ASTCs 2022-2024

TriStar Facility	2022	2023	2024
Summit Surgery Center (Davidson County)	1,867	1,888	2,099
Other TriStar ASTCs in Davidson County*	540	742	710
Physicians Pavilion Surgery Center (Rutherford County)	97	102	106
Total TriStar ASTC Patients from Wilson County	2,504	2,732	2,915

Source: 2022-2024 JARs.

The outmigration of Wilson County patients for outpatient surgical services has been a lasting trend that is partly attributable to the relatively limited availability of ASTCs in Wilson County. Before June 2024, there were only four facilities providing outpatient surgery services across all 540 square miles of Wilson County; one of these, Lebanon Endoscopy Center, is a single-specialty facility providing only endoscopic procedures. Now, following the opening of TriStar Summit HOPD in June 2024, there are only four facilities that perform multispecialty outpatient surgical services in Wilson County today. These facilities are:

- Lebanon Surgery Center (formerly the Phoenix Surgery Center) in Lebanon ("Phoenix/LSC"),
- Providence Surgery Center in Mt. Juliet ("Providence"),
- TriStar Summit HOPD, and
- Vanderbilt Wilson County Hospital Outpatient Surgery Center ("Vanderbilt HOPD").

Of these four facilities, only two are ASTCs (Phoenix/LSC and Providence). With this CON application, the Applicant, Lebanon Center for Outpatient Surgery ("LCOS") seeks a Certificate of Need to establish an ASTC that will replace the existing TriStar Summit HOPD. Through this conversion, patients can benefit from the lower cost of surgical care in a freestanding outpatient setting, and the facility will also expand the range of ambulatory surgical care available to patients in Wilson County.

The History of ASTCs in Wilson County

Prior to the development of ASTCs in Wilson County, Wilson County residents needing outpatient surgery had only one in-county option: the Wilson County Hospital in Lebanon. That hospital was owned and operated by Tennova Healthcare for many years before being purchased by Vanderbilt University Medical Center in 2019, becoming Vanderbilt Wilson County Hospital ("VWCH").

The first multispecialty ASTC was the Lebanon Surgical Center located at 1414 Baddour Parkway in Lebanon. This ASTC ceased operations in 2014. The first single-specialty

^{*} Includes Premier Orthopaedic Surgery Center, Southern Joint Surgery Center, Centennial Surgery Center, and Brentwood Surgery Center.

In the Providence CON Application, the Applicant said, "The only multispecialty ASTC in Wilson

ASTC, meanwhile, was the Wilson County Eye Surgery Center, located at 1670 Main Street, Suite # 120, in Lebanon. This facility's licensure expired in 2020.

By 2009, a single-specialty ASTC was developed in Wilson County, the Tennessee Sports Medicine Surgery Center, which became Providence. This ASTC was developed and remains located at 5002 Crossing Circle, Suite 110 in Mt. Juliet, a city in western Wilson County that is only a few miles from the border of Davidson County.

In October 2016, the Health Services and Development Agency ("HSDA"), the predecessor to the HFC, approved a CON for Tennessee Orthopedics, PC, (CN1605-019) to establish an ASTC at 101 Physicians Way in Lebanon. This ASTC was approved for three operating rooms ("ORs") and one procedure room ("PR"). This ASTC did not become operational until 2018, opening under the name Phoenix Surgery Center. After February 2021, this ASTC became known as the Lebanon Surgery Center. As noted above, this ASTC is referred to as Phoenix/LSC throughout this application.

In December 2016, Providence (CN1608-31) received approval for a CON to expand its services from a single-specialty surgical facility to a multispecialty surgical facility, a classification that remains true today.

In April 2017, the HSDA denied a CON for Lebanon Surgery Center, LLC, an ASTC that was to convert the Tennova Healthcare-Lebanon HOPD into an ASTC. The ASTC would have included four ORs and one PR. The Tennova HOPD to ASTC conversion was denied at least in part because of the recent grants of CONs for the Phoenix Surgery Center in October 2016 and the expansion of the Providence Surgery Center in December 2016.

In 2019, Providence filed a CON application to move into a new facility (CN1903-008). Although this CON was granted on August 28, 2019, it has not been implemented.² Notably, the relocation was approved even though, at the time, Providence was operating at 41.5 percent OR utilization (367 cases per OR).

2020 Lebanon Surgicenter CON Application

On November 12, 2020, Lebanon Surgicenter, LLC ("Lebanon Surgicenter") filed a CON application (CN2011-033) for an ASTC at the same location as the one proposed in this current CON application. Like the current application, the Lebanon Surgicenter ASTC application included 2 ORs and 1 PR. At the time of the Lebanon Surgicenter CON application, the outpatient surgery providers in Wilson County were the same as today, absent the TriStar Summit HOPD. The Lebanon Surgicenter CON application was

County, Lebanon Surgery (*sic*) 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." Moreover, the Department of Health, Health Facilities License Lookup notes that it is closed and that its license expired in 2016. See https://internet.health.tn.gov/FacilityListings.

² Providence received an extension to implement its 2019 CON through February 1, 2026.

As noted in the responses to Question 7A and Question 1E, Lebanon Surgicenter, LLC is the owner of LCOS, the Applicant for the present CON.

considered by the HSDA at its February 24, 2021, meeting. At that time, the pre-2021 CON Reform law applied, although that law changed significantly effective October 1, 2021.

The pre-2021 CON Law required the HSDA to consider three issues:

- 1. Need,
- 2. Economic feasibility, and
- 3. Orderly development.4

In reviewing the Lebanon Surgicenter CON application that preceded this current application, the Staff found that Criterion Four under the State Health Plan was only partially met. In essence, Criterion Four requires all ASTCs in the service area to be operating at 70 percent of capacity or greater. Lebanon Surgicenter readily admitted that Criterion Four could not be met because one of the ASTCs in the area, Phoenix/LSC, had scarcely any utilization at all. In fact, at the time of the Lebanon Surgicenter application, Phoenix/LSC was operating at approximately 10 percent capacity:

Figure 1N-1.1
Wilson County ASTC Utilization from Lebanon Surgicenter's 2020 CON Application
Service Area Operating and Procedure Room ASTC Utilization - 2019

ASTC	# ORs	# OR Cases	Cases per OR	% of Optimum Capacity (884)	# PRs	# PR Cases	Cases per PR	% of Optimum Capacity (1,867)
Wilson County Eye Surgery Center	1	984	984	111.3%	1	259	259	13.9%
Lebanon Endoscopy Center	0	-	-	-	1	2,249	2,249	120.5%
Single-Specialty Subtotal	1	984	984	111.3%	2	2,508	1,254	67.2%
Providence Surgery Center	2	966	483	54.6%	1	344	344	18.4%
Phoenix Surgery Center	3	270	90	10.2%	1	0	0	0.0%
Multi-Specialty Subtotal	5	1,236	247	28.0%	2	344	172	9.2%
Overall Total	6	2,220	370	41.9%	4	2,852	713	38.2%

Source: Joint Annual Report 2019; CN2011-033, Supplemental #1, Page 26R.

Criterion Four stated then, as it does now, the following:

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

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In 2021, the CON law was substantially amended to remove "economic feasibility" and "orderly development." Under current law, the requirements for a CON are: (1) Need, (2) Quality, and (3) Consumer Advantage ("the effects attributed to competition or duplication would be positive for consumers"). Tenn. Code Ann. § 68-11-1609(b) (2021) ("2021 CON Law").

currently utilized at 70% or above (emphasis added). 5

Currently, LCOS submits that Criterion Four is effectively obsolete due to the change in the statute in 2021, as the 2021 amendment removed "orderly development" from the law. The very purpose of Criterion Four, "the potential impact the proposed new ASTC would have on existing providers," is no longer a consideration under the 2021 CON Law. However, Orderly Development was still one of the requirements of the CON Statute in February 2021 when the 2020 ASTC application was considered – an applicability that, as detailed below, ultimately drove the HSDA's decision of denial.

After Lebanon Surgicenter's CON application was filed, two parties, VWCH – the sole acute care hospital in Wilson County – and Ascension Saint Thomas/USPI Surgery Centers, LLC ("USPI/Ascension") – the owner of all three ASTCs (the one single specialty and the two multispecialty) in Wilson County – opposed the Lebanon Surgicenter application at the HSDA meeting on February 24, 2021. Lebanon Surgicenter's CON application was denied. The minutes and the transcript from that meeting are included as <u>Attachment 1N-1.1</u>.

At the February 24, 2021, hearing on the Lebanon Surgicenter CON application, USPI/Ascension argued:

I don't recall any application before this one that has dared to come before this Agency to propose another surgery center in a service area that the Department of Health says the surgery centers existing are operating at 20 percent of capacity.⁶

Opposition from USPI/Ascension also noted it was taking over the Phoenix/LSC facility that had poor utilization:

Now that Saint Thomas USP will manage it, it will be able to become the true multi-specialty center that Lebanon deserves, and it will happen in two months, not two years down the road like this application would be.

While it may be understandable that some physicians have chosen not to work at a center owned by a single physician, particularly as a competitor, that will not be the case in two months once Saint Thomas USP owns and manages the Phoenix center.⁷

These Standards and Criteria were effective May 23, 2013. State Health Plan Certificate of Need Standards and Criteria for Ambulatory Surgical Treatment Centers, p. 1 ("These standards and criteria are effective immediately as of May 23, 2013."). The Standards and Criteria for ASTCs have not changed since May 2013, despite the dramatic change in the law in 2021 that removed Economic Feasibility and Orderly Development from the statute and added Consumer Advantage and Quality. Tenn. Code Ann. §68-11-1609(b).

⁶ "Excerpt of Proceedings: Lebanon Surgicenter, CN2011-033 (Motion to Deny)." State of Tennessee Health Services and Development Agency. As prepared by Ace Court Reporters. February 24, 2021, p. 42.

lbid., p. 43 (emphasis added).

The discussion between the members of the HSDA at the hearing in 2021 is enlightening as to the importance of Orderly Development in their thought process on the Lebanon Surgicare CON application. Further, the promises by USPI/Ascension to make Phoenix/LSC viable had great impact.

Dr. Patric, a physician from Chattanooga and HSDA member, spoke first:

This particular case brings up a number of the issues that we have struggled with as a board, both the idea of is competition a part of something that needs to be considered in orderly development and how far can we stretch the guideline part of need in particular as well as orderly development sometimes.

...And then, also, when you look at the amount of opposition from other physicians that aren't even necessarily connected financially to the current Phoenix facility and also local officials and that type of thing, that **this doesn't have a good feel for what is orderly development of healthcare.**

I think the last time or the time before, we actually took a position that when there is obviously something in development like the Phoenix plan, which was put into place before this current plan was proposed, that we took a wait and see. Let's give it a year and see if it actually plays out the way that the opposition says it's going to. And if it doesn't, then the current folks that have made this proposal can propose it again since it's going to be at least two years before they're available and they have a way of taking care of their own patients currently.⁸

Mr. Taylor, another HSDA member, said:

[I]n two months, that they [referring to the newly formed Phoenix Center under the auspices of USP/Saint Thomas] will be contracted with a lot of payors that currently they're obviously not contracted with. ... I mean, the huge idle capacity of the current centers when you combine them all together and with modifications in the next couple of months, I just can't support this application.⁹

Lastly, HSDA member Mr. Korth said:

[W]ith the recent change or the upcoming change with Phoenix moving over to USPI, it will offer that and will offer more general surgery case ability for those physicians and for the community in Lebanon and Wilson County. So I do have a hard time identifying or justifying that

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⁸ *Ibid.*, pp. 47-49 (emphasis added).

⁹ *Ibid.*, p. 51 (emphasis added).

there's going to be need for another surgery center at this present time.

I think we need to give the two that are in Wilson County, the Providence and the Phoenix, you know, time to develop. They're kind of brand new surgery centers. I know that Phoenix is going to be going under new ownership, and it will be brand new in a couple of months. And we need to give them a little bit of time to see what their optimal capabilities are.¹⁰

Following this discussion, Lebanon Surgicenter's CON application was denied.

Unfortunately for the patients of Wilson County, none of USPI/Ascension's pledges made when opposing Lebanon Surgicenter's proposed project were fulfilled. The Phoenix/LSC facility remains extremely underutilized, as will be discussed further in response # 4, below. Further, with the repeal of the Orderly Development from the statute, impact on existing providers is no longer an evaluable criterion by the Commission. The criterion that replaced it, Consumer Advantage, focuses on the benefit to the consumer and whether the project's relative enhancements to access, cost, and clinical quality will outweigh any duplication of services. LCOS's proposed conversion of its existing HOPD to an ASTC and inclusion of numerous surgeons who want to perform outpatient surgeries at LCOS represent improvements to all of these considerations for Wilson County patients and achieves the objectives of this criterion.

October 1, 2021, Change in the CON Law

In 2021, the General Assembly passed sweeping changes to the CON statute, which became effective October 1, 2021. The most significant changes removed Economic Feasibility and Orderly Development from statute and replaced those considerations with Quality and Consumer Advantage. Tenn. Code Ann. §68-11-1609(b). The statutory considerations now are:

- 1. Need,
- 2. Quality, and
- 3. Consumer Advantage (that "the effects attributed to competition or duplication would be positive for consumers").

The change to this law is shown in Figure 1N-1.2, below:

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¹⁰ *Ibid.* (emphasis added).

Figure 1N-1.2 Changes to CON Law Following 2021 Revision

Pre-October 1, 2021 CON Law

No certificate of need shall be granted unless the action proposed in the application 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 adequate and effective health care facilities services.

Middle TN Rehab. Hosp., LLC v. Health Servs. & Dev. Agency, 2014 WL 4181074, at *8 (Tenn. Ct. App. Aug. 22, 2014).

Post-October 1, 2021 CON Law

A certificate of need shall not be granted unless the action proposed in the application 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 adequate and effective health care facilities or services will provide health care that meets appropriate quality standards, and the effects attributed to competition or duplication would positive for consumers.

Tenn. Code Ann. § 68-11-1609 (2021) (redlined to show change).

In 2021, the Executive Director of the HFC published a summary of the changes in the CON law in the slide below, highlighting the removal of "[i]mpact on existing providers" from the law:

> Figure 1N-1.3 **Description of 2021 Changes to CON Law**

Changes to Standards and Criteria under PC 557 1. Need a) Population to be served b) Minimum utilization levels 2. Economic Feasibility a) Adequacy of funds to complete the project b) Sustainable revenue projections 3. Contribution to the Orderly Development of Health Care → Consumer Advantage a) Impact on existing patients b) Impact on existing providers 4. Appropriate Quality Standards a) Accreditation by respected organization

Source: HSDA.

As noted above, the 2021 CON law removed "Orderly Development" from the statute. While it may be feasible to consider the number of patients served in evaluating Need (where utilization of current providers is one of the many factors), the Phoenix/LSC facility has not been a viable ASTC, despite USPI/Ascension's lawyer's representation at the 2021 hearing on the Lebanon Surgicenter CON application that "in two months" Phoenix/LSC would be "the true multi-specialty center that Lebanon deserves." In short, this has not happened.

Table 1N-1.3 shows the utilization Phoenix/LSC reported on its JARs since receiving its CON from the HSDA/HFC.

Table 1N-1.3
Phoenix Surgery Center/LSC
Reported Surgeries, 2019-2024 (3 ORs)

Year	Year Total Cases Averag		Total Patients
2019	270	90.0	261
2020	164	54.7	158
2021	38	12.7	39
2022	4	1.3	4
2023	70	23.3	70
2024	128	42.7	128

Source: 2019-2024 JARs.

The Phoenix/LSC facility is nowhere close to the 884 surgeries per operating room that acts as the threshold number for meeting the utilization standard in Criterion Four.

Conversely, TriStar Summit HOPD began performing surgeries on June 26, 2024, and <u>has already surpassed Phoenix/LSC's utilization in its first six months of operation</u>. LCOS will meet the 884 case threshold for a new ASTC in Year 1 and will provide expanded access to outpatient surgery services in an ASTC facility that enables reduced payments by patients and insurers and will, thus, greatly benefit the public.

Assumptions in Determination of Need

The need for an ambulatory surgical treatment center shall be based upon the following assumptions:

1. Operating Rooms

- a. An operating room is available 250 days per year, 8 hours per day.
- b. The estimated average time per Case in an Operating Room is 65 minutes.
- c. The average time for clean up and preparation between Operating Room Cases is 30 minutes.
- d. The optimum utilization of a dedicated, outpatient, general-purpose Operating Room is 70% of full capacity. 70% x 250 days/year x 8 hours/day divided by 95 minutes = 884 Cases per year.

Response: The Applicant expects to operate the facility routinely 8 hours per day, 5 days per week, at least 50 weeks per year. The Applicant meets this criterion.

2. Procedure Rooms

- a. A procedure room is available 250 days per year, 8 hours per day.
- b. The estimated average time per outpatient Case in a procedure room is 30

minutes.

- c. The average time for clean up and preparation between Procedure Room Cases is 15 minutes.
- d. The optimum utilization of a dedicated, outpatient, general-purpose outpatient Procedure Room is 70% of full capacity. 70% x 250 days/year x 8 hours/day divided by 45 minutes = 1867 Cases per year.

<u>Response:</u> The Applicant expects to operate the facility routinely 8 hours per day, 5 days per week, at least 50 weeks per year. The Applicant meets this criterion.

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 abovestated 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:

Project Summary

LCOS, a multispecialty ASTC, will be a conversion of TriStar Summit HOPD, located at 125 Willard Hagan Dr, Lebanon, Wilson County, Tennessee. TriStar Summit Medical Center opened this HOPD on June 26, 2024. In less than one year of service, it has become a viable outpatient department that continues to grow as it serves the patients of Wilson County and the surrounding communities. The proposed ASTC will use the same two (2) ORs and one (1) PR currently used by the TriStar Summit HOPD. The ASTC will initially perform general surgery, ENT, GI/endoscopy, total joint replacement, orthopedic, spine, podiatry, and pain management procedures. The primary service area of the proposed project is Wilson County, although LCOS anticipates it will treat patients from other counties as well.

LCOS will establish a multispecialty surgery center in Lebanon that provides a material

number of outpatient surgeries in an ASTC setting. The Applicant meets this need in Criterion One by projecting to perform 896 surgeries per OR in Year 1 and 1,049 per OR in Year 2.

See Table 1N-1.4 and Table 1N-1.5, below for the projected utilization for the two ORs and one PR at LCOS in its first two project years. Please note that all values have been rounded.

Table 1N-1.4
Projected Operating Room Cases Year 1 & Year 2

	Year 1 (2026)	Year 2 (2027)
OR Cases	1,791	2,097
# ORs	2	2
Cases/OR	896	1,049
Optimum Utilization (70%)	884	884
Percentage of Optimal Utilization	101%	119%

Table 1N-1.5
Projected Procedure Room Cases Year 1 & Year 2

	Year 1 (2026)	Year 2 (2027)
PR Cases	248	290
# PRs	1	1
Cases/PR	248	290
Optimum Utilization (70%)	1,867	1,867
Percentage of Optimal Utilization	13%	16%

As a conversion of an existing HOPD, LCOS will provide patients with access to outpatient surgery at the lower cost/reimbursement rate that is available at an ASTC. Since its opening, TriStar Summit HOPD performed 504 surgeries from June 26, 2024, through March 26, 2025, the most recent data available. As shown in Table 1N-1.4, above, LCOS expects to exceed the optimal capacity standard of 884 cases per OR in both 2026 and 2027.

Notably, of the five ASTC CON applications filed with the HFC since January 2024, none fully met the need standard for both ORs and PRs.¹¹ Given the strong support from local physicians who plan to perform cases at the proposed ASTC, LCOS does project to exceed this standard for its operating rooms in both its first and second years of operation.

Need for the Proposed Project

The need for LCOS is driven by the following factors:

- The growing utilization of the TriStar Summit HOPD;
- The significant number of HCA TriStar affiliated surgeons and other surgeons who will perform cases at the proposed ASTC;
- The high volume of Wilson County patients seeking ASTC services outside of Wilson County;
- The significant number of Wilson County surgical outpatients currently being served at TriStar-affiliated facilities outside of Wilson County;
- The high volume of outpatient surgical cases at Wilson County's only hospital;
- The cost savings available to patients receiving care at an ASTC facility;
- The population growth in Wilson County; and,
- The experience of LCOS affiliates in providing high quality care in Tennessee.

Each of these factors is discussed in turn below.

Growing Utilization of TriStar Summit HOPD

Despite the denial of the 2020 CON application, LCOS and its associated entities have made strides to meet the continuing and growing need for increased access to surgical care for patients of Wilson County. Believing that surgical resources were still needed in Lebanon, TriStar Summit Medical Center established TriStar Summit HOPD, a facility that began performing surgery cases in Lebanon on June 26, 2024. In its first six months of operation in calendar year 2024, TriStar Summit HOPD performed 316 total surgical cases. Further, from January through March 2025, the most recent month for which internal data are available, TriStar Summit HOPD performed 188 total surgical cases. Annualized, this equates to 752 surgical cases for 2025.

Tennessee Oncology White House's CON application to establish a licensed ASTC limited to outpatient megavoltage radiation therapy with a linear accelerator (CN2403-006), noted that this need standard was not applicable, due to the proposed project being used exclusively for outpatient radiation therapy. The Plastic Surgery Center Brentwood's approved CON application to convert a single-specialty ASTC to a multi-specialty ASTC (CN2405-013) did not meet the need standard (see p. 4). Spring Hill Outpatient Center's CON application to establish a multi-specialty ASTC (CN2501-001) partially met the need standard (see p. 5). Women's Surgical Center of Nashville's CON application to establish an ASTC limited to female urology, gynecology, and urogynecology patients (CN2502-005) did not meet the need standard (see p. 4). Lastly, Bluff City Vascular Surgery Center's approved CON application to establish a single-specialty ASTC exclusively for vascular diseases and conditions (CN2403-009) failed to meet the Need criteria in Year 1 of Operations.

Table 1N-1.6 TriStar Summit HOPD Cases 2024-2025

Facility	2024*	2025(A)**
TriStar Summit HOPD	316	752

Source: Internal data.

This utilization is only anticipated to increase when the facility is converted to an ASTC and as additional surgeons perform cases at the facility, as discussed further below.

<u>Significant Number of HCA TriStar Affiliated Surgeons and Other Surgeons Who Will Perform Cases at the Proposed ASTC</u>

The growth in utilization at TriStar Summit HOPD will also be aided by the surgeons who are expected to perform cases at LCOS upon its development. According to their own attestations, these surgeons account for a significant volume of surgical services at both the existing TriStar facilities and the facilities in Wilson County. A portion of this volume, which still accounts for a significant volume of cases, is shown in Table 1N-1.7, below, and is the basis for the projected utilization of LCOS detailed in the response to # 9, as well as the response to Question 6N.

Table 1N-1.7
Portion of Historical Interested Provider Surgical Volume by Specialty 2024

2024					
Specialty	Cases				
ENT Surgery	298				
General Surgery	207				
GI/Endoscopy	207				
Orthopedic Surgery	688				
Pain Management	83				
Podiatry	249				
Orthopedic Spine Surgery	99				
Total Joint Replacement	555				
Total	2,387				

Source: Internal estimates from surgeons interested in performing cases at LCOS.

The letters of support from these HCA affiliated surgeons and other surgeons, referenced above and included as <u>Attachment 1N-1.2</u>, support the utilization projections at LCOS and reinforce the need for the existing HOPD-licensed surgery center to instead be operated as an ASTC.

^{*} TriStar Summit HOPD performed its first case on June 26, 2024.

^{**} Annualized based on three months of data: (188 \div 3) x 12 = 752 annualized surgical cases.

High Volume of Wilson County Patients Seeking ASTC Services Outside of Wilson County

As discussed above, there are currently 3 ASTCs in Wilson County. In contrast, there are currently 32 licensed ASTCs in neighboring Davidson County, as listed in the 2024 JAR for ASTCs. While Davidson County has a larger population than Wilson County and, naturally, has a greater amount of healthcare resources, many of the patients treated within Davidson County originate in other, neighboring counties – including, prominently, Wilson County.

In fact, very few patients living in Wilson County actually receive outpatient surgical services at ASTCs *within* Wilson County. As shown in the 2024 JAR, there were 13,411 Wilson County patients who received surgical services at ASTCs in 2024. Only 2,215 of those patients – or 16.5 percent – received care at an ASTC in Wilson County. In contrast, 75.9 percent of Wilson County patients outmigrated to Davidson County to receive outpatient surgical care.

Table 1N-1.8

County of Service for Wilson County ASTC Patients
2024

County of Service	Patients	% of Total
Davidson	10,183	75.9%
Wilson	2,215	16.5%
Other	1,013	7.6%
Total	13,411	100.0%

Source: 2024 JAR.

These data represent a historical trend. As shown in Table 1N-1.9, below, ASTC patients originating from Wilson County have increased every year since 2020. Overall, ASTC patients from Wilson County grew by 41.6 percent. However, ASTC patients from Wilson County who received ASTC services *in* Wilson County only grew by 18.7 percent – less than half of the growth rate of all ASTC patients from Wilson County. This is particularly offset by the growth of Wilson County patients traveling to Davidson County for surgery in an ASTC, a figure that grew at a rate of nearly 50 percent from 2020 to 2024. Overall, the percentage of Wilson County patients that received surgical services at an ASTC in Wilson County declined by 3.2 percent over this period.

Table 1N-1.9
County of Service for ASTC Patients from Wilson County 2020-2024

County of Service	2020	2021	2022	2023	2024	% Change, 2020-2024
Davidson	6,929	6,892	8,972	9,686	10,183	47.0%
Wilson	1,866	1,875	2,293	2,394	2,215	18.7%
All Other	675	766	929	992	1,013	50.1%
Total	9,470	9,533	12,194	13,072	13,411	41.6%
Wilson % of Total	19.7%	19.7%	18.8%	18.3%	16.5%	-3.2%*

Source: 2020-2024 JARs.

These data indicate that the percentage of Wilson County patients who sought ASTC care at a Wilson County facility *declined* from 2020 to 2024, *despite* the overall patient volume increasing. In fact, the percentage of Wilson County ASTC patients seeking care in-county has not exceeded 19 percent since 2021.

Table 1N-1.10
Share of County of Service for ASTC Patients from Wilson County 2020-2024

County of Service	2020	2021	2022	2023	2024	% Difference, 2020-2024
Davidson	73.2%	72.3%	73.6%	74.1%	75.9%	+2.6%
Wilson	19.7%	19.7%	18.8%	18.3%	16.5%	-3.2%
All Other	7.1%	8.0%	7.6%	7.6%	7.6%	+0.5%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	+0.0%

Source: 2020-2024 JARs.

<u>Significant Number of Wilson County Surgical Outpatients Currently Served at TriStar-</u> Affiliated Facilities

As shown above, a majority of Wilson County ASTC patients are seeking care in Davidson County. However, internal TriStar data shows that this trend also holds for Wilson County patients seeking outpatient surgical care at TriStar hospital facilities – which does not include TriStar-affiliated ASTCs. Indeed, from 2022 through 2024 the number of Wilson County patients that received outpatient surgery services at a TriStar hospital was higher than the number of ASTC-based surgeries in Wilson County. The number of outpatient surgical cases performed at *only* TriStar's hospitals in Middle Tennessee from 2022 to 2024 is shown in Table 1N-1.11, below. Comparatively, for each of those three years, the total patients who received outpatient surgical services at TriStar's Middle Tennessee hospitals is *greater* than the number of patients who received outpatient surgical services at an ASTC located in Wilson County. In other words, more Wilson County patients had outpatient surgery at a TriStar hospital in another county than had their surgery at an ASTC in Wilson

^{*} Percent difference.

County, thereby demonstrating the need for a local facility to provide such services in a more accessible and convenient manner.

Table 1N-1.11
Wilson County Patient Outpatient Surgical Volume by Facility 2022-2024

County of Service	2022	2023	2024
All Wilson County ASTCs*	1,866	1,875	2,293
TriStar Hospitals**	2,595	2,616	2,544
(Difference)	(729)	(741)	(251)

Source: 2022-2024 JARs (Wilson County ASTCs) and internal data (TriStar hospitals).

Additionally, the TriStar data shown above do *not* include any GI endoscopy procedures. As such, the difference between Wilson County patients receiving care at TriStar hospitals outside of Wilson County and receiving care at Wilson County ASTCs is actually <u>understated</u>, as the Wilson County figures include a portion of patients receiving GI endoscopy services at Lebanon Endoscopy Center.

Furthermore, the majority of Wilson County patients that have outpatient surgery at a TriStar-affiliated hospital choose TriStar Summit Medical Center in Davidson County. From 2022 to 2024, more than 63 percent of Wilson County patients that had their outpatient surgery performed at a TriStar hospital went to TriStar Summit Medical Center. This percentage has been steadily growing, reaching 65 percent of all Wilson County surgical outpatients at TriStar hospitals in 2024, summarized in Table 1N-1.12 below.

Table 1N-1.12

TriStar Hospitals - Wilson County Patient Outpatient Surgical Volume by Facility 2022-2024

	2022	2023	2024
TriStar Summit Medical Center	1,641	1,666	1,659
Other TriStar Hospitals*	954	950	885
All TriStar Hospitals	2,595	2,616	2,544
TriStar Summit Medical Center % of Total	63%	64%	65%

Source: Internal data (TriStar hospitals). Includes OR volume only.

Summit Surgery Center, a TriStar-affiliated ASTC in Hermitage on the TriStar Summit Medical Center campus, serves an even greater number of Wilson County residents. When combined with the cases served at the hospital, over 3,700 Wilson County residents had outpatient surgery performed in Hermitage, Tennessee at a TriStar facility, as shown below.

^{*} Includes Lebanon Endoscopy Center, Providence, and Phoenix/LSC.

^{**} Includes TriStar Centennial Medical Center, TriStar Hendersonville Medical Center, TriStar Horizon Medical Center, TriStar NorthCrest Medical Center, TriStar Skyline Medical Center, TriStar StoneCrest Medical Center, and TriStar Summit Medical Center.

^{*}Includes TriStar Centernial Medical Center, TriStar Hendersonville Medical Center, TriStar Horizon Medical Center, TriStar NorthCrest Medical Center, TriStar Skyline Medical Center, and TriStar StoneCrest Medical Center.

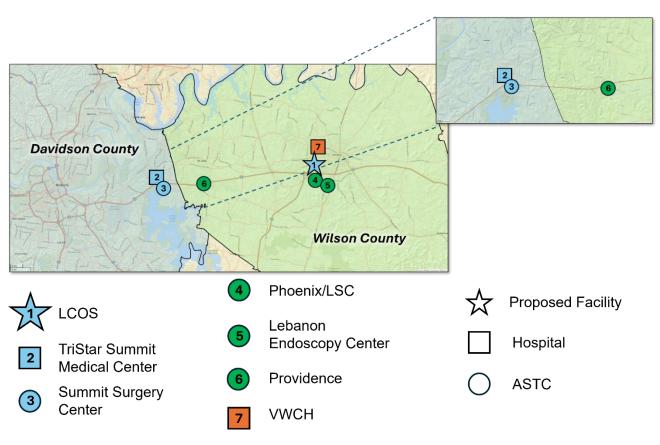
Table 1N-1.13
Wilson County Patient Outpatient Surgical Cases at TriStar Campus in Hermitage, Davidson County 2022-2024

Facility	2022	2023	2024
TriStar Summit Medical Center	1,641	1,666	1,659
Summit Surgery Center (ASTC)	1,867	1,888	2,099
Total Cases	3,508	3,554	3,758

Source: 2022-2024 JAR data and Internal data (TriStar hospitals). Includes OR volume only.

These data demonstrate that Wilson County patients choose TriStar hospitals over the existing ASTCs in Wilson County and specifically choose TriStar Summit Medical Center in Davidson County. As the map below shows, prior to the development of the TriStar Summit HOPD, the location of TriStar Summit Medical Center in eastern Davidson County makes it (along with Summit Surgery Center) the closest TriStar location for Wilson County residents.

Figure 1N-1.4
Surgical Facilities in Davidson and Wilson County



The development of a TriStar-affiliated ASTC in Wilson County will provide a lower cost setting for a significant number of patients who already choose TriStar facilities but currently

travel outside of their home county to do so - i.e., patients who have already been choosing the closest TriStar facility for years. These trends support the need for patients from Wilson County to receive more accessible and cost-effective care within their home county, which will be provided through the development of the proposed ASTC.

High Volume of Outpatient Surgical Cases at Wilson County's Sole Hospital

The volume of outpatient surgical services performed at VWCH, Wilson County's only hospital, has also increased substantially in the past three years. According to JAR data, VWCH experienced a significant increase in its outpatient surgical cases for adults, with cases growing by <u>over 40 percent</u> from 2021 to 2023, the most recent year for which hospital JAR data is available.

Table 1N-1.14
VWCH Outpatient Adult Surgical Cases
2021-2023

	2021	2022	2023	% Change, 2021-2023
VWCH	3,279	4,024	4,610	40.6%

Source: 2021-2023 JARs.

By point of comparison, the population of Wilson County grew at a rate of 11.1 percent from 2019 to 2024, which is itself double the population growth rate of Tennessee overall over that period of time.

This rapid growth in outpatient surgical services in a hospital setting is significant, as it can affect a hospital's ability to provide higher acuity care – the kind of care that can only be provided at an inpatient care facility. In fact, a large portion of the total volume of surgical services provided at VWCH from 2021 to 2023 was for surgery specialties that could largely be provided in an outpatient setting. According to the JARs for hospitals from 2021 to 2023, the specialties that LCOS will perform at its proposed ASTC, shaded in Table 1N-1.15 below in green, accounted for a plurality (42.7 percent) of the total volume of outpatient surgical cases performed at VWCH over that period of time.

Table 1N-1.15

VWCH Outpatient Adult Surgical Cases by Specialty
2021-2023

		Cases						
Specialty	2021	2022	2023	Total, 2021- 2023	% of Total, 2021-2023			
Oncology	881	1,091	1,420	3,392	28.5%			
Orthopedics	810	895	1,206	2,911	24.4%			
General Surgery	607	542	643	1,792	15.0%			
Urology	372	525	411	1,308	11.0%			
Obstetrics	213	234	222	669	5.6%			
Cosmetic	142	212	123	477	4.0%			
Vascular	106	142	78	326	2.7%			
Gynecology	72	117	118	307	2.6%			
Other*	0	65	145	210	1.7%			
Pain Management	29	61	59	149	1.3%			
ENT	24	37	76	137	1.2%			
Endoscopy	3	57	17	77	0.6%			
Ophthalmology	0	0	66	66	0.6%			
Dental	10	27	26	63	0.5%			
Podiatry	8	18	0	26	0.2%			
Pulmonary	1	1	0	2	0.0%			
Oral Surgery	1	0	0	1	0.0%			
Acupuncture	0	0	0	0	0.0%			
Neurology	0	0	0	0	0.0%			
Total	3,279	4,024	4,610	11,913	100.0%			

Source: 2021-2023 JARs.

Some of the percentages in the table above are relatively high, particularly when comparing the percentages by specialty for ASTC facilities over the same period of time. For instance, according to the 2021 through 2023 JARs for the ASTCs in Wilson County, the percentage of outpatient general surgery cases performed at Wilson County ASTCs accounted for only 0.5 percent of all cases over that period of time. In contrast, general surgery cases accounted for 15.0 percent of total outpatient surgery cases performed at VWCH – significantly higher than the corresponding Wilson County ASTC share.

^{*} As reported in the JARs, "Other" includes trauma and cardiac surgical services.

Table 1N-1.16
Outpatient General Surgery Cases by Wilson County Facility 2021-2023

Wilson County Facilities	General Surgery Cases, 2021-2023	Total Cases, 2021-2023	General Surgery % of Total Cases
ASTC*	68	13,228	0.5%
Hospital**	1,792	11,913	15.0%

Source: 2021-2023 JARs.

The data presented in Table 1N-1.16 are significant, as many of these hospital-based general surgery cases could effectively be performed in an ASTC setting, based on the experience of the Applicant and its affiliates, and as indicated in the physician letters of support included as Attachment 1N-1.2. Since hospital operating rooms are needed for higher acuity outpatient and all inpatient cases, the development of the proposed ASTC will allow for appropriate lower acuity outpatient cases to be performed in that setting, freeing up hospital capacity for more higher-acuity cases, thereby assuring that it continues to perform efficiently and at a high utilization. And as will be discussed further below, an ASTC represents a more accessible and efficient setting for patients needing outpatient surgery. The development of another ASTC in Wilson County, therefore, will enable Wilson County's sole acute care hospital to focus more on higher-acuity outpatient and inpatient services, particularly as its volume of surgical cases continues to increase given the growth of Wilson County overall.

Cost Savings Available to Patients Receiving Care at an ASTC Facility

As mentioned briefly above, the proposed conversion of TriStar Summit HOPD to an ASTC is a development that will positively impact Wilson County patients and payors. The charges for surgical services will be lower in an ASTC setting compared to a hospital-based setting. According to data from CMS, many of the procedures that are expected to be provided at LCOS are historically less costly when provided at an ASTC than in a hospital setting; in fact, most Medicare patients will experience savings in the ASTC setting ranging from 38.5 percent to as high as 53.6 percent. Table 1N.1-17, below, details these average cost savings.

^{*} Includes Lebanon Endoscopy Center, Providence, and Phoenix/LSC.

^{**} Includes VWCH.

Table 1N-1.17
Procedures to be Performed at LCOS by CPT Code
Comparison of ASTC and HOPD Payments for Medicare Patients

	CPT		Facilit	ty Fee	Patient	Payment	Sav	rings Calculat	ions
Specialty	Code	Procedure Name	Hospital	ASTC	Hospital	ASTC	Patient Savings	Total Savings	% Patient Savings
GI	45380	COLONOSCOPY AND BIOPSY	\$1,179	\$632	\$273	\$164	\$109	\$547	39.9%
GI	45385	LESION REMOVAL COLONOSCOPY	\$1,179	\$632	\$283	\$174	\$109	\$547	38.5%
GI	45378	DIAGNOSTIC COLONOSCOPY	\$911	\$489	\$217	\$132	\$85	\$422	39.2%
ENT	30520	REPAIR OF NASAL SEPTUM	\$3,243	\$1,394	\$778	\$408	\$370	\$1,849	47.6%
ENT	42830	REMOVAL OF ADENOIDS	\$3,243	\$1,394	\$690	\$320	\$370	\$1,849	53.6%
ENT	42820	REMOVE TONSILES AND ADENOIDS	\$5,915	\$2,917	\$1,240	\$640	\$600	\$2,998	48.4%
General	47562	LAPAROSCOPIC CHOLECYSTECT OMY	\$5,834	\$2,860	\$1,295	\$701	\$594	\$2,974	45.9%
Ortho	29881	KNEE ARTHOSCOPY / SURGERY	\$3,244	\$1,579	\$755	\$422	\$333	\$1,665	44.1%
Ortho	29827	ARTHROSCOPY ROTATOR CUFF REPAIR/SHOULD ER	\$7,143	\$3,510	\$1,638	\$912	\$726	\$3,633	44.3%
Ortho	64721	CARPAL TUNNEL SURGERY	\$1,952	\$924	\$477	\$271	\$206	\$1,028	43.2%
Ortho	26055	INCISE FINGER TENDON SHEATH	\$1,600	\$838	\$378	\$225	\$153	\$762	40.5%
Spine	63047	REMOVE SPINE LAMINA 1 LMBR	\$7,143	\$3,510	\$1,646	\$920	\$726	\$3,633	44.1%
Joints	27447	TOTAL KNEE ARTHROPLASTY	\$12,866	\$9,255	\$1,927	\$2,102	-\$175	\$3,611	-9.1%
Joints	27130	TOTAL HIP ARTHROPLASTY	\$12,866	\$9,449	\$1,927	\$2,140	-\$213	\$3,417	-11.1%
Pain	62323	NJX INTERLAMINAR LMBR/SAC	\$692	\$371	\$157	\$93	\$64	\$321	40.8%
Pain	64493	INJ PARAVERT F JNT L/S 1 LEV	\$890	\$477	\$195	\$112	\$83	\$413	42.6%
Podiatry	28285	REPAIR OF HAMMERTOE	\$3,244	\$1,579	\$724	\$391	\$333	\$1,665	46.0%

Source: "Procedure Price Lookup," Medicare.gov, Centers for Medicare & Medicaid Services, accessed April 14, 2025 at https://www.medicare.gov/procedure-price-lookup//.

Note: Procedures 29827, 63047, 27447, and 27130, when performed at hospital outpatient departments, may be subject to the Original Medicare \$1,676 copayment cap.

Of note, the possibility of performing many of the services historically performed in a hospital setting at an ASTC is an ongoing trend. Procedures such as mastectomies, joint replacements, and gallbladder removals were once highly invasive procedures that required an extensive inpatient stay. Advances in technology have enabled these procedures to be

done less invasively, where patients now require minimal recovery time and are typically released within the same day. In addition, Medicare and private insurers are increasing the number of procedures that can be reimbursed at non-hospital facilities. The result has been an increase in the relative share of outpatient surgery cases performed overall, an increase that is expected to continue given the changes in payment and technology discussed above.

Healthcare insurance plans are also increasingly structured to steer patients and physicians toward lower-cost options for care. Most insurance companies tier patients' out-of-pocket requirements depending on the type of facility where they receive care. Insurance companies categorize hospital-based services in a higher tier than they do freestanding outpatient services, meaning that the patient's out-of-pocket expenses are typically higher when receiving hospital-based care, regardless of whether the service is classified as inpatient or outpatient care. Since freestanding facilities such as ASTCs are categorized in a lower tier, patients benefit from lower out-of-pocket expenses when they choose freestanding services. For all payors, the lower charge structure associated with a freestanding setting increases the affordability of the services offered in the facility. As a result, many payors now require specific procedures to be performed in freestanding settings. Thus, many communities – particularly growing communities like Wilson County – need to provide an accessible and readily available freestanding option for multispecialty ambulatory surgical care to patients and payors.

In addition to typically offering lower costs, ASTCs are also recognized for providing high quality care. The Leapfrog Group's Patient Experience Report shows that patients report more favorable experiences at ASTCs compared to HOPDs. In all four areas of patient experience, ASTCs were rated statistically significantly better by their patients than patients of HOPDs. Further, physicians enjoy enhanced productivity, greater scheduling flexibility, more consistent nurse staffing, and faster turnaround time between cases. This allows them to perform more surgeries in less time with superior patient outcomes, reduces infection rates, and results in lower rates of medical error. Freestanding facilities also provide convenient access away from congested healthcare campuses and offer flexible scheduling for patients since they do not have to accommodate the more urgent needs of inpatients, emergency patients, or observation patients.

Ultimately, a freestanding ASTC will increase the volume of high-quality, lower cost surgical services to Wilson County, reducing patient travel and encouraging outpatient procedures to shift to a freestanding setting when appropriate. Given the inability of the existing multispecialty ASTC in Lebanon to meet this demand, the proposed project will bring these benefits of an ASTC operated by a highly experienced, high-quality operator that has the support of numerous area physicians.

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experience Surveys. The Leaptrog Group. 2021, accessed at https://weintender.org/ experience-report, p. 5.

[&]quot;What Patients Think About Their Hospitals and Ambulatory Surgery Centers: An Analysis of Patient Experience Surveys." The Leapfrog Group. 2021, accessed at https://www.leapfroggroup.org/patient-

Population Growth in Wilson County

Wilson County, the location of the proposed ASTC, has been growing particularly quickly. According to Tennessee Department of Health data, Wilson County added over 15,000 residents from 2019 to 2024. This equates to an 11.1 percent population growth rate. Notably, this is more than doi:10.1001/journal.org/11.1 percent population growth rate for the state of Tennessee over that period of time.

Table 1N-1.18

Historical Population Growth – Wilson County and Tennessee
2019 - 2024

	2019 Population		2024	4 Population		% Change		
Wilson	County	144,65	6		160,783		11.1%	
Tenne	ssee	6,829,1	16	7	7,125,908		4.3%	
Source:	Tennessee	Department	of	Health	Population	data,	accessed	at

Source: Tennessee Department of Health Population data, acceptibles://www.tn.gov/health/health-program-areas/statistics/health-data/population.html.

This growth is expected to continue, with Wilson County projected to add approximately 12,000 residents between 2024 and 2028, reflecting a projected population growth rate of 7.6 percent. This continues to be a higher growth rate than that of Tennessee, which is only projected to grow by 2.9 percent during this period.

Table 1N-1.19
Projected Population Growth – Wilson County and Tennessee
2024 – 2028

		2024 Popu	Population 2028 Population		8 Population		% Change	
Wilson	County	160,78	3		172,941		7.6%	
Tenne	ssee	7,125,90	08		7,331,859		2.9%	
Source:	Tennessee	Department	of	Health	Population	data,	accessed	a

https://www.tn.gov/health/health-program-areas/statistics/health-data/population.html.

Not only is the projected growth in Wilson County significant compared to Tennessee as a whole, the Department of Health projects that Wilson County will be the third-fastest growing county in the entire state, surpassed only by Rutherford and Williamson counties.

Of particular relevance to the proposed project, much of this growth is concentrated in ZIP codes encompassing and surrounding the city of Lebanon – the location of TriStar Summit HOPD and the proposed ASTC. As shown in Figure 1N-1.5, below, LCOS will be located in ZIP code 37090.

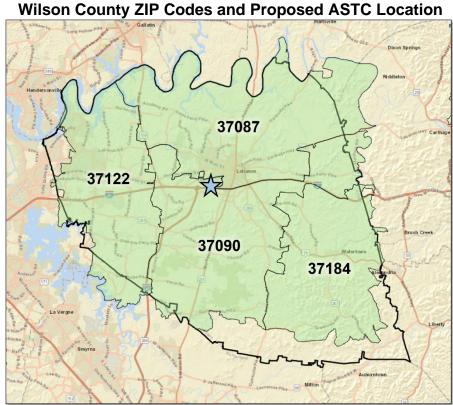
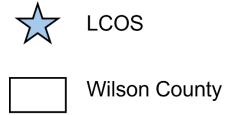


Figure 1N-1.5
Wilson County ZIP Codes and Proposed ASTC Location

Source: Esri.



This ZIP code, as well as its bordering ZIP code to the north, ZIP code 37087, are the two fastest-growing ZIP codes in Wilson County by percentage. In fact, according to Esri, a national geographic information and data analysis resource, ZIP codes 37090 and 37087 were the two fastest-growing ZIP codes by percentage of all Wilson County ZIP codes from 2020 to 2024. In fact, both grew at a faster compound annual growth rate ("CAGR") than the population of Wilson County overall, which grew at a CAGR of 2.9 percent.

Table 1N-1.20
Historical Population Growth – Wilson County ZIP Codes
2020 – 2024

	2020 Population	2024 Population	CAGR*
37090 (Lebanon)	19,046	23,589	5.5%
37087 (Lebanon)	50,605	57,403	3.2%
37122 (Mount Juliet)	63,549	70,022	2.5%
37184 (Watertown)	6,336	6,468	0.5%
Wilson County	147,737	165,860	2.9%

Source: Esri, accessed March 18, 2025. See <u>Attachment 1N-1.3</u>. Population by ZIP code is not available from the TN Department of Health. Please note there are additional ZIP codes with the majority of their geographic area outside of Wilson County; as such, they have not been included in the analysis above. These excluded ZIP codes account for the difference between the total population of the four ZIP codes and the total population of Wilson County.

These two Lebanon ZIP codes are also projected to continue growing, with ZIP codes 37090 and 37087 projected to grow at a CAGR of 3.0 and 2.8 percent, respectively, between 2024 and 2029. These two population growth rates are significantly higher than that projected for Wilson County overall, which is 2.1 percent.

Table 1N-1.21
Projected Population Growth – Wilson County ZIP Codes
2024 – 2028

	2024 Population	2028 Population	CAGR*
37090 (Lebanon)	23,589	27,376	3.0%
37087 (Lebanon)	57,403	65,803	2.8%
37122 (Mount Juliet)	70,022	75,746	1.6%
37184 (Watertown)	6,468	6,671	0.6%
Wilson County	165,860	184,005	2.1%

Source: Esri, accessed March 18, 2025. See <u>Attachment 1N-1.3</u>. Population by ZIP code is not available from the TN Department of Health. Please note there are additional ZIP codes with the majority of their geographic area outside of Wilson County; as such, they have not been included in the analysis above. These excluded ZIP codes account for the difference between the total population of the four ZIP codes and the total population of Wilson County.

Given that Lebanon is among the <u>fastest-growing cities in the entire country</u>, with a population growth rate that was 12th among all U.S. cities,¹³ this growth will drive the need for additional healthcare resources, such as additional surgical services.

Lastly, the areas in and around the town of Lebanon are some of the most densely populated in Wilson County, meaning that there is a significant volume of patients in that

^{*} Compound annual growth rate.

^{*} Compound annual growth rate.

Wrather, Meg. "Lebanon among nation's fastest-growing cities." *Nashville Business Journal*, May 23, 2024, accessed at https://www.bizjournals.com/nashville/news/2024/05/23/lebanon-among-nations-fastest-growing-cities.html.

area seeking care. As shown in Figure 1N-1.6, below, the proposed location of LCOS is close to Wilson County census tracts with particularly high populations per square mile.

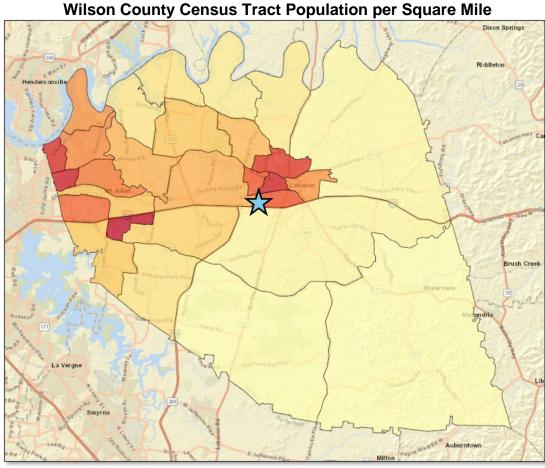


Figure 1N-1.6
Wilson County Census Tract Population per Square Mile

Source: Esri. Population by census tract is not available from the TN Department of Health.





The concentrated growth of the population in Lebanon and the immediately surrounding areas are additional proof of the need for accessible and cost-effective services to serve the community. It follows, therefore, that this growing population will greatly benefit from surgical care that is more accessible, more cost-effective, and that offers high standards of care quality and patient experience. The proposed project will enhance all these measures

for Wilson County patients.

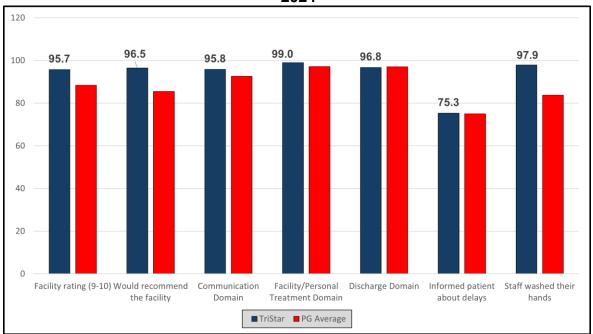
Experience of LCOS's Affiliates in Providing High Quality Care in Tennessee

As discussed above, TriStar Summit Medical Center already operates an HOPD at the site of the proposed ASTC and has accumulated nearly one year of experience of providing care at that facility to the patients of Wilson County and the surrounding area. Moreover, LCOS's network of affiliates has additional experience providing outpatient surgical care in Tennessee and follows numerous established guidelines and policies to ensure that the care delivered is of the highest quality.

First, Surgery Ventures, Powered by HCA Healthcare ("Surgery Ventures"), an affiliate of the proposed ASTC, is an experienced provider of ambulatory surgical care in Tennessee. Currently, Surgery Ventures operates 7 existing ASTCs in Tennessee, including 6 in nearby Davidson County. At the national level, Surgery Ventures operates, and jointly owns with physicians, 153 ASTCs throughout the United States. Located in 16 states, with more than 6,000 colleagues and approximately 3,400 physician partners, Surgery Ventures is focused on collaborating with physicians to provide high-quality, personalized outpatient care. Each year, Surgery Ventures cares for over 700,000 patients. Surgery Ventures' ASTCs are built on quality care and a commitment to providing patients with healthier tomorrows. The vast experience of Surgery Ventures and HCA Healthcare in developing, syndicating, and operating ASTCs throughout the country – including in Middle Tennessee – will support the proposed project.

Additionally, TriStar Summit HOPD has already received stellar feedback from patients through care surveys and qualitative assessments. A survey on patient experience conducted by Press Ganey found that, from the start of its services in June 2024 to the end of December 2024, TriStar Summit HOPD placed in the 93rd percentile (top 7 percent) for overall quality among all ambulatory surgery facilities surveyed. This included ranking in the 98th percentile (top 2 percent) of those patients who answered that they would recommend the facility to others. The results of this survey are shown in Figure 1N-1.7, below. Additional results from this survey are shown both graphically below and in Attachment 1N-1.4.

Figure 1N-1.7
Top Box Press Ganey Scores for TriStar Summit HOPD
2024



Source: Press Ganey Results, 2025. Scores represent random sampling of 144 TriStar Summit HOPD patients from June – December 2024.

Lastly, LCOS will utilize existing policies for HCA Healthcare in ensuring both patient accessibility and high-quality care. HCA Healthcare has existing Access to Services, Charity Discount, and Uninsured Discount policies that are also utilized by Surgery Ventures for its existing Tennessee ASTCs. LCOS will follow these policies to ensure patients can access its services, regardless of their ability to pay. Additionally, HCA Healthcare has an existing Infection Control Plan, a Patient Rights and Responsibilities document, a Patient Safety Plan, and a Safety Management Program, all of which ensure that the care provided to LCOS patients is safe and of the highest standards. These policies have been collected as Attachment 1N-1.5 and are evidence of the ways in which LCOS will follow the same high standards of its partners and ownership, ensuring that its patients receive quality care.

Summary

LCOS believes that there is a clear need for an additional ASTC in Wilson County. Specifically, the need for LCOS to convert the existing HOPD-licensed surgery center at that location to an ASTC is driven by the growing utilization of TriStar Summit HOPD in Wilson County, vocal support from local physicians for additional ASTC resources to more accessibly treat patients, the high number of Wilson County patients seeking outpatient surgical services at ASTCs outside of Wilson County, the growing volume of outpatient surgical cases at Wilson County's sole hospital, the cost savings benefits for patients receiving outpatient surgical care at an ASTC rather than a hospital or an HOPD, and the

growing population of the service area. LCOS ultimately believes that the conversion of the existing TriStar Summit HOPD to an ASTC demonstrates clear benefits over a hospital-based facility and is needed to best serve patients in the service area.

 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.

<u>Response:</u> LCOS has projected the utilization of the proposed ASTC based on the estimated volume of the physicians expected to perform surgical cases at LCOS in its first two project years, as estimated by those physicians and referenced in the collected letters of support in <u>Attachment 1N.1-2.</u>

Based on the average case time for the range of specialties to be provided and the expected turnaround times for ORs and PRs, LCOS will be well utilized. In both Year 1 and Year 2, the ORs are expected to operate above 100 percent of schedulable minutes. This is based on the following assumptions as noted in the "Assumptions in Determination of Need" section, above.

Operating Rooms

- 65 minutes per case
- 30-minute turnaround time per case

Procedure Room

- 30 minutes per case
- 15-minute turnaround time per procedure

The total utilization in Year 2 by OR and PR is presented below. At this point in time, LCOS cannot predict the exact relative use of ORs by time and specialty. Its OR utilization, while projected at a high level in Tables 1N-2.1 and 1N-2.2, below, will vary daily and will be scheduled in partnership with the interested surgeons to maximize the efficiency of their schedules and that of the ASTC. Please note that all values have been rounded.

Table 1N-2.1 Projected Time Usage for ORs/PR 2027 (Year 2)

Operating Rooms	Cases	Average Case Time (Minutes)	Average Turnaround Time (Minutes)	Total Minutes Used	Schedulable Minutes (Full Capacity)*	% of Schedulable Time Used (% of Full Capacity)
OR #1	1,049	65	30	99,608	120,000	83%
OR #2	1,049	65	30	99,608	120,000	83%
TOTAL	2,097	65	30	199,215	240,000	83%

Procedure Rooms	Cases	Average Case Time (Minutes)	Average Turnaround Time (Minutes)	Total Minutes Used	Schedulable Minutes (Full Capacity)*	% of Schedulable Time Used (% of Full Capacity)
PR #1	290	30	15	13,050	120,000	11%
TOTAL	290	30	15	13,050	120,000	11%

^{*} Defined as the summation of the minutes by each room available for scheduled cases.

Example: 8 hours per day and 60 minutes per hour = 480 minutes per day x 5 days per week = 2,400 minutes per week x 50 weeks per year = 120,000 schedulable minutes/room x the number of rooms = surgical suite schedulable capacity.

LCOS projects its utilization based on the range of surgical specialties it expects to provide and the input of the physicians who are supportive of this project. Specifically, LCOS conservatively based its projected utilization on only a portion of the historical volume of cases performed by the 20 interested surgeons and one interested proceduralist group who perform outpatient cases across an array of specialty lines in Wilson County and surrounding areas. In the aggregate, these surgeons and proceduralists state that they will perform thousands of outpatient cases at the proposed ASTC. This discounted case total was used as the Year 2 projected total number of cases. For Year 1, the Year 2 volume was discounted by an additional 15 percent to account for a reasonable period of time for the center to obtain its license, Medicare certification, and contracts with insurance payors.

Please see Attachment 1N.1-2 for the physician letters of support for the proposed project.

Table 1N-2.2
Projected OR/PR Cases by Specialty
2026 and 2027

Specialty	2026	2027						
OR Cases								
ENT Surgery	255	298						
General Surgery	177	207						
Orthopedic Spine Surgery	85	99						
Orthopedic Surgery	588	688						
Podiatry	212	249						
Total Joint Replacement	474	555						
Total OR Cases	1,791	2,097						
PR Ca	ases							
GI/Endoscopy	177	207						
Pain Management	71	83						
Total PR Cases	248	290						
Total Cases	2,039	2,387						

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 is 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.

<u>Response:</u> The primary service area for the proposed project is Wilson County. As discussed in the response to # 1, above, as well as throughout the application, there are three existing ASTCs in Wilson County. The utilization figures for these three ASTCs for the last three years of available data are shown in Table 1N-3.1R2, below.

Table 1N-3.1R2
Individual Historical Utilization of Wilson County ASTCs

			Most Recent 3 Years Reported								
Facility Name	County	Total Outpatient Surgery Cases by Relevant Type 2022	Total Outpatient Surgery Cases by Relevant Type 2023	Total Outpatient Surgery Cases by Relevant Type 2024	Total Outpatient Surgery Cases by Relevant Type 2022- 2024	Outpatient Cases as a % of Total Outpatient Cases					
Lebanon Endoscopy Center	Wilson	2,194	2,095	1,959	6,248	45.5%					
Providence	Wilson	2,485	2,667	2,129	7,281	53.0%					
Phoenix/LSC	Wilson	4	70	126	200	1.5%					
TOTAL		4,683	4,832	4,214	13,729	100.0%					

Source: 2022-2024 JARs.

Nearly all of the multispecialty ASTC surgical cases in Wilson County are performed at Providence, which is located in Mt. Juliet, on the west side of Wilson County. Providence has also been historically well-utilized, and as such LCOS believes that it does not have the capacity to treat Wilson County's rapidly growing population or to accommodate the volume of surgical cases projected for the proposed project.

Conversely, the only existing multispecialty ASTC in Lebanon is Phoenix/LSC. As discussed at length in the response to # 4, below, Phoenix/LSC has historically been underutilized; it also has performed almost *exclusively* general surgery cases since 2022, as shown in Table 1N-3.2, below.

Table 1N-3.2
Phoenix/LSC Historical Cases by Specialty 2022-2024

Specialty	2022	2023	2024	Total	% of Total
General Surgery	2	66	126	194	96.0%
Orthopedics	-	-	-	0	0.0%
Vascular	-	-	2	2	1.0%
Other*	2	4	-	6	3.0%
Total	4	70	128	202	100.0%

Source: 2022-2024 JARs.

This low utilization and low mix of specialty surgery cases is itself indicative of a need for additional patient choices for freestanding surgical services in Lebanon and Wilson County, a need that can be met cost-effectively and efficiently by the conversion of TriStar Summit HOPD, an existing HOPD, to an ASTC.

^{* &}quot;Other" includes cardiology and spine.

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: Please see Table 1N-4.1R, below.

Table 1N-4.1R
Collected Historical Utilization of Wilson County ASTCs

Service Area ASTCs		2024								
	# ASTCs	Operating Rooms	Operating Room Cases	Procedure Rooms	Procedure Room Cases	% of Optimal 884 Cases per OR	% of Optimal 1,867 Cases per PR			
Single-Specialty ASTCs	1	0	0	2	1,959	N/A	52.46%			
Multi-Specialty ASTCs	2	5	2,286	2	95	51.72%	2.54%			
TOTAL/PERCENTAGE	3	5	2,286	4	2,054	51.72%	27.50%			

Service Area ASTCs		2023							
	# ASTCs	'							
Single-Specialty ASTCs	1	0	0	2	2,095	N/A	56.11%		
Multi-Specialty ASTCs	2	5	1,971	2	768	44.59%	20.57%		
TOTAL/PERCENTAGE	3	5	1,971	4	2,863	44.59%	38.34%		

Service Area ASTCs	2022									
	# ASTCs	Operating Rooms	Operating Room Cases	Procedure Rooms	Procedure Room Cases	% of Optimal 884 Cases per OR	% of Optimal 1,867 Cases per PR			
Single-Specialty ASTCs	1	0	0	2	2,194	N/A	58.76%			
Multi-Specialty ASTCs	2	5	2,218	2	272	50.18%	7.28%			
TOTAL/PERCENTAGE	3	5	2,218	4	2,466	50.18%	33.02%			

Source: 2022-2024 JARs.

LCOS has also provided the historical utilization of each existing Wilson County ASTC from 2022 to 2024 in Table 1N-4.2R, below.

Table 1N-4.2R Individual Historical Utilization of Wilson County ASTCs

Service Area ASTCs		2024							
	Specialty	Operating Rooms	Operating Room Cases	Procedure Rooms	Procedure Room Cases	% of Optimal 884 Cases per OR	% of Optimal 1,867 Cases per PR		
Lebanon Endoscopy Center	Single	0	0	2	1,959	N/A	52.46%		
Providence	Multi	2	2,158	1	95	122.06%	5.09%		
Phoenix/LSC	Multi	3	128	1	0	4.83%	0.00%		
TOTAL/PERCENTAGE		5	2,286	4	2,054	51.72%	27.50%		

Service Area ASTCs	2023								
	Specialty	Operating Rooms	Operating Room Cases	Procedure Rooms	Procedure Room Cases	% of Optimal 884 Cases per OR	% of Optimal 1,867 Cases per PR		
Lebanon Endoscopy Center	Single	0	0	2	2,095	N/A	56.11%		
Providence	Multi	2	1,901	1	768	107.52%	41.14%		
Phoenix/LSC	Multi	3	70	1	0	2.64%	0.00%		
TOTAL/PERCENTAGE		5	1,971	4	2,863	44.59%	38.34%		

Service Area ASTCs		2022							
	Specialty	Operating Rooms	Operating Room Cases	Procedure Rooms	Procedure Room Cases	% of Optimal 884 Cases per OR	% of Optimal 1,867 Cases per PR		
Lebanon Endoscopy Center	Single	0	0	2	2,194	N/A	58.76%		
Providence	Multi	2	2,214	1	272	125.23%	14.57%		
Phoenix/LSC	Multi	3	4	1	0	0.15%	0.00%		
TOTAL/PERCENTAGE		5	2,218	4	2,466	50.18%	33.02%		

Source: 2022-2024 JARs.

Currently, only one of the existing ASTCs, Providence, is a viable multispecialty facility. Phoenix/LSC has not provided substantive surgical service to Wilson County residents for many years. Conversely, Providence was *well above* optimal utilization for every year from 2022 to 2024. Indeed, the sole reason that existing ASTC OR providers cannot meet the

optimal standard in the aggregate is the chronic underutilization of Phoenix/LSC.

The proposed project, as discussed throughout this application, will have a significant positive impact on consumers by providing an additional resource for outpatient surgical services, which are more cost-effective and accessible than outpatient surgical services provided in a hospital-based setting.

Additionally, the project will not adversely impact other providers. As shown in Table 1N-3.1R2, there are three existing ASTC providers in Wilson County, two of which are multispecialty ASTCs. Only one of these multispecialty ASTCs, Phoenix/LSC, is in Lebanon, the location of the proposed ASTC. However, Phoenix/LSC has been underutilized historically. The other multispecialty ASTC in Wilson County, Providence, is in Mt. Juliet, a city near the border of Davidson County and as such a destination of care for patients originating from Davidson County, as evidenced by historical utilization data for that facility. Further, as noted, a majority of ASTC patients from Wilson County get their surgeries outside of Wilson County, mostly at the ASTCs in Davidson County. Given this, the need for additional multispecialty outpatient surgical services in Wilson County is apparent.

Phoenix/Lebanon Surgery Center

The sole multispecialty surgery center in Lebanon is Phoenix/LSC. As shown in Table 1N-3.1R2, above, this ASTC accounted for only 1.5 percent of all surgical cases among all Wilson County ASTC providers from 2022 to 2024.

In its letter of opposition to Lebanon Surgicenter's 2020 CON application, included as <u>Attachment 1N-4</u>, USPI/Ascension discussed its decision to purchase Phoenix/LSC, which it claimed "could not recover successfully from operating challenges faced from the ongoing COVID-19 pandemic." It continued that "this almost brand new, fully equipped ASTC, under new ownership and management... will be available to do all of the procedures proposed by [Lebanon Surgicenter]" (emphasis added). 16

Contrary to USPI/Ascension's letter of opposition and statements at the HSDA hearing opposing the 2020 Lebanon Surgicenter application, utilization at Phoenix/LSC – after USPI/Ascension's acquisition of the facility – has remained as low as its volume in 2020, and, in fact, has <u>decreased</u>. After a "peak" of 164 surgical cases in 2020, Phoenix/LSC performed only 128 cases in 2024. Phoenix/LSC also performed only <u>four</u> cases in 2022.

As noted, adverse impact on existing providers is no longer a legitimate consideration under the current CON statute.

[&]quot;Letter of Opposition from USP." February 9, 2021, p. 1.

¹⁶ Ibid. pp. 1-2.

Table 1N-4.3
Phoenix/LSC Historical Surgical Cases
2020-2024

	2020	2021	2022	2023	2024
Total Cases	164	39	4	70	128
% of Surgical Capacity	4.3%	1.0%	0.1%	1.9%	3.4%

Source: 2020-2024 JARs.

Interestingly, and as already stated above, Phoenix/LSC is currently operating at an even <u>lower</u> capacity than it was in 2020, given that it treated fewer patients in 2024 than it did in 2020. It is operating at this lower utilization despite the fact that the population of Wilson County and Lebanon grew substantially during this period, and despite the fact that the number of outpatient surgeries increased. Indeed, Phoenix/LSC is the only ASTC in Wilson County that is operating at a *lower* volume than in 2020, as shown in the table below.

Table 1N-4.4
Wilson County ASTC Historical OR/PR Cases
2020-2024

ASTC	2020	2021	2022	2023	2024	CAGR*
Lebanon Endoscopy Center	1,940	2,095	2,194	2,095	1,959	4.0%
Providence	1,841	1,576	2,486	2,669	2,253	124.3%
Phoenix/LSC	164	39	4	70	128	-62.9%
Total	3,945	3,710	4,684	4,834	4,340	46.5%

Source: 2020-2024 JARs.

Moreover, in 2024, Phoenix/LSC accounted for only 2.9 percent of <u>all_surgical cases</u> performed by Wilson County ASTCs.

Table 1N-4.5
Percentage of Total Surgery Cases per Wilson County ASTC 2024

ASTC	% of Cases
Lebanon Endoscopy Center	45.1%
Providence	51.9%
Phoenix/LSC	2.9%
Total	100.0%

Source: 2024 JAR.

Additionally, Phoenix/LSC does not offer a diverse range of surgical specialties. From 2022 to 2024, <u>96 percent of the total cases performed at Phoenix/LSC were "General Surgery" cases</u>, with only eight total cases attributed to other specialties.

^{*} Compound annual growth rate.

Table 1N-4.6
Phoenix/LSC Historical Cases by Specialty 2022-2024

Specialty	2022	2023	2024	Total	% of Total
General Surgery	2	66	126	194	96.0%
Orthopedics	-	-	-	0	0.0%
Vascular	-	-	2	2	1.0%
Other*	2	4	-	6	3.0%
Total	4	70	128	202	100.0%

Source: 2022-2024 JARs.

Of note, LCOS will perform not only general surgery cases, but also ENT, GI/endoscopy, total joint replacement, orthopedic, spine, podiatry, and pain management surgery cases. The need for an ASTC offering these specialties is attested to by the surgeons who have pledged their support for the proposed ASTC, collected in Attachment 1N-1.2 and discussed throughout this application. As such, the proposed ASTC will also better enable Lebanon patients to access a multispecialty surgery center that will actually perform the specialties needed by patients in the Lebanon community, thereby providing real consumer choice for surgical services in Wilson County.

Phoenix/LSC has also not matched the utilization of TriStar Summit HOPD, despite the latter only being in operation since June 26, 2024 – or, at the time of the submission of this application, less than a year. As shown in Table 1N-4.7, below, TriStar Summit HOPD performed 316 total surgical cases from that opening date through December 31, 2024. This partial year of utilization represents more surgical cases than were performed at Phoenix/LSC in *four years*, from 2021 to 2024. In fact, TriStar Summit HOPD's six months of service in 2024 nearly <u>tripled</u> the number of cases performed at Phoenix/LSC during all of 2024.

Table 1N-4.7
TriStar Summit HOPD and Phoenix/LSC
Historical Cases
2020-2024

ASTC	2021	2022	2023	2024	Total, 2021- 2024
TriStar Summit HOPD	-	-	-	316	316
Phoenix/LSC	39	4	70	128	241

Source: 2021-2024 JARs, internal data.

As such, LCOS will treat a significant volume of Wilson County ASTC patients closer to their homes.

^{* &}quot;Other" includes cardiology and spine.

Providence

Davidson County

The only other existing multispecialty ASTC in Wilson County is Providence. Providence is located in Mt. Juliet, which is in western Wilson County, very near the border of Davidson County. Mt. Juliet is not particularly proximal to Lebanon and is in fact a nearly 25-minute and 15-mile drive from Lebanon according to Google Maps.

Figure 1N-4.1

Providence Location Relative to Davidson and Wilson Counties

Mt. Juliet

Providence

Wilson County

Given the historical and projected population growth of Lebanon and the areas around Lebanon, discussed in the response to # 1, above, it follows that patients in that area will need additional ambulatory surgical resources to match the growing population of their community. Additionally, according to JAR data, only 1,018 of the 2,126 patients at Providence in 2024 originated from Wilson County. This equates to less than 50 percent of its total patients. As shown in Table 1N-4.8R, below, Providence had the lowest percentage of patients from Wilson County among all three Wilson County ASTCs.

Table 1N-4.8R
Wilson County ASTC Patient Origin
2024

County	Wilson County	Wilson %	Davidson County	Davidson %	Other Counties*	Other %	Total Patients
Lebanon Endoscopy Center	1,116	57.0%	181	9.2%	662	33.8%	1,959
Providence	1,018	47.9%	554	26.1%	554	26.1%	2,126
Phoenix/LSC	81	63.3%	2	1.6%	45	35.2%	128
Total	2,215	52.6%	737	17.5%	1,261	29.9%	4,213

Source: 2024 JAR.

In fact, over a quarter of Providence's total patients in 2024 instead originated from *Davidson* County – which, given the ASTC's proximity to Davidson County, is logical.

In addition to this high volume of inmigration, the specialties provided by Providence vary from those proposed to be offered by LCOS. From 2022 to 2024, Providence performed cases by specialty as shown below.

Table 1N-4.9R
Providence Historical Cases by Specialty
2022-2024

Specialty	2022	2023	2024	Total	% of Total
ENT	582	810	803	2,195	29.6%
Cosmetic Surgery	0	0	123	123	1.7%
General Surgery	0	0	0	0	0.0%
Orthopedics	889	1,046	1,143	3,078	41.6%
Pain	973	768	152	1,893	25.6%
Podiatry	41	43	31	115	1.6%
Vascular	1	2	1	4	0.1%
Total	2,486	2,669	2,253	7,408	100.0%

Source: 2022-2024 JARs.

Of note, Providence performed *no* general surgery cases from 2022 to 2024, while LCOS projects that 8.7 percent of its Year 2 volume will be general surgery cases. Additionally, while Providence does perform orthopedic surgery, LCOS projects a significant number of total joint and orthopedic spine cases, cases that, to LCOS's knowledge, are not currently performed at Providence.

Additionally, the growth in surgical cases from Wilson County clearly demonstrates that the Providence facility alone is not sufficient to provide easily accessible multispecialty care for the patients of Wilson County. As the population of Wilson County increases – and as need

^{*} Other Counties include all other Tennessee counties and areas outside of Tennessee.

for additional ASTC services in Wilson County increases – patients seeking ambulatory surgery services in-county will *have* to seek care at Providence, given that – as stated above – it is effectively the only multispecialty surgery center in the county performing a high volume of care. However, the relatively low volume of Wilson County patients that Providence has historically treated, its proximity to Davidson County, and the inmigration of patients from outside of Wilson County to its facility will likely not ensure that these Wilson County patients have accessible, easily available ASTC resources in the future.

In short, while <u>one</u> of the existing ASTCs in the service area is not currently utilized at 70 percent or above, the LCOS ASTC is needed because Wilson County patients are not using Phoenix/LCS. Rather, they are going to Nashville for outpatient surgeries. Given the repeal of Orderly Development from the statute, Criterion Four should not preclude the approval of the LCOS CON. The multispecialty ASTC in Wilson County – the conversion of the existing TriStar Summit HOPD to an ASTC – will provide an accessible and cost-effective resource for patients and providers in Wilson County.

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.

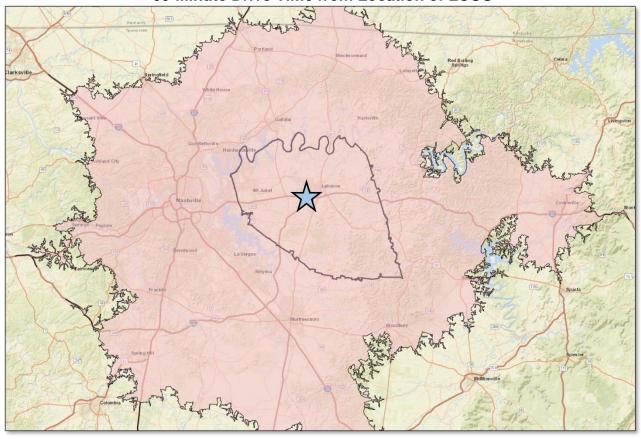
Response: Not applicable. The proposed project does not involve a single-specialty ASTC.

Other Standards and Criteria

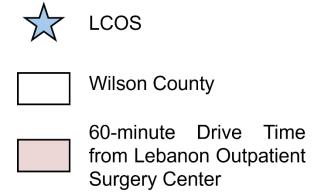
6. <u>Access to ASTCs</u>. The majority of the population in a Service Area should reside within 60 minutes average driving time to the facility.

<u>Response:</u> Please see Figure 1N-6, below, as sourced from Esri. The entirety of Wilson County, which is the service area for the proposed project, is well within a 60-minute drive time from the location of the proposed facility.

Figure 1N-6 60-Minute Drive Time from Location of LCOS



Source: Esri.



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.

<u>Response:</u> The site is located less than 0.5 miles from Exit 236 on I-40, and less than 0.5 miles from South Hartman Drive, a major thoroughfare in Lebanon. Moreover, it is easily accessible by car and other ground transportation. Additionally, the WeGo Star, a commuter

train service, connects Lebanon with the city of Nashville. The Lebanon Station is four miles away from the proposed location of the ASTC. LCOS will work with patients to ensure that safe transportation is available to and from its services.

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.

<u>Response:</u> Please see Table 1N-8, below, for projected patient origin for the projected volume for the first two full fiscal years following initiation of services at LCOS.

Table 1N-8
Projected Patient Origin at LCOS
2026 and 2027

County	Patients, 2026	Patients, 2027	% of Total, 2026 and 2027
Wilson	1,733	2,029	85.0%
Smith	86	100	4.2%
Rutherford	62	73	3.0%
Davidson	53	62	2.6%
Sumner	45	53	2.2%
Trousdale	40	47	2.0%
DeKalb	19	22	0.9%
Total	2,039	2,387	100.0%

As shown in Table 1N-8, above, LCOS has estimated that 85 percent of its projected cases will be for patients originating from Wilson County, while 15 percent will be from other counties that are contiguous with Wilson County, for both Year 1 and Year 2 of its proposed project. LCOS believes this is a reasonable assumption, as evidenced by the collected physician support for the proposed ASTC, the location of the proposed ASTC in Lebanon, the high number of patients who are currently outmigrating from Wilson County for outpatient surgical care, and the population growth of Wilson County. This assumption is also supported by the low volume of the only other multispecialty ASTC in Lebanon, Phoenix/LSC. Given that Lebanon is the largest municipality in Wilson County by population and is centrally located in the county, LCOS believes it is reasonable that the majority of its patients will originate from that county.

The remaining 15 percent of projected patients originate from counties that are contiguous

with Wilson County. LCOS calculated these shares of patients based on the historical patient origin for surgeons who have expressed interest in treating patients at the proposed ASTC. LCOS believes it is reasonable to assume that patient origin for cases performed at the proposed ASTC will be similar to these surgeons' current patient origin, and some portion of patients in counties contiguous to Wilson County will likely inmigrate to Wilson County for care.

The demographic factors and special needs of the proposed service area are described in the responses to both Question 3N and Question 4N. Wilson County's population has both historically grown and is projected to grow quickly; this rapid population growth will necessitate additional healthcare resources such as the ASTC proposed in this application. Additionally, a minority of patients who live in Wilson County currently receive outpatient surgical services in Wilson County, as discussed in the responses above. As such, the proposed project is necessary for the patients of Wilson County to receive additional accessible and cost-effective ASTC services.

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: Please see Table 1N-9.1, below, for projected utilization for the first two full fiscal years following initiation of services at LCOS. Table 1N-9.1, which replicates Table 1N-2.2, above, also projects utilization by case type.

Table 1N-9.1
Projected OR/PR Cases by Specialty
2026 and 2027

Specialty	2026	2027				
OR Cases						
ENT Surgery	255	298				
General Surgery	177	207				
Orthopedic Spine Surgery	85	99				
Orthopedic Surgery	588	688				
Podiatry	212	249				
Total Joint Replacement	474	555				
Total OR Cases	1,791	2,097				
PR Ca	ases					
GI/Endoscopy	177	207				
Pain Management	71	83				
Total PR Cases	248	290				
Total Cases	2,039	2,387				

Additionally, please see Table 1N-9.2, below, for projected utilization for the first two full fiscal years as segmented by quarter.

Table 1N-9.2
Projected OR/PR Cases by Specialty by Quarter 2026 and 2027

0			2026					2027		
Specialty	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Q4	Total
OR Cases										
ENT Surgery	45	61	75	75	255	75	75	75	75	298
General Surgery	31	42	52	52	177	52	52	52	52	207
Orthopedic Spine Surgery	15	20	25	25	85	25	25	25	25	99
Orthopedic Surgery	103	140	172	172	588	172	172	172	172	688
Podiatry	37	51	62	62	212	62	62	62	62	249
Total Joint Replacement	83	113	139	139	474	139	139	139	139	555
Total OR Cases	314	428	524	524	1,791	524	524	524	524	2,097
				PR	Cases					
GI/Endoscopy	31	42	52	52	177	52	52	52	52	207
Pain Management	12	17	21	21	71	21	21	21	21	83
Total PR Cases	43	59	73	73	248	73	73	73	73	290
Total Cases	358	487	597	597	2,039	597	597	597	597	2,387

Note: Some totals may not equate due to rounding.

LCOS projects its utilization based on the range of surgical specialties it expects to provide

and the input of the physicians who are supportive of this project. Specifically, LCOS, conservatively, based its projected utilization on only a portion of the historical volume of cases performed by the 20 interested surgeons and one interested proceduralist group who perform outpatient cases across an array of service lines in Wilson County and surrounding areas. In the aggregate, these surgeons and proceduralists state that they will perform thousands of outpatient cases at the proposed ASTC. This discounted case total was used as the projected total number of cases in Year 2. For Year 1, the Year 2 volume was discounted by an additional 15 percent to account for a reasonable period of time for the center to obtain its license, Medicare certification, and contracts with insurance payors.

Please see <u>Attachment 1N.1-2</u> for the physician letters of support for the proposed project.

- 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: LCOS will seek accreditation by The Joint Commission.

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 offsite.

<u>Response:</u> LCOS has received expressions of interest from a number of physicians to perform surgeries at the proposed facility. These and other letters of support can be found in <u>Attachment 1N-1.2.</u> A current estimate of the number of physicians providing each specialty is provided below. Of note, some physicians attested to being able to perform multiple specialties of surgery.

Table 1N-10
Specialties Available at LCOS

Specialty	# of MDs Able to Perform
ENT Surgery	5
General Surgery	1
GI/Endoscopy	1*
Orthopedic Spine Surgery	3
Orthopedic Surgery	12
Pain Management	1
Podiatry	2
Total Joint Replacement	4

^{*} Represents one interested proceduralist group.

LCOS anticipates that other physicians will seek privileges to join its surgical staff as the facility is constructed and after its opening. As such, the number of physicians above is not final, and only represents support that has been provided at the time of submission of this application.

Verification for extending surgical and anesthesia privileges will be secured for the following credentials:

- State license(s)
- Drug Enforcement Administration registration
- State controlled substance registration
- Specialty board certification
- Advanced Practice Professional specialty certification
- Background Check
- Professional Liability Claims History
- Exclusion Lists (OIG, GSA, State)

TriStar Summit Medical Center and Surgery Ventures, both affiliates of the proposed ASTC, have long histories of recruiting, training, and retaining ancillary and support personnel. LCOS will utilize these same resources to ensure the availability of qualified personnel for the proposed 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:

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

<u>Response:</u> According to the United States Health Resources and Services Administration ("HRSA"), Wilson County is designated as a Medically Underserved Area. See <u>Attachment 1N-11</u>. In addition, Lebanon and parts of eastern Wilson County are recognized as a Health Professional Shortage Area, with a lack of primary care resources for low-income individuals.¹⁷ The proposed ASTC will offer a lower-cost setting for individuals needing outpatient surgical services.

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. The proposed project is not a hospital.

 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

<u>Response</u>: LCOS will contract with both Medicare and TennCare/Medicaid and will contract with multiple TennCare MCOs. Please see the response to Question 2C and Question 4Q, as well as Attachment 2C.

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.

<u>Response:</u> Not applicable. The services to be provided at LCOS do not typically require longer preparation, as evidenced by the average OR case time of 65 minutes and average PR case time of 30 minutes noted in response to # 2, above.

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[&]quot;HPSA Find." Health Resources & Services Administration, accessed April 14, 2025, at https://data.hrsa.gov/tools/shortage-area/hpsa-find.

ORIGINAL APPLICATION



Date LOI was Published: 04/15/25

State of Tennessee Health Facilities Commission

502 Deaderick Street, Andrew Jackson Building, 9th Floor, Nashville, TN 37243

Phone: 615-741-2364

www.tn.gov/hsda

hsda.staff@tn.gov

CERTIFICATE OF NEED APPLICATION

Lebanon Center for Outpatient Surgery		
Name		
125 Willard Hagan Dr		Wilson County
Street or Route		County
Lebanon	Tennessee	37090
City	State	Zip
Under Development		
Website Address		
Note: The facility's name and address must be Publication of Intent.	e the name and address of the projection	eet and <u>must be</u> consistent with
2A. Contact Person Available for Respons	es to Questions	
2A. Contact Person Available for Respons Daniel Winkler	es to Questions	Vice President - Operations
•	es to Questions	
Daniel Winkler		Operations Operations
Daniel Winkler Name		Operations Title
Daniel Winkler Name Surgery Ventures, Powered by HCA Healthcare		Operations Title aniel.Winkler@SurgeryVentures.c
Daniel Winkler Name Surgery Ventures, Powered by HCA Healthcare Company Name		Operations Title aniel.Winkler@SurgeryVentures.c
Daniel Winkler Name Surgery Ventures, Powered by HCA Healthcare Company Name 1000 Healthpark Drive, Bldg. 3, Suite 500		Operations Title aniel.Winkler@SurgeryVentures.c
Daniel Winkler Name Surgery Ventures, Powered by HCA Healthcare Company Name 1000 Healthpark Drive, Bldg. 3, Suite 500 Street or Route		Operations Title aniel.Winkler@SurgeryVentures.c
Daniel Winkler Name Surgery Ventures, Powered by HCA Healthcare Company Name 1000 Healthpark Drive, Bldg. 3, Suite 500 Street or Route Brentwood	Tennessee	Operations Title aniel.Winkler@SurgeryVentures.c mail Address 37027

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6A. Name of Owner of the Facility, Agency, or Institution

Lebanon Surgicenter, LLC

Hospital -

Name

One Park Plaza	615-344-2000	
Street or Route		Phone Number
Nashville	Tennessee	37203
City	State	Zip
7A. Type of Ownership of Control (Check C	One)	
□ Sole Proprietorship	,	
☐ Partnership		
☐ Limited Partnership		
☐ Corporation (For Profit)		
☐ Corporation (Not-for-Profit)		
☐ Government (State of TN or Political Subdiv	rision)	
☐ Joint Venture		
☑ Limited Liability Company		
☐ Other (Specify)		
Describe the existing or proposed ownership structur Explain the corporate structure and the manner in applicable, identify the members of the ownership en 5% ownership (direct or indirect) interest.	which all entities of the ownership	structure relate to the applicant. As
RESPONSE: Please see Attachment 7A-1 for a copy the Applicant from the Tennessee Secretary of State. I Lebanon Surgicenter, LLC, which will own and opera	Please also see Attachment 7A-2 for	
8A. Name of Management/Operating Entity Surgicare of Lebanon, LLC		
Name		
13355 Noel Road, Suite 1200		Dallas
Street or Route		County
Dallas	Texas	75240
City	State	Zip
Under Development		

Website Address

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 schedule. For facilities with existing management agreements, attach a copy of the fully executed final contract. (Attachment 8A)

9A. Legal Interest in the Site

The legal interest described below must be valid on the date of the Agency consideration of the Certificate of Need application.

☐ Ownership (Applicant or applicant's parent company/owner) — Attach a copy of the title/deed.

☐ Lease (Applicant or applicant's parent company/owner) — Attach a fully executed lease that includes the terms of the lease and the actual lease expense.

☐ Option to Purchase - Attach a fully executed Option that includes the anticipated purchase price.

☐ Option to Lease - Attach a fully executed Option that includes the anticipated terms of the Option and anticipated lease expense.

☐ Letter of Intent, or other document showing a commitment to lease the property - attach reference document

☐ Other (Specify)

Check the appropriate box and submit the following documentation. (Attachment 9A)

RESPONSE: Please see Attachment 9AR for both an executed lease for the proposed project site for HCA Health Services of Tennessee, an affiliate of the proposed project, as well as an option to sublease from HCA Health Services of Tennessee to Lebanon Surgicenter, LLC.

10A. Floor Plan

If the facility has multiple floors, submit one page per floor. If more than one page is needed, label each page. (Attachment 10A)

- Patient care rooms (Private or Semi-private)
- Ancillary areas
- Other (Specify)

RESPONSE: Please see Attachment 10A for the floor plan of TriStar Summit HOPD, the existing hospital outpatient department ("HOPD") that will be converted into this ASTC following approval of this CON. No major construction or renovation will be required to implement this conversion.

11A. Public Transportation Route

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. (Attachment 11A)

RESPONSE: The site is located less than 0.5 miles from Exit 236 on I-40, and less than 0.5 miles from South Hartman Drive, a major thoroughfare in Lebanon. Moreover, it is easily accessible by car and other ground transportation. Additionally, the WeGo Star, a commuter train service, connects Lebanon with the city of Nashville. The Lebanon Station is four miles away from the proposed location of the ASTC.

12A. Plot Plan

Unless relating to home care organization, briefly describe the following and attach the requested documentation on a letter size sheet of white paper, legibly labeling all requested information. It **must** include:

- Size of site (in acres);
- Location of structure on the site;
- Location of the proposed construction/renovation; and
- Names of streets, roads, or highways that cross or border the site.

13A. Notification Requirements

municipality is the lessor of the facility or real property on which it sits, then within ten (10) days of filing the application, the applicant shall notify the chief executive officer of the county or municipality of the filing, by certified mail, return receipt requested." Failure to provide the notifications described above within the required statutory timeframe will result in the voiding of the CON application.
☐ Notification Attached (Provide signed USPS green-certified mail receipt card for each official notified.)
☐ Notification in process, attached at a later date
☐ Notification not in process, contact HFC Staff
☑ Not Applicable
• TCA §68-11-1607(c)(9)(A) states that " Within ten (10) days of the filing of an application for a nonresidential substitution based treatment center for opiate addiction with the agency, the applicant shall send a notice to the county mayor of the county in which the facility is proposed to be located, the state representative and senator representing the house district and senate district in which the facility is proposed to be located, and to the mayor of the municipality, if the facility is proposed to be located within the corporate boundaries of the municipality, by certified mail, return receipt requested, informing such officials that an application for a nonresidential substitution based treatment center for opiate addiction has been filed with the agency by the applicant.
☐ Notification Attached (Provide signed USPS green-certified mail receipt card for each official notified.)
☐ Notification in process, attached at a later date
☐ Notification not in process, contact HFC Staff
☐ Not Applicable

EXECUTIVE SUMMARY

1E. Overview

Please provide an overview not to exceed **ONE PAGE** (for 1E only) in total explaining each item point below.

• Description: Address the establishment of a health care institution, initiation of health services, and/or bed complement changes.

RESPONSE:

The Lebanon Center for Outpatient Surgery ("LCOS"), a multispecialty ambulatory surgical treatment center ("ASTC"), is a conversion of the existing TriStar Summit HOPD, an HOPD of HCA TriStar Summit Medical Center, a hospital located on the eastern edge of Davidson County and an affiliate of the Applicant, Lebanon Surgicenter, LLC. TriStar Summit HOPD has experienced rapid utilization growth since it began performing surgeries on June 26, 2024. The Applicant has support from 20 interested surgeons and one interested proceduralist group who will be performing cases at LCOS. Based on the level of interest from surgeons who regularly provide surgery services for Wilson County residents, the Applicant projects that the LCOS will exceed the optimal utilization for cases in its operating rooms ("ORs") (884 per OR) in its first year. The proposed ASTC will have two (2) ORs and one (1) procedure room ("PR"), and will perform General Surgery, ENT surgery, GI/Endoscopy, Orthopedic Surgery, Total Joint Replacement, Orthopedic Spine Surgery, Podiatry, and Pain Management procedures. The proposed ASTC will offer numerous advantages to patients and operating physicians, including: serving as the first ASTC in Lebanon that offers an accessible platform for outpatient surgeries in an ASTC setting; providing outpatient surgeries at a materially lower cost to patients than in-hospital outpatient surgeries while maintaining the highest level of quality; enabling hospital-based surgical departments to focus on higher acuity, emergency, and inpatient surgical cases; and, addressing growing demand for outpatient surgery based on the growth and aging of Wilson County. Given the cost savings advantages of an ASTC over an HOPD, the proposed project will greatly benefit both the patients and providers in Wilson County.

• Ownership structure

RESPONSE: LCOS will be wholly owned by Lebanon Surgicenter, LLC, whose ultimate parent is HCA Healthcare, Inc., a publicly traded company. Following approval of the CON, the physicians on the medical staff at LCOS will have the opportunity to collectively become up to 49 percent owners of Lebanon Surgicenter, LLC, not to exceed 5 percent ownership individually. HCA Healthcare, Inc. is one of the largest providers of healthcare and hospital services in the United States and United Kingdom. As part of HCA Healthcare, Inc., LCOS will operate as an affiliate of the TriStar Division ("TriStar Division"), and specifically, as part of TriStar Health. TriStar Health serves Middle Tennessee as one of the region's largest, most comprehensive healthcare providers, through its 10 hospitals, 6 freestanding emergency rooms, 20 urgent care centers, and 8 surgery centers. Through this affiliation, LCOS will have access to HCA Healthcare, Inc's and TriStar Health's vast resources and expertise.

• Service Area

RESPONSE: The primary service area for the proposed project is Wilson County.

• Existing similar service providers

RESPONSE: According to the 2024 Tennessee Joint Annual Reports ("JARs"), there are three existing ASTCs in Wilson County, two of which are multispecialty ASTCs. The only one of these in Lebanon is the Lebanon Surgery Center (formerly the Phoenix Surgery Center) ("Phoenix/LSC"), which has been severely underutilized for over five years. Even after its ownership change in 2021, Phoenix/LSC has continued to provide limited services to Wilson County patients. As such, there is only one multispecialty ASTC in Wilson County that is not underutilized. That provider – Providence Surgery Center ("Providence") – is located over 10 miles away from the proposed ASTC in Mt. Juliet, a suburb of Nashville in the western part of Wilson County. In contrast, the proposed ASTC will be located in Lebanon, the largest municipality in Wilson County, and is also centrally located in the county. As such, the proposed ASTC will fill an unmet need in Wilson County for outpatient services in the lower cost ASTC setting.

• Project Cost

RESPONSE: Using the HFC's project cost methodology, the proposed project cost is stated at \$15,870,573. Most of these costs have already been incurred because – as noted – this project is the conversion of the existing TriStar Summit HOPD into an ASTC. Please see Attachment 1E-1 for the Fair Market Value ("FMV") calculation of the space to be used for LCOS, as well as Attachment 1E-2 for the tabulation of all equipment to be purchased for the proposed project valued at over \$50,000.

• Staffing

RESPONSE: The ASTC will require 19.0 FTEs of direct patient care positions and 6.0 FTEs or non-patient care positions. Staffing will be provided by Surgery Ventures, Powered by HCA Healthcare ("Surgery Ventures"), an affiliate of TriStar Summit Medical Center. Surgery Ventures has a large existing base of experienced surgical facility staff and has active recruiting and training policies in place that include extensive affiliations with clinical education and training programs. These policies and resources will ensure the proposed LCOS is staffed by qualified and highly trained individuals.

2E. Rationale for Approval

A Certificate of Need can only be granted when a project is necessary to provide needed health care in the area to be served, will provide health care that meets appropriate quality standards, and the effects attributed to competition or duplication would be positive for consumers

Provide a brief description not to exceed ONE PAGE (for 2E only) of how the project meets the criteria necessary for granting a CON using the data and information points provided in criteria sections that follow.

• Need

RESPONSE: The need for the proposed project is driven by multiple factors. First, in less than one year of operations, TriStar Summit HOPD, the existing HOPD that will be converted to an ASTC, has performed hundreds of surgical cases, more than Phoenix/LSC, the sole other multispecialty ASTC in Lebanon and one of only two multispecialty ASTCs in Wilson County, performed over the last four years. Second, HCA TriStar affiliated surgeons and other surgeons in the service area attest to the need for an additional ASTC in Wilson County and also attested that they will perform surgical cases at the proposed ASTC. Third, a high volume of patients who live in Wilson County are currently seeking ASTC services outside of Wilson County. Fourth, Vanderbilt Wilson County Hospital ("VWCH"), the sole acute care provider in Wilson County, performs a high volume of outpatient surgical cases that could be performed more cost-effectively and efficiently at an ASTC, allowing the acute care facility to focus on higher acuity, inpatient cases. Fifth, there are cost-saving and accessibility advantages to providing outpatient surgical care in an ASTC, rather than a hospital or HOPD. Sixth, the population of both Wilson County and Lebanon is growing, which will only increase the need for additional healthcare services in the future. Finally, LCOS and its affiliates are experienced providers of outpatient surgical care, and this experience will be leveraged to provide high quality care to the patients of the proposed ASTC.

Quality Standards

RESPONSE: Given that the proposed project represents the conversion of an existing HOPD, LCOS and its affiliates have policies and procedures in place to ensure care quality. LCOS will seek accreditation by The Joint Commission. Additionally, HCA Healthcare's policies for ensuring care quality will apply to LCOS. These policies are described in response # 1 to the Standards and Criteria and are included as Attachment 1N-1.5.

Consumer Advantage

° Choice

RESPONSE: The proposed project will increase patient choice for outpatient surgical care in the service area. As noted in the 2024 JARs for the existing ASTCs, all existing ASTCs in Wilson County are owned or operated by Ascension/Saint Thomas Health/USPI Surgery Centers, LLC ("USPI/Ascension"). Therefore, the proposed project will be the sole ASTC in Wilson County not operated by USPI/Ascension, giving patients a choice of outpatient surgical providers in Wilson County.

• Improved access/availability to health care service(s)

RESPONSE: The proposed project will increase the accessibility of outpatient surgical care in the service area by establishing an additional experienced provider of surgical services in Lebanon. As discussed above, the only existing multispecialty ASTC in Lebanon, Phoenix/LSC, is significantly underutilized and has not been able to provide the level of care required for the growing population of Wilson County. Additionally, the only other multispecialty ASTC in Wilson County, Providence, is well-utilized and currently treats a minority of patients from Wilson County, in part due to its proximity to Davidson County. As such, the development of an additional outpatient surgery center in the area will ensure patients of Wilson County have another option for surgical care.

O Affordability

RESPONSE: The proposed project will also promote affordability of services. As discussed in response # 1 of the Standards and Criteria, outpatient surgical services performed at an outpatient facility are overall less expensive than outpatient surgical services performed in a hospital setting. The establishment of this multispecialty ASTC in Lebanon will benefit both payors, who prefer lower-cost options, and patients, by ensuring service area patients have access to a cost-effective resource for outpatient surgical services. For example, most Medicare patients will experience savings in the ASTC setting ranging from 38.5 percent to as high as 53.6 percent.

3E. Consent Calendar Justification

- ☐ Letter to Executive Director Requesting Consent Calendar (Attach Rationale that includes addressing the 3 criteria)
- Consent Calender NOT Requested

If Consent Calendar is requested, please attach the rationale for an expedited review in terms of Need, Quality Standards, and Consumer Advantage as a written communication to the Agency's Executive Director at the time the application is filed.

4E. PROJECT COST CHART

A.	Construction and equipment acquired by purchase	e :	
	1. Architectural and Engineering Fees		
	2. Legal, Administrative (Excluding CON Filing Consultant Fees	Fee),	\$150,000
	3. Acquisition of Site		
	4. Preparation of Site		
	5. Total Construction Costs		
	6. Contingency Fund		
	7. Fixed Equipment (Not included in Construction Cor	ntract)	\$5,694,690
	8. Moveable Equipment (List all equipment over \$50, separate attachments)	000 as	\$838,818
	9. Other (Specify):		
B.	Acquisition by gift, donation, or lease:		
	1. Facility (inclusive of building and land)		\$9,151,436
	2. Building only		
	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)		\$15,834,944
	(Атвте)		
E.	CON Filing Fee		\$35,629
			·
F.	Total Estimated Project Cost		\$15,870,573
	(D+E)	TOTAL	

GENERAL CRITERIA FOR CERTIFICATE OF NEED

In accordance with TCA §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, will provide health care that meets appropriate quality standards, and the effect attributed to completion or duplication would be positive for consumers." In making determinations, the Agency uses as guidelines the goals, objectives, criteria, and standards adopted to guide the agency in issuing certificates of need. Until the agency adopts its own criteria and standards by rule, those in the state health plan apply.

Additional criteria for review are prescribed in Chapter 11 of the Agency Rules, Tennessee Rules and Regulations 01730-11.

The following questions are listed according to the three criteria: (1) Need, (2) the effects attributed to competition or duplication would be positive for consumers (Consumer Advantage), and (3) Quality Standards.

NEED

The responses to this section of the application will help determine whether the project will provide needed health care facilities or services in the area to be served.

1N. Provide responses as an attachment to the applicable criteria and standards for the type of institution or service requested. A word version and pdf version for each reviewable type of institution or service are located at the following website. https://www.tn.gov/hsda/hsda-criteria-and-standards.html (Attachment 1N)

RESPONSE:

Please see Attachment 1N.

2N. Identify the proposed service area and provide justification for its reasonable ness. Submit a county level map for the Tennessee portion and counties boarding the state of the service area using the supplemental map, clearly marked, and shaded to reflect the service area as it relates to meeting the requirements for CON criteria and standards that may apply to the project. Please include a discussion of the inclusion of counties in the border states, if applicable. (Attachment 2N)

RESPONSE:

The service area for the proposed project is Wilson County, the current location of TriStar Summit HOPD, an existing HOPD that will be converted into the proposed ASTC. Please see the map in <u>Attachment 2N</u> with Wilson County shaded. Of note, LCOS anticipates providing care to patients from other counties, including those contiguous with Wilson County. However, as reflected through the projected patient origin shown below, LCOS believes the majority of its patients will originate from Wilson County.

The proposed service area is reasonable, given that the proposed ASTC is centrally located in Wilson County and TriStar Summit Medical Center has experience providing surgical services to the patients of Wilson County at its main hospital in Hermitage, the existing TriStar Summit HOPD in Lebanon, and through the affiliated Summit Surgery Center in Hermitage. As discussed in response # 1 to the Standards and Criteria included as Attachment 1N, there are only three existing ASTCs in Wilson County. Two of these ASTCs are multispecialty; of those two, only one is in Lebanon. The multispecialty ASTC in Lebanon, Phoenix/LSC, is overall under-utilized. The other multispecialty ASTC in Wilson County, Providence, is in Mt. Juliet, is well-utilized, and serves a majority of patients from Davidson County, rather than its home county of Wilson County. Additionally, according to JAR data, a high number of Wilson County patients are currently seeking outpatient surgical services outside of Wilson County – many at TriStar facilities. LCOS believes that, through the conversion of the existing TriStar Summit HOPD to an ASTC, it will be able to provide care for Wilson County patients that is more cost-effective and accessible, while also expanding its ability to provide care through the surgeons whom have expressed their desire to provide care at the proposed ASTC, as evidenced through letters of support collected in Attachment 1N-1.2.

Please see <u>Attachment 1N</u> for a detailed discussion of the need for the proposed project, as well as the response to Question 6N for the projected utilization of the proposed ASTC.

Complete the following utilization tables for each county in the service area, if applicable.

PROJECTED UTILIZATION

Unit Type: ☐ Proced	lures Cases	☐ Patients	☐ Other	
Service Area (Minnes	Projected Utilization 2026)	Recent Year	1 (Year =	% of Total
Wilson	1,733			84.99%
Other not primary/secondary county	306			15.01%
Total	2,039			100%

3N. A. Describe the demographics of the population to be served by the proposal.

RESPONSE:

Given the historical experience of TriStar Summit HOPD, as well as the experience of Surgery Ventures, an affiliate of Lebanon Surgicenter, in providing outpatient surgical care in Tennessee, LCOS will be able to treat all patients appropriate for surgery in an ASTC in the proposed specialties, including pediatric patients and geriatric patients. As such, the target population that is identified in Attachment 3N.B is the same as the total population of Wilson County.

- **B.** Provide the following data for each county in the service area:
 - Using current and projected population data from the Department of Health. (www.tn.gov/health/health-program-areas/statistics/health-data/population.html);
 - the most recent enrollee data from the Division of TennCare (https://www.tn.gov/tenncare/information-statistics/enrollment-data.html),
 - and US Census Bureau demographic information (https://www.census.gov/quickfacts/fact/table/US/PST045219).

RESPONSE:

Please see <u>Attachment 3N.BR.</u> For the source data used to complete this table, please see <u>Attachment 3N-1</u> (for Tennessee Department of Health Population Data), <u>Attachment 3N-2</u> (for U.S. Census Data), and <u>Attachment 3N-3</u> (for the detailed TennCare Enrollment Report for February 2025, the most recent month of data available at the time of the drafting of this application).

4N. Describe the special needs of the service area population, including health disparities, the accessibility to consumers, particularly those who are uninsured or underinsured, the elderly, women, racial and ethnic minorities, TennCare or Medicaid recipients, 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:

LCOS believes that patients in Wilson County have a special need for an additional ASTC that is driven by accessibility issues given the lack of well-operated, multi-specialty ASTCs.

First, and as shown in <u>Attachment 3N.BR</u>, the population of Wilson County is projected to grow significantly. Specifically, the Tennessee Department of Health projects that Wilson County's population will grow by 7.6 percent from 2024 to 2028, a growth rate that is nearly *three times* higher than the projected growth rate of the state of Tennessee overall. Additionally, the median age of Wilson County, as shown in <u>Attachment 3N.BR</u>, is higher than the median age of Tennessee overall; further, the population of Wilson County residents age 65 and older is anticipated to grow by 17.7 percent from 2024 to 2028 – a significant rate of growth, given that older residents utilize healthcare resources more frequently than younger residents.[1] This growing and aging population will require additional healthcare resources, and, specifically, additional healthcare resources that are readily accessible across the county.

This growing population is particularly notable as the ASTC options in Wilson County today are largely limited. As listed in the 2024 JARs, there are only three ASTCs in Wilson County today. Two of these providers – Providence and Phoenix/LSC – are listed as multispecialty surgery providers; Lebanon Endoscopy Center exclusively provides GI endoscopy procedures. Of the two existing multispecialty surgery providers, Providence is in Mt. Juliet, which is in western Wilson County, near Davidson County. While technically in the Service Area for the proposed project, Mt. Juliet is not particularly proximal to Lebanon, the location of the existing TriStar Summit HOPD and the proposed ASTC, and can require a drive time from Lebanon of 25 minutes or more. Additionally, Lebanon is the most-populated municipality in Wilson County, with an estimated 2023 population of 48,112.[2] Despite this, Lebanon is served by only one multispecialty ASTC today: Phoenix/LSC. Unfortunately, Phoenix/LSC has been significantly underutilized, and has not been able to demonstrate that it can adequately meet the needs of patients in the service area.

The state of outpatient surgical services in Wilson County today demonstrates a significant patient need for the Applicant's ASTC. LCOS believes that access to outpatient surgical services in Wilson County is already challenging, and these challenges will only increase, driven by a growing population. Additionally, providers in the area have echoed this need for an additional freestanding surgical facility that can meet this patient need as well as the insufficiency of existing Wilson County ASTCs to provide this care.

LCOS's affiliates have policies and procedures in place to ensure accessible and high quality care that will meet the special needs of the service area population. As discussed in the Standards and Criteria included as Attachment 1N, HCA Healthcare, an affiliate of LCOS, has existing Access to Services, Charity Discount, and Uninsured Discount policies that are also utilized by Surgery Ventures for its existing Tennessee ASTCs. These policies will be utilized by LCOS to ensure patient access to services, regardless of their ability to pay. Additionally, HCA Healthcare has an existing Infection Control Plan, a Patient Rights and Responsibilities document, a Patient Safety Plan, and a Safety Management Program, all of which ensure that the care provided to LCOS patients is safe and of the highest standards. These policies have been collected as Attachment 1N-1.5 and are evidence of the way in which the establishment of LCOS as an ASTC will meet the special needs of Wilson County patients by creating an accessible resource that is also cost-effective.

- [1] See Tillman, Bourke W., et al. "Acute healthcare resource utilization by age: A cohort study." *PLoS*, 2021, 16(5). Accessed via https://doi.org/10.1371%2Fjournal.pone.0251877. Also see "U.S. Personal Health Care Spending By Age and Sex: 2020 Highlights" from the Centers for Medicare & Medicaid Services, accessed March 15, 2023, at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/AgeandGenderHighlights.pdf, which notes healthcare spending largely increases as patients age and that it is significantly higher per capita for those over the age of 65.
- [2] "Population Estimates." University of Tennessee Institute for Public Service. Accessed April 1, 2025, at https://tnsdc.utk.edu/estimates-and-projections/population-estimates/.
- 5N. Describe the existing and approved but unimplemented services of similar healthcare providers 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. List each provider and its utilization and/or occupancy individually. Inpatient bed projects must include the following data: Admissions or discharges, patient days. Average length of stay, and occupancy. Other projects should use the most appropriate measures, e.g. cases, procedures, visits, admissions, etc. This does not apply to projects that are solely relocating a service.

RESPONSE:

Please see the table below for a list of the existing ASTCs in Wilson County, as well as their utilization for the three most recent years of available data, as sourced from the 2022, 2023, and 2024 JARs.

Table 5N Wilson County ASTC Historical OR/PR Cases 2022-2024

Mos			Most	Most Recent 3 Years		
			Reported			
Facility Name	County	Single or Multi- Specialty	Total ASTC Cases 2022	Total ASTC Cases 2023	Total ASTC Cases 2024	Total ASTC 2022-2024
Lebanon Endoscopy Center	Wilson	Single Specialty	2,194	2,095	1,959	6,248
Providence	Wilson	Multispecialty	2,486	2,669	2,253	7,408
Phoenix/LCS	Wilson	Multispecialty	4	70	128	202
TOTAL			4,684	4,834	4,340	13,858

Source: 2022-2024 JARs.

As shown in the table above, there are three existing ASTCs in Wilson County. Two of these providers, Providence and Phoenix/LSC, are listed as multispecialty surgery providers in the 2024 JARs; Lebanon Endoscopy Center is single-specialty and exclusively provides GI endoscopy procedures. In 2024, these three providers performed 4,340 surgery cases across all specialty types.

Of note, Providence, the most well-utilized existing ASTC in Wilson County, is in Mt. Juliet, which is in western Wilson County, near Davidson County. As such, the only multi-specialty ASTC in Lebanon is Phoenix/LSC. However, utilization at Phoenix/LSC is, and has been, very low for over five full years. Additionally, a large number of Wilson County patients have historically sought ASTC services outside of Wilson County, in part due to the high utilization of Providence, which is effectively the only functioning multispecialty ASTC in Wilson County. The high and growing ASTC patient outmigration also contributes to the need for the proposed project, as discussed in depth in the Standards and Criteria included as Attachment 1N.

6N. Provide applicable utilization and/or occupancy statistics for your institution services for each of the past three years and the project annual utilization for each of the two 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:

LCOS is not an existing ASTC, and the existing HOPD has been operating less than one year; as such, historical data for the last three years are not available. The projected utilization for LCOS for its first two project years, 2026 and 2027, is shown in Table 6N-1, below.

Table 6N-1 Projected OR/PR Cases 2026 and 2027

Facility Name	County	Single or Multi- Specialty	Total ASTC Cases 2026	Total ASTC Cases 2027	Total ASTC 2026-2027
LCOS	Wilson	Multi- Specialty	2,039	2,387	4,426

Additionally, please see the projected utilization for LCOS by specialty for its first two project years, 2026 and 2027, in Table 6N-2, below. Of note, these utilization projections by specialty are also included in the Standards and Criteria, attached as <u>Attachment 1N</u>.

Table 6N-2 Projected OR/PR Cases by Specialty 2026 and 2027

Specialty	2026	2027				
OR Ca	OR Cases					
ENT Surgery	255	298				
General Surgery	177	207				
Orthopedic Surgery	85	99				
Podiatry	588	688				
Orthopedic Spine Surgery	212	249				
Total Joint Replacement	474	555				
Total OR Cases	1,791	2,097				
PR Ca	ases					
GI/Endoscopy	177	207				
Pain Management	71	83				
Total PR Cases	248	290				
Total Cases	2,039	2,387				

Please note that this table duplicates the information provided in Table 1N.2-2 and Table 1N-9.1, as included in the Standards and Criteria attached as <u>Attachment 1N</u>.

As discussed in the response to # 2 of the Standards and Criteria, LCOS projects its utilization based on the range of surgical specialties it expects to provide and the input of the physicians who are supportive of this project. Specifically, LCOS conservatively based its projected utilization on only a portion of the historical volume of cases performed by the 20 interested surgeons and one interested proceduralist group who will perform outpatient cases across an array of specialty lines in Wilson County and surrounding areas. In the aggregate, these surgeons and proceduralists state that they will perform thousands of outpatient cases at the proposed ASTC. This discounted case total was used as the Year 2 projected total number of cases. For Year 1, the Year 2 volume was discounted by an additional 15 percent to account for a reasonable period of time for the center to obtain its license, Medicare certification, and contracts with insurance payors.

Please see <u>Attachment 1N.1-2</u> for the physician letters of support for the proposed project.

7N. Complete the chart below by entering information for each applicable outstanding CON by applicant or share common ownership; and describe the current progress and status of each applicable outstanding CON and how the project relates to the applicant, and the percentage of ownership that is shared with the applicant's owners.

RESPONSE:

LCOS does not have any other outstanding CON applications. The applicant's TriStar affiliates have several approved CONs as noted in the chart. The status of each is summarized below:

- · CN1707-023 The StoneCrest Surgery Center CON has an extension through May 31, 2026, to evaluate the impact of the acquisition of an existing surgery center in Rutherford County and the impact of the pandemic.
- · CN2302-006 TriStar Skyline East Nashville FSED was approved on April 26, 2023. Relocation of the CON was approved by the HFC on March 25, 2025. Development of the recently approved location is underway.
- · CN 2304-010 TriStar Southern Hills Nolensville FSED was approved on June 28, 2023. The groundbreaking occurred on January 16, 2025, with an anticipated opening in October 2025.
- · CN 2308-020 Chattanooga East Surgicenter was approved on October 25, 2023. It is currently under development.
- · CN2404-010 TriStar Spring Hill Hospital was approved for a CON for a new hospital on June 26, 2024. The CON was issued on August 28, 2024. Vanderbilt University Medical Center ("VUMC") and Williamson Medical Center commenced contested case proceedings on June 28, 2024. On April 24, 2025, VUMC dismissed its opposition to the hospital.
- · CN2407-020 TriStar Hendersonville White House FSED was approved on October 23, 2024. The CON was issued on December 1, 2024. The groundbreaking occurred on March 27, 2025, with an anticipated opening date in 2026.

CON Number	Project Name	Date Approved	Expiration Date
CN2304-010	TriStar Southern Hills Nolensville FSED	6/28/2023	8/1/2026
CN2308-020	Chattanooga East Surgicenter	10/25/2023	12/1/2025
CN2404-010	TriStar Spring Hill Hospital	6/26/2024	8/1/2027
CN2407-020	TriStar Hendersonville White House FSED	10/23/2024	12/1/2027
CN1707-023	TriStar StoneCrest Surgery Center	10/25/2017	5/31/2026
CN2302-006	TriStar Skyline East Nashville FSED	4/26/2023	6/1/2026

CONSUMER ADVANTAGE ATTRIBUTED TO COMPETITION

The responses to this section of the application helps determine whether the effects attributed to competition or duplication would be positive for consumers within the service area.

- 1C. List all transfer agreements relevant to the proposed project.
- approval of this project. A copy of the most recent version of this transfer agreement is included as TriStar Summit HOPD Summit Medical Center, an existing acute care hospital in Davidson County, currently operates the transfer agreement in place with TriStar Summit Medical Center, an affiliate of the Applicant. TriStar **RESPONSE:** Lebanon Surgicenter, LLC, the owner of the proposed LCOS, has an existing facility Attachment 1C. in Lebanon, which will be converted to the proposed ASTC following
- 2C. List all commercial private insurance plans contracted or plan to be contracted by the applicant
- Aetna Health Insurance Company
- Ambetter of Tennessee Ambetter
- **(** Blue Cross Blue Shield of Tennessee
- Blue Cross Blue Shield of Tennessee Network S
- **(** Blue Cross Blue Shiled of Tennessee Network P
- **(**) BlueAdvantage
- Bright HealthCare
- **(**) Cigna PPO
- Cigna Local Plus
- Κ. Cigna HMO - Nashville Network
- < Cigna HMO - Tennessee Select
- **(** Cigna HMO - Nashville HMO
- < Cigna HMO - Tennessee POS
- 4 Cigna HMO - Tennessee Network
- < Golden Rule Insurance Company
- 4 HealthSpring Life and Health Insurance Company, Inc
- **(**) Humana Health Plan, Inc.
- Κ. Humana Insurance Company
- 4 John Hancock Life & Health Insurance Company
- Omaha Health Insurance Company

(

- Omaha Supplemental Insurance Company
- State Farm Health Insurance Company
- United Healthcare UHC
- UnitedHealthcare Community Plan East Tennessee
- UnitedHealthcare Community Plan Middle Tennessee
- UnitedHealthcare Community Plan West Tennessee
- WellCare Health Insurance of Tennessee, Inc

RESPONSE: Please see Attachment 2C for a list of all commercial private insurance plans contracted by Surgery Ventures, all of which will also apply to LCOS. Attachment 2C also includes a list of all Managed Care Contracts.

3C. upon consumer charges and consumer choice of services. Describe the effects of competition and/or duplication of the proposal on the health care system, including the impact

RESPONSE:

while enhancing consumer choice. As shown in the 2024 JARs, there are three (3) existing ASTCs in Wilson County, all The development of LCOS will significantly increase competition among outpatient surgical providers in Wilson County of which are operated by Ascension/USPI. The inclusion of an additional ASTC that is *not* owned and operated by Ascension/USPI will bring competition among ASTC providers to Wilson County, giving patients an alternate provider from whom they may receive ambulatory surgical services.

Further, the establishment of the Applicant's ASTC will not duplicate existing outpatient multispecialty ASTCs in Wilson County, as the only existing multispecialty ASTC in Lebanon, Phoenix/LSC, has not been able to meet the needs of the patients of the service area. This is demonstrated in part by the high level of outmigration of ASTC patients from Wilson County. Additionally, the one multispecialty ASTC in Wilson County that is well utilized, Providence, has historically performed a variety of specialty surgeries that are not exactly the same as those that will be provided at LCOS, as shown in response # 4 of the Standards and Criteria and as evidenced by the projections provided in the response to Question 6N, above.

Lastly, the conversion of TriStar Summit HOPD to an ASTC is a development that will positively impact consumer charges for surgical services in Wilson County. As discussed both above and in the response to # 1 of the Standards and Criteria, outpatient surgical services performed at an ASTC are overall less expensive than outpatient surgical services performed in a hospital setting. Because healthcare insurers also tend to steer patients towards lower-cost options for care, the establishment of an additional ASTC in Wilson County will enhance service area patients' access to cost-effective ambulatory surgical services.

4C. Discuss the availability of and accessibility to human resources required by the proposal, including clinical leadership and adequate professional staff, as per the State of Tennessee licensing requirements, CMS, and/or accrediting agencies requirements, such as the Joint Commission and Commission on Accreditation of Rehabilitation Facilities.

RESPONSE:

Staffing will be provided by Surgery Ventures, an affiliate of TriStar Summit Medical Center. Surgery Ventures has a large existing base of experienced surgical facility staff and has active recruiting and training policies in place that include extensive affiliations with clinical education and training programs. These policies and resources will ensure the proposed LCOS is staffed by qualified and highly trained individuals. LCOS is confident that any staff required for the facility can be readily recruited both from that source and from elsewhere in Middle Tennessee.

With respect to providers, the medical staff of LCOS will be drawn both from the existing medical staff using the HOPD and from physicians who have stated that they will perform surgeries at LCOS. All staff of the facility will comply with all applicable requirements of Medicare, Licensure, and The Joint Commission, by which LCOS will be accredited.

5C. Document the category of license/certification that is applicable to the project and why. These include, without limitation, regulations concerning clinical leadership, physician supervision, quality assurance policies and programs, utilization review policies and programs, record keeping, clinical staffing requirements, and staff education.

RESPONSE:

As stated above, LCOS will seek accreditation by The Joint Commission. Additionally, please see <u>Attachment 1N-1.5</u> for collected policies and procedures, many of which address the quality and safety standards that will be applicable to the proposed project.

PROJECTED DATA CHART

☑ Project Only☐ Total Facility

Give information for the two (2) years following the completion of this proposal.

			Year 1	Year 2
			2026	2027
A.	Utilization Data			
	Specify Unit of Measure Case		2039	2387
B.	Revenue from Services to Patients			
	1. Inpatient Services		\$0.00	\$0.00
	2. Outpatient Services		\$77,462,867.00	\$108,193,596.00
	3. Emergency Services		\$0.00	\$0.00
	4. Other Operating Revenue (Specify) Not ap	oplicable	\$0.00	\$0.00
		Gross Operating Revenue	\$77,462,867.00	\$108,193,596.00
C.	Deductions from Gross Operating Revenue			
	1. Contractual Adjustments		\$65,067,897.00	\$90,881,350.00
	2. Provision for Charity Care		\$774,618.00	\$1,081,921.00
	3. Provisions for Bad Debt		\$139,431.00	\$194,746.00
		Total Deductions	\$65,981,946.00	\$92,158,017.00
NE	T OPERATING REVENUE		\$11,480,921.00	\$16,035,579.00

7C. Please identify the project's average gross charge, average deduction from operating revenue, and average net charge using information from the Historical and Projected Data Charts of the proposed project.

Project Only Chart

	Previous Year to Most Recent Year	Most Recent Year	Year One	Year Two	% Change (Current Year to Year 2)
Gross Charge (Gross Operating Revenue/Utilization Data)	\$0.00	\$0.00	\$37,990.62	\$45,326.18	0.00
Deduction from Revenue (Total Deductions/Utilization Data)	\$0.00	\$0.00	\$32,359.95	\$38,608.30	0.00
Average Net Charge (Net Operating Revenue/Utilization Data)	\$0.00	\$0.00	\$5,630.66	\$6,717.88	0.00

8C. Provide the proposed charges for the project and discuss any adjustment to current charges that will result from the implementation of the proposal. Additionally, describe the anticipated revenue from the project and the impact on existing patient charges.

RESPONSE:

The table above provides the average charges proposed for LCOS. As described, LCOS anticipates that most of its cases will result from physicians shifting their existing volume to the proposed ASTC; much of this volume is currently performed in a hospital setting. As a result, it expects that both charges and reimbursement, as well as patient out of pocket payments, will be lower than if the same service was provided in a hospital setting. Please see the response to #1 of the Standards and Criteria for a discussion of the cost effectiveness of the proposed project. Please also see Table 9C-1 below, affirming that, in general, care provided at an ASTC is generally less costly for patients than the same care provided at a hospital or hospital-based setting.

9C. Compare the proposed project charges to those of similar facilities/services in the service area/adjoining services areas, or to proposed charges of recently approved Certificates of Need.

If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

RESPONSE:

As discussed in response # 1 of the Standards and Criteria, the proposed project will result in more cost-effective services for patients and payors based on the shift of cases from a hospital-based setting to a freestanding setting. Table 9C-1, which replicates Table 1N-1.17 in response # 1 of the Standards and Criteria, provides a summary of some of the most common procedures anticipated to be performed at LCOS. As shown in this table, most Medicare patients will experience savings in the ASTC setting compared to an in-hospital or HOPD setting, ranging from 38.5 percent to as high as 53.6 percent.

Table 9C-1
Procedures to be Performed at LCOS by CPT Code
Comparison of ASTC and HOPD Payments for Medicare Patients

			Facilit	ty Fee	Patient I	Payment	Sav	ings Calculat	ions
Specialty	CPT Code	Procedure Name	Hospital	ASTC	Hospital	ASTC	Patient Savings	Total Savings	% Patient Savings
GI	45380	COLONOSCOPY AND BIOPSY	\$1,179	\$632	\$273	\$164	\$109	\$547	39.9%
GI	45385	LESION REMOVAL COLONOSCOPY	\$1,179	\$632	\$283	\$174	\$109	\$547	38.5%
GI	45378	DIAGNOSTIC COLONOSCOPY	\$911	\$489	\$217	\$132	\$85	\$422	39.2%
ENT	30520	REPAIR OF NASAL SEPTUM	\$3,243	\$1,394	\$778	\$408	\$370	\$1,849	47.6%
ENT	42830	REMOVAL OF ADENOIDS	\$3,243	\$1,394	\$690	\$320	\$370	\$1,849	53.6%
ENT	42820	REMOVE TONSILES AND ADENOIDS	\$5,915	\$2,917	\$1,240	\$640	\$600	\$2,998	48.4%
General	47562	LAPAROSCOPIC CHOLECYSTECTOMY	\$5,834	\$2,860	\$1,295	\$701	\$594	\$2,974	45.9%
Ortho	29881	KNEE ARTHOSCOPY / SURGERY	\$3,244	\$1,579	\$755	\$422	\$333	\$1,665	44.1%
Ortho	29827	ARTHROSCOPY ROTATOR CUFF REPAIR/SHOULDER	\$7,143	\$3,510	\$1,638	\$912	\$726	\$3,633	44.3%
Ortho	64721	CARPAL TUNNEL SURGERY	\$1,952	\$924	\$477	\$271	\$206	\$1,028	43.2%
Ortho	26055	INCISE FINGER TENDON SHEATH	\$1,600	\$838	\$378	\$225	\$153	\$762	40.5%
Spine	63047	REMOVE SPINE LAMINA 1 LMBR	\$7,143	\$3,510	\$1,646	\$920	\$726	\$3,633	44.1%
Joints	27447	TOTAL KNEE ARTHROPLASTY	\$12,866	\$9,255	\$1,927	\$2,102	-\$175	\$3,611	-9.1%
Joints	27130	TOTAL HIP ARTHROPLASTY	\$12,866	\$9,449	\$1,927	\$2,140	-\$213	\$3,417	-11.1%
Pain	62323	NJX INTERLAMINAR LMBR/SAC	\$692	\$371	\$157	\$93	\$64	\$321	40.8%
Pain	64493	INJ PARAVERT F JNT L/S 1 LEV	\$890	\$477	\$195	\$112	\$83	\$413	42.6%
Podiatry	28285	REPAIR OF HAMMERTOE	\$3,244	\$1,579	\$724	\$391	\$333	\$1,665	46.0%

Source: "Procedure Price Lookup," Medicare.gov, Centers for Medicare & Medicaid Services, accessed April 14, 2025 at https://www.medicare.gov/procedure-price-lookup//.

Note: Procedures 29827, 63047, 27447, and 27130, when performed at hospital outpatient departments, may be subject to the Original Medicare \$1,676 copayment cap.

For patients currently receiving surgery in a hospital setting, the proposed project will represent a significant reduction in costs. As discussed above, it is LCOS's belief that there are no existing ASTCs in Wilson County that perform either total joint or orthopedic spine cases today; as such, patients needing these types of surgery have no in-county option other than hospital-based care, and associated charges.

While patient payments vary based on multiple factors, including payor and specific insurance plan, deductible, co-pays, etc., data available from the price estimator tool for VWCH nonetheless shows the directional difference in charges for hospital patients compared to the Medicare fee schedule for the same surgical cases, as shown in Table 9C-2.

Table 9C-2
VWCH Projected Facility Fee Comparison with Medicare ASTC Average

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Specialty	CPT Code	Procedure Name	2025 VWCH Facility Fee/Patient Payment*	2025 Medicare ASTC Facility Fee**	Approximate ASTC Savings
ENT	30520	REPAIR OF NASAL SEPTUM	\$10,531	\$1,394	\$9,137
General	47562	LAPAROSCOPIC CHOLECYSTECTOMY	\$8,948	\$2,860	\$6,088
Ortho	29881	KNEE ARTHOSCOPY / SURGERY	\$6,992	\$1,579	\$5,413
Ortho	29827	ARTHROSCOPY ROTATOR CUFF REPAIR/SHOULDER	\$15,075	\$3,510	\$11,565
Ortho	26055	INCISE FINGER TENDON SHEATH	\$6,215	\$838	\$5,377

Source: Vanderbilt Health price estimator tool, accessed at https://myhealthatvanderbilt.com/MyChartPRD/GuestEstimates/. *Price quote for self-pay patients. Price tool requires carrier/plan ID to access specific information by payor. VWCH applies a 70 percent discount to gross facility charges for self-pay patients.

For patients in Wilson County with only one functional multispecialty ASTC in their county, and particularly for patients needing procedures that are currently only available in a hospital-based setting in Wilson County, the proposed LCOS represents significant cost savings and substantial benefit to the consumer.

Lastly, please see Table 9C-3, which notes the average gross charge for the three ASTCs in Wilson County as sourced from the 2024 JAR for ASTCs.

Table 9C-3
Wilson County ASTC Historical Charges
2024

ASTC	Gross Charge	Deduction from Revenue	Average Net Charge
Lebanon Endoscopy Center	\$7,740.93	\$6,588.35	\$1,152.59
Providence	\$25,009.65	\$21,113.68	\$3,895.97
Phoenix/LCS	\$853.80	\$689.56	\$164.24

Source: 2024 JAR.

While these charges differ from those presented in the response to Question 8C above, LCOS largely believes that its charges are in line with the types of care it will provide at the proposed ASTC. The anticipated mix of specialties at LCOS is expected to differ from those historically delivered at both Providence and Phoenix/LSC, as is discussed at length in response # 4 of the Standards and Criteria included as Attachment 1N; for example, LCOS anticipates providing a significant volume of total joint replacement and orthopedic spine surgery procedures, which, to LCOS's knowledge, are currently not performed at any existing ASTC in Wilson County. These procedures, as shown in Table 9C-1 and Table 9C-2, above (see "Joints" and "Spine") are largely more costly than other surgeries, which in turn increases the average charges expected for LCOS. Additionally, Phoenix/LSC's diminished volume likely results in a very low average net charge for that facility; additionally, it has historically almost exclusively provided general surgery procedures, which typically represent lower costs than more specialized care. Moreover, the charges in Table 9C-1 are from 2024, and, unlike projected charges for the proposed ASTC, are not inflated through 2027. As such, they do not represent a valid comparison of the charges for the same mix of cases that will be performed at LCOS.

10C. Report the estimated gross operating revenue dollar amount and percentage of project gross operating revenue anticipated by payor classification for the first and second year of the project by completing the table below.

If applicable, compare the proposed charges of the project to the current Medicare allowable fee schedule by common procedure terminology (CPT) code(s).

Applicant's Projected Payor Mix Project Only Chart

	Year-2	026	Year-2027		
Payor Source	Gross Operating Revenue	% of Total	Gross Operating Revenue	% of Total	
Medicare/Medicare Managed Care	\$23,323,743.00	30.11	\$32,576,636.00	30.11	
TennCare/Medicaid	\$6,468,059.00	8.35	\$9,034,039.00	8.35	
Commercial/Other Managed Care	\$41,225,160.00	53.22	\$57,579,826.00	53.22	
Self-Pay	\$652,693.00	0.84	\$911,626.00	0.84	
Other(Specify)	\$5,793,212.00	7.48	\$8,091,469.00	7.48	
Total	\$77,462,867.00	100%	\$108,193,596.00	100%	
Charity Care	\$774,618.00		\$1,081,921.00		

^{*}Needs to match Gross Operating Revenue Year One and Year Two on Projected Data Chart

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.

RESPONSE: LCOS will contract with both Medicare and TennCare/Medicaid.

QU <i>A</i> 1Q.	Per PC 1043, Acts of 2016, any receiving a CON after July 1, 2016, must report annually using forms prescribed by the Agency concerning appropriate quality measures. Please attest that the applicant will submit an annual Quality Measures.
	report when due.
	▼ Yes
	□ No
2Q.	The proposal shall provide health care that meets appropriate quality standards. Please address each of the following questions.
	• Does the applicant commit to maintaining the staffing comparable to the staffing chart presented in its CON application?
	✓ Yes
	□ No

□ No

• Does the program	 Does the applicant commit to obtaining and maintaining TennCare and Medicare certification(s), if participation in such programs are indicated in the application? 				
	Yes				
	No				

3Q. Please complete the chart below on accreditation, certification, and licensure plans. Note: if the applicant does not plan to participate in these type of assessments, explain why since quality healthcare must be demonstrated.

Credential	Agency	Status (Active or Will Apply)	Provider Number or Certification Type
Licensure	 ✓ Health Facilities Commission/Licensure Division □ Intellectual & Developmental Disabilities □ Mental Health & Substance Abuse Services 	Will Apply	Not applicable
Certification	✓ Medicare ✓ TennCare/Medicaid □ Other	Will Apply Will Apply	Not applicable Not applicable
Accreditation(s)	TJC - The Joint Commission	Will Apply	Not applicable

		Other	will Apply	Not applicable				
Acc	reditation(s)	TJC - The Joint Commission	Will Apply	Not applicable				
4Q.	If checked "TennC	are/Medicaid" box, please list all Managed	Care Organization's currer	ntly or will be contracted.				
	□ AMERIGROUI	P COMMUNITY CARE- East Tennessee						
	_	P COMMUNITY CARE - Middle Tenness	ee					
	_	P COMMUNITY CARE - West Tennessee						
	☐ BLUECARE - :							
	_	Middle Tennessee						
	_	West Tennessee						
	_	are Community Plan - East Tennessee						
		•						
	_	UnitedHealthcare Community Plan - Middle Tennessee						
		☐ UnitedHealthcare Community Plan - West Tennessee ☐ TENNCARE SELECT HIGH - All						
	_	ELECT HIGH - All ELECT LOW - All						
	_	ELECT LOW - All						
	□ PACE	DD						
	☐ KBB under DII	DD waiver						
	Others							
RES	tracted by Surgery V	the previously referenced Attachment 2C Ventures, an affiliate of LCOS. These same expense of the proposed project.						
5Q.		you will submit a Quality Measure Report as of the applicant, if approved?	annually to verify the licens	e, certification, and/or				
	Yes							
	□ No							
(0	T 1	14 to de de la Control						

6Q. For an existing healthcare institution applying for a CON:

• Has it maintained substantial compliance with applicable federal and state regulation for the three years prior to the CON application. In the event of non-compliance, the nature of non-compliance and corrective action should be discussed to include any of the following: suspension of admissions, civil monetary penalties, notice of 23-day or 90-day termination proceedings from Medicare/Medicaid/TennCare, revocation/denial of accreditation, or other similar actions and what measures the applicant has or will put into place to avoid similar findings in the future.

\sqcup_{Yes}
□ No
✓ N/A
• Has the entity been decertified within the prior three years? If yes, please explain in detail. (This provision shall not apply if a new, unrelated owner applies for a CON related to a previously decertified facility.)
☐ Yes
□ No
☑ N/A
Respond to all of the following and for such occurrences, identify, explain, and provide documentation if occurred in last five (5) years.
Has any of the following:
• Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the
chain of ownership for applicant); • Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to includ any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or.
Been subject to any of the following:
• Final Order or Judgement in a state licensure action;
☐ Yes
☑ No
• Criminal fines in cases involving a Federal or State health care offense;
☐ Yes
☑ No
• Civil monetary penalties in cases involving a Federal or State health care offense;
☐ Yes
☑ No
• Administrative monetary penalties in cases involving a Federal or State health care offense;
☐ Yes
☑ No
• Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services;
□ Yes
■ No
• Suspension or termination of participation in Medicare or TennCare/Medicaid programs; and/or
☐ Yes
☑ No
• Is presently subject of/to an investigation, or party in any regulatory or criminal action of which you are aware.
□ Yes

7Q.

- **8**Q. Provide the project staffing for the project in Year 1 and compare to the current staffing for the most recent 12-month period, as appropriate. This can be reported using full-time equivalent (FTEs) positions for these positions.
- ▼ Existing FTE not applicable (Enter year)

Position Classification	Existing FTEs(enter year)	Projected FTEs Year 1
A. Direct Patient Care		
Positions		
OR Manager	0.00	1.00
RN OR	0.00	3.00
Tech OR	0.00	8.00
RN PACU/Pre-OP	0.00	5.00
Other Clinical Positions 0.00	0.00	2.00
Total Direct Patient Care Positions	N/A	19

25	0	Total Employees $(A+B)$
6	N/A	Total Non-Patient Care Positions
1.00	0.00	Materials Manager
2.00	0.00	l Positions
1.00	0.00	Receptionist
1.00	0.00	Business Office Manager 0.00
1.00	0.00	Administrator
		Positions
		B. Non-Patient Care

C. Contractual Staff
Contractual Staff 0.00 0.00
Total Staff $A+B+C$ 0 25

DEVELOPMENT SCHEDULE

TCA §68-11-1609(c) provides that activity authorized by a Certificate of Need is valid for a period not to exceed three (3) years (for hospital and nursing home projects) or two (2) years (for all other projects) from the date of its issuance and after such time authorization expires; provided, that the Agency may, in granting the Certificate of Need, allow longer periods of validity for Certificate 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 authorization which has been extended shall expire at the end of the extended time period. The decision whether to grant an extension is within the sole discretion of the Commission, and is not subject to review, reconsideration, or appeal.

- Complete the Project Completion Forecast Chart below. If the project will be completed in multiple phases, please identify the anticipated completion date for each phase.
- If the CON is granted and the project cannot be completed within the standard completion time period (3 years for hospital and nursing home projects and 2 years for all others), please document why an extended period should be approved and document the "good cause" for such an extension.

PROJECT COMPLETION FORECAST CHART

Assuming the Certificate of Need (CON) approval becomes the final HFC action on the date listed in Item 1 below, indicate the number of days from the HFC decision date to each phase of the completion forecast.

Phase	Days Required	Anticipated Date (Month/Year)
1. Initial HFC Decision Date		06/25/25
2. Building Construction Commenced		06/24/25
3. Construction 100% Complete (Approval for Occupancy)		06/24/25
4. Issuance of License	236	02/15/26
5. Issuance of Service	236	02/15/26
6. Final Project Report Form Submitted (Form HR0055)	236	02/15/26

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

RDA 1651

Attachment 3A Proof of Publication

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Summons

SUMMONS AND NOTICE STATE OF SOUTH CARO-IN THE FAMILY COURT THIRTEENTH JUDICIAL CIRCUIT COUNTY OF GREENVILLE

C.A.No.: 2025-DR-23-0173

South Carolina Department of Social Services, Plaintiff,

Maritza Saliya Rìos, et al. Defendants.

In the Interest of: Female, YOB: 2008 Female, Minor(s) Under the Age of 18

TO:DEFENDANT MARITZA SALIYA RIOS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint for Removal for the minor child in this action filed against you, the original of which has been filed in the Office of the Clerk of Court for Greenville County on 01/17/2025, a copy of which will be delivered to you upon your request, and to serve a copy of your Answer to said Complaint upon the undersigned attorney for the Plaintiff to Rebecca Wray, Esq., Attorney, Greenville





unish sation. The Wastaville Teamessean shall not be liable for any loss or expense tha

CATE OF NEED This is to provide official notice to the Health Facili-

ties Commission and all interested parties, in accordance with T.C.A. §68-11-1601 et sea., and the Rules of the Health Facilities Commission, that Lebanon Center for Outpatient Surgery, a/an Ambulatory Surgical Treatment Center (ASTC)- Multi-Specialty owned by Lebanon Surgicenter, LLC with an ownership type of Limited Liability Company and to be managed by Surgicare of Lebanon, LLC intends to file an application for a Certificate of Need for establishing a multispecialty ambulatory surgical treatment center (ASTC) consisting of approximately 17,350 square feet with two (2) operating rooms and one (1) procedure room. The facility will be licensed as an ASTC by the HFC. The surgical specialties to be offered at the ASTC will be General Surgery, ENT surgery, GI/Endoscopy, Orthopedic Surgery, Total Joint Replacement, Orthopedic Spine Surgery, Podiatry, and Pain Management Procedures. The facility will replace the existing TriStar Summit Hospital Outpatient Department. The address of the project will be 125 Willard Hagan Dr. Lebanon, Wilson County, Tennessee, 37090. The estimated project cost will be \$15,870,573.

The anticipated date of filing the application is 05/01/2025

The contact person for this project is Vice President -Operations Daniel Winkler who may be reached at Surgery Ventures, Powered by HCA Healthcare - 1000 Health Park Drive, Bldg. 3, Suite 500, Brentwood, TN 37027- Contact No. 615-661-1474.

The published Letter of Intent must contain the following statement pursuant to T.C.A. §68-11-1607 (c)(I), (A) Any healthcare institution wishing to oppose a Certificate of Need application must file a written notice with the Health Facilities Commission no later than fifteen (15) days before the regularly scheduled Health Facilities Commission meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application may file a written objection with the Health Facilities Commission at or prior to the consideration of the application by the Commission, or may appear in person to express opposition. Written notice may be sent to: Health Facilities Commission, Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243 or email at hsda.staff@tn.gov . LOKR0276720

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFI-CATE OF NEED

This is to provide official notice to the Health Facilities Commission and all interested parties, in accordance with T.C.A. §68-11-1601 et seq., and the Rules of the Health Facilities Commission, that Sumner Regional Medical Center, an existing hospital provider owned by Sumner Regional Medical Center, LLC with an ownership type of Limited Liability Company and to be managed by Sumner Regional Medical Center, LLC intends to file an application for a Certificate of Need for the establishment of a satellite hospital, under the single license of Sumner Regional Medical Center, at 225 Big Station Camp Boulevard in Gallatin, Sumner County, Tennessee. The satellite hospital will incorporate the existing free-standing emergency department on site and will have sixteen inpatient beds (twelve private medical beds and four intensive care unit beds), an endoscopy suite and ancillary spaces. The project will be bed neutral as the sixteen beds are included in Sumner Regional Medical Center d/b/a Highpoint Health-Sumner with Ascension Saint Thomas' current and approved bed distribution. The sixteen beds will be relocated from the main campus (555 Hartsville Pike, Gallatin, Tennessee 37066) to the satellite hospital campus at Sumner Regional Medical Center d/b/a Highpoint Health - Sumner Station with Ascension Saint Thomas (225 Big Station Camp

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Publication Logo

Publication Name: The Tennessean

Publication URL:

Publication City and State: Nashville, TN

Publication County:

Davidson

Notice Popular Keyword Category:

Notice Keywords: certificate of need

Notice Authentication Number: 202504150943251195991 3517637202

Notice URL:

Back

Notice Publish Date: Tuesday, April 15, 2025

Notice Content

NOTIFICATION OF INTENT TO APPLY FOR A CERTIFICATE OF NEED This is to provide official notice to the Health Facilities Commission and all interested parties, in accordance with T.C.A. §68-11-1601 et seq., and the Rules of the Health Facilities Commission, that Lebanon Center for Outpatient Surgery, a/an Ambulatory Surgical Treatment Center (ASTC)- Multi-Specialty owned by Lebanon Surgicenter, LLC with an ownership type of Limited Liability Company and to be managed by Surgicare of Lebanon, LLC intends to file an application for a Certificate of Need for establishing a multispecialty ambulatory surgical treatment center (ASTC) consisting of approximately 17,350 square feet with two (2) operating rooms and one (1) procedure room. The facility will be licensed as an ASTC by the HFC. The surgical specialties to be offered at the ASTC will be General Surgery, ENT surgery, GI/Endoscopy, Orthopedic Surgery, Total Joint Replacement, Orthopedic Spine Surgery, Podiatry, and Pain Management Procedures. The facility will replace the existing TriStar Summit Hospital Outpatient Department. The address of the project will be 125 Willard Hagan Dr, Lebanon, Wilson County, Tennessee, 37090. The estimated project cost will be \$15,870,573. The anticipated date of filing the application is 05/01/2025 The contact person for this project is Vice President - Operations Daniel Winkler who may be reached at Surgery Ventures, Powered by HCA Healthcare - 1000 Health Park Drive, Bldg. 3, Suite 500, Brentwood, TN 37027-Contact No. 615-661-1474. The published Letter of Intent must contain the following statement pursuant to T.C.A. §68-11-1607 (c)(I). (A) Any healthcare institution wishing to oppose a Certificate of Need application must file a written notice with the Health Facilities Commission no later than fifteen (15) days before the regularly scheduled Health Facilities Commission meeting at which the application is originally scheduled; and (B) Any other person wishing to oppose the application may file a written objection with the Health Facilities Commission at or prior to the consideration of the application by the Commission, or may appear in person to express opposition. Written notice may be sent to: Health Facilities Commission, Andrew Jackson Building, 9th Floor, 502 Deaderick Street, Nashville, TN 37243 or email at hsda.staff@tn.gov . April 15 2025 LOKR0276720

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Attachment 7A-1 Secretary of State Documentation



Division of Business Services Department of State

State of Tennessee 312 Rosa L. Parks AVE, 6th FL Nashville, TN 37243-1102

Lebanon Surgicenter, LLC **PO BOX 750** NASHVILLE, TN 37202-0750 October 7, 2020

Filing Acknowledgment

Please review the filing information below and notify our office immediately of any discrepancies.

SOS Control #:

001135190

Formation Locale: TENNESSEE

Filing Type:

Limited Liability Company - Domestic

Date Formed:

10/06/2020

Filing Date:

10/06/2020 3:44 PM

Fiscal Year Close: 12

Status:

Active

Annual Report Due: 04/01/2021

Duration Term:

Perpetual

Image #:

B0927-1381

Managed By: **Business County:** Member Managed DAVIDSON COUNTY

Document Receipt

Receipt #: 005827054

Filing Fee:

\$300.00

Payment-Check/MO - CAPITAL FILING SERVICE, INC., NASHVILLE, TN

\$300.00

Registered Agent Address:

C T CORPORATION SYSTEM

300 MONTVUE RD

KNOXVILLE, TN 37919-5546

Principal Address:

1 PARK PLZ

NASHVILLE, TN 37203-6527

Congratulations on the successful filing of your Articles of Organization for Lebanon Surgicenter, LLC in the State of Tennessee which is effective on the date shown above. You must also file this document in the office of the Register of Deeds in the county where the entity has its principal office if such principal office is in Tennessee. Please visit the Tennessee Department of Revenue website (www.tn.gov/revenue) to determine your online tax registration requirements. If you need to obtain a Certificate of Existence for this entity, you can request, pay for, and receive it from our website.

You must file an Annual Report with this office on or before the Annual Report Due Date noted above and maintain a Registered Office and Registered Agent. Failure to do so will subject the business to Administrative Dissolution/Revocation.

Secretary of State

Processed By: Michelle Holloway

ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY (ss-4270)

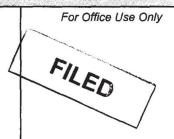
Page 1 of 2



Business Services Division
Tre Hargett, Secretary of State
State of Tennessee

312 Rosa L. Parks AVE, 6th Fl. Nashville, TN 37243-1102 (615) 741-2286

Filing Fee: \$50.00 per member (minimum fee = \$300, maximum fee = \$3,000)



Limited Liability Company Act.		
1. The name of the Limited Liability Company is: Lebanon Surgicenter, LLC		
(NOTE: Pursuant to the provisions of T.C.A. §48-249-106, each Limited Liability Company name must contain the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.")		
2. Name Consent: (Written Consent for Use of Indistinguishable Name) This entity name already exists in Tennessee and has received name consent from the existing entity.		
3. This company has the additional designation of:		
4. The name and complete address of ithe Limited Liability Company's initial registered agent and office located in the state of Tennessee is: Name: C T Corporation System Address: 300 Montvue Rd City: Knoxville State: TN Zip Code: 37919-5546 County: Knox		
5. Fiscal Year Close Month: December		
6. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date and time is: (Not to exceed 90 days) Effective Date://		
7. The Limited Liability Company will be: Member Managed Manager Managed Director Managed		
8. Number of Members at the date of filing:1		
9. Period of Duration: X Perpetual Other/		
10. The complete address of the Limited Liability Company's principal executive office is: Address: One Park Plaza City: Nashville State: TN Zip Code: 37203 County: Davidson		

ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY (ss-4270)

Page 2 of 2

For Office Use Only



Business Services Division

Tre Hargett, Secretary of State
State of Tennessee
312 Rosa L. Parks AVE, 6th Fl.

312 Rosa L. Parks AVE, 6th Fl. Nashville, TN 37243-1102 (615) 741-2286

Filing Fee: \$50.00 per member (minimum fee = \$300, maximum fee = \$3,000)

The name of the Limited Liability Company is: Lebanon Surgicenter, LLC		
11. The complete mailing address of the entity (If different from the principal office) is: Address: PO Box 750		
City: Nashville State: T	Zip Code: 37202	
12. Non-Profit LLC (required only if the Additional Designation of "Non-Profit LLC" is entered in section 3.) I certify that this entity is a Non-Profit LLC whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of the Tennessee Nonprofit Corporation Act and who is exempt from franchise and excise tax as not-for-profit as defined in T.C.A. §67-4-2004. The business is disregarded as an entity for federal income tax purposes.		
13. Professional LLC (required only if the Additional Designation of "Professional LLC" is entered in section 3.) I certify that this PLLC has one or more qualified persons as members and no disqualified persons as members or holders. Licensed Profession:		
14. Series LLC (required only if the Additional Designation of "Series LLC" is entered in section 3.) ☐ I certify that this entity meets the requirements of T.C.A. §48-249-309(a) & (b)		
15. Obligated Member Entity (list of obligated members and signatures must be attached) This entity will be registered as an Obligated Member Entity (OME) Effective Date: Month Day Year I understand that by statute: THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE THE MEMBER(S) TO BE PERSONALLY LIABLE FOR THE DEBTS, OBLIGATIONS AND LIABILITIES OF THE LIMITED LIABILITY COMPANY TO THE SAME EXTENT AS A GENERAL PARTNER OF A GENERAL PARTNERSHIP. CONSULT AN ATTORNEY.		
16. This entity is prohibited from doing business in Tennessee: ☐ This entity, while being formed under Tennessee law, is prohibited from engaging in business in Tennessee.		
17. Other Provisions:		
10/6/2020	Some DeRussis	
Signature Date	Signature	
Organizer Signer's Capacity (if other than individual capacity)	Jaime DeRensis Name (printed or typed)	



Division of Business Services Department of State State of Tennessee

312 Rosa L. Parks AVE, 6th FL Nashville, TN 37243-1102

WOLTERS KLUWER WOLTERS KLUWER 600

October 23, 2020

S, IL 62704

Request Type: Certificate of Existence/Authorization Issuance Date: 10/23/2020 Request #: 0387026 Copies Requested:

Document Receipt

Receipt #: 005855453 Filing Fee: \$20.00 Payment-Credit Card - State Payment Center - CC #: 3791392807 \$20.00

Lebanon Surgicenter, LLC Regarding:

Limited Liability Company - Domestic Filing Type: Control #: 1135190 Formation/Qualification Date: 10/06/2020 Date Formed: 10/06/2020 Formation Locale: TENNESSEE Status: Active

Duration Term: Perpetual

Business County: DAVIDSON COUNTY

CERTIFICATE OF EXISTENCE

I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that effective as of the issuance date noted above

Lebanon Surgicenter, LLC

- * is a Limited Liability Company duly formed under the law of this State with a date of incorporation and duration as given above;
- * has paid all fees, interest, taxes and penalties owed to this State (as reflected in the records of the Secretary of State and the Department of Revenue) which affect the existence/authorization of the business;
- * has appointed a registered agent and registered office in this State;
- * has not filed Articles of Dissolution or Articles of Termination. A decree of judicial dissolution has not been filed.

Secretary of State

Inactive Date:

Processed By: Cert Web User Verification #: 042445831

Attachment 8A Management Agreement and Operating Agreement

MANAGEMENT AGREEMENT

This Management Agreement ("Agreement") is made and entered into as of the _____ day of ____, 202[_] (the "Effective Date"), by and between Surgicare of Lebanon, LLC, a Tennessee limited liability company ("Manager"), and Lebanon Surgicenter, LLC, a Tennessee limited liability company (the "Company"), with reference to the following facts:

WHEREAS, the Company owns and operates an ambulatory surgery center located in Lebanon Tennessee (the "Surgery Center");

WHEREAS, Manager is the Managing Member of the Company and, together with its affiliates, is experienced in the operation of ambulatory surgery centers;

WHEREAS, Manager is an affiliate of HCA Holdings, Inc., a Delaware corporation ("HCA");

WHEREAS, the parties desire to enter into an agreement whereby Manager will manage the Surgery Center for the Company.

NOW, THEREFORE, the Company and Manager agree as follows:

1. Management Services.

- The Company hereby engages Manager, and Manager hereby accepts such 1.1. engagement, to provide day-to-day management services to and for the Surgery Center, including but not limited to financial management, preparation of the annual operating and capital budgets, purchasing, managed care contracting, materials management, reimbursement expertise, legal services, accreditation and risk management, public relations, preparation of staffing plans, recruitment of personnel and medical staff and supervision of the day-to-day operations of the Surgery Center. In carrying out such duties, Manager shall have authority over charges, cash flow, budgeting, planning, accounts receivable and thirdparty payor reimbursements. Manager shall have the further authority and responsibility to manage all of the departments of the Surgery Center, establish charge schedules and promulgate personnel policies, including but not limited to working hours, wages, fringe benefits and qualifications and criteria for hiring and discharge of personnel. Manager may carry out any or all of its duties hereunder through subcontracts or similar arrangements with one or more of its equity owners or any of their respective affiliates. Manager may also enter into contracts or arrangements with one or more of its affiliates to provide goods or services to the Company in addition to the management services provided pursuant to this Agreement, provided that in the event any such affiliates are to be compensated by the Company for providing such services ("Affiliate Contracts"), the Affiliate Contracts shall be on terms consistent with similarly situated affiliates of HCA, with charges not to exceed fair market value. In addition, Manager is authorized to provide certain services otherwise handled by Surgery Center employees through a central business office that services other facilities affiliated with Manager. The portion of the cost of such services allocated to the Company will be reasonably determined by Manager in accordance with generally accepted accounting principles.
- 1.2. Manager shall use commercially reasonable efforts to do or cause 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.
- 1.3. Manager shall maintain one or more bank accounts for the Company into which it shall deposit the receipts from the business of the Company. Manager shall be entitled to make withdrawals from such accounts to invest such funds in connection with the cash management system employed by

Manager or any of its affiliates on behalf of its affiliated hospitals and surgery centers. Any funds in such accounts not reasonably required for the operation of the Surgery Center shall be disbursed to, or upon the instructions of, the Company. The handling of receipts and disbursements with respect to such bank accounts shall be in accordance with customary business practices. The Company shall participate in HCA's cash management system. All cash proceeds from the Company's operations shall be swept to sweep bank accounts held by HCA or its affiliates with appropriate accounting on the Company's books. The Company shall establish a lockbox that shall permit daily access for the Company and Manager to deposit information and patient account detail. The Company shall have the same electronic access to such deposit and patient account information as HCA or its affiliates. Such funds may be commingled with other HCA funds and may be used for other HCA purposes; provided Manager shall hold the Company harmless from any losses occurring as a result of such commingling.

- 1.4. Manager shall institute, supervise and from time to time revise and amend management, financial and informational systems in order to conduct the physical and administrative operations of the Surgery Center. Manager shall cause to be prepared and submitted all reports required to be submitted by the Company pursuant to the requirements of third-party payors or any authority having jurisdiction over the Surgery Center. Manager shall negotiate and consummate agreements and contracts for and on behalf of the Surgery Center in the usual course of business, including contracts of insurance naming both the Company and Manager as insureds pursuant to the master insurance policies and programs maintained by Manager or any of its affiliates for its affiliated hospitals, diagnostic imaging centers, surgery centers and cardiac catheterization centers. Manager shall pay all payables and perform or cause to be performed all actions Manager reasonably determines necessary to the business of the Surgery Center.
- 1.5. 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 the Company or 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.
- 1.6. Manager shall have the right 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, appropriate or useful to Manager in the carrying out of its duties as specified in the preceding paragraphs of this Section 1.
- 1.7. The full authority and responsibility for the day-to-day operation of the Surgery Center shall, during the term of this Agreement, be and remain in Manager, subject to the terms of the Amended and Restated Operating Agreement of the Company (as the same may be amended from time to time during the term of this Agreement, the "Operating Agreement"), and the Company shall have no rights or duties in derogation of the rights and duties of Manager hereunder; provided, however, that all medical and professional matters shall be the responsibility of the Company and the medical director and medical staff of the Surgery Center. Manager shall exercise commercially reasonable efforts at all times during the term of this Agreement to operate the Surgery Center in accordance with the terms of the Surgery Center's licenses. Manager shall exercise good faith efforts not to expend more than a reasonable sum of money for any goods purchased or services engaged on behalf of the Company.
- 1.8. During the term of this Agreement, Manager shall make available to the Company the services of certain employees of Manager reasonably required by the Company (the "Employees"). Such Employees who work primarily on site at the Center may be referred to herein as the "On Site Employees." Manager shall have the right to terminate the employment of an Employee and to hire such additional individuals as Employees as Manager determines is reasonably necessary from time to time,

subject to the consent of the Company. Furthermore, Manager shall have the right to control and direct the Employees as to the performance of duties and as to the means by which such duties are performed, subject to the Company's day to day operations management. The Company shall promptly fund or, as appropriate, reimburse Manager for all expenses incurred by Manager with respect to the On Site Employees. Such expenses shall include, but are not limited to, compensation, amounts required to provide employee benefits, federal and state taxes on wages, unemployment compensation premiums and workers compensation premiums, each as determined in accordance with generally accepted accounting principles consistently applied. Notwithstanding any other provision of this Agreement, including Section 8 hereof, Manager and its respective officers, directors, agents and employees shall be held harmless and indemnified by the Company for claims, demands, losses, or liabilities incurred or arising out of or relating to the continued employment of the On Site Employees during the term of this Agreement, including, without limitation: (i) acts or omissions of any On Site Employees, (ii) the operation of the Company and (iii) acts or omissions of the Company. In the performance of this Agreement, it is mutually understood and agreed that the Employees are at all times acting and performing as employees of Manager and not the Company. Nothing herein is intended to affect Manager's status as employer of each Employee or Manager's control over such individual during the term of this Agreement.

2. <u>Term.</u> Unless earlier terminated pursuant to Section 9, the term of this Agreement shall commence on the Effective Date and shall continue until the later of (i) the date which is ten (10) years after the Effective Date, or (ii) such date as Manager or an affiliate ceases to own an interest in the Company. The foregoing notwithstanding, this Agreement shall remain in effect in the event that Manager and its affiliates cease to be members of the Company as a result of a transfer of all their interests in the Company and Manager assigns its rights and duties hereunder to the same entity, or an affiliate thereof, that acquires its, and its affiliate's, membership interest in the Company. This Agreement shall also terminate upon an Event of Default (as defined in Section 9 hereof) by one party, upon the nondefaulting party giving written notice of termination to the defaulting party.

3. Management Fee.

- 3.1. As Manager's fee for its management services hereunder, Manager shall receive \$10,000 per month until the end of calendar year 202[]. Thereafter, beginning in January 202[], the monthly management fee will be re-set in January each year to an amount equal to five percent (5%) of the average monthly net revenues of the Surgery Center during the prior calendar year; provided, however, in no event shall such fee be less than \$10,000 per month. For this purpose, "net revenues" shall be determined in accordance with HCA accounting policies and procedures. The fee for each month shall be paid on or before the 15th day of the succeeding month.
- 3.2. In addition to the above management fees and the other reimbursement to Manager and its affiliates described herein, Manager shall be reimbursed by the Company for the direct cost of all out-of-pocket expenses incurred in the management of the Surgery Center, but shall not be reimbursed for any of its indirect or overhead expenses or profit or administrative fees in the nature of profit. Such authorized reimbursement shall include, but is not limited to, professional liability insurance premiums allocable to the Surgery Center; information systems costs, such as third party software license costs, third party application service provider fees and fees for extraordinary or nonrecurring information system services provided by Manager or its affiliates (excluding travel and training costs and expenses related to the initial installation of the information systems in the initial year of this Agreement and employee training on such initial systems); and all costs of providing the Employees for the Surgery Center, pursuant to Section 1.8 hereof, including, without limitation, recruiting costs and all compensation and employee benefit costs. The Company agrees to reimburse Manager for such expenses no less frequently than monthly and within 10 business days after a proper request for reimbursement is submitted by Manager.

- 3.3. 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 Company, for the account of the Surgery Center and the Company, and shall not be expenses of Manager.
- 3.4. All amounts payable to Manager pursuant to this Agreement that are not paid on or before the date such payments are due (except for any payments not made because of the failure by Manager to transfer funds) shall bear interest of 1% per month.

4. Books and Records.

- 4.1. Manager shall supervise the maintenance of the books of account covering the operations of the Company. Such books of account shall be maintained on an accrual basis in accordance with generally accepted accounting principles consistently applied.
- 4.2. Manager shall prepare and furnish to the Company promptly after the close of each fiscal quarter its unaudited financial statements reflecting the operations of the Surgery Center and the Company for such quarter. Manager shall cause to be prepared and furnished promptly 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. The expense of any such independent accountants shall be borne by the Company.
- 4.3. 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. Each such party shall bear all expenses incurred in any examination it makes pursuant hereto.
- 5. Representations of Manager. Manager represents and warrants to the Company that it has been duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of Tennessee, with full power to own its properties and to conduct its business under the laws of said state.
- **6.** <u>Use of Name, Logos, etc.</u> During the term of this Agreement, Manager shall have the right to utilize the name, trademarks, logos and symbols identifying the Surgery Center, including the right to represent to the public and the health care industry that the facilities and operations of the Surgery Center are managed by Manager. The Company shall not, however, make any use of the name of Manager or any of its affiliates, or any of its trademarks, logos or symbols, without the prior written consent of Manager.
- 7. <u>Manager's Intellectual Property</u>. All computer software, programs and similar systems, licenses, manuals, books and records and other information or intellectual property provided by Manager in its provision of management services to and for the Surgery Center or relating to the operation of the Surgery Center (collectively, the "Manager's Intellectual Property"), are the sole property of Manager, and nothing contained in this Agreement shall constitute a transfer of or license to any portion of the Manager's Intellectual Property, whether during or after the term of this Agreement. Upon the termination of this Agreement, Manager shall retain all of the Manager's Intellectual Property.

8. Indemnification.

8.1. Manager does not hereby assume any of the obligations, liabilities or debts of the Company 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, its affiliates and owners, and their respective officers, governors, directors, employees, agents, owners and affiliates (each a "Manager Indemnified Party") 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 (a "Loss"), which may be asserted against any of the Manager Indemnified Parties, in connection with the Manager's provision of services to the Company, including without limitation Manager's performance of its duties hereunder during the term of this Agreement; provided that except as stated in Section 1.8 above, the Company's obligations under this Section 8.1 shall not apply to any Loss arising as a result of the gross negligence or willful misconduct of Manager.

- 8.2. Manager hereby agrees to indemnify and hold harmless the Company and its member, managers, officers, employees and agents (each a "Company Indemnified Party") from and against any and all Losses which may be asserted against a Company Indemnified Party as a result of the gross negligence or willful misconduct of Manager, its affiliates and owners, and their respective officers, governors, directors, employees, agents, owners and affiliates, in connection with the performance by or on behalf of Manager of its duties hereunder; provided that Manager's obligations under this Section 8.2 shall not apply to any Loss arising as a result of the act or omission of any On Site Employee.
- **9.** <u>Default and Termination</u>. Each of the following will be an event of default ("Event of Default") hereunder:
- 9.1. If the Company fails to make or cause to be made any payment to Manager required to be made hereunder or otherwise fails in the performance of any other material obligation on its part required to be performed under this Agreement and such failure continues for a period of 30 days after written notice thereof has been given to the Company; provided, however, that no Event of Default shall be deemed to have occurred with respect to a breach which cannot reasonably be cured within 30 days, so long as the Company commences to cure such breach within such 30 day period and thereafter prosecutes the same to conclusion with due diligence.
- 9.2. If Manager fails in the performance of any material obligation on its part required to be performed under this Agreement, and such failure continues for a period of 30 days after written notice thereof has been given to Manager; provided, however, that no Event of Default shall be deemed to have occurred with respect to a breach which cannot reasonably be cured within 30 days, so long as Manager commences to cure such breach within such 30 day period and thereafter prosecutes the same to conclusion with due diligence.
- 9.3. (i) If 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 is filed; (ii) if either party consents to an order for relief under the federal bankruptcy laws or fails to vacate such an order for relief within 60 days from and after the date of entry thereof; (iii) upon 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 party's assets, if such order, judgment or decree shall continue unstayed and in effect for any period of 60 days.

If any Event of Default by the Company listed in subsection 9.1 occurs and is continuing, or if any Event of Default by Manager listed in subsection 9.2 occurs and is continuing, or if any Event of Default by either party listed in subsection 9.3 occurs and is continuing, the nondefaulting party may immediately terminate this Agreement subject to the limitations set forth in this Section 9. In the event of a termination of this Agreement pursuant to this Section 9, neither party will have any further obligations whatsoever under this Agreement except (a) obligations previously arising; (b) obligations which by their terms are intended to survive termination or expiration of this Agreement; or (c) obligations otherwise specifically set forth herein. In the event of a termination of this Agreement, Manager will provide the Company an accounting of the amount due hereunder up to the date of termination. Upon receipt of such an accounting,

the Company will promptly pay Manager all unpaid amounts due to Manager pursuant to the terms of this Agreement.

10. <u>Competitive Services</u>. It is hereby acknowledged that Manager and its affiliated companies are currently in the business of owning and operating 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 Surgery Center under this Agreement. Nothing in this Agreement shall prohibit Manager or any of its affiliated companies from owning and operating hospitals, diagnostic imaging centers, ambulatory surgery centers, cardiac catheterization centers or other health facilities or from providing such management services.

11. Ownership and Confidentiality of Records.

- of the Surgery Center, including but not limited to all books of account, general administrative records and patient files, and procedure reports and images, shall be and remain the sole property of the Company and shall be confidential information thereof. Manager shall cooperate with the Company in the maintenance of accurate, complete and confidential patient records, including maintenance of an adequate filing system in conformity with governmental records and reporting requirements. Manager shall not divulge, furnish or make accessible to anyone, without the Company's prior written approval, any such confidential information other than as may be necessary for Manager to perform its obligations and responsibilities hereunder, or for treatment of patients, or to bill and collect from third party payors for services rendered by the Company (and then only in accordance with the HIPAA Privacy Standards discussed in Section 11.3 below), or as otherwise may be required by law. Nothing herein shall prohibit Manager from using or disclosing any of the Company's information that is in the public domain (other than due to a breach of this Agreement by Manager), or from disclosing any of the Company's information in compliance with applicable legal requirements or in response to a request by any governmental authority.
- 11.2. <u>Confidentiality of Records</u>. The Company shall adopt procedures which shall seek to assure maximum confidentiality of the records of the Surgery Center and shall comply in all material respects with all applicable federal, state and local laws and regulations relating to the records of the Surgery Center.
- 11.3. <u>Individually Identifiable Patient Information</u>. Without limiting the generality of Section 11.2 hereof, and except as permitted or required by this Agreement or by law, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH"), the parties agree not to use or disclose patient information in a manner that would violate the requirements of 45 C.F.R. Parts 160 and 164 (HIPAA Security and Privacy Standards), which are incorporated herein by reference. Manager and the Company expressly agree to comply with HIPAA and HITECH in all respects, including the implementation of all necessary safeguards and to prevent the disclosure of protected health information, except as permitted by HIPAA or HITECH, and the assurance that any subcontractors or agents provided such information have agreed to the same restrictions and conditions imposed on the parties under HIPAA and HITECH. The Company and Manager have contemporaneously herewith executed a Business Associate Agreement which is attached hereto and incorporated herein as **Schedule 11.3**.
- 11.4. <u>Remedies</u>. Manager agrees that the remedy at law for any breach of the provisions of this Section 11 may be inadequate and would be difficult to ascertain. Therefore, in addition to any other remedies that may be available, the Company shall have the right to enjoin Manager from any threatened or actual activity in violation thereof, without the necessity of proving actual damages or posting a bond.
- 12. <u>Access to Records and Information</u>. Subject to the confidentiality provisions herein, each party shall have access to all applicable records and information, including but not limited to documents

prepared in connection with the performance of procedures at the Surgery Center hereunder ("Records"), upon prior written notice to the other party, in order to perform any necessary billing, to conduct utilization review or quality assurance activities, or to prepare the defense of a lawsuit in which those Records may be relevant. Subject to the confidentiality provisions herein, Manager and the Employees, as applicable to their respective duties, will be given reasonable access to the Surgery Center and its records, offices and facilities, in order that Manager and the Employees may carry out their obligations hereunder. Except where prohibited by applicable law, the party providing access to such Records hereunder shall have the right to redact from any such Records any information not related to the operations of the Surgery Center. Each party hereto is solely responsible for the accuracy of the coding and billing of its own services, if any, provided at the Surgery Center.

- 13. Assignment. Except as specifically provided in this Section 13, 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 to (i) any entity directly or indirectly controlling, controlled by or under common control with Manager, (ii) any entity that is, concurrently with such assignment, succeeding to substantially all of the assets and liabilities of Manager or (iii) any entity or such entity's affiliates that becomes the owner of Manager's or its affiliates' interest in the Company. The Company may not assign this Agreement without the prior written consent 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.
- 14. <u>Notices</u>. 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, when received by telegraphic or other electronic means (including facsimile and telex), when delivered by overnight courier or three days after being deposited in the United States mail, with postage paid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to the Company:

Lebanon Surgicenter, LLC 13355 Noel Road, Suite 1200

Dallas, Texas 75240 Attn: Managing Member Facsimile: (972) 789-1561

If to Manager: Surgicare of Lebanon, LLC

13355 Noel Road, Suite 1200

Dallas, Texas 75240 Attn: President

Facsimile: (972) 789-1561

With a copy to: HCA Holdings, Inc.

One Park Plaza

Nashville, Tennessee 37203 Attn: Corporate Counsel Facsimile: (615) 344-1600 or to such other address or number, and to the attention of such other person or officer, as any party may designate, at any time, in writing in conformity with these notice provisions.

- 15. <u>Attorneys' Fees</u>. In the event a party elects to incur legal expenses to enforce, defend or interpret any provision of this Agreement by judicial proceedings, the prevailing party shall be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements at all court levels, in addition to any other relief to which such party shall be entitled.
- 16. Entire Agreement. This Agreement supersedes any and all prior agreements, either oral or written, between the parties with respect to the subject matter of this Agreement (including any term sheet or similar agreement or document relating to the transactions contemplated hereby). This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and no party shall be entitled to benefits other than those specified herein.
- 17. <u>Governing Law</u>. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to its principles of conflicts of law.
- 18. <u>Construction</u>. 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, the feminine or the neuter gender shall include the masculine, feminine and neuter. The term "person" means any individual, corporation, partnership, limited liability company, trust or other entity. No provision of this Agreement shall be interpreted for or against either party hereto on the basis that such party was the draftsman of such provision, each party having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- 19. <u>Headings</u>. The headings used in this Agreement have been inserted for convenience and do not constitute provisions to be construed or interpreted in connection with this Agreement.
- **20.** <u>Counterparts and Facsimile Signatures</u>. This Agreement may be executed in two or more counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be constructed together and shall constitute one agreement. Facsimile signatures on this Agreement shall be deemed to be original signatures for all purposes.
- **21.** <u>Amendment</u>. This Agreement may be modified or amended only by a written instrument duly executed by each of the parties hereto.
- **22.** <u>Waiver</u>. Failure by any party to enforce any of the provisions hereof for any length of time shall not be deemed a waiver of its rights set forth in this Agreement. Such a waiver may be made only by an instrument in writing signed by the party sought to be charged with the waiver. No waiver of any condition or covenant of this Agreement shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Agreement shall be construed to be a waiver on the part of the parties of any right or remedy at law or in equity or otherwise.
- **23.** No Third-Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective permitted successors or assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.
- **24.** <u>Weekends and Holidays</u>. If any due date contained herein falls on a Saturday, Sunday or legal holiday, the due date shall be deemed to be the following business day.

- 25. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.
- **26.** Severability; Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provisions will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.
- **27.** Regulatory Compliance. The parties agree to conduct their relationship in full compliance with all applicable state, federal and local laws and regulations, including, but not limited to, the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)). The parties agree that no part of this Agreement shall be construed to induce or encourage the referral of patients or the purchase of health care services or supplies. The parties acknowledge that there is no requirement under this Agreement or any other agreement between Manager or any affiliate thereof and the Company that any party refer any patients to any health care provider or purchase any health care goods or services from any source. Additionally, no payment under this Agreement is in return for the referral of patients, if any, or in return for purchasing, leasing or ordering services from Manager or any of its affiliates. The parties may refer patients to any company or person providing services and will make such referrals, if any, consistent with professional medical judgment and the needs and wishes of the relevant patients.
- **28.** <u>Survival</u>. The respective indemnities, representations, warranties and covenants of the parties to this Agreement shall remain in full force and effect and shall survive the termination of this Agreement.

[Signature Page Follows]

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

COMPANY:	Lebanon Surgicenter, LLC
	By Surgicare of Lebanon, LLC, its Managing Member
	By: Name: Title:
MANAGER:	Surgicare of Lebanon, LLC
	By: Name: Title:

SCHEDULE 11.3

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") dated
202[] (the "Effective Date"), is entered into by and between Lebanon Surgicenter, LLC, a
Tennessee limited liability company ("Covered Entity"), and Surgicare of Lebanon, LLC, a
Tennessee limited liability company ("Business Associate"), each a "Party" and collectively, the
"Parties."

WHEREAS, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, one or more agreements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by federal law;

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), Security Standards for the Protection of Electronic Protected Health Information (the "Security Standards") and standards for Breach Notification for Unsecured Protected Health Information (the "Breach Notification Standards") at 45 C.F.R. Parts 160, 162 and 164 (collectively, the Privacy Standards, the Security Standards and the Breach Notification Standards are sometimes referred to herein as the "Confidentiality Requirements");

WHEREAS, the Confidentiality Requirements require that certain obligations be extended to Business Associate through an agreement between Covered Entity and Business Associate;

WHEREAS, Business Associate and Covered Entity desire to enter into this Business Associate Agreement in order to satisfy such requirement;

NOW THEREFORE, the parties agree as follows:

- 1. <u>Business Associate Obligations</u>. Business Associate may use and disclose PHI only as permitted or required by this Agreement. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Confidentiality Requirements; provided that Protected Health Information ("PHI") and Electronic Protected Health Information ("EPHI") are limited to such information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity in connection with the Business Arrangements, and all references to PHI herein shall be construed to include EPHI. To the extent Business Associate is to carry out Covered Entity's obligations under Part 164, Subpart D of the Confidentiality Requirements, Business Associate shall comply with the requirements of such subpart that apply to Covered Entity in the performance of such obligations.
- 2. <u>Use of PHI</u>. Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate may use PHI (i) as required by law, (ii) for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements to the extent such uses are permitted by applicable federal or state law; provided that Business Associate shall not so use PHI in a manner that would violate the Confidentiality Requirements if the PHI were used by Covered Entity in the same manner, and (iii) as necessary for the proper

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management and administration of the Business Associate or to carry out its legal responsibilities.

- 3. <u>Data Aggregation.</u> In the event that Business Associate works for more than one covered entity (as such term is defined in the Confidentiality Requirements), Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the Confidentiality Requirements.
- 4. <u>De-identified Information</u>. Business Associate may use and disclose de-identified health information if the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514.
- 5. **Disclosure of PHI.** To the extent permitted by applicable state and federal law, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement (provided that Business Associate shall not so disclose PHI in a manner that would violate the Confidentiality Requirements if the PHI were disclosed by Covered Entity in the same manner). Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to promptly notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. In accordance with § 164.502(e)(1)(ii) and § 164.308(b)(2) of the Confidentiality Requirements, Business Associate shall ensure that any of its subcontractors that use, disclose, create, receive, maintain and/or transmit PHI on behalf of Business Associate agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such information and in the case of EPHI, agree to comply with the applicable requirements of Part 164, Subpart C of the Confidentiality Requirements. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within fifteen (15) business days of the Business Associate becoming aware of such use or disclosure.
- 6. Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an Individual within ten (10) days of such request and shall make any amendment requested by Covered Entity within twenty (20) days of such request. Any information requested under this Section 6 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial of access and/or amendment is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) business days of receipt of any request for access or amendment of PHI by an Individual. Covered Entity shall determine whether to grant or deny any access or amendment requested by the Individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the

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Designated Record Set.

- 7. Accounting of Disclosures. Business Associate shall make available to Covered Entity in response to a request from an Individual, information required for an accounting of disclosures of PHI with respect to the Individual in accordance with 45 CFR §164.528. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the Individual or to Covered Entity if it is the first accounting requested by an Individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity in advance of the fee, and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
- 8. Obligations of Covered Entity. Covered Entity shall: (i) provide Business Associate with a copy of its notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. §164.520 as well as any changes to such notice, to the extent that it effects Business Associate's use or disclosure of PHI; (ii) notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522 of the Privacy Regulations, to the extent that such restriction may affect Business Associate's use or disclosure of PHI pursuant to the terms of this Agreement; (iii) notify Business Associate in conformance with Section 14.1 of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and (iv) Covered Entity shall obtain all authorizations necessary for any use or disclosure of any PHI as contemplated under the Business Arrangements.
- 9. Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use of his or her PHI, and (i) the Individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Covered Entity shall promptly provide Business Associate written notice of such revocation or invalidity, to permit Business Associate to cease the use and disclosure of any such Individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
- 10. Records and Audit. Business Associate shall make available to HHS or its agents, its books and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining the Parties' compliance with the Confidentiality Requirements, in a time and manner designated by the Secretary.
- 11. <u>Implementation of Security Standards</u>; <u>Notice of Security Incidents</u>. Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement, will comply with the applicable requirements of Part 164, Subpart C of the Confidentiality Requirements, and will promptly report to Covered Entity any Security Incident involving EPHI of which it becomes aware; provided, however, that Covered Entity shall be deemed to have received notice from Business Associate of routine occurrences of:

 (i) unsuccessful attempts to penetrate computer networks or services maintained by Business

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Associate; and (ii) immaterial incidents such as "pinging" or "denial of services" attacks.

12. Data Breach Notification.

Business Associate agrees to implement reasonable systems for the discovery and reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 provided however, that a breach shall not include (i) any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in a further use or disclosure in a manner not permitted under the Privacy Rule; (ii) any inadvertent disclosure by a person authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at Covered Entity or Business Associate, or an organized health care arrangement in which Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Confidentiality Requirements; or (iii) a disclosure of PHI where Covered Entity or Business Associate has a good faith belief that the unauthorized person to whom the disclosure was made would not have reasonable been able to retain the disclosed information. (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §§164.404, 164.410 govern the determination of the date of a HIPAA Breach. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity promptly and in no event later than fifteen (15) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. No later than twenty (20) business days following a HIPAA Breach, and to the extent such information is known to Business Associate, Business Associate shall provide Covered Entity with the information required by 45 C.F.R. §§164.404(c), 164.410.

13. Term and Termination.

- 13.1. This Agreement shall commence on the Effective Date and shall remain in effect until terminated
- 13.2. in accordance with the terms of this **Section 13**.
- 13.3. Either Party may immediately terminate this Agreement (the "Terminating Party") and shall have no further obligations to the other Party (the "Terminated Party") hereunder if the Terminated Party fails to observe or perform any material covenant or obligation contained in this Agreement for thirty (30) days after written notice thereof has been given to the Terminated Party.
- 13.4. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
- 13.5. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

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14. Miscellaneous.

14.1. <u>Notice</u>. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Business Associate:

Covered Entity:

Address: 13355 Noel Road, Suite 1200 Address: 13355 Noel Road, Suite 1200

Dallas, Texas 75240 Dallas, Texas 75240

 Attention: President
 Attention: Managing Member

 Tel. No: (972) 401-8750
 Tel. No: (972) 401-8750

 Fax No: (972) 789-1561
 Fax No: (972) 789-1561

With a copy to: With a copy to:

HCA Holdings, Inc.

Address: One Park Plaza

HCA Holdings, Inc.

Address: One Park Plaza

Nashville, Tennessee 37203 Nashville, Tennessee 37203

Attention: Corporate Counsel
Tel. No: (615) 344-1444
Fax No: (615) 344-1600

Attention: Corporate Counsel
Tel. No: (615) 344-1444
Fax No: (615) 344-1600

- 14.2. <u>Waiver</u>. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- 14.3. <u>Severability</u>. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
- 14.4. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control with respect to the subject matter of this Agreement unless the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
- 14.5. Governing Law. This Agreement shall be governed by and interpreted in

accordance with the laws of the State of Tennessee, excluding its conflicts of law provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in Wilson County, Tennessee.

- 14.6. <u>Nature of Agreement; Independent Contractor</u>. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity under this Agreement. This Agreement does not express or imply any commitment to purchase or sell goods or services.
- 14.7. <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

[Signature Page Follows]

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

COVERED ENTITY:	BUSINESS ASSOCIATE:
Lebanon Surgicenter, LLC	Surgicare of Lebanon, LLC
By:	By:
(Print or Type Name)	(Print or Type Name)
(Title)	(Title)
(Date)	(Date)

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

 \mathbf{of}

LEBANON SURGICENTER, LLC

a Tennessee Limited Liability Company

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

 \mathbf{of}

LEBANON SURGICENTER, LLC, a Tennessee Limited Liability Company

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THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED (1) UNLESS PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND (2) AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGING MEMBER OF THE COMPANY OR SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGING MEMBER TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Of

LEBANON SURGICENTER, LLC, a Tennessee Limited Liability Company

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT of LEBANON SURGICENTER, LLC, a Tennessee limited liability company (the "Company"), is an amendment and restatement in full of that certain Limited Liability Company Agreement effective as of [______], 202____ (the "Prior Company Agreement"), and is made effective as of [______], 2020 (the "Effective Date"), by and among (i) Surgicare of Lebanon, LLC, a Tennessee limited liability company (the "Managing Member"), and (ii) each of the persons whose names and addresses are set forth under the heading "members" on one or more counterparts of <u>Schedule A</u> attached hereto.

WITNESSETH:

WHEREAS, the Managing Member formed the Company on October 6, 2020;

WHEREAS, immediately prior to the Effective Date, the Managing Member was the sole member of the Company;

WHEREAS, as of the Effective Date, the Class A Members listed in <u>Schedule A</u> have purchased the Class A Units listed therein and own the respective Membership Percentages set forth therein; and

WHEREAS, the Members desire to amend and restate the Prior Company Agreement, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the parties hereto agree as follows:

DEFINITIONS

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

- "Advisory Board" shall be as defined in Section 15.3.
- "Affiliate" of any entity means any corporation, partnership, trust, limited liability company or other entity controlling, controlled by or under direct or indirect common control with such entity or in which such entity holds 10% or more of the outstanding voting or equity interests.
 - "Affiliated Person" shall be as defined in Section 14.4.
 - "Agreed Value" shall be as defined in Section 16.11.
- "Agreement" means this Amended and Restated Limited Liability Company Agreement of Lebanon Surgicenter, LLC, a Tennessee limited liability company, as the same may be amended or modified from time to time in accordance with Article XX hereof.
- "Articles of Organization" means the Articles of Organization of the Company, which were filed with the Tennessee Secretary of State on October 6, 2020 as the same may be amended or modified from time to time.
- "Available Cash" means, at the time of determination, all Company 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, without limitation, reserves for working capital, replacements and capital improvements, reserves for repayments of debts owed to the Members and additions to such amounts as the Managing Member 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, including the contributions referred to in Section 7.1 hereof.
- "Category A Directors" means the members of the Advisory Board elected or appointed from time to time by the Class A Members (excluding the Managing Member and its Affiliates).
- "Category B Directors" means the members of the Advisory Board elected or appointed from time to time by the Managing Member.
- "Center" means the ambulatory surgical center known as "[Lebanon Surgery Center]," and located at [_____].
- "Center Property" means the Center facility and other improvements, leasehold interests, all equipment and all other real, personal and mixed property used in connection with the Center.

- "Certification Statement" means the form of certification to this Agreement attached hereto as <u>Schedule F</u>, as the same may be amended, revised or supplemented from time to time by the Managing Member, in its sole discretion.
- "Class A Members" means those Members (including Managing Member and its Affiliates) holding Class A Units.
 - "Class A Units" shall mean all Units issued by the Company other than the Class B Units.
- "Class B Units" shall mean the 510 Units issued by the Company to the Managing Member as of the Effective Date.
 - "CMS" shall mean the Centers for Medicare & Medicaid Services.
- "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 be as defined in the preamble to this Agreement.
- "Company Confidential Information" means confidential, proprietary or trade secret information, data or materials, regardless of whether provided in writing or verbally and regardless of whether marked as confidential or proprietary, related to business conducted or reasonably proposed to be conducted by the Company, including: the terms of this Agreement, the identity of Members or their respective Membership Percentages in the Company, financial or business information, data, analysis, valuations, records, reports and statements, policies, practices, principles, standards and procedures, business plans, contract proposals, marketing information, medical staff information, vendor lists, employee, consultant or independent contractor information (including compensation information), payor or reimbursement information, patient or procedure data, results of operations, budgets, tax information, internal and cost controls, revenues, costs; provided, however, that "Company Confidential Information" shall not include information that: (i) was rightfully in recipient's possession before receipt from the Company, without any obligation of confidentiality owed to the Company or other third party; (ii) is or became available to the public through no fault of recipient; (iii) was received rightfully and in good faith by recipient from a third party, without any wrongful activity by such third party, and without any obligation of confidentiality owed to the third party, or (iv) was developed by recipient or its employees or agents independently of and without reference to any Company Confidential Information.
 - "Company Tax Items" shall be as defined in Section 10.6.
 - "Compliance Program" shall be as defined in Section 15.14.
 - "Director" means any member of the Advisory Board.
 - "Effective Date" shall be as defined in the opening paragraph of this Agreement.
- "Eligibility Affirmation Statement" means the form of statement attached hereto as <u>Schedule C</u>, as the same may be amended, revised or supplemented from time to time by the Managing Member, in its sole discretion.
 - "Fiscal Year" shall be defined in Article XI.

- "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 to the Company or distributed to a Member 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 Managing Member;
- (b) the Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values as determined by the Managing Member (without taking into account Section 7701(g) of the Code);
- (c) the Gross Asset Values of all Company assets may be adjusted by the Managing Member to equal their respective gross fair market values (taking into account Section 7701(g) of the Code), as of (i) the date of the acquisition of an additional interest in the Company by any new or existing Member 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 of more than a *de minimis* amount of Company property including money in reduction of such Member's interest in the Company, or (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments to clauses (i) and (ii) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company; and
- (d) if the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b) or (c) above, such Gross Asset Value shall thereafter be adjusted by the depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss.
 - "HCA" means HCA Holdings, Inc., a Delaware corporation.
 - "HCA Combined Return" shall be as defined in Section 10.6.
- **"Imputed Underpayment"** means "imputed underpayment" within the meaning of Section 6225 of the Code and the Partnership Audit Procedures, or any similar tax liability pursuant to any state or local tax law that is imposed on the Company.
- **"Information Questionnaire"** means the form of questionnaire attached hereto as *Schedule F*, as the same may be amended, revised or supplemented from time to time by the Managing Member, in its sole discretion.
 - "IRS" means the Internal Revenue Service.
- "Joinder Agreement" means the form of joinder to this Agreement attached hereto as <u>Schedule</u> \underline{D} , as the same may be amended, revised or supplemented from time to time by the Managing Member, in its sole discretion.
- "Legal Disability" means the temporary or permanent incapacity, physical or mental, and whether complete or partial, resulting from bodily injury or disease or pre-existing condition, which results in the person being unable to perform the requirements of his or her position on a full-time basis for a period of one hundred eighty (180) consecutive days, or one hundred eighty (180) out of two hundred ten (210) consecutive days (in either case, any absence prior to the date of this Agreement shall

be counted toward the total number of days). Whether the person is disabled shall be established by medical proof satisfactory to an independent physician appointed by the Managing Member, and such physician's decision as to the competence of such medical proof shall be binding upon the person, the Company and all interested parties. In all events, if the person has qualified to receive disability benefits for total and permanent disability under the Social Security Act, he shall be deemed to be disabled for purposes of this Agreement.

"Limited Liability Company Laws" means the provisions of the Tennessee Limited Liability Company Act.

"Liquidator" means the party or parties actually conducting the liquidation of the Company in accordance with the first sentence of Section 18.1 hereof, whether the Managing Member, a liquidator or a liquidating committee.

"Management Agreement" means that certain Management Agreement of even date herewith between the Managing Member and the Company referred to in Section 15.1 hereof.

"Managing Member" shall be as defined in the preamble to this Agreement.

"Member" means the Managing Member, the Class A Members and any person that hereinafter acquires an ownership interest in the Company and is admitted to the Company as a member by the Managing Member, but excludes any persons hereinafter withdrawing from the Company as members from and after the time of such withdrawal. The name and address of each Member is reflected in *Schedule A* hereto.

"Member Investor" means an individual who holds an interest in a Class A Member (other than the Managing Member or a Member that is an Affiliate of the Managing Member) or who holds an interest, as trustee, beneficiary, equity holder or otherwise, in an entity that, directly or indirectly, holds an interest in a Class A Member (other than the Managing Member or a Member that is an Affiliate of the Managing Member). Each Class A Member which is not a natural person shall deliver to the Managing Member a completed, executed version of the Certification Statement attached hereto as <u>Schedule G</u> at the time of its admission as a Class A Member.

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

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

"Member Nonrecourse Deduction" shall be as defined in Section 9.6(e)(iv).

"Membership Percentage" means: (i) at such time as there are 490 or fewer Class A Units outstanding, with respect to a Member, the percentage obtained by dividing the total number of Units owned by such Member by the total number of Units outstanding; and (ii) at such time as there are more than 490 Class A Units outstanding, (a) with respect to the Managing Member in its capacity as such, 51% and (b) with respect to a Class A Member (including the Managing Member and its Affiliates to the extent that any of them hold Class A Units), 49% multiplied by a fraction, the numerator of which is the number of Class A Units held by such Class A Member, and the denominator of which is the total number of Class A Units issued and outstanding on the date of determination.

"Net Income" or "Net Loss" means, for each Fiscal Year, or other fiscal period, an amount equal to the Company's taxable income or loss, as the case may be, for such year or other period

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:

- 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 other 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 provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member;
- (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)(2)(iv)(i) and not otherwise taken into account in computing Net Income or Net Losses pursuant to this definition of Net Income and Net Losses shall be subtracted from such taxable income or loss.

"Nonrecourse Deductions" shall be as defined in Section 9.6(e)(i).

"Operating Affiliates" shall be as defined in Section 15.13.

"Operational Agreement" shall be as defined in Section 15.13.

"Partnership Audit Procedures" means (i) the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 (together with any subsequent amendments thereto, proposed, temporary or final regulations promulgated thereunder, and published administrative or judicial interpretations thereof), (ii) any provisions or procedures of any state or local tax law or taxing authority relating to reporting requirements of the results of a federal partnership audit of the Company or (iii) any provisions or procedures of any state or local tax law or taxing authority permitting a state or local taxing authority to conduct an audit of the Company, including an audit unrelated to a federal partnership audit.

- "Physician" shall have the meaning given to such term in the Stark Law, 42 U.S.C. §1395nn and the regulations promulgated thereunder, as may from time to time be amended, which as of the date hereof includes a doctor of podiatric medicine, a doctor of optometry or a chiropractor.
- "Physician Eligibility Requirements" shall mean the requirement that a Member that is an individual (or, in the case of a Member that is an entity, such Member and each Member Investor), must execute and deliver to the Company a written Eligibility Affirmation Statement in connection with the initial acquisition of Units, and annually thereafter, and promptly upon the request of the Managing Member, or upon any change that makes a previous Eligibility Affirmation Statement inaccurate. Each Eligibility Affirmation Statement shall represent that:
- (a) the Member or, if applicable, the Member Investor, agrees to fully inform each patient referred to the Center by the Member or the Member Investor of his or her investment interest in the Company;
- (b) a Substantial Portion (as defined below) of the Member's or, if applicable, the Member Investor's, medical practice income from all sources for the prior 12-month period was derived from the performance of surgical procedures that are on the list of procedures authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations;
- (c) the Member, or, if applicable, the Member Investor, performed a Substantial Portion of his or her outpatient surgical procedures at the Center during the prior 12-month period, defined for purposes hereof to be those surgical procedures that are on the list of procedures authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations (or, if a new Member or new Member Investor, he or she expects to perform a Substantial Portion of such procedures at the Center each year);
- (d) the Member or, if applicable, the Member Investor, agrees to treat patients receiving medical benefits or assistance under any federal health care program (including Medicare and Medicaid) in which such Member or, if applicable, such Member Investor participates in a nondiscriminatory manner;
- (e) neither the Member nor the Member Investor (if applicable), has been excluded from participation in the Medicare, Medicaid or any other federal health care program; debarred, suspended, or otherwise excluded from any federal procurement or nonprocurement program; or been placed under a Medicare payment suspension;
- (f) the Member, or, if applicable, the Member Investor, does not and will not refer any patient to the Center unless it is a patient on whom he or she personally performs the surgical procedure, and does not, and will not, refer patients to another physician who is in a position to refer patients to the Center if one purpose of the referral is to increase the Center's volume or revenues;
- (g) neither the Member nor the Member Investor (if applicable), has loaned money to another Member for the purpose of investing in the Company, nor borrowed money from another Member for the purpose of investing in the Company;
- (h) the Member or, if applicable, the Member Investor, is licensed to practice medicine in the State of Tennessee and his or her license has not been suspended, revoked, or limited in any way;

- (i) the Member or, if applicable, the Member Investor, holds a valid Controlled Substance Registration Certificate from the United States Drug Enforcement Administration and his or her license has not been suspended or limited in any way;
- (j) neither the Member nor the Member Investor (if applicable), is under investigation or charged or convicted of a crime relating to the provision of healthcare items or services or a Federal or State felony offense; and
- (k) neither the Member nor the Member Investor (if applicable), has any existing overpayment due to CMS.

"Prime rate" shall be as defined in Section 8.3 hereof.

"Prior Company Agreement" shall be as defined in the opening paragraph of this Agreement.

"Qualified Member" means (1) the Members named in one or more counterparts of <u>Schedule A</u> attached hereto; (2) the Member Investors who have executed a Joinder Agreement, and as applicable a Certification Statement; (3) each other individual who, or each other person, the Member Investor of which, (a) meets the Physician Eligibility Requirements, (b) is credentialed (or has applied for credentials) to perform procedures at the Center, (c) meets certain net worth and income standards established by the Managing Member from time to time, and (d) is approved by the Managing Member; (4) each trust, partnership, limited liability company, corporation and other entity controlled and owned solely by one or more individuals who would otherwise be Qualified Members; (5) the Managing Member with respect to any Units either issued to or subsequently acquired by the Managing Member; and (6) any Affiliate of the Managing Member.

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

"Responsible Party" shall be as defined in Section 15.6.

"Restrictive Area" shall be as defined in Section 14.1.

"Restrictive Period" shall be as defined in Section 14.1.

"Reviewed Year" means "reviewed year" as such term is defined in Section 6225(d)(1) of the Code and the Partnership Audit Procedures, or any comparable provisions of state or local tax law with respect to a Fiscal Year of the Company to which a partnership-related item being adjusted by a taxing authority relates.

"Securities Act" shall be as defined in the legend to this Agreement.

"State Securities Laws" shall be as defined in Section 16.7.

"Substantial Portion" means, for purposes of the Physician Eligibility Requirements, at least one third.

"Supermajority of the Advisory Board" means: (a) as to any action that is brought before the Advisory Board when the Class A Members (excluding the Managing Member and its Affiliates), in the aggregate, own more than a 25% Membership Percentage in the Company, the receipt of not less than a

majority of Category A Director votes and a majority of the Category B Director votes; (b) as to any action that is brought before the Advisory Board when the Class A Members (excluding the Managing Member and its Affiliates), in the aggregate, own a 25% or smaller Membership Percentage in the Company, a majority of Category B Director votes.

"Tax Matters Representative" shall be the Managing Member or an Affiliate appointed by the Managing Member.

- "Tax Payment Amount" shall be as defined in Section 10.4(e).
- "Tax Proceeding" shall be as defined in Section 10.4(a).
- "Tax Sharing Payment" shall be as defined in Section 10.6(b).
- "Tax Sharing Schedule" shall be as defined in Section 10.6(a).
- "Threshold" means, with respect to any other Member that is an entity (other than its Managing Member and its Affiliates), 80% of the number of Member Investors in such Member as of the date it is admitted as a Member, rounded down to the nearest whole number.

"Units" means the ownership interests of the Members in the Company and includes the Class A Units and the Class B Units. As of the Effective Date, 490 Class A Units are held by the Class A Members and 510 Class B Units are held by the Managing Member in its capacity as such. The number of Units held by each Member is reflected on <u>Schedule A</u> hereto.

ARTICLE I FORMATION OF LIMITED LIABILITY COMPANY

The Managing Member heretofore formed the Company pursuant to the Limited Liability Company Laws. This Agreement amends and restates the Prior Company Agreement initially executed by the Managing Member, as the sole member of the Company, at the time of formation. Concurrently with the execution of this Agreement, the Members have made the Capital Contributions to the Company set forth in <u>Schedule A</u> hereto, in exchange for the number of Units set forth therein (subject to amendment for additional Capital Contributions). This Agreement is entered into to reflect the addition of the Class A Members as Members. The rights and liabilities of the Members shall be as provided in the Limited Liability Company Laws, except as herein otherwise expressly provided.

ARTICLE II NAME

The name of the Company shall be Lebanon Surgicenter, LLC, a Tennessee limited liability company. The business of the Company shall be conducted under the name of "[Lebanon Surgery Center]" or such other name or names as may be designated from time to time by the Managing Member. The Managing Member shall take the actions required to comply with the Limited Liability Company Laws 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 (although the Managing Member is empowered to execute, on behalf of all Members, pursuant to Article XXI below) any document requested by the Managing Member in connection with that action.

ARTICLE III PURPOSE

The purposes of the Company are to: (1) lease the space in which the Center is located; (2) own, operate, improve, repair, maintain, manage, sublease, replace, rebuild, alter, remodel, restore, sell, lease, mortgage, hypothecate and otherwise use and deal with the Center, including the Center Property and other property; (3) engage in any and all activities related or incident to the foregoing, including, without limitation, the acquisition, ownership, improvement, operation, sale, lease, sublease, mortgage or other use of or dealing with real, personal or mixed property; and (4) generally engage in such other business and activities and do any and all other acts that the Managing Member deems necessary, appropriate or advisable from time to time in furtherance of and consistent with the Company's purposes.

ARTICLE IV NAMES AND ADDRESSES OF MEMBERS

The names and places of business or residence of the Members are as set forth on the counterparts of <u>Schedule A</u> attached hereto, as the same may be modified from time to time by the Managing Member to reflect transfers, address changes and other appropriate revisions to the information set forth therein.

ARTICLE V PRINCIPAL PLACE OF BUSINESS

The principal place of business of the Company shall be at the Center. The Managing Member may in its sole discretion establish additional places of business of the Company.

ARTICLE VI TERM

The term of the Company shall be from the date of the filing of the Articles of Organization as required under the Limited Liability Company Laws until the Company is dissolved in accordance with this Agreement or applicable law.

ARTICLE VII CAPITAL CONTRIBUTIONS AND CAPITAL ACCOUNTS

Section 7.1 <u>Capital Contributions</u>. Concurrently with the execution hereof, each Member has made, or has been credited for purposes hereof, with a contribution to the capital of the Company in cash or property as set forth opposite such Member's name as its Capital Contribution on one or more counterparts of <u>Schedule A</u> attached hereto. No interest shall be paid on any Capital Contributions. Any transferee of a Unit shall be credited for purposes hereof with any Capital Contribution previously made by the prior owner or owners of such Unit. No Member shall have any obligation to make any additional capital contribution to the Company.

Section 7.2 <u>Limitation of Liability</u>. The liability of each Member to the Company shall be limited to the amount of such Member's Capital Contribution and no Member shall have any further personal liability to contribute money to, or in respect of, the liabilities or the obligations of the Company. No Member shall be personally liable for any obligations of the Company, except as may be provided in the Limited Liability Company Laws.

Section 7.3 Capital Accounts. A Capital Account shall be established for each Member 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 current Capital Account of each Member is set forth opposite such Member's name on Schedule A. The Capital Account of each Member shall consist of and be increased by the cash Capital Contributions and the Gross Asset Value of any other property contributed by such Member 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, and shall be decreased by the amount of money distributed to such Member by the Company (exclusive of a guaranteed payment within the meaning of Section 707(c) of the Code paid to such Member), the Gross Asset Value of any portion of any property distributed to such Member by the Company (net of liabilities secured by such distributed property that such Member 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. 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 Accounts 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 Unit shall succeed to that portion of the transferor's Capital Account which is allocable to the portion of the Unit transferred. The respective Capital Accounts of the Members shall not bear interest.

Section 7.4 Authorized Units. The Company shall be authorized to issue 1,000 Class A Units and 510 Class B Units, of which 490 Class A Units and 510 Class B Units are issued and outstanding. The Managing Member may issue, offer and sell Class A Units to Qualified Members in exchange for a cash capital contribution to the Company equal to the fair market value thereof as determined by the Managing Member. In the event that the issuance and sale of additional Class A Units has the effect of diluting the Membership Percentage attributable to one Class A Unit, the net proceeds of the issuance and sale of such additional Class A Units shall be distributed to the Class A Members in accordance with their Membership Percentages immediately prior to the issuance and sale of additional Class A Units (i.e., by multiplying the net proceeds by a fraction, the numerator of which is the number of Class A Units held by a particular Class A Member and the denominator of which is the total number of Class A Units held by all Class A Members immediately prior to the issuance and sale of additional Class A Units).

ARTICLE VIII DISTRIBUTIONS AND LOANS

Section 8.1 <u>Distributions of Available Cash</u>. Except as otherwise expressly provided herein, Available Cash, if any, shall be distributed to the Members pro rata according to each Member's Membership Percentage (determined in accordance with Section 16.3 as to any Units that have been transferred) calculated as of the first day of the calendar quarter immediately preceding the calendar 4810-4302-5358.2

quarter in which the distribution is made. The Company shall make distributions of Available Cash at such intervals or at such times as the Managing Member shall determine.

Section 8.2 <u>Treatment of Unwithdrawn Distributions</u>. If any Member does not withdraw the whole or any part of such Member's share of any cash distribution, such Member shall not be entitled to receive any interest thereon unless such amount is deemed a loan in accordance with Section 8.3 hereof. Any such cash that is not withdrawn shall not be deemed an increase in such Member's Capital Account or share of Net Income or Net Loss of the Company without the express written consent of the Managing Member.

Section 8.3 Loans to Company. Notwithstanding the foregoing, if the Managing Member or, with the consent of the Managing Member, any other Member, advances any funds, agrees not to receive any distributions to which such Member 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, such advance or payment shall be deemed a loan to the Company by such Member, bearing interest from the date such advance or payment was made until such loan is repaid at a floating rate per annum equal to the lesser of (a) 2% plus the "prime rate" from time to time as published in *The Wall Street Journal* or (b) the maximum rate permitted under applicable law as and when amended from time to time. Any such loan shall be secured by a first lien on the Company's assets. The Managing Member will also have the option, at any time, to convert the loan into a fixed rate term loan at the then current market interest rate. Notwithstanding Section 8.1 above, unless otherwise agreed by the Member or Members making any loan to the Company pursuant to this Section 8.3, all distributions of Available Cash shall first be distributed to the Members making such loans until all such loans have been repaid to such Members, 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 above. 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 Overpayments. In the event that a Member, or if applicable, a Member Investor, with a five percent (5%) or more direct or indirect interest in the Company has a Medicare debt due to CMS or any of its contractors and the Company has received notice that such debt has or will result in a denial, revocation, termination, or suspension of the Company's enrollment or revalidation in the Medicare program, such Member or Member Investor shall promptly comply with the conditions set forth in 42 C.F.R. § 424.530(a)(6)(iii).

ARTICLE IX ALLOCATIONS OF INCOME, GAIN, LOSS, DEDUCTION AND CREDIT

Section 9.1 <u>Allocation of Net Income, Loss, Gain, Etc.</u> Except as otherwise provided herein, all items of Company Net Income, gain, Net Loss, deduction and credit shall be allocated among the Members pro rata in accordance with their respective Membership Percentages.

Section 9.2 <u>Treatment of Contributed Property</u>. 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, if any Member 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. Such allocations shall be determined by the Managing Member using any permissible method selected by the Managing Member 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.

- Member's Units, Net Income and Net Loss shall be allocated between the transfer of all or any part of a Member's Units, Net Income and Net Loss shall be allocated between the transferor and transferee based on the effective date of the transfer (as set forth in Section 16.3), provided such method is in conformity with the methods prescribed by Section 706 of the Code and Regulations Section 1.706-4. Distributions shall be made to the holder of record of the Units (determined in accordance with Section 16.3 as to any transferred Units) on the first day of the calendar quarter immediately preceding the calendar quarter in which the distribution is made. Any transferee of Units shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred Units. Subject to the provisions of Regulations Section 1.704-1(b), adjustments to the adjusted tax basis of Company property under Sections 743 and 732(d) of the Code shall not be reflected in the Capital Account of the transferee Member 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.
- Section 9.4 <u>Reliance on Tax Advisors</u>. The Managing Member may rely upon, and shall have no liability to the Members or the Company if it does rely upon, the opinion of tax advisors retained by the Company or the Managing Member from time to time with respect to all matters (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 or the Managing Member is advised by its tax advisors that the allocations provided by this Article IX are unlikely to be respected for federal income tax purposes, the Managing Member is granted the authority, without the approval of a Supermajority of the Advisory Board, to amend the allocation provisions of this Agreement, on advice of said tax advisors, to the minimum extent necessary to comply with the applicable principles of the Code and the applicable Regulations.

Section 9.6 <u>Company Minimum Gain; Member Nonrecourse Debt.</u>

- (a) Except as provided in Regulations Section 1.704-2(f), notwithstanding any other provisions of this Agreement (including but not limited to Section 9.1), if there is a net decrease in Company Minimum Gain for a Company Fiscal Year, determined in accordance with Regulations Section 1.704-2(j)(2)(i), each Member 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 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 requirements of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.
- (b) Except as provided in Regulations Section 1.704-2(f), notwithstanding any other provisions of this Agreement (including but not limited to Section 9.1), if there is a net decrease in 4810-4302-5358.2

Member Nonrecourse Debt Minimum Gain for a Company Fiscal Year, determined in accordance with Regulations Section 1.704-2(i)(3), any Member 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 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 requirements of Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

- (c) Any Member Nonrecourse Deductions for any Company Fiscal Year shall be specially allocated to the Member 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) Nonrecourse Deductions for any Company Fiscal Year shall be specially allocated among the Members pro rata in accordance with their proportionate ownership of Units.
 - (e) For purposes of this Section 9.6, the following definitions shall apply:
- (i) "Nonrecourse Deductions" has the meaning set forth in Regulations Sections 1.704-2(b)(1) and 1.704-2(c);
- (ii) "Member Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4);
- (iii) "Member Nonrecourse Debt Minimum Gain" has the meaning set forth in Regulations Section 1.704-2(i)(3);
- (iv) "Member Nonrecourse Deductions" has the meaning set forth in, and shall be determined in accordance with, Regulations Sections 1.704-2(i)(1) and 1.704-2(i)(2); and
- (v) "Company Minimum Gain" has the meaning set forth in, and shall be determined in accordance with, Regulations Section 1.704-2(d).
- Section 9.7 <u>Elimination of Deficit Balances</u>. 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 its Capital Account (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** Gross Income Allocation. In the event any Member has a deficit balance in their Capital Account at the end of any Company Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.8 shall be made only if and to the extent that such Member would have a deficit balance in their Capital Account in excess of such sum after all other allocations provided 4810-4302-5358.2

in this Agreement have been made as if Section 9.7 hereof and this Section 9.8 were not in the Agreement.

Section 9.9 Adjustments after Special Allocations. Any special allocations of items of Net Income pursuant to Section 9.6 and Section 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 pursuant to this Article IX shall, to the extent possible, be equal to the net amount that would have been allocated to such Member pursuant to the provisions of this Article IX if Section 9.6 and Section 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 Managing Member 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 books and records shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be kept on the accrual basis. Except as may be expressly limited or prohibited by applicable law, the books and records shall at all times 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. The Company shall furnish or make available a list of names and addresses of all Members to any Member who requests such a list in writing for any purpose; however, the cost thereof shall be borne by the requesting Member.

Section 10.2 <u>Company Tax Information</u>. Within 90 days after the end of each Fiscal Year, the Managing Member shall send each person who was a holder of any Unit at any time during the year then ended (including any assignee permitted under Article XVI below, whether or not a substituted Member) 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 Managing Member will furnish or make available to such Member 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.

Section 10.3 <u>Annual Financial Statements</u>. Within 90 days after the end of each Fiscal Year, the Managing Member shall send to each person who was a Member in the Company as of the last day of such Fiscal Year, upon written request, an unaudited balance sheet as of the end of such year and a statement of income for such Fiscal Year, each of which shall be prepared on an accrual basis in accordance with generally accepted accounting principles consistently applied.

Section 10.4 <u>Tax Matters Representative and Tax Audits.</u>

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(a) The Tax Matters Representative shall be the "partnership representative" of the Company within the meaning of Section 6223(a) of the Code (and any analogous state and local tax laws). The Tax Matters Representative shall appoint a "designated individual" as such term is defined in the Partnership Audit Procedures. The Tax Matters Representative shall have all of the powers and authority granted to such Person under the Code and any analogous state and local tax laws. If any state or local tax law provides for a tax matters partner, partnership representative or other Person having similar rights, powers, authority or obligations, the Tax Matters Representative shall also serve in such capacity for the applicable Fiscal Years of the Company. The Tax Matters Representative shall represent

the Company in any claim, action, audit, hearing, investigation, litigation, suit or other similar proceeding by or before any taxing or governmental authority involving (i) any tax matters of the Company or (ii) a Member (including a former Member) relating to tax matters of the Company (a "Tax Proceeding") to the extent allowed by law or this Agreement. The Tax Matters Representative, as long as it is a Member, shall have the authority to execute all tax returns and tax elections on behalf of the Company. If the Tax Matters Representative is not a Member, the Managing Member shall appoint a Member to execute any tax returns and tax elections on behalf of the Company. The Tax Matters Representative may retain, at the Company's expense, such outside counsel, accountants and other professional consultants as it may reasonably deem necessary in the course of fulfilling its obligations as the Tax Matters Representative. If for any reason the Tax Matters Representative can no longer serve in such capacity, including as a result of withdrawal from the Company, the Managing Member shall designate another Person to be the Tax Matters Representative to the extent permitted by the Partnership Audit Procedures and any analogous state and local tax laws. The Members shall not take any actions inconsistent with the designation of the Tax Matters Representative (including the designated individual) as the "partnership representative" of the Company within the meaning of Section 6223(a) of the Code (and any analogous state and local tax laws).

- (b) The Company shall indemnify and reimburse the Tax Matters Representative (i) for all costs and expenses, including legal and accounting fees, claims, liabilities, losses and damages, incurred in connection with any Tax Proceeding solely by virtue of being the Tax Matters Representative, and (ii) against any and all loss, liability, cost or expense, including judgments, fines, amounts paid in settlement and attorney fees and expenses, incurred by the Tax Matters Representative in any other civil, criminal or investigative proceeding in which the Tax Matters Representative is involved or threatened to be involved solely by virtue of being the Tax Matters Representative or its involvement in any tax matters of the Company, except such loss, liability, cost or expense arising by virtue of the Tax Matters Representative's gross negligence, fraud, malfeasance, breach of fiduciary duty or intentional misconduct. Except as otherwise provided in this Agreement, no Member, nor any other Person, shall have any obligation to provide funds for such purpose.
- The Tax Matters Representative may, in its sole and absolute discretion and if permitted by the Code or other applicable law, cause the Company to elect out of the application of the Partnership Audit Procedures for each Fiscal Year of the Company. The Members shall provide the Company with such information as is reasonably necessary to make such election. The Tax Matters Representative shall provide notice to all Members of such election out of the Partnership Audit Procedures as required by the Code or other applicable law. If the Company elects out of the application of the Partnership Audit Procedures for any Fiscal Year of the Company, each Member (including each former Member) agrees that if such Member is notified of any Tax Proceeding involving such Member for that Fiscal Year, such Member shall timely provide a copy of such Tax Proceeding notice to the Tax Matters Representative. Each Member (including each former Member) hereby agrees to cooperate with the Tax Matters Representative in connection with such Tax Proceeding, including, but not limited to, (i) keeping the Tax Matters Representative reasonably informed of the progress of such Tax Proceeding, (ii) providing the Tax Matters Representative with copies of any material documents or agreements relating to such Tax Proceeding, (iii) allowing the Tax Matters Representative to participate in such Tax Proceeding and (iv) not entering into any settlement or compromise of such Tax Proceeding without first notifying the Tax Matters Representative. Any participation by the Tax Matters Representative in a Tax Proceeding of a Member (or former Member) shall be limited solely to the tax matters related to the Company and shall be at the sole cost and expense of the Company. Each Member (or former Member) may request from the Tax Matters Representative information reasonably necessary for such Member to file an amended return for the Member's tax year(s) under tax audit, and the Tax Matters Representative shall use commercially reasonable efforts to provide such information to a requesting Member.

- If an election out of the application of the Partnership Audit Procedures is not made for a Fiscal Year and a tax audit of the Company under the Partnership Audit Procedures results in a proposed deficiency for such Fiscal Year, the Tax Matters Representative may make any elections under the Partnership Audit Procedures, including, but not limited to, the election described in Section 6226 of the Code and any comparable election under state or local tax law, in its sole and absolute discretion. The Tax Matters Representative will inform the Members of the start of any tax audit under the Partnership Audit Procedures and provide periodic updates on the status of such tax audit. Each Member (including any former Member) hereby agrees to timely provide to the Tax Matters Representative such information as the Tax Matters Representative reasonably requests in connection with a Company tax audit under the Partnership Audit Procedures in order for the Tax Matters Representative to minimize any Imputed Underpayment and to evaluate any elections available to the Company under the Partnership Audit Procedures. Such information shall include, but not be limited to, (i) if such Member is an entity, providing the Tax Matters Representative with the type of entity, its federal income tax classification, the names of its direct and indirect owners and, if such direct or indirect owners are entities, with the types of entities and their respective federal income tax classifications, (ii) taxpayer identification numbers, and (iii) any relevant state tax information or filings. Each Member or former Member may, at its, his or her election, request from the Tax Matters Representative information reasonably necessary for such Member to file an amended return for the Reviewed Year as contemplated by the Partnership Audit Procedures, and the Tax Matters Representative shall use commercially reasonable efforts to provide such information to a requesting Member.
- (e) The Company shall make any payments of Imputed Underpayment, taxes, penalties and interest thereon, or any similar amounts imposed at the Company level resulting from the final resolution of a Tax Proceeding of the Company as a partnership for tax purposes, that it is required to make under the Partnership Audit Procedures or other applicable law (the "Tax Payment Amount"). The Tax Payment Amount shall be allocated by the Tax Matters Representative among the Persons who were Members of the Company for the Reviewed Year in a manner that reflects such Persons' respective interests in the Company for the Reviewed Year, adjusted by taking into account any tax attributes or actions taken by such Persons that resulted in a reduction in the Imputed Underpayment. For the avoidance of doubt, if any Member or former Member provides information to the Tax Matters Representative regarding its tax attributes or its amended tax return for the Reviewed Year that directly results in a reduction in the Imputed Underpayment, such Member or former Member shall receive credit for such reduction in determining its share, if any, of the remaining Imputed Underpayment.
- Each Member does hereby agree to indemnify and hold harmless the Company from and against any liability with respect to any Tax Payment Amount resulting in any liability to the Company and such Member's proportionate share of any Tax Payment Amount. The portion of the Tax Payment Amount allocated to a Member pursuant to subsection (e) above, if any, shall, at the election of the Tax Matters Representative in its sole and absolute discretion either (i) be treated as a distribution to such Member and shall reduce, dollar for dollar, the next distribution(s) of cash that would otherwise have been distributable to such Member under this Agreement or (ii) be required to be immediately paid is cash by such Member to the Company upon thirty (30) days written notice from the Tax Matters Representative. The portion of the Tax Payment Amount allocated to a former Member pursuant to subsection (e) above shall be paid in immediately available funds by such former Member to the Company upon thirty (30) days written notice from the Tax Matters Representative demanding such payment. Any Member (or former Member) that does not timely indemnify the Company for its portion of the Tax Payment Amount, shall, in addition to such Tax Payment Amount, also be liable for any collection costs and expenses incurred by the Company (including reasonable attorney fees and expenses), plus interest on such Tax Payment Amount at the mid-term annual applicable federal rate, as defined in the Code, as in effect for the month in which the payment is to be made. For the avoidance of 4810-4302-5358.2

doubt, any amounts payable by any Member (or former Member) with respect to such Tax Payment Amount shall not be treated as a Capital Contribution.

- (g) Each Member agrees that any action taken by the Tax Matters Representative in connection with any Tax Proceeding of the Company or any other matters relating to taxes of the Company shall be binding upon such Member and such Member shall not independently act with respect to any Tax Proceeding affecting the Company, unless previously authorized to do so in writing by the Tax Matters Representative, which authorization may be withheld by the Tax Matters Representative in its sole and absolute discretion.
- (h) The obligations of the Members and the Tax Matters Representative under this Section 10.4 shall survive a Member ceasing to be a Member, the termination, dissolution, liquidation and winding up of the Company or the transfer or redemption of all or any portion of a Member's interest in the Company. If the Company has terminated, this Section 10.4 shall be applied as if the Company continued to exist to the extent possible under applicable law. If the Partnership Audit Procedures are changed, revised or modified, the Tax Matters Representative shall have all of the rights, authority and power to interpret and act upon such changes to the maximum extent permitted in applying the provisions of this Section 10.4.
- (i) If the Company itself is allocated an Imputed Underpayment as a result of an election made pursuant to Section 6226 of the Code (or comparable state or local law) by an entity classified as a partnership for tax purposes of which the Company is itself a partner of such entity for tax purposes, the Tax Matters Representative may make any elections under the Partnership Audit Procedures with respect to such adjustment and Imputed Underpayment, including, but not limited to, any election under Section 6226 of the Code and any comparable election under state or local tax law, in its sole and absolute discretion. If such allocation results in the Company making a Tax Payment Amount, the Tax Matters Representative may take any actions in connection with such Tax Payment Amount as provided for in this Section 10.4.
- Section 10.5 <u>Tax Status of Company</u>. The Company intends to be classified as a partnership for federal income tax purposes under Regulations Section 301.7701-3. Neither the Company nor any Member may make an election under Regulations Section 301.7701-3(c) to treat the Company as an association taxable as a corporation. To the extent Regulation Section 301.7701-3 does not govern the state and local tax classification of the Company, the Managing Member shall take such action as may be permitted or required under any state and/or local law applicable to the Company to cause the Company to be taxable as, and in a manner consistent with, a partnership (or the functional equivalent thereof under applicable law) for state and/or local income tax purposes. In addition, neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law and no provision of this Agreement shall be construed to sanction or approve such an election.
- **Section 10.6** Combined Tax Filings. For each Fiscal Year in which the taxable income (loss), gross receipts, gross margin, net worth or other amounts of the Company (the "Company Tax Items") are included in a combined or consolidated state or local tax filing with HCA Holdings, Inc. and/or any one or more its affiliates (an "HCA Combined Return"), the Company and the Members agree that the Company shall make tax sharing payments as set forth in this Section below.
- (a) Within 120 calendar days after the due date, including extensions, of an HCA Combined Return for a Fiscal Year, the Managing Member shall provide to the Company a schedule showing, in reasonable detail, the calculation of any Company Separate Tax Liability or Company 4810-4302-5358.2

Separate Tax Benefit, as the case may be, for such Fiscal Year (the "Tax Sharing Schedule"). The Company Separate Tax Liability is the pro forma liability calculated on the Company Tax Items. The Company Separate Tax Benefit is the pro forma benefit calculated on the Company Tax Items.

- (b) Within 30 calendar days after receiving the Tax Sharing Schedule, the Company shall pay to the Managing Member an amount equal to the Company Separate Tax Liability or the Managing Member shall pay to the Company an amount equal to the Company Separate Tax Benefit (the "Tax Sharing Payment"). As an example of how the Company Separate Tax Liability will be determined with respect to a state income tax return, assume that the Company has taxable income for Fiscal Year 20x1 of \$10,000,000 and 100% of the income is apportioned to State X. The income tax rate in State X is 6.5%. Further assume that the Company generates \$50,000 of tax credits which are utilized in the HCA Combined Return that year. The Company Separate Tax Liability payment due from the Company to the Managing Member for Fiscal Year 20x1 would be \$600,000 (\$10 million income x 6.5% rate = \$650,000 pre-credit liability less \$50,000 of tax credits). In Fiscal Year 20x2 (and assuming 100% State X apportionment and a 6.5% tax rate), if the Company has a taxable loss of (\$2,000,000) and generates tax credits of \$25,000 which are utilized in the HCA Combined Return, the Company Separate Tax Benefit payment due to the Company from the Managing Member for Fiscal Year 20x2 would be \$155,000 (\$2 million loss x 6.5% rate = \$130,000 pre-credit benefit plus \$25,000 of tax credits).
- (c) If the items used to determine the Company Separate Tax Liability or Company Separate Tax Benefit are adjusted by reason of an amended return, claim for refund, examination by a taxing authority, or the final decision of any court, the amount due to or from the Company shall be recomputed using the adjusted Company Separate Tax Liability or adjusted Company Separate Tax Benefit, whichever the case may be. The Company agrees to pay the Managing Member any additional amount owed including interest at the statutory rate applicable to underpayments in the HCA Combined Return and the Managing Member agrees to pay the Company any overpayment made by the Company including interest at the statutory rate applicable to overpayments in the HCA Combined Return. Payments due under this subsection shall be made within 30 days after the Company receives a revised Tax Sharing Schedule reflecting the subsequent adjustments.
- (d) Any Tax Sharing Payment made from the Company to the Managing Member shall be treated as a payment of tax expense and not as a distribution. Any Tax Sharing Payment made from the Managing Member to the Company shall be treated as a reimbursement for tax benefits and not as a capital contribution. The Managing Member and the Company shall have no obligation to make Tax Sharing Payments with respect to any taxable period that begins on or after the date the Company is no longer included in the HCA Combined Return. If any jurisdiction requires separate tax return filings for any period prior to that date, then the Managing Member and the Company shall have no obligation to make Tax Sharing Payments for such period. The Managing Member shall, at its expense, have the right to control any Tax Proceeding relating to any Tax Sharing Payment, provided, however, that the Company will be entitled to participate in any such Tax Proceeding concerning taxes for which it is responsible and the Managing Member shall not concede, compromise or contest any assessment or assertion of liability with respect to any such taxes relating to a Tax Proceeding for which the Company is responsible without the consent of the Company (which consent shall not be unreasonably withheld).

ARTICLE XI FISCAL YEAR

The fiscal year of the Company means (a) the period commencing on the Effective Date of this Agreement and ending on December 31, (b) any subsequent twelve (12) month period commencing on January 1 and ending on December 31, or (c) any portion of the period described above for which the 4810-4302-5358.2

Company is required to allocate Net Income, Net Loss and other items of Company income, gain, loss or deduction pursuant to Article IX hereof (the "Fiscal Year").

ARTICLE XII COMPANY FUNDS

The funds of the Company shall be deposited in such bank account or accounts, or invested in such interest bearing or non-interest bearing accounts, as shall be designated by the Managing Member. All withdrawals from any such bank accounts shall be made in accordance with the written instructions or authorizations of the Managing Member or its duly authorized agent or agents. The Company may, in the discretion of the Managing Member, participate in HCA's cash management system. If the Managing Member so elects, all cash proceeds from the Company's operations shall be swept to sweep bank accounts held by HCA or its Affiliates with appropriate accounting on the Company's books. Such funds shall be commingled with other HCA funds and may be used for other HCA purposes.

ARTICLE XIII STATUS AND OBLIGATIONS OF MEMBERS

Section 13.1 <u>Limitation on Participation in Management</u>. No Member (other than the Managing Member) shall participate in the active 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 Managing Member.

Limitation on Personal Liability. Except as otherwise provided in the Limited Liability Company Laws, no Member (in its capacity as such) 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 of his or her Capital Contribution and no Member shall have any further personal liability to contribute money to, or in respect of, the liabilities or the obligations of the Company. The preceding sentence shall not, however, be construed to limit or prohibit, in any respect, the use by the Managing Member of any undistributed funds of the Company (regardless of whether previously allocated to the account of any Member) for the payment of Company debts. Upon payment of his or her Capital Contribution set forth in Section 7.1, each Member's interest in the Company shall be fully paid and nonassessable. In no event will any Member (or the successors in interest of a Member) be required to make any capital or other contribution to the Company upon or following the dissolution thereof by reason of the status of the Capital Account of such Member (or his or her successors in interest) except as may be provided in the Limited Liability Company Laws.

Section 13.3 <u>Death, Dissolution, Bankruptcy, Etc. of Members</u>. The death, dissolution, bankruptcy, mental incompetency or Legal Disability of a Member (or the person deemed to be a Member pursuant to Section 16.15 hereof) or a Member Investor shall not cause a dissolution of the Company, but the rights of such Member to share in the profits and losses of the Company, to receive distributions of Company funds and the right and obligation to assign a Company interest pursuant to Article XVI hereof shall on the happening of such an event, devolve upon such Member's legal representative or successors in interest, as the case may be, subject to the terms and conditions of this Agreement, and the Company shall continue as a limited liability company. Each Member's estate or other successor in interest shall be liable for all the obligations of such Member. In no event, however, shall such estate, legal representative or other successor in interest become a member (as such term is used in the Limited Liability Company Laws) except in accordance with Article XVI hereof.

Section 13.4 Eligibility Affirmation Statement and Information Questionnaire. Each Member who is an individual (and in the case of a Member that is an entity, such Member and each Member Investor), must execute and deliver to the Company (i) an Eligibility Affirmation Statement in connection with the initial acquisition of Units, and annually thereafter, and promptly upon the request of the Managing Member or upon any change that makes a previous Eligibility Affirmation Statement inaccurate and (ii) an Information Questionnaire in connection with the initial acquisition of Units, and promptly upon the request of the Managing Member or upon any change that makes a previous Information Questionnaire inaccurate. The organizational documents of Members that are entities shall require that Member Investors meet the Physician Eligibility Requirements and shall provide for the redemption of a Member Investor's interests in the Member in the event that a Member Investor fails to satisfy the Physician Eligibility Requirements or competes with the Company in violation of any applicable non-competition agreements.

ARTICLE XIV NON-COMPETITION

Non-Competition Agreement. Each Class A Member and each Member Section 14.1 Investor recognizes that (i) the Managing Member's entering into this Agreement is induced primarily because of the covenants and assurances made by the Class A Members and the Member Investors hereunder, (ii) the covenant not to compete of the Class A Members, the Member Investors and their respective Affiliates is necessary to ensure the continuation of the business of the Company, and (iii) irreparable harm and damage will be done to the Company in the event that any of the Class A Members, the Member Investors or their respective Affiliates compete with the Company within the area or areas specified in this Section 14.1. Therefore, in consideration of the premises, as a necessary inducement for the Managing Member to enter into this Agreement and the consummation of the transaction described therein), each Class A Member (other than the Managing Member and Affiliates of the Managing Member) and each Member Investor agree that (a) so long as such Class A Member is a member of the Company and for a period of two (2) years thereafter and (b) in the case of a Member Investor, so long as such Member Investor is an equity owner of a Class A Member and for a period of two (2) years thereafter (the time frames referred to in (a) and (b) are referred to herein as the "Restrictive Period"), none of such Class A Members or the Member Investors shall, directly or indirectly, (including, without limitation, through any entity that controls, is controlled by or under common control with such Member or Member Investor or through any spouse, parent, child or sibling of such Member or Member Investor), own any interest in, manage, operate, control, participate in the management or control of, be employed by, provide consulting services to, lend money to or maintain or continue any interest whatsoever (financial or otherwise) in any entity that, directly or indirectly, owns, operates or manages or is developing or constructing a health care facility where surgical, pain management, or gastrointestinal endoscopy services are performed or are intended to be performed, that is located within a [] mile radius of the Center (the "Restrictive Area") and that is not (wholly or partially) owned and operated by HCA or one or more of its Affiliates or (B) enter into a contract or arrangement or employment relationship that requires or incentivizes him or her to perform procedures at a hospital or other health care facility within the Restrictive Area that is not (wholly or partially) owned and operated by HCA or one or more of its Affiliates. Notwithstanding the foregoing, this Section 14.1 shall not (w) prevent any Class A Member or Member Investor from admitting patients to a health care facility or personally performing office based procedures through his or her medical practice in accordance with applicable law and regulations that do not require separate license or require monitoring or monitored anesthesia care provided by an anesthesiologist, a certified registered nurse anesthetist or a registered nurse, (x) apply to the Managing Member or any of its Affiliates, (y) prevent any Class A Member or Member Investor from engaging in the practice of medicine, or (z) apply to ownership interests that the Managing Member explicitly permits in writing provided that such interests are not increased in any way and the owned entity does not change its location or add new locations.

Restriction Against Solicitation Covenant. Each Class A Member (other than Section 14.2 the Managing Member and its Affiliates) and each Member Investor agrees that during the Restrictive Period, no Class A Member nor Member Investor shall, directly or through another entity or person, (i) encourage, induce or attempt to encourage or induce any employee or independent contractor of Company or any of its Affiliates to leave the employ or engagement of Company or any of its Affiliates, or interfere with the relationship between Company or any of its Affiliates and any employee or independent contractor thereof, (ii) hire (in any capacity) any person who was employed or engaged by Company or any of its Affiliates at any time during the twelve (12) month period immediately prior to the date on which such hiring would take place (it being conclusively presumed by the parties so as to avoid any disputes under this Section 14.2 that any such hiring within such twelve month period is in violation of clause (i) above), (iii) call on, solicit or provide services to any customer, patient, supplier, distributor, product manufacturer, licensee, licensor or other business counter-party of Company or any of its Affiliates in order to encourage or induce or attempt to encourage or induce such Person to cease doing business with Company or any of its Affiliates, or in any way interfere with the relationship between any such customer, patient, supplier, distributor, product manufacturer, licensee, licensor or business counterparty and Company or any of its Affiliates (including making any negative or disparaging statements or communications about Company or any of its Affiliates) or (iv) initiate or engage in any discussions regarding an acquisition of any businesses being conducted by the Company or any of its Affiliates (the "Restriction Against Solicitation Covenant"). This Section 14.2 shall not apply to the Managing Member or any of its Affiliates.

Section 14.3 Remedy for Breach. The Members and Member Investors acknowledge and agree that any remedy at law for any breach of the provisions of Section 14.1, Section 14.2 or 14.5 hereof would be inadequate, and each Member and Member Investor hereby consents to the granting by any court of competent jurisdiction of an injunction or other equitable relief restraining any breach or threatened breach thereof, without the necessity of posting a bond, cash or otherwise, and without the necessity of actual monetary loss being proved or the Company's establishing the inadequacy of any remedy at law. To the extent that a court of competent jurisdiction determines that any provision of this Article XIV is illegal, invalid or unenforceable in any respect, the illegal, invalid or unenforceable provision shall be severable therefrom and a lesser restriction shall be enforced in its place, and the remaining restrictions contained herein shall be enforceable independently of each other. Such injunctive relief shall be in addition to any other remedies that may be available to the Company under this Agreement, at law or in equity.

Section 14.4 Managing Member Competition. Nothing in this Agreement shall preclude or limit, in any respect, the right of the Managing Member, HCA, any Affiliate of the Managing Member or HCA, or any partner, owner, officer or director of the Managing Member, HCA or any of their respective Affiliates (collectively, the "Affiliated Persons"), to engage or invest in any business activity of any nature or description, including, without limitation, those which may be the same as or similar to the Company's business and in direct competition therewith. The Members expressly acknowledge and agree that the Affiliated Persons are in fact engaging in, and shall be entitled to continue to engage in, activities that are directly competitive with the Center and the Company. Any such activity may be engaged in independently or with others, and may include, without limitation, the ownership and/or operation of other surgical facilities or related medical facilities for the account of the Managing Member or any such Affiliated Person or the account of others, including, without limitation, any partnership, limited liability company or other entity organized by the Managing Member or any such Affiliated Person. Neither the Company nor any Member shall have any right, by virtue of this Agreement or the relationship created 4810-4302-5358.2

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. The Managing Member or any 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, and the doctrine of corporate opportunity, or any analogous doctrine, will not apply to the Managing Member or any Affiliated Person. Neither the Managing Member nor any Affiliated Person who acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Company will have any duty to communicate or offer such opportunity to the Company. Neither the Managing Member nor any Affiliated Person will be liable to the Company or to the Members for breach of any fiduciary or other duty by reason of the fact that the Managing Member or any Affiliated Person pursues or acquires such opportunity for its own account, or directs such opportunity to another person or does not communicate such opportunity or information to the Company. Except as expressly provided herein, this Agreement will not preclude the Managing Member or any Affiliated Person from engaging in any activity whatsoever permitted by applicable law.

Section 14.5 Confidentiality. Each Class A Member (other than the Managing Member and its Affiliates) and each Member Investor agrees during the Restricted Period and thereafter to keep confidential, at all times, Company Confidential Information, except that each Class A Member and each Member Investor may disclose the fact of such Member's investment in the Company and discuss this agreement with his or her financial and legal advisors as needed. This is an ongoing obligation even if the Class A Member or Member Investor is no longer a member of the Company. If a Class A Member or Member Investor discloses any Company Confidential Information, the Managing Member is entitled to preliminary and permanent injunctive relief as well as any other remedy available. The restriction in this Section 14.5 shall also apply to Affiliates of the Class A Member and Member Investor. This Section 14.5 shall not apply to the Managing Member or its Affiliates.

ARTICLE XV MANAGEMENT OF COMPANY

Authority of Managing Member. Subject to Section 15.4, the Managing Member shall have exclusive authority to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company. The Company shall enter into a Management Agreement, in the form attached hereto as <u>Schedule B</u> (the "Management Agreement"), with the Managing Member to manage the operations of the Center. The Management Agreement shall be assignable to any Affiliate of HCA. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Managing Member as set forth in this Section 15.1 and elsewhere in this Agreement. In no event shall any person dealing with the Managing Member or the Managing Member's representative with respect to any business or property of the Company be obligated to ascertain that the terms of this Agreement have been complied with, or be obligated to inquire into the necessity or expedience of any act or action of the Managing Member or its representative; and every contract, agreement, deed, mortgage, security agreement, promissory note or other instrument or document executed by the Managing Member or its representative with respect to any business or property of the Company shall be conclusive evidence in favor of any and every person relying thereon or claiming thereunder that (a) at the time of the execution and/or delivery thereof, this Agreement was in full force and effect, (b) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Company, and (c) the Managing Member or its representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Company. Furthermore, any person or entity dealing with the Company may rely upon a certificate signed by the Managing Member as to the following: (i) the identity of the Managing Member or any Member; (ii) the existence or nonexistence of any fact or facts 4810-4302-5358.2

that constitute a condition precedent to acts by the Managing Member or which are in any other manner germane to the affairs of the Company; (iii) the persons or entities who are authorized to execute and deliver any instrument or document of the Company; or (iv) any act or failure to act by the Company on any other matter whatsoever involving the Company or any Member. Any and all acts heretofore taken by the Managing Member which are permitted under Section 15.1 are hereby ratified and confirmed by the Members as the acts and deeds of the Company.

Powers of the Managing Member. Subject to Section 15.4, the Managing Member is authorized and empowered on behalf and in the name of the Company to carry out any and all of the objects and purposes of the Company and to perform all acts and enter into and perform all contracts and other undertakings, consistent with the terms of this Agreement, that the Managing Member may in its discretion deem necessary, advisable or incidental thereto. Any and all acts heretofore taken by the Managing Member in connection therewith are hereby ratified and confirmed by the Members as the acts and deeds of the Company. Without limiting the generality of the foregoing, any grant of "discretion" to the Managing Member authorizes the Managing Member to act in its sole and absolute discretion to the greatest extent permitted by law. Notwithstanding any other provision of this Agreement or applicable provision of law or equity, whenever in this Agreement the Managing Member is permitted or required to make a decision or take an action or omit to do any of the foregoing: (a) in its "sole discretion" or "discretion" or under a similar grant of authority or latitude, the Managing Member will be entitled to consider only such interests and factors, including the interests of any Affiliate of the Managing Member, as it desires, and will have no duty or obligation to consider any other interests or factors affecting the Company or the Members, or (b) with an express standard of behavior (including, without limitation, such standards as "reasonable" or "good faith"), then the Managing Member will comply with such express standards and will not be subject to any other or different standard.

Section 15.3 Advisory Board.

- (a) <u>Powers and Duties</u>. The Company shall have an Advisory Board of Directors (the "Advisory Board"). The Advisory Board shall advise the Managing Member as to major business issues relating to the business and affairs of the Company. Such advice and consultation shall not be construed as indicating that any Member (including any member of the Advisory Board) is taking part in the management of the Company in contravention of Section 13.1 hereof. Additionally, the Advisory Board shall have the power and authority to consider and approve (or not approve) the matters set forth in Section 15.4 relating to the business and affairs of the Company.
- (b) <u>Composition</u>. The Advisory Board shall be comprised of **[five (5)]** members, **[three (3)]** of whom shall be elected by the Class A Members (excluding the Managing Member and its Affiliates) as described below (the "Category A Directors"), and **[two (2)]** of whom shall be appointed by the Managing Member (the "Category B Directors"); provided, however, that in no event shall more than ____ of the Category A Directors be affiliated with the same medical practice. The Category A Directors must be Physicians who are admitted to the medical staff of the Center.

D'	(c)	Election	on of Category A Directors	. The	following shal	l apply to	Category A
Directors:							
		(i)	Elections shall be held in the	e [] calendar qua	arter of 202	2[_] in which
the Center co	mmences	operati	ions and then during the firs	t quart	ter of each cale	ndar year	beginning in
202[], to the	extent ne	cessary	to fill an empty seat.				

- (ii) Any Class A Member (excluding the Managing Member and its Affiliates) shall have the right to nominate individuals who meet the qualifications set forth above for election to the Advisory Board as Category A Directors.
- (iii) The Managing Member shall conduct the election by written ballot, which shall list the qualified nominees of which the Managing Member has received notice at least three business days prior to the distribution of the ballot. The Managing Member shall count those ballots received within 20 business days after the initial distribution of the ballots.
- (iv) Each Class A Member (excluding the Managing Member and its Affiliates) shall have one vote for each Category A Director position up for election and for each Unit owned by such Class A Member. Class A Members entitled to vote may vote for "write-in" candidates, but shall not be entitled to "cumulate" their votes. The Managing Member and its Affiliates may not vote in any such election.
- (v) The three (3) qualified nominees or write-in candidates who receive the largest number of votes from the Class A Members entitled to vote shall be elected as Category A Directors.
- (vi) Each Category A Director serving on the Advisory Board shall serve in such capacity until the earlier to occur of (a) such person's resignation, (b) such person's death, (c) such person's removal as set forth below, or (d) the election of a new Category A Director to fill his or her Category A Director position.
- (vii) Each Category A Director shall be eligible for reappointment or reelection at the end of any such term.

(d) Term, Removal and Vacancies.

- (i) Directors shall serve at the pleasure of the Managing Member or the Class A Members that appointed or elected such Director (as the case may be). Directors appointed by the Managing Member shall be subject to removal by the Managing Member, and Directors elected by the Class A Members shall be subject to removal based upon a vote of a simple majority of the Class A Members (excluding the Managing Member and its Affiliates). Further, Category A Directors shall have the right and option to remove any Category A Director (from which vote the subject Category A Director shall abstain) upon any act, event or occurrence giving rise to an option to purchase such Category A Director's Units under Section 16.9 or Section 16.13 below. Upon the removal, resignation or death of any Category B Director, a replacement Category B Director shall be appointed by the Managing Member. Upon the removal, resignation or death of any Category A Director, a replacement Category A Director shall be elected by a vote of a simple majority of the Class A Members (excluding the Managing Member and its Affiliates) and such replacement Director shall serve for the remainder of the term of the Class A Director who has been removed, resigned or died.
- (ii) Subject to subsection (i) above, each Director shall serve for a one-year term, except that the initial Category A Directors identified in Section 15.3(c)(i) shall serve until their successors are elected as provided in Section 15.3(c)(ii). Each Director shall be eligible for reappointment or reelection at the end of any such term.

- (e) <u>Meetings</u>. The Advisory Board shall hold regular meetings annually. Additional meetings of the Advisory Board may be called by the Managing Member or any two (2) Directors.
 - (f) Quorum and Voting. So long as the Class A Members (excluding the Managing Member and its Affiliates), in the aggregate, own more than a 25% Membership Percentage, the presence of two (2) Category A Directors and one (1) Category B Director (or such smaller number as the Managing Member may determine) shall constitute a quorum for purposes of transacting business at any meeting of the Advisory Board. In the event that the Class A Members (excluding the Managing Member and its Affiliates), in the aggregate, own a 25% or smaller Membership Percentage, the presence of two (2) Category B Directors (or such smaller number as the Managing Member may determine) shall constitute a quorum for purposes of transacting business at any meeting of the Advisory Board. Notwithstanding the foregoing, at all times the votes of the Category B Directors shall be voted in the same manner (i.e., all for or all against the matter brought before the Advisory Board).
 - (g) <u>Action by Written Consent</u>. The Advisory Board may take any action which is permitted or required by this Agreement to be taken at a meeting of the Advisory Board without any such meeting if a written consent setting forth the action to be taken is signed by a sufficient number of Directors as would be necessary to take the action at a meeting at which a quorum was present and voted. Prompt notice of the action so taken shall be given to Directors that did not sign the consent.
 - (h) <u>Alternative Forms of Meetings</u>. Directors may participate in and hold a meeting of the Advisory Board by means of a conference telephone or similar remote communications equipment, or another suitable electronic communications system, including videoconferencing technology or the Internet, or any combination thereof, if the telephone or other equipment or system permits each person participating in the meeting to communicate with all other persons participating in the meeting. Participation in such meeting shall constitute presence in person at such meeting.
 - (i) <u>Advisory Board Bylaws</u>. With the approval of the Managing Member, the Advisory Board may adopt written bylaws relating to the conduct of its business, so long as such bylaws are consistent with the provisions of this Agreement.
 - (j) <u>Corporate Compliance Program</u>. The Directors must participate in and comply with, upon request by the Managing Member, HCA's corporate compliance policies and programs applicable to members of a governing board, as same may be amended from time to time. In the event that a Director fails to participate in and comply with HCA's corporate compliance policies and programs, the Managing Member may remove such Director, regardless of whether such Director is a Category A Director or a Category B Director. Any vacancy occurring in the Advisory Board as a result of this subsection shall be filled in accordance with the rules governing vacancies set forth in Section 15.3(d)(i).
 - (k) <u>Compensation</u>. The Directors shall not receive any compensation from the Company for serving on the Advisory Board or attending meetings of the Advisory Board.
 - Section 15.4 <u>Decisions Requiring Approval of a Supermajority of the Advisory Board</u>. The following major business decisions of the Company shall require the approval of a Supermajority of the Advisory Board at a meeting at which a quorum is present, or in writing in accordance with Section 15.3(g), in order to become effective:
 - (a) Any change to the purpose of the Company;

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- (b) any amendment to this Agreement which changes any Member's right of limited liability or right not to be required to make additional capital contributions to the Company;
 - (c) the sale of all or substantially all of the assets of the Company; or
- (d) selecting a new administrator of the Center (but not terminating the employment of an existing administrator);
- (e) incurring any indebtedness or obligation, including but not limited to capital expenditures, in excess of twenty-five percent (25%) of the value of the Company's net assets; or
- (f) exercise by the Managing Member of its rights under Section 16.9(a)(iii) or Section 16.9(c)(iii) hereof.

Section 15.5 Supervision of Company; Employment of Agents and Affiliates. Subject to the provisions of Section 15.6 below, the Managing Member shall devote such time to the Company's business as it shall deem to be necessary to manage and supervise the Company's business and affairs in an efficient manner; but 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 Managing Member. To the maximum extent permitted by applicable law, the Managing Member may delegate to any Affiliate or third party all or any of the powers, rights, privileges, duties and discretion vested in it under this Agreement or otherwise, in each case subject to the supervision of the Managing Member. Any such delegation may be made upon such terms and conditions as the Managing Member may determine in its discretion. Any reference herein to the Managing Member includes any such delegate, to the extent of the applicable delegation, but no such delegation will cause the Managing Member to cease to be the Managing Member of the Company or cause any delegate to become a Member.

Section 15.6 Limitation of Managing Member Liability. Neither the Managing Member, nor any owner, Affiliate, officer, member, or director of the Managing Member, nor any Director (each a "Responsible Party"), shall be liable, responsible or accountable in damages or otherwise to the Company or any Member for (i) any action taken or failure to act (even if such action or failure to act constituted the simple negligence of such Responsible Party) on behalf of the Company within the scope of the authority conferred on the Managing Member or Director by this Agreement or by law unless such act or omission was performed or omitted fraudulently or in bad faith or constituted gross negligence or constituted a breach of an express covenant of this Agreement or (ii) a breach or alleged breach of any Responsible Party's fiduciary duties whether imposed by the Limited Liability Company Laws or otherwise (all such duties, fiduciary and otherwise, being expressly disclaimed, waived and eliminated, to the fullest extent permitted by applicable law). If the Limited Liability Company Laws or other applicable laws are amended after the Effective Date to authorize action further eliminating or limiting the liability of Responsible Parties for breach of fiduciary duties, then the liability of Responsible Persons shall be eliminated or limited to the fullest extent permitted by such laws as so amended. The provisions of this Agreement, to the extent that they expand, restrict or eliminate the duties and liabilities of any Responsible Party otherwise existing at law or in equity, are agreed by the Members to expand, restrict or eliminate to that extent such other duties and liabilities of such Responsible Party to the fullest extent permitted by applicable law.

Section 15.7 Indemnification.

- (a) The Company shall indemnify and hold harmless to the full extent permitted by the law each Responsible Party from and against any loss, expense, damage or injury suffered or sustained by it by reason of any acts, omissions or alleged acts or omissions (even if such acts or omissions constituted the simple negligence of the Responsible Party) arising out of its activities on behalf of the Company or in furtherance of the interests of the Company, including, without limitation, any judgment, award, settlement, attorney's fees and other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim if the acts, omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based were for a purpose reasonably believed by the Responsible Party to be in the best interests of the Company and were not performed or omitted fraudulently or in bad faith or as a result of gross negligence by such Responsible Party and were not in violation of the fiduciary obligation of any such Responsible Party as limited herein; provided, however, that the Managing Member shall not be required to make any contribution to the Company that may be necessary for the Company to satisfy its indemnity obligation hereunder.
- (b) Expenses reasonably incurred by a Responsible Party in defense or settlement of any claim that may be subject to a right of indemnification hereunder shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Responsible Party to repay such amounts to the extent that it shall be determined upon final decision, judgment or order that such Responsible Party is not entitled to be indemnified hereunder. No advances shall be made by the Company under this Section 15.7(b) without the prior written approval of the Managing Member.
- Section 15.8 Adjustment of Basis of Company Property; Other Tax Elections. In the event of a transfer of all or part of the interest of a Member in the Company by sale or exchange or on the death or dissolution of a Member, the Managing Member may cause the Company to elect, pursuant to the Section 754 of the Code, or corresponding provision of subsequent law, to adjust the basis of the Company property as provided by Section 743 of the Code; provided that such election is deemed by the Managing Member to be in the best interest of the Company. All other elections required or permitted to be made by the Company under the Code or the Regulations shall be made by the Managing Member in such manner as in the Managing Member's reasonable judgment will be most advantageous to the Members. Each of the Members will upon request supply the information necessary to properly give effect to any such election.
- **Section 15.9** <u>Holders of Nonrecourse Debt</u>. Anything in this Agreement to the contrary notwithstanding, the Managing Member shall not cause or permit the Company to permit any person (other than the Managing Member and its Affiliates) who holds any Nonrecourse Debt of the Company to acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Company, other than as a secured creditor.
- Section 15.10 Expense Reimbursement. During the term of this Agreement, the Managing Member shall be reimbursed for all direct costs and expenses of the Managing Member incurred (whether before or after the organization of the Company) for the benefit of the Company and attributable to the organization of the Company or the business or operations of the Company, but the Managing Member shall not be entitled under this Section 15.10 to be reimbursed or otherwise to charge the Company for any of its general overhead expenses, other costs or expenses that are not directly for the benefit of the Company, or any expenses or costs properly reimbursed or specifically excluded from reimbursement under the Management Agreement. Without limiting the foregoing, the Managing Member shall be reimbursed for all reasonable costs and expenses of the Managing Member incurred in connection with (x) applying for and obtaining appropriate federal and state licenses necessary for the Company's 4810-4302-5358.2

operation of the Center, and (y) filing fees incurred in connection with the formation and organization of the Company. The Managing Member shall be reimbursed for all reasonable costs and expenses incurred in connection with any offering or sale of Units made by or with the assistance of the Managing Member from time to time; provided, however, that the Managing Member shall not be entitled to expense reimbursements in connection with the sale of all or substantially all of its interest in the Company.

Section 15.11 <u>Meetings of the Members</u>. There are no annual or other required meetings of the Members. Meetings of the Members may be called, however, at any time by the Managing Member (a) upon giving written notice thereof at least 10 days and not more than 60 days prior to such meeting at a place determined by the Managing Member to be convenient or (b) within 30 days after the Managing Member receives written notice from any two Members requesting a meeting of the Members.

Section 15.12 Conflict of Interest Transactions. Notwithstanding anything to the contrary herein, at law or in equity, the Managing Member and the Affiliated Persons are hereby authorized and empowered, without any consent or approval of the Members, to lend money to the Company as described in Section 8.3 hereof and to engage in any transaction in which the Managing Member or any Affiliated Person has an actual or potential conflict of interest with the Members or the Company, including, without limitation, any action taken pursuant to Section 15.13. Without limiting any grant of discretion to the Managing Member elsewhere in this Agreement, any transaction that involves the Managing Member or any Affiliated Person providing services, equipment or supplies to the Company wherein the terms of such transaction are no less favorable than those offered to other similarly situated HCA-affiliated ambulatory surgery centers will be deemed fully compliant with this Agreement and will not give rise to any liability whatsoever on the part of the Company or any Affiliated Person. Notwithstanding anything to the contrary in law or equity, unless otherwise expressly provided herein, (a) whenever a conflict of interest exists or arises between the Managing Member or any of the Affiliated Persons, on the one hand, and the Company or a Member, on the other hand, or (b) whenever this Agreement or any other agreement contemplated herein or therein provides that the Managing Member shall act in a manner which is, or provides terms which are, fair and reasonable to the Company or any Member, the Managing Member shall have the sole discretion to resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices and any applicable generally accepted accounting practices and principles. The resolution, action or terms so made, taken or provided by the Managing Member will not constitute a breach of this Agreement or any other agreement contemplated herein or of any duty or obligation of the Managing Member at law, in equity or otherwise.

Section 15.13 Operational Agreements. Without limiting any other grant of authority or discretion to the Managing Member hereunder, in conducting the business of the Company, the Managing Member is authorized to negotiate agreements with third parties ("Operational Agreements") on behalf of the Company, including, without limitation, insurance reimbursement agreements and other third party payor contracts, and to amend, terminate or otherwise implement any such Operational Agreement on behalf of the Company. In that regard, each Member and Member Investor expressly acknowledges and agrees that, notwithstanding anything to the contrary herein, in the Limited Liability Company Laws, at law or in equity: (a) the Managing Member may cause the Company to enter into Operational Agreements together with any other parties, including Affiliates of the Company or the Managing Member that may be engaged in the same or similar business as the Company, including those that are in direct competition with the Company ("Operating Affiliates"), on such terms (which may vary between the Company and any such Operating Affiliate) as the Managing Member may deem appropriate in its sole discretion; (b) the combined involvement of the Company and any such Operating Affiliates in any Operational Agreement (or related agreements) is expected to serve the long-term interests of both the

Company and such Operating Affiliates; (c) in negotiating and otherwise administering any Operational Agreement, the Managing Member may take into consideration the role of any Operating Affiliate in such Operational Agreement or in related agreements to which such Operating Affiliate is a party; (d) in determining the interest of the Company in connection with any Operational Agreement, the Managing Member may take into consideration any factors that the Managing Member may deem appropriate in its discretion, including the collective interest of the Company and any Operating Affiliates in such Operational Agreement or any related agreements, in addition to or, to the extent adverse to the interest of the Company taken in isolation, instead of such isolated interest; and (e) there can be no assurance that the Company or the Members will not incur economic or other detriment in connection with the negotiation, amendment, implementation, administration or termination of any Operational Agreement, whether through the involvement of Operating Affiliates or otherwise as a result of business, economic, legal, regulatory or other considerations, and the incurrence of any such detriment will not in any event comprise evidence of any breach of the Managing Member's duties hereunder. Any actions of the Managing Member taken in accordance with the express terms of this Section 15.13 will not constitute a breach by the Managing Member of this Agreement or any other agreement contemplated herein or of any duty or obligation of the Managing Member at law or in equity or otherwise, to the fullest extent permitted by law. Consistent with the authority granted to the Managing Member herein, in planning or implementing the managed care contracting strategy for the Company, the Managing Member may take into consideration its own interest and the interest of its Operating Affiliates and may decide in its sole discretion to reject certain joint contracting arrangements and/or separate contracting opportunities with certain third party payors, if the Managing Member in its sole discretion determines that such contracting decisions would not be in the best interest of the Managing Member and/or its Operating Affiliates.

Section 15.14 <u>Compliance Program</u>. The Members understand and acknowledge that the Company shall be operated by the Managing Member in compliance with all corporate compliance plans maintained by Affiliates of the Managing Member including, but not limited to, the Ethics and Compliance Program and the Code of Conduct Distribution and Training Policy (collectively, "Compliance Program"). Accordingly, the Company and all personnel providing services to the Company shall be subject to and participate in the Compliance Program.

ARTICLE XVI TRANSFER OF INTERESTS BY MEMBERS

Section 16.1 Limitations on Transfer of Units.

- (a) Except as otherwise provided in this Article XVI and notwithstanding any provision contained in the Limited Liability Company Laws to the contrary, no Member (other than the Managing Member or its Affiliates) shall have the right to transfer its, his or her Units and no Member shall have the right to have a transferee admitted as a substituted Member in respect of such Member's interest in the Company without, in both instances, first obtaining the prior written consent of the Managing Member, which consent may be withheld at the sole discretion of the Managing Member; provided, however, that any Member may sell his or her Units at any time to the Managing Member or the Company at a price and upon such terms as may be agreed to by such Member and the Managing Member. The Managing Member may (but shall not be obligated to) permit the transfer of fractional Units. For purposes of this Agreement, the issuance, sale or transfer of any membership or equity interest in a Member (other than the Managing Member or its Affiliates), shall constitute a transfer of such Member's interest in the Company that requires the prior written consent of the Managing Member.
- (b) The Managing Member and its Affiliates may transfer and assign their respective Units to any Affiliate of the Managing Member or to any third parties without the consent of any

Member. Upon any such transfer or assignment, the transferee or assignee shall automatically be admitted as a substituted member of the Company.

(c) As to any Member or Member Investor that is an entity, such Member shall not issue any additional equity interests to any individual or entity, nor may any Member Investor holding an equity interest in the Member sell, assign or transfer his or her equity interest in the Member, without in each instance the prior written consent of the Managing Member, which consent may be granted or withheld in the sole discretion of the Managing Member. After receipt of the written consent of the Managing Member, and a reasonable period of time prior to issuing any additional equity interests in the Member to any individual or entity or permitting the assignment or transfer of any equity interest in the Member, the Member shall make all disclosures to such individual, entity or assignee as are necessary to comply with applicable state and federal securities laws. All equity interests in the Member must be issued and sold or transferred at the fair market value thereof based upon the then-current fair market value of the Company as a going concern as determined by an independent third party that is acceptable to the Managing Member. Each new owner of the Member shall be required to become a party to the Member's governing documents and to execute and deliver to the Company an Eligibility Affirmation Statement and a Joinder Agreement.

Right of First Refusal. A Member (other than the Managing Member or its Affiliates) may not, without the prior written consent of the Managing Member, which consent may be withheld in the Managing Member's sole discretion, sell, assign or transfer the whole or any part of his Units to any person or entity. Any transfer permitted hereunder may only be made to a Qualified Member. Before any such Unit (other than any Units held by the Managing Member or any of its Affiliates) is assigned, sold or transferred to a Qualified Member, the assigning Member shall first offer the Managing Member the opportunity to acquire such interest, in whole or in part, on the same terms and for the same price (fairly apportioned if less than the entire interest is purchased) that the assigning Member offers or proposes to offer such Units to any such Qualified Member. The Managing Member or any Qualified Member designated by the Managing Member may acquire the Units so offered. If the Managing Member or its designee does not elect to acquire all of the Units offered within 30 days after its receipt of the offer, the part that it does not acquire will be offered to the Company and any portion of the Units offered to the Company and not purchased by it within 10 days after its receipt of such offer, with the Managing Member's approval, may be sold to the Qualified Member upon the same terms and for the same price offered to the Company at any time within 90 days after the expiration of the Company's option period.

In addition to the foregoing, any Member who desires to transfer his or her Units to a Qualified Member shall arrange for such Qualified Member to be bound by the provisions of this Agreement, as it may then be amended, by having such Qualified Member execute two counterparts of an instrument of assignment satisfactory in form to the Managing Member and by delivering the same to the Managing Member together with any such other information that may be required by counsel to the Company to determine whether the proposed transfer will violate applicable federal or state securities or other laws or regulations. It is understood that the assigning Member 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 16.3 Effective Date of Assignment. Each assignment or transfer of Units shall be effective as follows: (a) if the Managing Member actually receives an instrument of assignment that is satisfactory in form to the Managing Member, and is duly executed by the assignor and the assignee and received by the Managing Member no later than the fifteenth (15th) day of the second month of any calendar quarter, the assignment shall be effective as of the first day of such calendar quarter; and (b) if such an instrument of assignment is actually received by the Managing Member after the fifteenth (15th) 4810-4302-5358.2

day of the second month of a calendar quarter, the assignment shall be effective as of the first day of the next calendar quarter. Notwithstanding the foregoing, no attempted assignment or transfer shall be effective or recognized by the Company or the Members until all the requirements of this Article XVI have been satisfied.

Section 16.4 **Disposition Upon Termination of Marriage**. In the case of a Member who is an individual, if the marital relationship of a Member is terminated by divorce or the death of the Member's spouse and such Member does not succeed to his or her spouse's interest (if any) in their Units, such Member shall have the option to purchase all of his or her spouse's interest in such Units, and such spouse or the executor or administrator of the spouse's estate shall be obligated to sell such Units. The price per Unit at which such Units shall be purchased shall be an amount equal to the Agreed Value, which shall be payable in cash. Such option must be exercised within 90 days after such death or divorce. If a Member fails to exercise such option within said 90 day period (including, without limitation, any such failure resulting from a determination that the preceding provisions of this Section 16.4 are not enforceable against the Member's spouse), such failure shall constitute an offer by the Member and his or her spouse to sell all of their interest in the Units to the Managing Member or the Company at the Agreed Value, and the provisions of Section 16.2 above shall apply to such offer. The date of the offer shall be the 91st day after such death or divorce. In the case of a Member who is an individual, the spouse of such Member shall execute and deliver to the Company a Spousal Consent, in substantially the form of <u>Schedule E</u> hereto contemporaneously with the execution and delivery of the Agreement of each Class A Member.

Section 16.5 <u>Involuntary Disposition</u>. Prior to or upon any involuntary disposition of Units, the Member who owns such Units or his or her representative shall send written notice thereof to the Managing Member 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 the Units for the Agreed Value, and the provisions of Section 16.2 above shall apply. Failure to send any such notice shall not affect the applicability or operation of this Section 16.5 or the other provisions of this Article XVI. The various options to purchase the Units pursuant to this Article XVI shall continue following any transfer or disposition of the Units, whether pursuant to this Agreement or otherwise.

Transfers Affecting Status of Company. Anything contained herein to the Section 16.6 contrary notwithstanding, without the prior written consent of the Managing Member, no Member (other than the Managing Member or its Affiliates) may assign the whole or any part of his or her Units, and no attempted or purported transfer or assignment by any Member (other than the Managing Member or its Affiliates) of an interest in the Company (whether or not such assignee or transferee becomes a substituted Member) shall be effective if it prejudices or affects, or would prejudice or affect, the continuity of the Company as a partnership for state or local tax purposes pursuant to provisions providing for a technical termination. The Managing Member is expressly authorized to enforce this provision by notifying the Members that all transfers or assignments will be (or may be) suspended for a period of up to 12 months whenever interests totaling 25% or more in interest of the Company shall have been effectively transferred in any 12 month period. Prior to any such transfer or assignment becoming effective, the Managing Member may require an opinion of counsel to the effect that, except as may result from any basis adjustment made pursuant to Section 15.8 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 16.7 <u>Compliance with Securities Laws</u>. All Members acknowledge that the Units have not been registered under (a) the Securities Act, in reliance on the exemptions afforded by Section 4810-4302-5358.2

3(a)(11) and Section 4(2) of the Securities Act, or (b) the securities laws of the State of Tennessee (the "State Securities Laws") in reliance on the 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 of the Members shall be nontransferable and nonassignable except in compliance with the registration provisions of the Securities 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 Unit, the Managing Member may require an opinion of counsel satisfactory to the Managing Member that such assignment or transfer will be made in compliance with the registration provisions of the Securities Act and the State Securities Laws or exemption(s) therefrom, and such transferor or assignor shall be responsible for paying said counsel's fee for the opinion. The foregoing shall not limit the restrictive legend set forth at the beginning of this Agreement.

Section 16.8 <u>Substitution of Qualified Member</u>. Provided that the assignee is a Qualified Member, upon the effectiveness of an assignment of an interest pursuant to Section 16.3 and the written consent of the Managing Member to the substitution of such assignee as a Member, such assignee shall be a substituted Member. The Managing Member shall execute, file and record with the appropriate governmental agencies such documents (including amendments to this Agreement) as are required to accomplish the substitution of the assignee as a substituted Member. Each Member hereby consents to the substitution of any assignee of Units as a Member concurrently with the consent of the Managing Member to such substitution. Any person admitted to the Company as a substituted Member shall be subject to and bound by all the provisions of this Agreement as if originally a party to this Agreement. Unless and until any assignee of a Member becomes a substituted Member as provided in this Section 16.8, his or her status and rights shall be limited to the rights of an assignee of an interest in a limited liability company under the Limited Liability Company Laws.

Section 16.9 Option to Repurchase on Death, Disability or Failure to Meet the Physician Eligibility Requirements.

In the case of a Member that is an individual, the Managing Member shall have (a) the option and, if the Managing Member does not exercise its option, the Company shall have the option to purchase such Member's Units (i) in the event of the death, dissolution, bankruptcy, mental incompetency or Legal Disability of such Member, (ii) if such Member ceases either (A) to maintain his or her credentials to perform procedures at the Center for any reason or (B) to meet the Physician Eligibility Requirements (which may be, without limitation, evidenced by such Member's failure or inability to execute and deliver a complete and accurate Eligibility Affirmation Statement within 30 days after the first anniversary of the Effective Date or at such other times as the Managing Member shall from time to time determine) or (iii) at any time upon a determination by the Managing Member, in its discretion, that the Member's behavior at the Center is disruptive or inappropriate, or that the Member's involvement with the Company is otherwise contrary to the best interest of the Company. The purchase price under this Section 16.9(a) shall be a price equal to the Agreed Value of such Units, except that in the event that the Managing Member or the Company exercises its option to purchase a Member's Units under subsection (ii) above, the Managing Member shall have the option to obtain a third party valuation to determine the fair market value of the Units, and if so, such fair market valuation shall be used as the purchase price for the Units. The closing of any purchase of Units pursuant to this Section 16.9(a) shall take place, the purchase price shall be paid and the Member's Units shall be transferred and assigned in accordance with the terms and provisions of Section 16.10 hereof.

- Each Member that is an entity (other than the Managing Member and its Affiliates), agrees (i) to maintain a number of Member Investors at least equal to the Threshold who satisfy the Physician Eligibility Requirements, and who are credentialed and maintain active medical staff privileges at the Center; and (ii) to purchase, or arrange for other Member Investors meeting such requirements, to purchase the interests in such Member held by any Member Investor who ceases to meet such requirements. In the event that a Member that is an entity has a number of Member Investors less than the Threshold for a period of at least six (6) months, the Managing Member shall have the right to purchase or cause the Company to purchase a number of Units from such Member equal to the number of Units then held by such Member multiplied by a fraction, the numerator of which is 1 and the denominator of which is one plus the number of Member Investors who continue to meet all such requirements, at a price equal to the Agreed Value of such Units. Notwithstanding the foregoing, for any purchase pursuant to this Section, the Managing Member shall have the right, in its sole discretion, to require an independent third party valuation by a firm chosen by it, to determine a fair market value purchase price of the Units being purchased, in which case such price shall be used as the purchase price for such Units. The closing of any purchase of Units pursuant to this Section shall take place, the purchase price shall be paid and the Units shall be transferred and assigned in accordance with the terms and provisions of Section 16.10 hereof.
- In the case of a Member that is an entity (other than the Managing Member or an Affiliate of the Managing Member), the Managing Member shall have the option and, if the Managing Member does not exercise its option, the Company shall have the option to purchase such Member's Units (i) upon the death, dissolution, bankruptcy, mental incompetency or Legal Disability of such entity Member's Member Investor, (ii) if a Member Investor ceases either (a) to maintain his or her credentials to perform procedures at the Center for any reason or (b) to meet the Physician Eligibility Requirements (which may be, without limitation, evidenced by such Member Investor's failure or inability to execute and deliver a complete and accurate Eligibility Affirmation Statement no later than 30 days after the Effective Date or at such other times as the Managing Member shall from time to time determine) or (iii) at any time upon a determination by the Managing Member, in its discretion, that a Member Investor's behavior at the Center is disruptive or inappropriate, or that the Member's or Member Investor's involvement with the Company is otherwise contrary to the best interest of the Company. In the event that the entity Member does not affect the purchase of the Member Investor's interest in the Member within 30 days of notice from the Managing Member, then the Managing Member shall have the option and, if the Managing Member does not exercise its option, the Company shall have the option to purchase all or a portion of such Member's Units or to withhold distributions of Available Cash to such Member until it effects the purchase of the applicable Member Investor. The purchase price under this Section 16.9(c) shall be a price equal to the Agreed Value of such Units, except that in the event that the Managing Member or the Company exercises its option to purchase a Member's Units under subsection (ii) above, the Managing Member shall have the option to obtain a third party valuation to determine the fair market value of the Units, and if so, such fair market valuation shall be used as the purchase price for the Units. The closing of any purchase of Units pursuant to this Section 16.9(b) shall take place, the Purchase Price shall be paid and the Units shall be transferred and assigned in accordance with the terms and provisions of Section 16.10 hereof.

Section 16.10 Repurchase Procedures. Except as provided in Section 16.12 below, the purchase price for Units to be acquired by the Company or the Managing Member shall be payable in cash to the holder of such Units. The closing of the sale shall be held at the principal place of business of the Company within 60 calendar days after the date the Company or the Managing Member exercises such election to purchase such interest. At the closing of the sale, the Member who is selling his or her interest in the Company or his or her legal representative shall convey good and marketable title to his or her Units free and clear of all encumbrances other than those incurred by the Company in connection with 4810-4302-5358.2

its business (and shall quitclaim all of such owner's right, title and interest in Company assets) to the buyer by an appropriate bill of sale, deed or other instrument of assignment, and the buyer shall pay the purchase price to the owner. All costs and expenses of said transfer, including any legal fees of the Company or the Managing Member, shall be borne and paid by the selling party, and the Company or the Managing Member is authorized to apply any other obligations payable to the selling party to the payment or reimbursement of such costs and expenses. If the Managing Member purchases any Units as herein provided, the Managing Member shall be admitted as a substituted Member in respect of such Units.

Section 16.11 Agreed Value. The "Agreed Value" of a Member's Units shall mean the Member's Membership Percentage multiplied by an amount equal to four (4) times the Company's Normalized Cash Flow (as defined below) for the most recent four fiscal quarters of the Company completed prior to the date of such purchase, less long term debt (including the current portion of long term debt), as determined in accordance with generally accepted accounting principles using the accrual method of accounting applied on a basis consistent with the preceding period. "Normalized Cash Flow" shall mean the Company's net income (i) plus depreciation, amortization and interest expenses, (ii) less an amount equal to the average capital expenditures of the Company over the most recently completed three Fiscal Years and (iii) plus or minus such adjustments that, in the sole discretion of the Managing Member, are necessary to eliminate the effect of extraordinary, non-recurring transactions and events. Any questions with respect to accounting procedures or valuation not controlled by this Agreement shall be resolved by the independent accountants selected by the Managing Member.

Section 16.12 Repurchase Obligation Upon Change in Law. If any law is passed or regulation adopted after the date of this Agreement which prohibits or has the effect of prohibiting a referring physician from being a Member or Member Investor, the Managing Member and the affected Member agree to use their best 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 the parties. If despite such efforts no such restructuring is agreed upon, the Managing Member agrees to purchase (or to cause the Company to purchase), and the Member agrees to sell, all of the Member's Units, for a purchase price equal to the fair market value of the Units at the time of the purchase as determined by an independent third party selected by the Managing Member. Additionally, if the enactment of any statute, regulation or other law or the judicial or administrative interpretation of any existing or future statute, regulation or law shall have the effect of limiting reimbursement of health care costs through government or other payor programs or otherwise materially and adversely affects the manner in which the Company or its Affiliates shall operate their businesses, the Managing Member shall attempt to restructure the Company to eliminate the adverse effect, and if the Company cannot be so restructured, the Managing Member, at its sole and absolute discretion, shall have the option to purchase (or to cause the Company to purchase) the Units of all Members for a purchase price equal to the fair market value of the Units at the time of the purchase as determined by an independent third party selected by the Managing Member. If the Managing Member (or the Company) purchases Units from a Member pursuant to this Section 16.12, the purchase price will be payable to the Member, at the sole and absolute discretion of the Managing Member, in a lump sum or in 36 equal monthly payments with interest on the unpaid principal balance at the prime rate, as published in The Wall Street Journal on the date of the purchase. If the Managing Member exercises its discretion to pay (or to cause the Company to pay) for a Unit in 36 monthly installments, the first such installment shall be paid to the Member on the first day of the month after 30 days have expired after the purchase of the Units, with subsequent installments paid on the first day of each successive month thereafter until paid in full. The Managing Member (or the Company) may pre-pay in whole or in part the amount owed without penalty. The Managing Member's (or the Company's) obligation to pay the Member in 36 equal monthly installments under this Section 16.12 shall be evidenced by non-recourse promissory notes executed by the Managing Member (or the Company). The obligations of the Managing Member (or the 4810-4302-5358.2

Company) under such note shall be subordinate to all other obligations of the Managing Member (or the Company).

Section 16.13 Repurchase Right Upon Breach of Non-compete.

- (a) In the event that a Member that is an individual breaches the non-competition provisions of Section 14.1 hereof, the Managing Member shall have the option, and if the Managing Member does not exercise its option the Company shall have the option, to purchase all Units held by such Member for a purchase price equal to the book value of such Member's interest in the Company as of the last day of the Fiscal Year preceding the date of such breach as determined in the reasonable discretion of the Managing Member. Such purchase right shall be in addition to any other remedies available to the Company hereunder, at law or in equity for a breach of Section 14.1. The closing of any purchase of Units pursuant to this Section 16.13(a) shall take place, the purchase price shall be paid and the Units shall be transferred and assigned in accordance with the terms and provisions of Section 16.10 hereof.
- (b) In the event that a Member Investor of a Member that is an entity (other than the Managing Member or an Affiliate of the Managing Member breaches the non-competition provisions of Section 14.1 hereof, the Managing Member shall have the option, and if the Managing Member does not exercise its option the Company shall have the option, (i) to purchase all Units held by such Member for a purchase price equal to the book value of such Member's interest in the Company as of the last day of the Fiscal Year preceding the date of such breach as determined in the reasonable discretion of the Managing Member or (ii) to withhold distributions of Available Cash to such Member until such Member or its Member Investors repurchase all of the equity interests in such Member held by the breaching Member Investor. Such rights shall be in addition to any other remedies available to the Company hereunder, at law or in equity for a breach of Section 14.1. The closing of any purchase of Units pursuant to this Section 16.13(b) shall take place, the purchase price shall be paid and the Units shall be transferred and assigned in accordance with the terms and provisions of Section 16.10 hereof.
- Section 16.14 Entity Member Governing Documents. The governing partnership, operating and similar governing documents of each Member that is an entity (other than the Managing Member and its Affiliates) shall contain provisions giving such Member the right to purchase the interests of its Member Investors upon the occurrence of a breach of the noncompete provisions set forth in Section 14.1 hereof and upon a Member Investor's failure to satisfy the Physician Eligibility Requirements or be credentialed or maintain active medical staff privileges at the Center. The Company and the Managing Member shall be third party beneficiaries of such Member's purchase rights under such agreements and shall have the right to seek injunctive or other relief to cause such Member to exercise such rights. No Member that is an entity required to include the foregoing provisions may modify or delete such provisions without the consent of the Managing Member.
- **Section 16.15** Ownership of Units for Certain Purposes. In the case of Units held by an entity or by two or more persons as joint tenants, tenants-in-common or pursuant to any other joint ownership arrangement, the Managing Member shall designate the individual who shall be deemed to be the Member for purposes of determining the rights of the Company, the Managing Member and the Members under this Article XVI.
- **Section 16.16** <u>Joinder Agreement by Member Investors</u>. In the case of Units being held by an entity, each Member Investor in such entity shall sign an Eligibility Affirmation Statement and a Joinder Agreement, an Information Questionnaire and a Certification Statement.

Section 16.17 Other Sales of Class A Units. If the Company or the Managing Member agrees to acquire a Member's Class A Units under any circumstances not otherwise addressed in this Article XVI, the purchase price for such acquisition shall be, at the Managing Member's option, either: (i) the then-current Agreed Value of such Class A Units; or (ii) the then-current fair market value of such Class A Units based upon the value of the Company as a going concern as determined by an independent third-party appraiser chosen by the Managing Member.

ARTICLE XVII DISSOLUTION OF THE COMPANY

The happening of any one of the following events shall work an immediate dissolution of the Company:

- (a) The sale or other disposition of all or substantially all the assets of the Company;
- (b) The Managing Member determines to dissolve; or
- (c) The occurrence of any other event that causes the dissolution of a limited liability company under the Limited Liability Company Laws.

ARTICLE XVIII WINDING UP AND TERMINATION OF THE COMPANY

Winding Up; Appointment and Powers of Liquidator. If the Company is Section 18.1 dissolved for any reason, the Managing Member (or in the event the Managing Member has ceased to be the managing member of the Company, a Liquidator or liquidating committee selected by the Advisory Board) 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 entered into by the Company before or (subject to the limitations hereinafter set forth) after the dissolution. The Liquidator shall be instructed to 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 having due regard to the activity and condition of the relevant market and general financial and economic conditions. The Liquidator (if other than the Managing Member) appointed as provided herein shall be entitled to receive such compensation for its services as shall be agreed upon by the Liquidator and the Managing Member. The Liquidator may resign at any time by 15 days prior written notice and the Liquidator (if other than the Managing Member) may be removed at any time, with or without cause, by written notice of removal signed by the Managing Member. 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) will be appointed, within 30 days thereafter, by the Managing Member 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 XVIII, 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 Managing Member under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, other than the limitation on sale set forth in Section 15.4) 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, not to exceed two years after the date of dissolution of the Company, 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, 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 18.2 <u>Liquidator Appointed by Court</u>. If within 30 days following the date of dissolution or other time period provided in Section 18.1 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 Center is located for appointment of such Liquidator or successor Liquidator, and 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 18.3** 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 the two year period referred to in Section 18.1 above, such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.
- Section 18.4 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 and 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 in Section 18.1 above) the balance of any reserve account referred to in Section 18.3 above, shall be distributed among the Members 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 Fiscal Year of liquidation).

Section 18.5 <u>Liquidation Financial Statement</u>. Within a reasonable time following the completion of the liquidation of the Company's properties, the Liquidator shall supply to each of the Members a statement prepared by the Company's accountants which shall set forth the assets and the liabilities of the Company as of the date of complete liquidation, each Member's pro rata portion of distributions pursuant to Section 18.4, and the amount retained as reserves by the Liquidator pursuant to Section 18.3.

Section 18.6 No Recourse; In-Kind Distributions. Each holder of a Unit shall look solely to the assets of the Company for all distributions with respect to the Company and his or her Capital Contribution therein (including the return thereof) and share of profits or losses thereof, and shall have no recourse therefor (upon dissolution or otherwise) against the Company, the Managing Member or the Liquidator. No holder of an interest in the Company 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, 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 is in compliance with this Article XVIII. In the event any Company property is distributed in kind, each Member 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 of 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 XVIII.

Section 18.7 Termination and Dissolution. Upon the completion of the liquidation of the Company and the distribution of all Company funds, 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 18.8 <u>Technical Tax Termination</u>. A technical tax termination under any applicable provisions of federal or state income tax laws shall not cause a dissolution of the Company. Upon the liquidation of the Company caused by the termination of the Company under any state income tax laws, the assets of the Company shall be deemed to be contributed to a new limited liability company in exchange for the interests in the new limited liability company and, immediately thereafter, the Company shall be deemed to distribute the interests in the new limited liability company to Members in exchange for their interests in the Company, with the new limited liability company being governed by a limited liability company agreement identical to the provisions of this Agreement and agreed to by all of the Members.

Section 18.9 Liquidation of Member Interests. A Member's interest in the Company shall be deemed liquidated for purposes of this Article XVIII upon the liquidation of the Company or on the date of liquidation of the Member's 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 XIX NOTICES

To be effective, all notices 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, 4810-4302-5358.2

return receipt requested, (2) confirmed facsimile transmission, (3) courier service or (4) delivering same in person and receiving a signed receipt therefor. For purposes of notice, the addresses of the Members (or their respective assigns) and the Company shall be as set forth on the counterparts of <u>Schedule A</u> attached to this Agreement. Notices mailed in accordance with the foregoing shall be deemed to have been given and made three days following the date so mailed. Notices given in any other manner shall be deemed given upon actual receipt. Any Member or his or her assignee may designate a different address to which notices 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 XX AMENDMENT OF COMPANY AGREEMENT

Amendment; Restrictions. This Agreement may be modified or amended at any time by the Managing Member, except that any modifications or amendments to this Agreement that change any Member's right of limited liability or right not to be required to make additional contributions to the Company require the approval set forth in Section 15.4. For avoidance of doubt, the Managing Member shall have the authority to amend this Agreement without the approval of a Supermajority of the Advisory Board (a) as provided in Section 9.5, (b) for the purpose of reflecting transfers of Units pursuant to Article XVI, (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, and (d) to the extent deemed necessary or appropriate by the Managing Member to bring the Company and this Agreement into compliance with any future federal or state laws or administrative regulations that are duly enacted, or binding court decisions that are promulgated, 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 a Supermajority of the Advisory Board if such modification or amendment would change any Member's right of limited liability or right not to be required to make additional contributions to the Company.

Section 20.2 Amendment of Articles of Organization. In the event this Agreement shall be amended pursuant to this Article XX, the Managing Member shall have the authority to amend the Articles of Organization without any vote or other action by the Advisory Board to reflect such change if it deems such amendment of the Articles of Organization to be necessary or appropriate.

ARTICLE XXI POWER OF ATTORNEY

Each of the Members and any permitted assignee or transferee of his or her interest hereunder, does hereby irrevocably constitute and appoint the Managing Member, or its successors as Managing Member, as 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 assignee'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 amendments to the Articles of Organization, counterparts of this Agreement and amendments thereto) which the Managing Member deems appropriate to form, qualify or continue the Company as a limited liability company in the State of Tennessee, (2) all instruments which the Managing Member deems appropriate to reflect any amendment to this Agreement made in accordance with the terms of this Agreement, (3) all instructions required by the Limited Liability Company Laws to cancel the Articles of

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Organization filed with the Tennessee Secretary of State and any other governmental agencies to reflect the dissolution and termination of the Company pursuant to the terms of this Agreement, (4) all instruments relating to the admission of any additional or substituted Member, (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, and (6) in connection with exercise of any option under Article XVI hereof, to execute an appropriate assignment of Units if a Member fails to do so within ten (10) days after written request therefor. 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 and shall extend to such Member's heirs, successors and assignees; and may be exercised by said agent and attorney in fact for all Members (or any of them) by listing all (or any) of the Members 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 hereby agrees to be bound by any representations made by the Managing Member acting in good faith pursuant to such power of attorney, and each Member hereby waives any and all defenses which may be available to contest, negate or disaffirm any action of the Managing Member taken in good faith under such power of attorney.

ARTICLE XXII MISCELLANEOUS

- Section 22.1 <u>Waiver of Right to Seek Partition</u>. The Members agree that the Company properties are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that he or she may have to maintain any action for partition of any of the Company property.
- Section 22.2 <u>Integrated Agreement</u>. This Agreement and the other agreements referred to herein constitute the entire agreement among the Members. Such agreements supersede any prior agreement or understandings among them with respect to the subject matter hereof, and may not be modified or amended in any manner other than as set forth herein or in such other agreement referred to 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, without regard to the conflicts of law provisions thereof.
- Section 22.4 <u>Successors and Assigns</u>. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, heirs, administrators, executors, successors and assigns, but this Section 22.4 shall not diminish the restrictions set forth in Article XVI hereof.
- Section 22.5 <u>Construction</u>. 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, the feminine or the neuter gender shall include the masculine, feminine and neuter. The term "person" means any individual, corporation, partnership, limited liability company, trust or other entity.

- **Section 22.6** <u>Captions</u>. 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. 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. Signatures on this Agreement or any other document relating to the Company transmitted by facsimile shall be accepted as original signatures.
- Section 22.9 <u>Further Assurances</u>. 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 by the laws of the United States of America, the State of Tennessee or any political subdivision or agency thereof.
- Section 22.10 <u>Weekends and Holidays</u>. If any due date contained herein falls on a Saturday, Sunday or bank holiday in the State of Tennessee, the due date shall be deemed to be the following business day.
- **Section 22.11** Articles of Organization. The Managing Member shall not be required to deliver or mail copies of the Articles of Organization, or any amendments thereto, to the Members, but the Managing Member shall provide copies thereof to any Member upon written request therefor.
- **Section 22.12** No Representation Regarding Tax Effects. Neither the Company nor any Member or representative or agent of the Company or any Member makes any representation, warranty, guarantee or other assurance to any Member, the Company or others regarding the federal or state income tax effects of this Agreement on the Company or its Members.
- Section 22.13 <u>Compliance with Laws</u>. It is the intention of the Company and the Members that this Agreement, the business and operations of the Company, including the Center's operations, and the manner in which the parties perform their respective obligations, shall comply with all applicable federal, state and local laws and regulations, including but not limited to the Medicare and Medicaid Anti-Fraud and Abuse Law, 42 U.S.C. § 1320a-7(b), Ethics In Patient Referrals Act, 42 U.S.C. § 1395nn and related legislation, or the Federal Civil False Claims Act, 31 U.S.C. § 3729. Without limiting the generality of the foregoing, the Company shall not provide "designated health services" except as permitted in accordance with an applicable exception under the Ethics In Patient Referrals Act, 42 U.S.C. § 1395nn and related regulations.
- Section 22.14 No Third Party Beneficiaries. It is understood and agreed among the Members that this Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto, and that no other person shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

Section 22.15 Force Majeure. If any of the parties hereto is delayed or prevented from fulfilling any of its obligations under this Agreement by force majeure, said party shall not be liable under this Agreement for said delay or failure. "Force majeure" shall mean any cause beyond the reasonable control of a party, including but not limited to, act of God, act or omission of civil or military authorities of a state or nation, fire, strike, flood, riot, war, delay of transportation or any other act or omission beyond the reasonable control of a party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Limited Liability Company Agreement as of the day and in the year first above written.

MANAGING MEMBER:	SURGICARE OF LEBANON, LLC
	By:
	Name:Title:

[Counterpart Signatures Follow for Class A Members.]

Counterpart Signature Page - Class A Members

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Limited Liability Company Agreement as of the day and in the year first above written.

If Individual:
Name:
If Entity:
Entity Name:
By:
Name:
Title:

SCHEDULE A

Members and Capital Contributions

Name	Address	Employer Identification Number (if entity)	Number of Units (Class of Units)	Capital Contribution
Surgicare of Lebanon, LLC	One Park Plaza Nashville, TN 37203	[]	510 (Class B Units)	\$
[Class A Members]				\$ \$
				\$

For purposes of notice to the Company:

Lebanon Surgicenter, LLC 13355 Noel Road, Suite 1200 Dallas, Texas 75240 Attention: Manager

Facsimile: (972) 789-1561

with a copy to:

HCA Holdings, Inc. One Park Plaza Nashville, TN 37203

Attention: General Counsel & Senior

Vice President - Development Facsimile: (615) 344-2086

SCHEDULE B

Management Agreement

SCHEDULE C

Eligibility Affirmation Statement

The undersigned, who is either (i) a Member (if such Member is an individual) or (ii) an owner of a Member of Lebanon Surgicenter, LLC, a Tennessee limited liability company (the "Company"), or an affiliate of a Member of the Company required to deliver to the Company this Eligibility Affirmation Statement (in either case, "Member Investor"), hereby represents, warrants and agrees as set forth below. With respect to an owner of a Member of the Company, such owner makes the representations below on his or her own behalf as well as on behalf of the Member entity of which he or she is an owner (in which case references below to "I" shall include, where applicable, both the Member and the Member Investor).

- 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 **[Lebanon Surgery Center]** (the "Center") that I have an investment interest in the Center and that the patient may choose any hospital or surgery facility (subject to my having appropriate medical staff privileges at such hospital or surgery facility).
 - 2. During the 12 calendar months immediately preceding the date of this Statement:
- (a) I have derived a Substantial Portion (as defined below) of my medical practice income from the performance of outpatient surgical procedures that are on the list of procedures authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations; and
- (b) I have performed a Substantial Portion of my procedures that are on the list of procedures authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations, at the Center (or, if a new Member or Member Investor, I expect to perform a Substantial Portion of such procedures at the Center each year).

For purposes hereof, the term "Substantial Portion" shall be at least one third.

- 3. I agree that, with respect to any and all federal health care programs in which I participate, I will treat patients receiving benefits or assistance under such programs in a nondiscriminatory manner.
- 4. I have never been excluded from participation in the Medicare, Medicaid or any other federal health care program; debarred, suspended, or otherwise excluded from any federal procurement or nonprocurement program; or been placed under a Medicare payment suspension.
- 5. I shall not prescribe, order or refer any patient who is a beneficiary of the Medicare, Medicaid or other federal health care program to the Center for ancillary services unless such services are directly and integrally related to primary procedures performed at the Center and are not separately billed to Medicare, Medicaid or any other federal health care program.
- 6. I have been and will be personally involved with the provision of care to each patient I have referred, or refer, to the Center.
- 7. I have neither loaned money to another Member for the purpose of investing in the Company, nor borrowed money from another Member for the purpose of investing in the Company.

- 8. I am licensed to practice medicine in the State of Tennessee and my license has not been suspended or limited in any way.
- 9. I hold a valid Controlled Substance Registration Certificate from the United States Drug Enforcement Administration and my license has not been suspended, revoked, or limited in any way.
- 10. I am not under investigation and have not been charged with or convicted of a crime relating to the provisions of healthcare items or services or a Federal or State felony offense.
 - 11. I have no existing overpayment due to CMS or a CMS contractor.

Agreed to by the undersigned this	day of	, 20
		Signature
		Type or Print Name

SCHEDULE D

Joinder Agreement

3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3	,
confessed, the undersigned, being a Member Investor the limited liability company created by the Am Agreement (the "Company Agreement") of Lebanon to be bound by and subject to the provisions of Article if the undersigned were a signatory to the Company agrees that, while the undersigned is a Member	ended and Restated Limited Liability Company Surgicenter, LLC (the "Company"), hereby agrees is XIV, XV and XVI of the Company Agreement as Agreement. Additionally, the undersigned hereby Investor of and while pany, he/she will meet the Physician Eligibility
to the Managing Member an Eligibility Affirmation S Company Agreement.	
IN WITNESS WHEREOF, the undersigned as of the day of [], 202	has caused this Joinder Agreement to be executed
MEMBER INVESTOR: Si	gnature
	vpe or Print Name

SCHEDULE E

SPOUSAL CONSENT

The undersigned, being a spouse of a Member of Lebanon Surgicenter, LLC, a Tennessee limited liability company (the "Company), hereby acknowledges that he/she has read and is familiar with the provisions of the Amended and Restated Limited Liability Company Agreement of the Company (the "Company Agreement"), including, without limitation, the mandatory resale on divorce provisions described in Section 16.4 of the Company Agreement, and agrees to be bound thereby and joined therein. The undersigned further acknowledges that he/she has been advised to seek independent legal counsel with respect to the consequences of the undersigned's execution of this Spousal Consent. The undersigned hereby agrees that his/her Member spouse may join in any future amendment or modification of the Company Agreement without any further signature, acknowledgement, agreement or consent by such spouse, to the extent such amendment or modification does not affect the value of the spouse's interest in the Units (as defined in the Company Agreement). In addition, the undersigned hereby agrees that any community property interest that he/she may have in the Units will be subject to the provisions of the Company Agreement.

	IN WITNESS WHEREOF, the undersigned h	as executed this Spousal Joinder as of the
day of _	, 202	
		Signature of Spouse
		Type or Print Name

SCHEDULE F INFORMATION QUESTIONNAIRE

The Company requires that each Member who is an individual and, in the case of a Member that is an entity, each owner of such Member, execute and date the following questionnaire.

PART A: Exact Name on your ownership investment in surgery center (Choose one of the following):

(Complete Part B and Part D)

	(Each Person	n complete Part B	and Part D)		
-Entity:					
(Complete Part B Part D)	B, C and D and EAC	H member owner	within Entity	must co	mplete Part B, C and
PART B: All Individual	Members and All	Owners of Entition	es that are M	<u> 1embers</u>	:
(1) Legal Name:					
	First	Λ	ΔI		Last
(2) Residence Address:					
	Street Add	ress			Apartment/Unit #
	City			State	ZIP Code
(3) Address to send notices/payments to (if different from residence):	City			State	ZII Code
	Street Add	ress			Apartment/Unit #
	City	1		State	ZIP Code
(4) Home Phone:	()	(5) Busin	ess Phone:	()	
(6) Birth Date:	/ /	(7) Socia	al Security		-
(8) Place of Birth (State)		(9) Countr	ry of Birth		
(10) Drivers State and License No.		(11) If no evidence or residence			

-Individual: __

-Individual and Spouse:

(12) Professional	\square M.D. \square D.O. \square D.M.D. \square D.P.M. \square D.D.S \square N/A \square Other (specify):
Licenses:	
(13) Medicare Identification Number (N/A if non-physician)	(14) National Provider identifier (N/A if non- physician)
(15) Specialty:	

PART B (Continued):

- (16) Have you, under any current or former name or business entity, and has your entity if holding as an entity, ever had any of the following final adverse legal actions?
 - Felony crimes against persons and other similar crimes for which you (or entity) were convicted, including guilty pleas and adjudicated pre-trial diversions; financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual (or entity) was convicted, including guilty pleas and adjudicated pre-trial diversions; any felony that placed the Medicare program or its beneficiaries at immediate risk (such as a malpractice suit that results in a conviction of criminal neglect or misconduct); and any felonies that would result in a mandatory exclusion under Section 1128(a) of the Act.
 - Any misdemeanor *conviction*, under Federal or State law, related to: (a) the delivery of an item or service under Medicare or a State health care program, or (b) the abuse or neglect of a patient in connection with the delivery of a health care item or service.
 - Any misdemeanor *conviction*, under Federal or State law, related to theft, fraud, embezzlement, breach of fiduciary duty, or other financial misconduct in connection with the delivery of a health care item or service.
 - Any felony or misdemeanor conviction, under Federal or State law, relating to the interference with or obstruction of any investigation into any criminal offense described in 42 C.F.R. Section 1001.101 or 1001.201 (related to exclusion by the OIG for convictions related to program or healthcare fraud).
 - Any felony or misdemeanor conviction, under Federal or State law, relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.
 - Any *revocation or suspension* of a license to provide health care by any State licensing authority. This includes the surrender of such a license while a formal disciplinary proceeding was pending before a State licensing authority.
 - Any revocation or suspension of accreditation.
 - Any suspension or exclusion from participation in, or any sanction imposed by, a Federal
 or State health care program, or any debarment from participation in any Federal
 Executive Branch procurement or non-procurement program.
 - Any current Medicare *payment suspension* under any Medicare billing number.
 - Any Medicare *revocation* of any Medicare billing number.
 - Any current Medicaid *payment suspension* under any Medicaid billing number.
 - Any Medicaid *revocation* of any Medicaid billing number.

Vec	No	
res	INO	

If Yes, report each final adverse legal action, when it occurred, the Federal or State agency or the court/administrative body that imposed the action, and the resolution, if any. Attach a copy of the final adverse legal action documentation and resolution.

Final Adverse Legal Action	Date	Taken By	Resolution
Do you understand, that if you, entity, if holding as an entity, hat the Company in writing within 3	s any future f	inal adverse legal actio	ns, you are required to
Yes No No			
Indicate the amount of your net the value of your primary reside (in other words, if you are "under from your net worth.	nce. Also if	you owe more on the ho	ouse than the house is v
Greater than \$1,000,000		\$750,000 to \$1,000,00	0 🔲 Below \$750,
Does the investment exceed:			
10% of your net worth? Yes] No [20% of your net wort	h? Yes 🗌 No 🗌
Did you have individual income than \$200,000 or joint individua			
20? Yes	20	_? Yes _ No _	
Do you reasonably expect your your spouse) to be in excess of \$20 to be in excess of \$300,0	$32\overline{00,000}$ or y	dual income (exclusive our joint individual inc	
Yes No No			
Do you feel you have sufficient the Company in particular, to ev			
Yes No No			
i es 🔝 i No 🔝			

PART B (Continued):

me	•	officers, director		rsonal relationship with g persons? If so, please		•
you	purch			stantial restrictions on ye e to resell any Unit(s) ye		resell any Unit(s)
PART C: I	Entity	Members (Pleas	e complete the	ese items for all entities	that are Men	nbers):
(26) Entity	Name:					
(27) Busin Address:	ess					
			Street Addres	SS		Suite
					T	
			City		State	ZIP Code
(28) Phone Number:	;	()	(29)	Taxpayer I.D. No.:		-
(30) Medic ID #: (or N			, ,	National Provider ifier: (or N/A)		
(32) Natur Business	e of					
(33) State a	and Da	te of Organizatio	n or Incorporat	tion: State:	Date: /	/
(34) Locat	ion of l	Principal Office (if different from	n above):	ı	
		Street	Address			Suite
		(City		State	ZIP Code
PART D: S	Signatı	<u>ire</u>				
Sig	nature			Date		
Pri	nt You	Name				

SCHEDULE G CERTIFICATION STATEMENT

The undersigned, being a Class A Member (the "Member") of Lebanon Surgicenter, LLC, a Tennessee limited liability company (the "Company") hereby certifies as follows:

The following is a list of all trustees, beneficiaries, members or other owners (collectively, "Owners") of the Member as of the date hereof, noting which are Physicians who meet the Physician Eligibility Requirements ("Qualified Members"), or otherwise, with their respective occupations and relationship(s) to the Qualified Members. For purposes of this Certification Statement, "Physician" has the meaning given to such term in the Stark Law, 42 U.S.C. §1395nn and the regulations promulgated thereunder, as may from time to time be amended, which as of the date hereof includes a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry or a chiropractor.

Name (Qualified Member ((Y/N)	Occupation	Relationship

The Qualified Member(s) listed above shall (i) be treated as though he, she or they are the registered holder of the Units (as defined in the Company's Amended and Restated Limited Liability Company Agreement (the "Agreement")) held by such Member for purposes of Article XV of the Agreement, (ii) be treated as the Member Investor(s) (as defined in the Agreement) for purposes of Article XVI of the Company's Agreement, and (iii) have the right to exercise all voting rights attributable to the Member's Units on behalf of the Member. If at any time, the Member has any Owner who is not a Qualified Member or the Qualified Member's non-Physician spouse and/or minor children: (x) with respect to an Owner who is a Physician and is a spouse of a Qualified Member but who is not a Qualified Member himself or herself, the Member shall deliver or cause to be delivered to the Company a nonreferral letter, in a form satisfactory to Surgicare of Lebanon, LLC, the Company's Managing Member (the "Managing Member"), and (y) with respect to any Owner, the Member agrees to take such action or cause such action to be taken as requested by the Managing Member, including without limitation requiring such Owner to transfer his or her interest in the Member to Qualified Member(s) or transferring such Member's Units to Qualified Member(s). If the Member does not take such action within thirty (30) days of request by the Managing Member, the Managing Member and the Company shall have the right and option to purchase all of the Member's Units as if such interest had been offered for sale at the Agreed Value (as defined in the Agreement) pursuant to the provisions of Section 16.9 of Agreement. Any Physician who becomes an Owner shall be considered a Member Investor for purposes of the Agreement unless he or she is the spouse of a Qualified Member who delivers a non-referral letter to the Managing Member pursuant to subsection (x) above. The Member agrees to give the Managing Member prior written notice of any change in the ownership of the Member that may occur after the date hereof and to promptly update this certificate accordingly.

[Signature Page to Certification Statement Follows]

						caused	this	Certification	Statement	to	be
executed as o	f the	day of		,	_•						
	CLASS A MEMBER:										
	Member Name:										
				By:							
				Name:							
				Title							

Attachment 9AR Lease

LEASE

THIS LEASE is made and entered into as of October 31, 2022, by and between Hartmann SC Partners, a Tennessee general partnership ("Landlord"), and HCA Health Services of Tennessee, Inc. a Tennessee corporation ("Tenant").

WITNESSETH:

Landlord hereby leases to Tenant, on the terms and conditions set forth in this Lease, the following property (the "Premises"): (i) the real property located at 125 Willard Hagan Drive, located in Lebanon, Wilson County, Tennessee as more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), (ii) the building (the "Building") containing approximately 17,350 square feet of rentable area and other improvements to be constructed on the Land by Landlord in accordance with the terms of the Work Letter Agreement of even date between Landlord and Tenant, attached hereto as Exhibit B and made a part hereof (the "Work Letter"), (iii) all other improvements now or hereafter located on the Land (the Building and such other improvements shall hereinafter be referred to as the "Improvements"), and (iv) all other rights and easements appurtenant to the Land, the Building, and other Improvements. The Work Letter Agreement is incorporated herein and the obligations of Landlord thereunder shall be obligations of Landlord under this Lease. Landlord shall construct the Building and all other improvements in accordance with the Work Letter and the obligations of Landlord thereunder shall be obligations of Landlord under this Lease. Defined terms used in this Lease which are not defined herein shall have the meanings set forth in the Work Letter.

SECTION 1. TERM

- 1.01. Primary Term. (a) The primary term of this Lease shall be for approximately ten (10) years (the "Primary Term"), commencing on the date (the "Commencement Date") which is the earlier of (i) one-hundred eighty (180) days after the "Completion Date" (as defined in Section 3.4 of the Work Letter) or (ii) the date Tenant receives a certificate of occupancy for the Premises, and ending at 11:59 p.m. on the tenth (10th) anniversary of the last day of the calendar month in which the Commencement Date occurs, unless the Commencement Date is the first day of a month, in which event such date of expiration of the term of this Lease shall be the day prior to the tenth anniversary of the Commencement Date. Within thirty (30) days following the Rent Commencement Date, Landlord and Tenant shall enter into a Rent Commencement Date Certificate in the form attached hereto as Exhibit C setting forth the Rent Commencement Date. Tenant shall have the right to enter upon the Premises prior to the Commencement Date for the purpose of moving and installing its trade fixtures, equipment and furniture into the Building; provided, however, Tenant shall obtain Landlord's consent to any such entry prior to the Completion Date, which consent shall not be unreasonably withheld. No "Base Rent" (as defined in Section 2.01 hereof) or additional rent shall accrue prior to the Commencement Date.
- (b) Landlord shall prepare and Landlord and Tenant shall execute and deliver to each other prior to the Commencement Date, an agreement setting forth the Commencement Date and the expiration date of the Primary Term.
- (c) In the event the Completion Date does not occur by September 1, 2023, Tenant shall have the right and option to terminate this Lease by delivering written notice of such termination to Landlord. Furthermore, this Lease shall may be terminated prior to the Commencement Date in accordance with Sections 2 and 6.1 of the Work Letter.
- 1.02. Renewal Terms. Tenant shall have the right and option to extend the term of this Lease for two (2) additional terms of five (5) years each (each such optional extended term is hereinafter called

- a "Renewal Term"). Each Renewal Term shall be on and subject to all of the same terms, covenants and conditions as herein contained; provided, however, "Base Rent" (as defined in Section 2.01 hereof) payable for a Renewal Term shall be determined pursuant to Section 2.01(b) hereof. Tenant shall exercise the renewal options, if at all, by giving Landlord written notice of such exercise not less than one hundred twenty (120) days prior to the expiration of the Primary Term or the preceding Renewal Term, if applicable. Notwithstanding anything to the contrary set forth in this Lease, if the amount of Base Rent to be paid during the Renewal Term is determined by appraisal (and not by mutual agreement of the parties) pursuant to Section 3.01(b) hereof, then Tenant shall have the right to revoke the exercise of its option to extend the term by delivering written notice of such revocation to Landlord within thirty (30) days after the receipt by Tenant of the written determination of the "Fair Market Rental Rate" (as defined in Section 2.01(b) below) for the Premises. In the event of any such revocation, the term of this Lease shall end at the end of the then current Primary Term or Renewal Term, as the case may be.
- 1.03 <u>Definitions</u>. The phrases "<u>Term</u>", "<u>term of this Lease</u>", "<u>Lease term</u>", or any other similar phrases used in this Lease shall be deemed to include, unless otherwise provided, the Primary Term and each of the Renewal Terms, if exercised, and any other renewals or extensions of this Lease. "<u>Lease Year</u>" shall mean the period beginning on the Commencement Date and ending on the first anniversary of the last day of the calendar month in which the Commencement Date occurs (unless the Commencement Date is the first day of a calendar month, in which event such first Lease Year shall end on the day prior to the first anniversary of the Commencement Date) and each twelve month period thereafter during the Term of this Lease.

SECTION 2. RENT

- **2.01.** <u>Base Rent.</u> (a) During the Primary Term, Tenant shall pay to Landlord as annual base rent for the Premises (the "Base Rent") the sum equal to \$563,875.00 (based on a rate of \$32.50 per rentable square foot of the Premises); provided, however, beginning on the first day of the second Lease Year and on the first day of each Lease Year thereafter during the term of this Lease (each such date shall hereinafter be referred to as an "Adjustment Date"), Base Rent shall be adjusted to an amount equal to 102.5% of the annual Base Rent amount payable immediately preceding such Adjustment Date.
- (b) During the Renewal Term of this Lease, if so exercised by Tenant as provided herein, Tenant shall pay Landlord Base Rent equal to the then fair market rental rate (the "Fair Market Rental Rate") as determined in accordance with the terms of this Section, using the definition of fair market value for the lease of real property set forth in the "Stark Law" (as defined in Section 25.16 of this Lease), for property comparable to the Premises, leased on terms comparable to the terms of this Lease to a tenant under no compulsion to lease and not in possession of the Premises, for a term equal to such Renewal Term, and with annual percentage increases in the amount of Base Rent comparable to the annual increases in Base Rent set forth in Section 2.01 of this Lease as herein provided.
- (i) During the fourteen (14) day period following the delivery of Tenant's written notice exercising its option for the Renewal Term, Landlord and Tenant will attempt to agree on the Fair Market Rental Rate payable during such Renewal Term, and failing such agreement, Landlord and Tenant will attempt to agree within such fourteen (14) day period on an appraiser to determine the Fair Market Rental Rate. If Landlord and Tenant are able to agree on the Fair Market Rental Rate, then that shall be the annual Base Rent payable during the Renewal Term. If Landlord and Tenant are unable to agree on the Fair Market Rental Rate but are able to agree on the appraiser, then within twenty-one (21) days after the selection of such appraiser, such appraiser will determine in good faith the Fair Market Rental Rate using the definition of fair market value for the lease of real property set forth in the Stark Law, and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Rental Rate was determined by such appraiser using the

definition of fair market value for the lease of real property set forth in the Stark Law, and the Base Rent payable during the Renewal Term shall be the Fair Market Rental Rate determined by such appraiser.

- If Landlord and Tenant are unable to agree as to the Fair Market Rental Rate or any such appraiser within the above referenced fourteen (14) day period, then within twenty-one (21) days after the date written notice exercising Tenant's extension option is delivered to Landlord, Landlord and Tenant will each designate a professional M.A.I. appraiser who is engaged in the business of appraising commercial rental property in the county in which the Freestanding Building is located, and will notify each other of the appraiser so selected. Within forty-two (42) days after the date written notice exercising Tenant's extension option is delivered to Landlord, each selected appraiser will determine in good faith the Fair Market Rental Rate of the Premises using the definition of fair market value for the lease of real property set forth in the Stark Law, and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Rental Rate was determined by such appraiser using the definition of fair market value for the lease of real property set forth in the Stark Law. If the two selected appraisers mutually agree on the Fair Market Rental Rate, then the Base Rent payable during the Renewal Term shall be the Fair Market Rental Rate as determined by such two appraisers. If the lower appraised Fair Market Rental Rate is at least eightyfive percent (85%) of the higher appraised Fair Market Rental Rate ("Acceptable Deviation"), then the annual Base Rent payable during the Renewal Term shall be the average of the Fair Market Rental Rate as determined by such two appraisers.
- (iii) If the appraised values of the two selected appraisers are not within the Acceptable Deviation, then the two appraisers shall within forty-nine (49) days after the date written notice exercising Tenant's extension option is delivered to Landlord, select a third appraiser who is similarly qualified. Within twenty-one (21) days after the selection of the third appraiser, the third appraiser shall determine in good faith the Fair Market Rental Rate of the Premises using the definition of fair market value for the lease of real property set forth in the Stark Law, and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Rental Rate was determined by such appraiser using the definition of fair market value for the lease of real property set forth in the Stark Law. If an appraisal by a third appraiser is required, then the annual Base Rent payable during the Renewal Term shall be the average of the Fair Market Rental Rate as determined by the other two appraisers.
- (iv) Each appraiser shall work independently and without consulting with the other appraisers and the conclusions and appraisal report of each appraiser shall not be provided to any other appraiser.
- (v) Each party will bear the cost of the appraiser selected by it (unless the parties agreed as to the appraiser, in which event the cost of such appraiser will be divided equally between Landlord and Tenant) and the cost of the third appraiser shall be divided equally between Landlord and Tenant.
- (vi) Notwithstanding anything to the contrary stated herein, within ten (10) business days after the final determination of the Fair Market Rental Rate as determined pursuant to this Section, either Landlord or Tenant will have the right, exercisable in the sole discretion of each, to reject or rescind, as applicable, the exercise of Tenant's Renewal Term upon written notice to the other party.
- (c) Base Rent is payable in equal monthly installments (which shall be 1/12 of Base Rent), in advance beginning on the first day of the next calendar month following the Commencement Date of the Primary Term and the first day of each subsequent calendar month during the term of this Lease. In

addition, at the same time as the first monthly installment of Base Rent is due, Tenant shall also pay Landlord prorata Base Rent computed on a per diem basis for the number of days of the preceding month subsequent to the Commencement Date. Such installments shall be paid, without demand or deduction, at Landlord's office at 2107 Longmire Road, Conroe, TX 77304, or at such other address as Landlord may designate.

- (d) Tenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed on Base 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 to Landlord concurrently with the payment of the Base Rent upon which such tax is based.
- 2.02. Additional Rent. All taxes, charges, costs and expenses which Tenant assumes or agrees to pay under any provision of this Lease, shall constitute additional rent. If Tenant shall fail to pay any such additional rent or any other sum due hereunder when the same shall become due, Landlord shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of non-payment of Base Rent which is then due and payable and shall, except as expressly provided herein, have the right to pay the same on behalf of Tenant. Tenant shall perform all of its obligations under this Lease at its sole cost and expense, and shall pay all Base Rent, additional rent and other sums due hereunder when due and payable, without notice or demand.
- 2.03. <u>Net Lease</u>. This Lease is a net lease and it is the intention of the parties that, except as otherwise provided or limited by the specific provisions of this Lease or the Work Letter, Tenant shall be responsible for all costs and expenses of the ownership, maintenance, repair and operation of the Premises incurred or relating to the period of time during the Term.
- **2.04. IRS Form W-9.** Landlord shall provide to Tenant Landlord's IRS Form W-9 certifying as to Landlord's Taxpayer Identification Number (TIN) and notwithstanding anything to the contrary set forth herein, Tenant shall not be required to deliver to Landlord the first payment of Rent until the later of the Commencement Date or the tenth business day after the date Landlord delivers to Tenant such Form W-9.

SECTION 3. TAXES; PERMITTED CONTESTS.

Taxes. (a) Tenant shall pay, prior to delinquency: (i) all taxes, assessments, levies and fees, and all other governmental charges, general and special, ordinary and extraordinary, which are during the Term, hereof, imposed or levied upon or assessed against (A) the Premises, (B) any Rent or any additional rent or other sum payable by Tenant hereunder or (C) this Lease, the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Premises; and (ii) all gross receipts or similar taxes (i.e., taxes based upon gross income which fail to take into account all customary deductions (e.g., depreciation and interest) relating to the Premises) imposed or levied upon, assessed against or measured by any Rent. Tenant shall not be required to pay any franchise, estate, inheritance, transfer, income or similar tax of Landlord (other than any tax referred to in clause (ii) above) unless such tax is imposed, levied or assessed in substitution for any other tax, assessment, charge or levy which Tenant is required to pay pursuant to this Section 3.01(a); provided, however, that if at any time during the term of this Lease, the method of taxation shall be changed such that there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received therefrom, or upon the value of the Premises or any present or any future improvement or improvements on the Premises, then all such taxes, assessments, levies or charges or the part thereof so measured or based, shall be payable by Tenant, but only to the extent that (i) such taxes are in lieu of and a substitute for any tax, levy or charge referred in the first sentence of this Section 3.01(a) and (ii) would be payable if the

Premises were the only property of Landlord, and Tenant shall pay and discharge the same as herein provided. Tenant will furnish to Landlord, promptly after demand therefor, proof of payment of all items referred to above which are payable by Tenant. If any such assessment may legally be paid in installments, Tenant may pay such assessment in installments; in such event, Tenant shall be liable only for installments which become due and payable during the term hereof.

- (b) All ad valorem real estate taxes and assessments which are due and payable in the first Lease Year and within one year after the expiration of the term of this Lease shall be prorated as of the date this Lease is executed and delivered by each of the parties or the date of expiration of the term of this Lease, whichever is applicable, on the basis of the fiscal year with respect to which such taxes are assessed, and assuming that such taxes are payable in arrears. Tenant shall be responsible for and shall pay the portion of such taxes relating to the periods beginning with date of execution and delivery of this Lease through and including the expiration or earlier termination of this Lease.
- 3.02. Permitted Contests. Tenant shall not be required, nor shall Landlord have the right, to pay, discharge, or remove any taxes, charges, liens or encumbrances, or to comply with any legal requirements applicable to the Premises or the Land, as long as Tenant contests the existence, amount or validity of the matter in question by appropriate proceedings. This right of Tenant to withhold performances while proceedings are pending shall apply only if Tenant's proceedings effectively prevent any sale, forfeiture or loss of the Premises or Land or Landlord's rights under this Lease. Nothing contained in this Section shall be deemed to relieve Tenant from any obligation to pay the Base Rent. Tenant shall give such reasonable security as may be demanded by Landlord to insure ultimate payment of the amounts and compliance with the legal requirements contested, and/or any potential sale or forfeiture of the Premises or any rent or other sum required to be paid by Tenant under this Lease.

SECTION 4. UTILITIES.

Tenant shall at its sole cost and expense pay for all utility services required for the operation of or furnished to or consumed on the Premises during the Term, including, without limitation, gas, electricity, water, sewer, heat and telephone and all charges for any of the foregoing.

SECTION 5. USE.

The Premises may be used, occupied and sublet by Tenant for surgical, medical, administrative, or office uses and any use incidental to or in connection with such use, and for any other uses that do not violate any laws, federal, state or local, or any regulations of any governmental authorities having jurisdiction over the Premises.

SECTION 6. MAINTENANCE.

- **6.01.** Tenant's Maintenance. Except as otherwise provided in Section 6.02 below or in the Work Letter, during the Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Improvements now or hereafter located on the Premises and all additions thereto, in good repair and shall make all necessary repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition; it being the intention of the parties that Landlord shall have no liability for any of the foregoing, except as provided in Section 6.02 below or in the Work Letter.
- **6.02.** Landlord's Maintenance. During the Lease term, Landlord shall, at its expense, maintain in good condition and repair all structural portions of the Improvements, including, but not limited to, the roof, weight bearing walls and columns, footings, foundations and structural floors. In addition Landlord shall be responsible for any repairs, replacements or additional work which is necessitated by reason of a breach of

any warranty set forth in the Work Letter and any defect or nonconforming condition which Landlord is obligated to remedy or correct pursuant to the Work Letter. In the event Landlord fails to make any repairs or replacements required pursuant to this Section 6.02, Tenant may make any such repairs or replacements after thirty (30) days prior written notice to Landlord (or such longer period as is reasonably necessary in the event such repairs or replacements cannot reasonably be completed within 30 days); provided, however, should Tenant reasonably determine that the failure to make such repairs or replacements for such 30-day period would cause a material loss to the Premises or cause damage to Tenant, then Tenant may give such prior written notice as is practical under the circumstances. Landlord shall reimburse Tenant for all costs incurred by Tenant in connection with any such repairs or replacements within thirty (30) days after receipt of a written demand for the payment thereof and if Landlord fails to reimburse Tenant for such costs within such thirty (30) day period, Tenant may deduct such costs plus interest from the next ensuing installments of Base Rent coming due until all such sums plus interest are recovered.

SECTION 7. ALTERATIONS AND BUILDING NAME.

- 7.01. <u>Alterations</u>. Tenant shall make no structural modifications, alterations or improvements to the Premises without Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Tenant may, without Landlord's consent, make nonstructural modifications, alterations and improvements to the Premises. All modifications, alterations and improvements shall be made in good and workmanlike manner and shall not weaken the structure of the Building or materially lessen its value. All modifications, alterations and improvements shall become the property of Landlord at the expiration or earlier termination of this Lease. Tenant may, without Landlord's consent, install temporary partitions, shelves, bins, equipment, trade fixtures and other personal property in the Building. Those items shall remain Tenant's property and may be removed by Tenant prior to the expiration or earlier termination of this Lease. Tenant shall repair any damage to the Premises caused by such removal.
- **7.02.** Building Name. During the term of this Lease, Tenant shall have the right, from time to time, to designate and redesignate the name of the Building.
- 7.03 <u>Tenant Improvements</u>. Notwithstanding anything set forth in this Lease to the contrary, Landlord consents to the alteration of the Premises by Tenant for the construction and installation of tenant finishes and improvements as determined by Tenant after the "Completion Date" (as that term is defined in the Work Letter) (the "<u>Tenant Improvements</u>"). Prior to commencement of construction of the Tenant Improvements, Tenant shall deliver to Landlord copies of the working drawings, plans and specifications for the Tenant Improvements. The Tenant Improvements will be constructed by contractors selected and employed by Tenant. Tenant shall provide Landlord with written notice of the substantial completion of the Tenant Improvements and setting forth the date that Tenant intends to begin business operations in the Premises.

SECTION 8. LIENS.

Tenant will not create or permit to be created or remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Premises or any part thereof or upon Tenant's leasehold interest therein, which arises out of the use or occupancy of the Premises by Tenant or by reason of any labor and material furnished or claimed to have been furnished to Tenant or by reason of any construction, addition, alteration, repair or restoration of any part of the Premises, by Tenant. In the event that any such lien shall be filed against the Premises, Tenant shall cause such lien to be released or discharged by payment or bonding within 60 days after actual notice of the filing thereof. If Tenant fails to cause such lien to be relieved or discharged within such 60-day period, Landlord, after notice to Tenant, may pay and/or otherwise obtain discharge of such lien, and all expenditures and costs incurred thereby shall be payable by Tenant to Landlord within five days after Tenant's receipt from Landlord of a written demand for payment

thereof. Notwithstanding anything to the contrary set forth in this Lease, Tenant shall not be required to pay, or obtain the discharge or release of the Premises from any such lien, encumbrance or charge or otherwise contest the validity of any such lien and/or claim and indemnify Landlord, if such lien, encumbrance or charge is the responsibility, obligation or liability of Landlord under the Work Letter.

SECTION 9. RIGHT OF ENTRY.

Upon 48 hours written prior notice to Tenant, Landlord shall have the right to enter the Premises during normal business hours to examine its condition, to make any repairs Landlord is required or permitted to make hereunder, or to show the Premises to persons interested in purchasing or leasing the same. Each entry by Landlord in accordance with this paragraph shall be made in such a manner as will not unreasonably interfere with Tenant's use of the Premises.

SECTION 10. COMPLIANCE WITH LAWS.

During the Lease term, Tenant, at its expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises. Tenant agrees to hold Landlord harmless from any cost, expense or liability that may be imposed or assessed against Landlord in connection with Tenant's noncompliance with any such law or regulation. Notwithstanding the above, Tenant shall not be obligated to make, and Landlord shall be solely responsible for, any structural repairs, modifications or additions to the Premises that (a) are not necessitated by negligent or wrongful actions of Tenant or Tenant's agents, employees, contractors, licensees or invitees and which (b) Landlord would be required to make as the owner of the Building regardless of the specific nature of Tenant's use, including, but not limited to any repairs, modifications or additions to the Premises required pursuant to the Americans with Disabilities Act or any similar legislation. Notwithstanding the foregoing, Tenant, at its sole costs and expense, shall construct and install any changes or modifications to the office space within the Building required as a result of any future requirements resulting from changes to the Americans With Disability Act.

SECTION 11. INSURANCE.

- 11.01. <u>Liability Insurance</u>. During the Term, Tenant shall keep in effect, at its sole expense, satisfactory comprehensive general, public liability and property damage insurance covering the Premises and providing coverage with maximum limits of liability of not less than \$1,000,000 for bodily injury to one person, \$1,000,000 for bodily injury to any group of persons as a result of one accident, and \$1,000,000 for property damage. Such policy shall name Landlord and the "Mortgagee" (as defined in Section 18.01 hereof) as additional insureds.
- 11.02. <u>Casualty Insurance</u>. During the Term, at its sole cost and expense, Tenant will keep in force broad form fire and extended coverage casualty insurance on the Building, insuring against loss by fire and all of the risks and perils usually covered by a so-called "all risk" of physical loss endorsement to a policy of fire insurance, including, but not limited to, vandalism, malicious mischief and boiler, pressure vessel and machinery coverage, in an amount equal to not less than 100% of the full replacement value (the "<u>Insured Value</u>"). Such insurance shall be written by a company of recognized financial standing and every policy evidencing such insurance shall name Landlord as an additional insured thereunder. Furthermore, every such policy shall contain a first mortgage endorsement in favor of the holder of the Mortgagee.
- 11.03. General Provisions. (a) The policies required by Sections 11.01 and 11.02 above shall contain an agreement by the insurer that it will provide not less than ten days' prior written notice of any cancellation of the policy to Tenant, Landlord and the holder of the first Mortgage on the Premises and that any loss otherwise payable under the policy shall be payable notwithstanding any act or negligence of

Landlord or Tenant that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

- (b) At the commencement of the term of this Lease, Tenant shall deliver to Landlord certificates of the insurance required to be maintained under this Section. Tenant shall also deliver to Landlord at least ten (10) days prior to the expiration date of any such policy (or of any renewal policy), certificates for the renewal policy of this insurance.
- (c) After any loss insured against pursuant to Section 11.02 hereof, Tenant shall proceed with repair or rebuilding if and as required by Section 14.01 hereof and the net proceeds of such insurance shall be made available to Tenant to pay the costs of such repair and rebuilding; all costs of such repair or rebuilding in excess of the net insurance proceeds shall be paid by Tenant, and any surplus proceeds shall upon the completion thereof be paid by Tenant to Landlord and/or the holder of the first Mortgage for the Premises, as their respective interests therein may appear. If the net proceeds of such insurance are not promptly made available to Tenant to pay the costs of such repair and rebuilding, then in addition to any other remedies available to Tenant by reason of such default of Landlord, Tenant may deduct the cost of such repair and rebuilding plus interest thereon from the next ensuing installments of Base Rent coming due until all such sums plus interest are recovered or Tenant may terminate this Lease by giving Landlord written notice of such termination, and such termination shall be effective as of the date of such notice. If the Lease is so terminated, Landlord shall refund to Tenant any rent prepaid beyond the effective date of termination, and Tenant will be released of all liabilities and obligations arising on or after the effective date of such termination.
- (d) All insurance proceeds in the hands of the Tenant, Landlord or the holder of the first Mortgage on the Premises at the time of expiration or earlier termination of this Lease, and all insurance proceeds thereafter received by such holder, Landlord or Tenant under any policy of insurance required to be maintained by Tenant pursuant to this Lease, shall be the sole and exclusive property of Landlord and such holder, except to the extent any such proceeds were paid or are payable with respect with respect to the loss or damage of Tenant's trade fixtures and personal property.
- (e) Should Tenant fail to effect, maintain or renew any insurance provided for in this Lease, or to pay the premium therefor, or to deliver to Landlord any of such certificates, then and in any of said events Landlord, at its option, but without obligation to do so, upon fifteen (15) days prior notice to Tenant of its intention so to do, may procure such insurance. Any sums expended by Landlord to procure any such insurance shall be additional rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days following the receipt of a written demand for payment thereof.
- (f) In lieu of carrying any policy of insurance required to be carried by Tenant under this Lease, Tenant shall have the option, either alone or in conjunction with Tenant's ultimate parent corporation, or any subsidiaries or affiliates of Tenant or of Tenant's ultimate parent corporation, to maintain self-insurance and/or provide or maintain any insurance required by this Lease under blanket insurance policies maintained by Tenant, Tenant's ultimate parent corporation or such subsidiaries or affiliates, or provide or maintain insurance through such alternative risk management programs as Tenant, Tenant's ultimate parent corporation or such subsidiaries or affiliates may provide or participate in from time to time.

SECTION 12. WAIVER OF LIABILITY AND SUBROGATION.

Landlord and Tenant on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property (including, but not limited to, the Premises) arising from fire, smoke damage, windstorm,

hail, vandalism, theft, malicious mischief and any of the other perils normally insured against in an "all risk" of physical loss insurance policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party. If either party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party.

SECTION 13. INDEMNIFICATION.

- 13.01. Tenant's Indemnity. Subject to the provisions of Section 12, Tenant shall indemnify and hold harmless Landlord against and from any and all claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) incurred by Landlord as a result of or arising from Tenant's use of the Premises; provided that Tenant shall not be liable to indemnify Landlord with respect to any of the foregoing arising out of the negligence or willful misconduct of Landlord or any of its contractors, agents, employees, owners, officers, partners or other tenants or their invitees.
- 13.02. <u>Landlord's Indemnity</u>. Subject to the provisions of Section 12, Landlord shall indemnify and hold harmless Tenant against and from any and all claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) incurred by Tenant as a result of or arising from any misrepresentation by Landlord set forth in this Lease or any willful or negligent act or omission of Landlord, or of Landlord's contractors, agents, employees, owners, officers or partners.

SECTION 14. DAMAGE AND DESTRUCTION.

- **14.01.** Damage and Destruction. (a) Except as hereinafter provided, if during the Term any of the Improvements shall be damaged or destroyed by fire or any other casualty which is covered by the policy of insurance required pursuant to 11.02 hereof and the net proceeds of such insurance are paid to Tenant, Tenant shall thereafter commence and diligently prosecute to completion, at Tenant's sole expense, the repair or rebuilding of the Improvements or portion thereof which was damaged, in a good and workmanlike manner using materials of first grade and quality, in accordance with the same plans and specification in accordance with which the Improvements were originally constructed or such other plans and specifications satisfactory to Tenant and Landlord, which Landlord shall not unreasonably disapprove. Notwithstanding the foregoing in the event the Improvements are damaged or destroyed and if either (a) the cost to repair or replace the Improvements exceeds 60% of the Insured Value (as defined in Section 11.02 hereof) or (b) such repair and replacement cannot reasonably be completed within one hundred eighty (180) days of the date of the damage or destruction, then Tenant may, at its option, terminate this Lease upon such date as is set forth in a written notice given to Landlord within thirty (30) days of the date of the damage or destruction; provided, however, that the date of termination shall be no less than five (5) and no more than sixty (60) days after the notice date and in no event shall Tenant terminate this Lease upon the occurrence of an insured loss unless it has maintained the insurance specified in Section 11.02 in an amount not less than the Insured Value, or makes available to fund restoration the difference between the amount which the insurer will pay for rebuilding and restoration and the amount that would have been payable if Tenant had kept the Premises insured for the Insured Value.
- (b) In the event of damage or destruction described in Section 14.01(a) above, all Base Rent thereafter accruing shall be equitably and proportionately suspended or adjusted from the date of such damage or destruction until completion of repair or rebuilding, in proportion to the ratio that the untentable area of the damaged Building bears to the total area of the Building, except that in the event the damage or destruction is so extensive that Tenant cannot use the Building without substantial

interference, the Base Rent shall be completely abated until such repair or rebuilding is completed. Any prepaid Base Rent attributable to periods subsequent to such damage or destruction which is in excess of the adjusted Base Rent, if any, thereafter due Landlord for such periods, shall be applied to payment of the installment(s) of Base Rent due Landlord after the date of such damage or destruction.

SECTION 15. CONDEMNATION.

- 15.01. Condemnation. (a) If (i) the Premises are taken by any entity with the power of eminent domain (a "Condemning Authority") or if the Premises are conveyed to a Condemning Authority by a negotiated sale, or if part of the Premises is so taken or conveyed such that the Improvements cannot be rebuilt so that upon completion Tenant may again use the Premises without substantial interference, or (ii) due to any such taking or conveyance, access to the Premises by motor vehicles and trucks as operated by Tenant, its contractors and its customers in the course of Tenant's business as theretofore conducted, is substantially impaired or terminated, then in any such event, Tenant may terminate this Lease by giving Landlord written notice at any time after the occurrence of any of the foregoing and such termination shall be effective as of the date possession is taken by the Condemning Authority. If this Lease is terminated pursuant to this Section 15.01(a), then Landlord shall refund to Tenant any Base Rent prepaid beyond the effective date of termination, and Tenant will be released of all liabilities and obligations arising on or after the effective date of such termination.
- (b) If part of the Premises is so taken or conveyed without substantially interfering with the use of the Premises, this Lease shall not terminate. In such event, Landlord shall pay to Tenant all awards and other compensation or sums received in connection with such taking or conveyance and Tenant shall apply all such amounts it receives from Landlord to the extent necessary to pay the cost of restoring the Improvements and/or the Premises to a complete architectural unit suitable for Tenant's use and business on the Premises, and any balance remaining after payment of the costs of such restoration shall be paid to Landlord. If Landlord does not promptly pay Tenant such award, compensation or other sums due to Landlord for such taking or conveyance, then Tenant may deduct the cost of restoring the Improvements, plus interest thereon from the next ensuing installments of Base Rent until all such costs and interest are recovered, or by written notice to Landlord terminate this Lease, and such termination shall be effective as of the date of such notice. If the Lease is so terminated, Landlord shall refund to Tenant any Base Rent prepaid beyond the effective date of termination, and Tenant will be released of all liabilities and obligations arising on or after the effective date of such termination.
- (c) Except in the event that Tenant undertakes to reconstruct or restore the Improvements to a complete architectural unit suitable for Tenant's use and business pursuant to Section 15.01(b) above, all payments made for any taking or conveyance of the Premises as described in Section 15.01(b) above shall be the property of Landlord, except that any compensation attributable to leasehold improvements or fixtures installed or constructed upon the Premises at the cost expense of Tenant or its subtenants shall be the property of Tenant. In the event that Tenant undertakes restoration or reconstruction of the Improvements as aforesaid, Tenant shall be entitled and Landlord shall pay to Tenant all payments and awards made with respect to such taking or conveyance, provided that if the total amount thereof is not required by Tenant to fund the cost of such reconstruction and restoration, any excess shall be returned to Landlord.

SECTION 16. DEFAULTS AND REMEDIES.

16.01. <u>Defaults</u>. Any of the following occurrences or acts shall constitute an event of default ("<u>Event of Default</u>") by Tenant under this Lease: (i) if Tenant shall (A) fail to pay any Base Rent, additional rent or other sum, as and when required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant, or (B) fail to observe or perform

any other provision hereof and such failure shall continue for thirty (30) days after notice to Tenant of such failure or such longer period as reasonably may be required to cure such default if the same cannot be cured within such 30-day period and Tenant commences to effect the cure within such 30-day period and thereafter diligently prosecutes such cure to completion; (ii) if Tenant shall file a petition in bankruptcy or for reorganization or for an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, or shall be adjudicated a bankrupt or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or if a petition or answer proposing the adjudication of Tenant as a bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law shall be filed in any court and Tenant shall consent to or acquiesce in the filing thereof or such petition or answer shall not be discharged or denied within 60 days after the occurrence of any of the foregoing; or (iii) if a receiver, trustee or liquidator of Tenant or of all or substantially all of the assets of Tenant or of the Premises or Tenant's leasehold interest therein shall be appointed in any proceeding brought by Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought against Tenant and shall not be discharged within 60 days after such appointment, or if Tenant shall consent to or acquiesce in such appointment.

- 16.02. Remedies. (a) If an Event of Default shall have happened and be continuing, Landlord shall have the right to give Tenant notice of Landlord's termination of the term of this Lease. Upon the giving of such notice, the term of this Lease and the estate hereby granted shall expire and terminate on the date set forth in such notice as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the term of this Lease, and all rights of Tenant hereunder shall expire and terminate, but Tenant shall remain liable as hereinafter provided.
- (b) If an Event of Default shall have happened and be continuing, Landlord shall have the immediate right, whether or not the term of this Lease shall have been terminated pursuant to Section 16.02(a) above, to re-enter and repossess the Premises by summary proceedings, ejectment, any other legal action or in any lawful manner Landlord determines to be necessary or desirable. No such re-entry or repossession of the Premises shall be construed as an election by Landlord to terminate the term of this Lease unless a notice of such termination is given to Tenant pursuant to Section 16.02(a) above, or unless such termination is decreed by a court or other governmental tribunal of competent jurisdiction.
- (c) At any time or from time to time after the reentry or repossession of the Premises pursuant to Section 16.02(b) hereof, whether or not the term of this Lease shall have been terminated pursuant to Section 16.02(a) hereof, Landlord shall use reasonable efforts to relet the Premises for the account of Tenant at a rental which is reasonable in light of the then existing market conditions in the community, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such terms or terms and on such other conditions and for such uses as Landlord, in its absolute discretion, may determine. Landlord may collect and receive any rents payable by reason on such reletting.
- (d) In the event of any expiration or termination of the term of this Lease or re-entry or repossession of the Premises by reason of the occurrence of an Event of Default, Tenant will pay to Landlord all Base Rent to and including the date of such expiration, termination, re-entry or repossession, and all additional rent and other sums required to be paid by Tenant to and including the date of such expiration, termination, re-entry or repossession; and, thereafter, Tenant shall, until the end of what would have been the term of this Lease in the absence of such expiration, termination, re-entry or repossession, and whether or not the Premises shall have been relet, be liable to Landlord for, and shall pay to Landlord, as liquidated and agreed current damages: (i) all Base Rent on a current basis and all additional rent and other sums which would be payable under this Lease by Tenant in the absence of such expiration, termination, reentry or repossession, less (ii) the net proceeds, if any, of the reletting affected for the account of Tenant pursuant to Section 16.02(c) hereof, after deducting from such proceeds all expenses of Landlord in connection with such reletting (including, but not limited to, all repossession costs, brokerage commissions, reasonable attorneys'

fees and expenses (including fees and expenses of appellate proceedings), employees' expenses, alteration costs and expenses of preparation for such reletting). Tenant will pay such current damages on the days on which Base Rent would be payable under this Lease in the absence of such expiration, termination, re-entry or repossession, and Landlord shall be entitled to recover the same from Tenant on each such day. If Landlord elects to terminate this Lease due to Tenant's default, then in lieu of collecting current damages from Tenant as provided hereinabove, Landlord may elect to recover as damages for loss of its bargain and not as a penalty, an aggregate sum that, at the time of occurrence of the Event of Default or recovery of possession of the Premises by Landlord, as the case may be, represents the then-present worth of the excess, if any, of the aggregate of the Base Rent payable by Tenant that would have accrued for the balance of the term of this Lease over the present value of the fair market rental value of the Premises for the balance of such term. Present value shall be determined by using a ten percent (10%) discount factor.

- (e) If Tenant shall fail to make any payment or perform any act required to be made or performed under this Lease, Landlord, without waiving or releasing any obligation or default, may (but shall be under no obligation to), at any time, and upon reasonable notice to Tenant, make the payment or perform the act for the account of and at the expense of Tenant, and may enter upon the Premises for that purpose and take all actions as may be necessary to correct Tenant's breach. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment, shall constitute additional rent and shall be paid by Tenant to Landlord on demand.
- (f) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing by law, in equity or by statute.
- 16.03. Landlord's Default. In the event Landlord is in default under the terms of this Lease or its obligations under the Work Letter, then in any such event, Tenant may provide written notice of such default to Landlord pursuant to this Section 16.03. Upon the expiration of thirty (30) days following the giving of such notice, if Landlord (i) has failed to cure such default or (ii) in the case of a default (other than the payment of money) which by its nature cannot be completely cured within such thirty (30) day period, Landlord does not within such period commence to cure the default, and diligently pursue and complete the cure in a reasonable period of time, then in either such event Tenant may do all things necessary or desirable to remedy such default and perform the obligations of Landlord which have not been fully or properly performed. Landlord shall immediately upon demand reimburse Tenant for all costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) incurred by Tenant in connection with the foregoing plus interest thereon from the date of payment and, if Landlord fails to make such payment within thirty (30) days of Tenant's written demand, Tenant may set off the amount of all costs and expenses incurred by Tenant in connection with the foregoing plus interest thereon against Base Rent payments coming due under this Lease.
- 16.04. Force Majeure. The cure periods provided herein shall also be extended for any period of time during which the defaulting party is delayed in, or prevented from, curing due to fire or other casualty, or acts of God, strikes, lockouts, power shortages or outages, enactment, adoption, or promulgation of new laws. Notwithstanding the foregoing, there shall be no extended period in which to cure a monetary default.

SECTION 17. ASSIGNMENT AND SUBLETTING.

Tenant shall have the right to sublet all or any portion of the Premises without the prior written consent of Landlord; provided that each such sublease shall be subject and subordinate to this Lease and Tenant shall remain liable for the performance of all of its covenants and agreements under this Lease.

Notwithstanding the foregoing, Tenant shall not assign this Lease in whole or in part without the consent of Landlord, which consent shall not be unreasonably withheld; provided that, without the consent of Landlord, Tenant may assign this Lease to (i) HCA Healthcare, Inc. ("HCA") or any person, firm, corporation or other entity who is the purchaser of all or substantially all of the outstanding shares of capital stock of HCA, the purchaser of substantially all of the assets and business of HCA or successor to substantially all of the business and assets of HCA by merger, consolidation or other business combination of, with or into HCA (collectively, the "HCA Successor"), (ii) any subsidiary or other entity owned at least 51%, directly or indirectly, by Tenant, HCA or any HCA Successor, (iii) any person, firm, corporation or other entity who is the purchaser of all or substantially all of the assets of Tenant or is the successor to substantially all the assets and business of Tenant by virtue of a merger, consolidation or other business combination of, with or into Tenant, (iv) any general partner or managing member of Tenant, or (v) any person, firm, corporation or other entity who is the purchaser or shall otherwise become the owner of all or substantially all of the assets of TriStar Summit Medical Center, the main campus of which is located in Hermitage, Tennessee. No permitted assignment shall be effective unless each such assignee by written instrument or operation of law assumes and becomes bound to perform and observe all of the covenants and agreements of Tenant under this Lease arising from and after the date of such assignment, provided that Tenant shall not be released of liability for the payment of rent and for the performance and observance of the other covenants and agreements of Tenant under the Lease after the effective time of such assignment.

SECTION 18. SUBORDINATION TO MORTGAGES.

Except as otherwise hereinafter provided, this Lease shall be senior to and shall at all times have priority over all liens and encumbrances, now existing or hereafter affecting the Premises. In the event that in connection with the financing or refinancing of the cost of the Land and/or the Improvements, Landlord shall have obtained or shall hereafter obtain a mortgage loan from an institutional lender and such lender requires that this Lease be subordinated to the lien of the mortgage or deed of trust securing repayment of such loan (the "Mortgage"), Tenant agrees to subordinate its interest under this Lease to such Mortgage; provided that the holder of such mortgage (the "Mortgagee") shall execute and deliver to Tenant a nondisturbance and attornment agreement in recordable form with terms reasonably acceptable to Tenant. Landlord shall deliver to Tenant a subordination, nondisturbance and attornment agreement in accordance with the terms of the preceding sentence with respect to each Mortgage which now constitutes a lien against the Premises.

SECTION 19. SURRENDER OF PREMISES.

Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Premises in good condition and repair, ordinary wear and tear, fire and other casualty, governmental takings, obsolescence and deterioration occurring on account of normal use and aging, excepted. Tenant shall have the right prior to said expiration or earlier termination to remove any equipment, furniture, trade fixtures or other personal property placed on or in the Premises by Tenant or its subtenants, provided that Tenant promptly repairs any damage to the Premises caused by such removal.

SECTION 20. HOLDING OVER.

Any holding over beyond the expiration of the term of this Lease shall operate as an extension of this Lease from month to month at 100% of the monthly rental rate that was paid during the last month of the Lease term, and shall otherwise be on the same terms and conditions as provided in this Lease. Such extended term may be terminated either by Landlord or Tenant by giving 30 days written notice to the other.

SECTION 21. TENANT'S CERTIFICATE.

At any time and from time to time, Tenant, on or before the date specified in a written request therefor, made by Landlord, which date shall not be earlier than thirty (30) days from the making of such request, shall execute, acknowledge and deliver to Landlord a certificate (a) evidencing whether or not (i) this Lease is in full force and effect, (ii) this Lease has been amended in any way and (iii) there are any existing defaults hereunder to the knowledge of Tenant and specifying the nature of such defaults if any; and (b) certifying as to the amount of Base Rent and the date to which Base Rent has been paid. Each certificate delivered pursuant to this Section may be relied on by any prospective purchaser or transferee or the holder or prospective holder of any mortgage or deed of trust on the Premises or on Landlord's interest hereunder.

SECTION 22. QUIET ENJOYMENT AND TITLE

22.01. Quiet Enjoyment. So long as Tenant pays the Base Rent and the additional rent and performs Tenant's covenants hereunder, Tenant shall peacefully and quietly hold the Premises throughout the Term free from any hindrance or molestation by Landlord or any other person or entity whatsoever.

22.02. <u>Title.</u> Landlord hereby represents and warrants to Tenant that Landlord is the owner of fee simple absolute title to the Land subject only to the following (the "<u>Permitted Encumbrances</u>"): (a) real estate taxes which are not delinquent, and (b) utility easements of record which do not and will not materially impair the use of the Premises for the purposes permitted in Section 5 hereof.

SECTION 23. NOTICES.

All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or sent by Federal Express or other nationally recognized overnight courier or sent by certified or registered United States mail, postage prepaid, and in each instance addressed as follows:

If to Landlord, to it at

Hartmann SC Partners c/o The Capital Corporation 7101 Sharondale Court, Suite 600 Brentwood, TN 37027 Attn: Nick Church

Email: Nick@capitalcorporation.net

If to Tenant, to it at

HCA Health Services of Tennessee, Inc.

1001 Healthpark Drive

Building 3, Suite 500

Brentwood, TN 37027

Attention: Daniel Winkler

with a copy to: HCA Healthcare, Inc.

1100 Dr. Martin Luther King, Jr. Blvd,

Suite 500

Nashville, Tennessee 37203

Attention: Vice President, Real Estate

or to such other address as either party may designate by notice to the other parties hereto. A notice or other communication shall be deemed to be duly delivered and received if sent by hand or express service, when left at the address of the recipient, and if sent by certified or registered United States mail, on the fifth day after deposited in the United States mail, postage prepaid; provided that if a notice or other communication is served by hand, or is received by facsimile on a day that is not a business day, or after 5:00 p.m. on any business day at the addressee's location, such notice or communication shall be deemed to be duly delivered to and received by the recipient at 9:00 a.m. on the first business day thereafter.

SECTION 24. ENVIRONMENTAL MATTERS.

- 24.01. Environmental Matters. (a) Landlord represents and warrants to Tenant and covenants that as of the Date of this Lease and as of the Commencement Date no Hazardous Substances or any other toxic material or medical waste are or will be present on or in the Land or the Improvements, and Landlord shall indemnify Tenant against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys' fees, arising out of any breach of the foregoing warranty and/or covenant. This representation and warranty shall survive the expiration or earlier termination of this Lease.
- (b) Except for Hazardous Substances or other toxic materials or medical waste existing on or in the Land or the Improvements as of the Commencement Date or otherwise located on or in the Premises as a result of a breach of the covenant set forth in Section 24.01(a) above, and except for Hazardous Substances or other toxic materials or medical waste brought, kept or used in the Premises in commercial quantities similar to those quantities usually kept on similar premises by others in the same business, or profession as Tenant, and which are used and kept in compliance with applicable public health, safety and environmental laws, Tenant shall not allow any Hazardous Substance, or other toxic material or medical waste to be located in, on or under the Premises or allow the Premises to be used for the manufacturing, handling, storage, distribution or disposal of any Hazardous Substance or other toxic material.
- (c) Tenant shall at all times and in all respects comply with all federal, state or local laws, ordinances, regulations and orders applicable to the Premises or the use thereof relating to industrial hygiene, the generation, manufacture, use, handling, storage, disposal or transportation of any Hazardous Substance.
- (d) If Tenant becomes aware of the presence of any Hazardous Substance in or on the Premises (except for those Hazardous Substances or other toxic material permitted pursuant to Section 24.01(b) above) or if Tenant, or the Premises become subject to any order of any federal, state or local agency to repair, close, detoxify, decontaminate or otherwise cleanup the Premises, Tenant shall, at its own cost and expense, carry out and complete any repair, closure, detoxification, decontamination or other cleanup of the Premises; provided that Tenant shall not be responsible for any of the foregoing relating to any Hazardous Substance, or other toxic materials located on, in or under the Premises on or prior to the Commencement, or for any

Hazardous Substances or other toxic materials otherwise located on, in or under the Premises as a result of a breach of the covenant set forth in Section 24.01(a) above, all of which shall be the responsibility of Landlord at Landlord's sole cost and expense. If Tenant fails to implement and diligently pursue any such repair, closure, detoxification, decontamination other cleanup of the Premises for which Tenant is responsible as herein provided, Landlord shall have the right, but not the obligation, to carry out such action and to recover all of the costs and expenses from Tenant. If Landlord fails to implement and diligently pursue any such repair, closure, detoxification, decontamination other cleanup of the Premises for which Landlord is responsible as herein provided, Tenant shall have the right, but not the obligation, to either (i) carry out such action and to recover all of the costs and expenses from Landlord, or (ii) terminate this Lease by delivering written notice thereof to Landlord.

(e) "<u>Hazardous Substances</u>" as such term is used in this Lease means any hazardous or toxic substance, material or waste, regulated or listed pursuant to any federal, state or local environmental law, 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 Conversation and Recovery Act, the Federal Insecticide, Fungicide, Rodenticide Act, the Safe Drinking Water Act and the Occupational Safety and Health Act.

SECTION 25. MISCELLANEOUS.

25.01. INTENTIONALLY DELETED.

- 25.02. <u>Interest</u>. Whenever this Lease requires or permits the payment of interest, such interest shall be determined as the lesser of the following (the "<u>Interest Rate</u>"): (a) the prime rate of interest as announced from time to time by *The Wall Street Journal*, plus two percent per annum, with such rate changing with each change in the prime lending rate published by the *Wall Street Journal*, or (b) the highest rate permitted by applicable law.
- 25.03. <u>Broker's Commission</u>. Each of Landlord and Tenant represents and warrants to the other that it has not entered into any agreement with, or otherwise had any dealings with any broker or agent other than <u>N/A</u> (the "<u>Brokers</u>") as a result of which any commission, fee, or other compensation of any kind will be payable in connection with the execution of this Lease, and each party (an "<u>Indemnitor</u>") agrees to indemnify the other (an "<u>Indemnitee</u>") against and hold Indemnitee harmless from all liabilities (including without limitation, the cost of counsel fees in connection therewith) arising from any claim or demand made by a person claiming to have been engaged by Indemnitor to provide services in connection with this transaction. Any fee or commission owing to Brokers will be paid by <u>N/A</u> only in accordance with the terms of a separate written agreement between <u>N/A</u> and Brokers.
- **25.04.** Execution. The presentation of this Lease for review by Landlord does not constitute an offer on the part of Tenant to enter into the lease transaction described herein and this Lease will become effective and legally binding only when it has been signed by a duly authorized officer or representative of each of the parties and delivered to the other party.
- 25.05. Entire Agreement. This Lease, the Work Letter and the Exhibits attached hereto and thereto contain all the agreements of the parties with respect to the subject matter herein. There have been no representations made by either party or understandings made between the parties with respect to the subject matter hereof other than those set forth in this Lease, the Work Letter, and the Exhibits attached hereto and thereto. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

- 25.06. <u>Waiver</u>. Failure by either party to enforce any of the provisions hereof for any length of time shall not be deemed a waiver of its rights set forth in this Lease. Such a waiver may be made only by an instrument in writing signed by the party sought to be charged with the waiver.
- 25.07. Severability. If any covenant or provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity of the remaining covenants and provisions, it being the intention of the parties that this Lease be so construed as to render enforceable that portion of this Lease unaffected by such holding. The contractual provisions shall be deemed severable.
- **25.08.** Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.
- **25.09.** <u>Binding Agreement.</u> Subject to the provisions of Section 17 hereof, this Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Landlord and Tenant.
- **25.10.** Business Day. Should any due date hereunder fall on a Saturday, Sunday or legal holiday, then such due date shall be deemed timely if given on the first business day following such Saturday, Sunday or legal holiday.
- 25.11. Waiver of Jury Trial. Each party hereto hereby irrevocably waives any and all rights it may have to demand that any action, proceeding or counterclaim arising out of or in any way related to his lease or the relationship of the parties be tried by jury. This waiver extends to any and all rights to demand a trial by jury arising from any source, including but not limited to the Constitution of the United States, the Constitution of any state, common law or any applicable statute or regulation. Each party hereby acknowledges that it is knowingly and voluntarily waiving the right to demand trial by jury.
- **25.12.** Governing Law. This Lease shall be governed by the laws of the State in which the Premises is located without regard to its conflict of laws rules.
- **25.13.** Gender. Feminine, neuter and masculine pronouns, and the plural and the singular, shall be construed to be and shall be interchangeable in any place or places in which the context may require such interchange.
- 25.14. Attorney's Fees. In the event any litigation ensues with respect to the rights, duties and obligations of the parties under this Lease, the unsuccessful party in any such action or proceeding shall pay for all costs, expenses and reasonable attorney's fees incurred by the prevailing party in enforcing the covenants and agreements of this Lease. The term "prevailing party," as used herein, shall include, without limitation, a party who obtains legal counsel and brings action against the other party by reason of the other party's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.
- 25.15. Records. Upon the written request of the Secretary of the U.S. Department of Health and Human Services, the U.S. Comptroller General of the Government Accounting Office, or their authorized representatives, Landlord shall make available this Lease and all books, documents, and records necessary to certify the nature and extent of Landlord's costs with respect to this Lease and the Premises for a period of four (4) years after performing its duties hereunder. If the Landlord carries out any of its duties under this Lease through a subcontract worth \$10,000 or more over a 12-month period, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their authorized representatives to such subcontractor's books and records.

- 25.16. Regulatory Matters. (a) Landlord and Tenant enter into this Lease with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "Anti-Kickback Law") and Section 1877 of the Social Security Act (the "Stark Law"), as amended. Notwithstanding any unanticipated effect of any of the provisions of this Lease, neither party will intentionally conduct itself under the terms of this Lease in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Landlord and Tenant expressly agree that nothing contained in this Lease shall require either party to refer any patients to the other, or to any affiliate or subsidiary of the other.
- (b) If any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Lease, then Landlord and Tenant agree to negotiate in good faith for a period of ninety (90) days to modify the terms of this Lease to comply with applicable law. Should the parties hereto fail to agree upon modified terms to this Lease within this time, then either Landlord or Tenant may immediately terminate this Lease by giving written notice to the other party.
- (c) Landlord represents and warrants to Tenant that Landlord (i) is not currently excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Tenant being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation and warranty during the term of this Lease and Landlord shall immediately notify Tenant of any change in the status of the representation and warranty set forth in this Section, at which time Tenant will have the right to immediately terminate this Lease.
- (d) For purposes of this Section of this Lease, "protected health information", or PHI, shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Standards"), as promulgated by the Department of Health and Human Services ("HHS") pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties agree that neither the Landlord nor its contractors, subcontractors or agents shall need access to, nor shall they use or disclose, any PHI of Tenant. However, in the event PHI is disclosed by Tenant or its agents to Landlord, its, contractors, subcontractors or agents, regardless as to whether the disclosure is inadvertent or otherwise, Landlord agrees to take reasonable steps to maintain, and to require its contractors, subcontractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a "business associate" relationship between the parties as that term is defined by the Privacy Standards.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereby have executed this instrument.

LANDLORD:

By ACC	Group, LLC, its general partner
by. AC C	noup, EEC, its general partner
By:	
Name:	BRYAN CHARCE
Its:	MUNICIPAL PARTITION
Date:	10-27-22
TENANT	·
TENANT	
	: .lth Services of Tennessee, Inc.
НСА Неа	
HCA Hea	

IN WITNESS WHEREOF, the parties hereby have executed this instrument.

	ORD:
Hartman	n SC Partners
By: AC	Group, LLC, its general partner
Ву:	
Name: _	
Its:	
Date:	
TENAN	T:
НСА Не	alth Services of Tennessee, Inc.
	N. I DO
/	All A Mull 4
/	Ald Jull 4
Ву:	Joseph A. Sowell
By:	
By:	Joseph A. Sowell Senior Vice President
Ву:	
By:	Senior Vice President
By:	Senior Vice President

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

BEING A CERTAIN TRACT OF LAND LYING AND BEING IN THE FOURTH (4TH) CIVIL DISTRICT OF WILSON COUNTY, CITY OF LEBANON, TENNESSEE. BEING A PORTION OF THE SAME PROPERTY CONVEYED TO HCA REALTY, INC. OF RECORD IN DEED BOOK 1108, PAGE 755, REGISTER'S OFFICE OF WILSON COUNTY (R.O.W.C.T), THE SAME BEING A PORTION OF LOT 3 AS SHOWN ON PLAT ENTITLED "ONE PARK PLAZA SUBDIVISION" OF RECORD IN PLAT BOOK P29, PAGE 339, R.O.W.C.T. BEING BOUNDED ON THE EAST BY THE REMAINING LOT 3 AS SHOWN ON SAID PLAT; ON THE SOUTH BY LOTS 1 AND 2 OF SAID PLAT; ON THE WEST AND NORTH BY THE ANTHONY E. HAGAN, ETAL PROPERTY OF RECORD IN DEED BOOK 1272, PAGE 774, R.O.W.C.T. AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING ON A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC" IN THE EAST RIGHT-OF-WAY LINE OF SAID SOUTH HARTMANN DRIVE AT THE NORTHEAST CORNER OF SAID LOT 1 AND PROCEEDING AS FOLLOWS:

THENCE, LEAVING THE WEST RIGHT-OF-WAY OF SAID HARTMANN DRIVE WITH THE NORTH LINE OF SAID LOT 1, SOUTH 81 DEGREES 56 MINUTES 59 SECONDS WEST, 383.23 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED TRACT:

THENCE, CONTINUING WITH SAID NORTH LINE OF LOT 1, SOUTH 81 DEGREES 56 MINUTES 59 SECONDS WEST, 13.30 FEET TO A 1/2-INCH IRON ROD (NEW) WITH CAP STAMPED "RAGAN SMITH ASSOC";

THENCE, WITH THE EAST LINE OF SAID LOT 1 THE NEXT TWO (2) CALLS:

- 1. SOUTH 06 DEGREES 28 MINUTES 51 SECONDS WEST, 38.53 FEET TO A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC";
- 2. WITH A CURVE TO THE LEFT HAVING A RADIUS OF 716.13 FEET, AN ARC LENGTH OF 62.04 FEET, A DELTA ANGLE OF 04 DEGREES 57 MINUTES 50 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 04 DEGREES 18 MINUTES 16 SECONDS WEST, 62.02 FEET TO A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC" AT THE NORTHEAST CORNER OF SAID LOT 2;

THENCE, WITH THE NORTH LINE OF SAID LOT 2, SOUTH 83 DEGREES 04 MINUTES 12 SECONDS WEST, 354.58 FEET TO A 1/2-INCH IRON ROD (NEW) WITH CAP STAMPED "RAGAN SMITH ASSOC" IN THE EAST LINE OF SAID ANTHONY E. HAGAN, ETAL PROPERTY;

THENCE, WITH THE EAST LINE OF SAID PROPERTY, NORTH 06 DEGREES 55 MINUTES 48 SECONDS WEST, 493.77 FEET TO A 5/8-INCH IRON ROD (OLD);

THENCE, WITH THE SOUTH LINE OF SAID PROPERTY, NORTH 81 DEGREES 56 MINUTES 01 SECONDS EAST, 415.03 FEET;

THENCE, LEAVING SAID SOUTH LINE CROSSING SAID LOT 3 THE NEXT THREE (3) CALLS: 1. SOUTH 08 DEGREES 03 MINUTES 30 SECONDS EAST, 266.23 FEET;

- 2. WITH A CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 11.43 FEET, A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 14 DEGREES 33 MINUTES 32 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 00 DEGREES 46 MINUTES 44 SECONDS EAST, 11.40 FEET;
- 3. SOUTH 06 DEGREES 30 MINUTES 02 SECONDS WEST, 129.45 FEET TO THE POINT OF BEGINNING, CONTAINING 200,979 SQUARE FEET OR 4.61 ACRES, MORE OR LESS.

EXHIBIT B

WORK LETTER AGREEMENT

This Work Letter Agreement is made and entered into as of October 24, 2022 (the "<u>Agreement Date</u>"), by and between Hartmann SC Partners, a Tennessee general partnership ("Landlord"), and HCA Health Services of Tennessee, Inc., a Tennessee corporation ("Tenant"), under the following circumstances:

- A. Landlord and Tenant are entering into a Lease Agreement of even date herewith (the "<u>Lease</u>") relating to an approximately 17,350 rentable square foot building to be constructed by Landlord at 125 Willard Hagan Drive, Lebanon, Tennessee (the "<u>Building</u>"); and
- B. Landlord and Tenant are entering into this Work Letter Agreement (this "<u>Agreement</u>") for the purpose of setting forth their agreements relating to the design and construction of the Building and certain other improvements.
- C. All terms used herein which are defined herein shall have the meanings set forth in the Lease.
- NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

SECTION 1. DESIGN OF IMPROVEMENTS.

- 1.1. **<u>Design of Improvements.</u>** Landlord has caused the project architect, Hereford Dooley Architects (the "Project Architect"), to complete preparation of the final working drawings and specifications for the Building, excluding interior partitions, finishes and other Tenant improvement work below finished ceilings (the "Tenant Improvements"), but including all related utility improvements, not less than seventy-six (76) parking spaces (seven (7) of the 76 spaces will be handicapped-accessible) on the Land for Tenant's use, driveways, signage, landscape and other site improvements located on or adjoining the Land (the Building and all of the foregoing except Tenant Improvements are generally and collectively hereinafter called the "Base Building Improvements"). The final agreed upon working drawings and specifications for the Base Building Improvements, with such changes thereto as are hereinafter permitted, shall be referred to herein as the "Plans and Specifications." Landlord and Tenant have both approved the Plans and Specifications, which are described and scheduled on Exhibit 1 attached to this Agreement and made a part hereto. Tenant's approval of the Plans and Specifications shall not be construed as an approval of the character or quality of the architectural, structural or engineering design of the Base Building Improvements or any of its components, or an acknowledgment that the design complies with applicable building codes. No such approval constitutes a waiver of any warranties or guaranties set forth in this Agreement or release Landlord from liability for any errors or omissions. All costs, fees and expenses of preparation of drawings and specifications hereunder by Project Architect and any other consultants shall be paid by Landlord.
- 1.2. Changes to Plans and Specifications. None of the Plans and Specifications may be changed or otherwise modified without the prior written consent of Tenant. Notwithstanding the foregoing, in the event a change is required to be made to the Plans and Specifications to (i) correct a manifest error, (ii) comply with any code or other legal requirements imposed by any governmental authority having jurisdiction over the Land or the Building or (iii) comply with any insurance industry-wide requirements with respect to life/safety issues, then Landlord shall make such changes to the Plans and Specifications as are approved by Tenant to correct such error or to comply with such requirements or

such directives; provided, however, Tenant's approval shall apply only to the specific changes to the Plans and Specifications required as a result thereof and not to the requirement for such change.

SECTION 2. BUDGET

Landlord and Tenant have estimated that the Base Building Project Costs will be approximately \$6,812,638.00. Landlord and Tenant, however, acknowledge and agree that a more accurate estimate of Base Building Project Costs will not be possible until the Plans and Specifications have been completed and approved and a construction contract negotiated. Landlord anticipates that it will have completed negotiation of the construction contract for the Base Building Improvements by not later than the th day after the Agreement Date (such th day being hereinafter referred to as the "Base Building Budget Submission Date"). Therefore, by not later than the Base Building Budget Submission Date, Landlord shall submit to Tenant a budget (the "Base Building Budget") setting forth an itemization of all reasonably foreseeable Base Building Project Costs, which Base Building Budget shall be in substantially the form attached hereto as Exhibit 2, and which budget, to the extent appropriate, shall reflect negotiated construction prices. If the Base Building Project Costs budgeted on the Base Building Budget exceeds \$6.812.638.00 then Landlord shall indicate in writing submitted to Tenant with the Base Building Budget (and any re-submittals thereof), whether or not Landlord approves such submitted Base Building Budget. If the total amount of the Base Building Project Costs budgeted on the Base Building Budget exceeds \$\$6.812.638.00 and Landlord does not approve such Base Building Budget, Landlord and Tenant shall meet within ten (10) days after submission to Tenant of the Base Building Budget to discuss and agree upon changes and modifications to the Plans and Specifications and/or other elements of the project in order to achieve cost savings sufficient to reduce the Base Building Budget. If Landlord and Tenant are able to agree upon such changes and modifications, Landlord shall cause the Project Architect to make the agreed upon changes to the Plans and Specifications, and (ii) revise the Base Building Budget to reflect such net savings and resubmit the revised Base Building Budget to Tenant. If after any such revision and resubmittal, the Base Building Project Costs budgeted on the revised Base Building Budget still exceeds \$6,812,638.00, and Landlord does not approve such resubmitted Base Building Budget, then the above process for meeting to discuss and agree on changes to achieve savings shall be repeated. The Base Building Budget shall be deemed to be approved by Landlord at such time as the total amount of Base Building Project Costs budgeted thereon equals or is less than \$6,812,638.00. Landlord and Tenant acknowledge and agree that completion of construction of the Base Building Improvements by the Projected Completion Date is, in part, dependent on the approval (or deemed approval) by Landlord and Tenant of the Base Building Budget by not later than _, 20____, and that any delay in approval (or deemed approval by Landlord and Tenant beyond such date shall automatically extend the Projected Completion Date as set forth in Section 3.2 hereof by the number of days of such delay. If Landlord has not approved (or been deemed to have approved) the Base Building Budget by _____, 20____, then either Landlord or Tenant, by giving the other party written notice, may terminate this Agreement and the Lease, in which event no party hereunder shall have any further rights or obligations under this Agreement or the Lease other than those rights and obligations that are expressly stated to survive termination; provided, however, Landlord's and Tenant's right to terminate shall be of no further force and effect if Landlord has approved (or been deemed to have approved) the Base Building Budget prior to the delivery of such notice of termination.

SECTION 3. CONSTRUCTION OF IMPROVEMENTS.

3.1. <u>Construction of Base Building Improvements</u>. (a) Landlord, at Landlord's sole cost and expense, hereby agrees to construct and install the Base Building Improvements in accordance with the Plans and Specifications and this Agreement and Landlord agrees to substantially complete the construction and installation of the Base Building Improvements by not later than the Projected Completion Date.

- (b) Landlord shall not be required to commence construction of the Base Building Improvements until (i) the Plans and Specifications have been approved by Tenant, and (ii) the Base Building Budget has been approved (or deemed approved) by Landlord.
- 3.2. Projected Completion Date. As used herein, "Projected Completion Date" shall mean June 30, 2023 as such date may be extended pursuant to Sections 1.2 and 2.1 hereof, or as such date may be extended by any enforced delay due to unforeseeable causes beyond Landlord's control and without Landlord's fault or negligence including, but not limited to, acts of God, fires, floods, strikes, freight embargoes, unusually severe weather conditions not reasonably anticipatable, but excepting delays caused by acts or omissions of Landlord's contractors, subcontractors, material or equipment suppliers, architects or engineers, or by the failure or inability of Landlord to provide or obtain sufficient funds to pay Base Building Project Costs.
- 3.3. Completion of Construction. The Base Building Improvements shall be deemed substantially completed and Landlord shall deliver to Tenant physical possession of the Premises on the date on which all of the following have occurred (the "Completion Date"): (i) the Project Architect's certificate of Final Completion with respect to the Base Building Improvements shall have been delivered to Tenant; (ii) all sanitary, electrical, heating, ventilating and air conditioning systems of the Building which are part of the Base Building Improvements are operational to the extent necessary to provide adequate services to the Building; access to the Building and the Premises and the parking areas are available to and for use by Tenant and its employees and invitees without interruption; and (iii) Tenant shall have accepted the Base Building Improvements as being in substantial conformity with the Plans and Specifications and executed a written acknowledgment of such acceptance setting forth the Completion Date (the "Completion Date Certificate"), which shall also be signed by Landlord. In the event that Tenant refuses to execute and deliver a Completion Date Certificate on the basis that the Base Building Improvements have not been completed in substantial conformity with the Plans and Specifications and Landlord does not agree that Tenant is entitled to withhold such certificate, Landlord may submit such dispute for decision by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association, except as otherwise hereinafter provided. Notice of demand for arbitration shall be filed by Landlord with Tenant and the American Arbitration Association. The parties will attempt to agree upon a single arbitrator to decide the dispute. In the event that the parties are unable to agree within five days after notice of demand is given, each party shall have an additional three days in which to select an arbitrator, who in each case shall be an architect or other construction industry professional. Within fifteen days after their selection, the party-appointed arbitrators shall select a third arbitrator from the National Panel of Construction Arbitrators who shall be a professional experienced in the matters of the type of dispute. The third arbitrator shall be selected from a list provided by the American Arbitration Association and shall act as chair person. If the party-appointed arbitrators fail to agree upon the selection of the third arbitrator, or if the acceptable arbitrator is unable to act, or for any other reason, the appointment cannot be made, the American Arbitration Association shall have the power to make the appointment from the other members of the Panel. The decision of the arbitrator(s) shall be final and may be enforced in any court of competent jurisdiction. In the event a dispute is submitted to arbitration pursuant to this Section 3.3, the nonprevailing party shall pay all costs of such arbitration.
- 3.4. <u>Permits</u>. Landlord shall obtain and maintain all authorizations, approvals and permits required by any governmental entity for the construction and installation of the Base Building Improvements.
- 3.5. Access Before Completion Date. A representative of Tenant shall have the right (without the obligation to do so) to observe Base Building Improvements as the same are being constructed; such representative shall notify Landlord of any deviations from the applicable plans and

specifications or other deficiencies which it may discover, and Landlord shall promptly correct and/or repair any such deviations or deficiencies upon receipt of such notice.

SECTION 4. PUNCH LIST.

4.1. Punch List. Following issuance of the Project Architect's certificate of Final Completion in accordance with Section 3.3 above, Tenant may inspect the Base Building Improvements and prepare a punchlist setting forth all incomplete, defective or nonconforming items of construction and if such punchlist is delivered to Landlord, Landlord shall promptly complete or correct all items on the punch list within thirty (30) days of receipt thereof. If the nature of any such punch list item is such that it cannot reasonably be completed within such thirty (30) day period, Landlord shall commence to repair or complete such item within the thirty (30) day period and shall diligently prosecute such punch list work to completion.

SECTION 5. LANDLORD'S WARRANTIES.

Landlord warrants to Tenant that (i) the Base Building 5.1. Landlord's Warranties. Improvements will be constructed in accordance with the Plans and Specifications, (ii) all materials and equipment furnished will be new, unless otherwise specified, (iii) the Base Building Improvements will be of good quality, free from faults and defects, and (iv) the Base Building Improvements shall be in full compliance with all applicable laws, codes and regulations, including by way of example, but not as a limitation, environmental, zoning, building and land use laws, codes and regulations. Without limiting the generality of the foregoing, if within one (1) year after the date of substantial completion of all of the Base Building Improvements and, or within such longer period of time as may be prescribed by law or the terms of any applicable warranty required by the Plans and Specifications, the Base Building Improvements, or any part or element thereof is found to be defective or not in accordance with the Plans and Specifications, Landlord shall correct the same within thirty (30) days after receipt of written notice from Tenant to do so or a longer reasonable period if such correction cannot reasonably be completed within a thirty (30) day period, unless Tenant has previously given Landlord a written acceptance of such condition. Unless such condition is specifically referred to and accepted in a written instrument delivered to Landlord, acceptance by Tenant of the Base Building Improvements pursuant to the terms of this Agreement or the Lease shall not be deemed to be written acceptance of any such condition.

SECTION 6. FAILURE TO COMPLETE CONSTRUCTION.

6.1. Failure to Complete Construction. In the event the Completion Date has not occurred by September 1, 2023 the date (the "Outside Completion Date"), then in addition to any other remedies available to Tenant herein or in the Lease and in addition to any other remedies that may be available to Tenant at law, by statute, or in equity, Tenant shall have the right to terminate this Agreement and the Lease by delivering to Landlord written notice of such termination; provided, however, Tenant's right to terminate shall be of no further force and effect if the Completion Date occurs prior to the delivery of such notice of termination. Furthermore, in the event the Completion Date has not occurred by the Outside Completion Date, then in addition to any other remedies available to Tenant herein or in the Lease and in addition to any other remedies that may be available to Tenant at law, by statute, or in equity, Tenant shall have the right to enter upon the Land and take possession of all materials and equipment located thereon and complete the Base Building Improvements in accordance with the Plans and Specifications, using any contractors, subcontractors and material suppliers as Tenant may select in its sole discretion. If requested by Tenant, Landlord shall assign any and all construction trade contracts and any and all agreements with the Project Architect, but Tenant shall have no obligation to request or accept any such assignment or assume any of Landlord's obligations under such contracts. Landlord shall reimburse Tenant for all costs and expenses incurred by Tenant in completing construction of the Base

Building Improvements, and in enforcing this Agreement and exercising its rights hereunder (including, without limitation, reasonable attorneys' fees and costs), together with interest thereon at the "Interest Rate" (as defined in Section 1.01 of the Lease), which shall be paid to Tenant within thirty (30) days after delivery to Landlord of a written demand for payment thereof. If Landlord fails to pay any such amount within such thirty (30) day period, Tenant shall have the right, in addition to all other rights and remedies available at law, by statute or in equity, to deduct all such amounts from any and all installments of Base Rent coming due under the Lease. For the purpose of avoiding applicability of the Rule against Perpetuities, the parties agree that this Agreement and the Lease shall terminate automatically if the Completion Date with respect to the Base Building Improvements has not occurred within five (5) years of the Agreement Date; provided, however, such termination shall not limit or prejudice the rights and remedies of either party hereto, none of which are waived by either Landlord or Tenant.

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

Hartmann	SC Partners	
By: AC G	roup, LLC, its genera	partner
	25	
By:	1	_
Name:	BRYWU C	
Its:	MANACOINE	PARTNER
Date:	16-27-29	2
Date.	10-21-0	
TENANT:		
HCA Heal	th Services of Tennes	see, Inc.
Ву:		
Name:		
Its:		

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

LANI	DLORD:	
Hartm	ann SC Partners	
By: A	C Group, LLC, its	general partner
Ву:		
Name		
Its:		
Date:		
TENA	NT:	
HCA I	Health Services of	Tennessee, Inc.
Ву:	Ibsenh	T JUJOUN/
Name:		A. Sowell /
Its:	Sonic	or Vice President
Date:		
		100

Exhibit 1
Schedule of Plans and Specifications

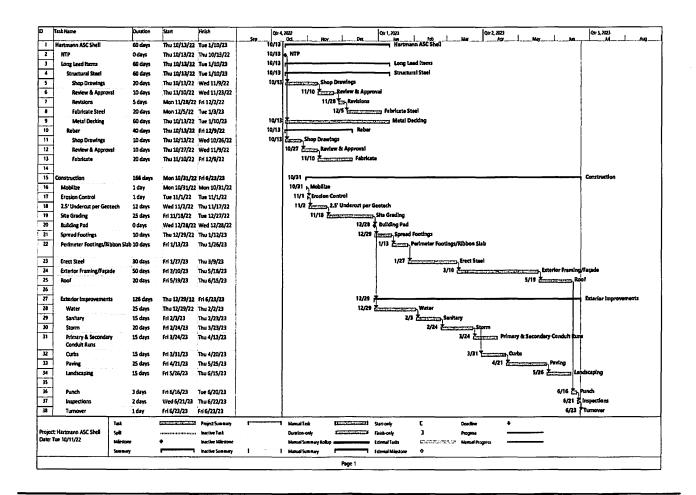


Exhibit 2

Form Base Building Budget

(Does Not Include Tenant Improvement Costs)

Item No.	<u>Description</u>	Budgeted Amount
1	Architectural and Engineering	
2	Construction Costs	
2.A	General Conditions	
2,B	Sitework	
2.C	Storm Drains	
2.D	Sanitary Sewer	
2.E	Domestic Water	
2.F	Soil Treatment	
2.G	Asphalt Pavement	
2.H	Concrete Walks	
2.I	Masonary	
2.J	Landscaping	
2.K	Reinforced Concrete	
2.L	Structural Steel	
2.M	Expansion Joint Cover	
2.N	Roofing and Sheetmetal	
2.O	Waterproof and Caulking	
2.P	Finish Hardware	
2.Q	Glass, Glazing, Storefront	
2.R	Drywall	
2.S	Painting and Wallcovering	
2.T	Floor/Carpet	
2.U	Toilet Partitions, etc.	
2.V	Signage	
2.W	Hard Tile	
2.X	Conveying Systems	
2.Y	Mechanical Systems	
2.Z	Plumbing	
2.AA	Electrical Systems	
2.BB	Labor Burden	
2.CC	Bond	
2.DD	Building permit Builders risk Insurance	
2.EE 2.FF	Bond General Cont.	
3	Sewer tap fee	
4	Impact fees	
5	Soil Test	
6	Utility Connection Fees	
v	Cinity Connection 1 003	
	TOTAL	<u>\$</u>

EXHIBIT "C"

RENT COMMENCEMENT DATE CERTIFICATE

La	ndlord a	nd Tenant	acknowledge	and agree t	hat pursuant to the terms of that certain Lease
dated as of	·	20, w	hereby Land	llord leases to	Tenant the building located at Sout
Hartmann	Drive,	Lebanon,	Tennessee,	the "Rent	Commencement Date" of said Lease in commencement Date of Said Da
		, 20			•
				T A	NDLORD:
				LA	INDLOND.
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				Na	me:
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OPTION FOR SPACE SUBLEASE

THIS OPTION FOR SPACE SUBLEASE (this "Agreement") made on the date on which this Agreement is executed by the last party to sign this Agreement as evidenced by the date below such party's signature (the "Agreement Date") by and between HCA HEALTH SERVICES OF TENNESSEE, INC., a Tennessee corporation ("Sublandlord"), and LEBANON SURGICENTER, LLC, a Tennessee limited liability company, and its successors and assigns ("Subtenant").

WITNESSETH:

- A. Pursuant to that certain Lease, dated October 31, 2022, Sublandlord leases from Hartman SC Partners, a Tennessee general partnership ("Prime Lessor"), the following property (the "Premises"): (i) the real property located at 125 Willard Hagan Drive, Lebanon, Wilson County, Tennessee (the "Land"), (ii) the building (the "Building") containing approximately 17,350 square feet of rentable area and all other improvements now or hereafter located on the Land (the Building and such other improvements shall hereinafter be referred to as the "Improvements"), and (iii) all other rights and easements appurtenant to the Land, the Building, and other Improvements; and
- C. Sublandlord and Subtenant now desire to enter into this Agreement whereby Sublandlord grants to Subtenant the right and option to sublease the Premises pursuant to the terms of a sublease (the "Sublease") acceptable to Sublandlord and Subtenant.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, Sublandlord and Subtenant agree as follows:

ARTICLE I. OPTION RIGHTS

- 1.1 Grant of Option. For and in consideration of the sum of \$10 and other good and valuable consideration (the "Option Payment") that will be paid by Subtenant to Sublandlord within ten (10) business days after the Agreement Date, the adequacy and sufficiency whereof is hereby acknowledged, Sublandlord hereby gives and grants unto Subtenant, upon the terms and conditions hereinafter set forth, the irrevocable right and option to enter into the Sublease in such form and on such terms as are described in this Agreement (the "Sublease Option").
- 1.2 Sublease Option Period; Requirement for Exercise of Sublease Option. The Sublease Option may be exercised at any time beginning on the Agreement Date up to 11:59 p.m. Central Time, on the first (1st) anniversary of the Agreement Date (the "Sublease Option Period").
- 1.3 Exercising the Sublease Option. Subtenant will have the right at any time during the Sublease Option Period, within its sole discretion, to exercise the Sublease Option by giving written notice to Sublandlord ("Subtenant's Option Notice").

- 1.4 <u>Sublease</u>. (a) Following delivery of Subtenant's Option Notice, Sublandlord and Subtenant will work together in good faith and with reasonable diligence to complete the Sublease upon the final terms of the Sublease. The Sublease shall be substantially in the form attached hereto as <u>Exhibit A</u>. The parties acknowledge and agree that the final terms of the Sublease must be satisfactory to Sublandlord and Subtenant in their sole and absolute discretion, including without limitation, satisfaction on the part of Sublandlord and Subtenant that the terms of the Sublease comply fully with all of Sublandlord's and Subtenant's policies regarding health care laws and regulations.
- (b) Sublandlord and Subtenant acknowledge and agree that the Sublease will provide for rent and other terms that are "fair market value" and commercially reasonable at the time the Sublease is entered into, using the definition of "fair market value" for the Sublease of real property set forth in the "Stark Law." "Stark Law" means 42 CFR §411.357(a) to Section 1877 of the Social Security Act (42 U.S.C. 1395nn), as it may be amended from time to time. The parties anticipate that the Sublease will have an initial term of ten (10) years.

ARTICLE II. MISCELLANEOUS

- **2.1** Binding Effect. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
- **2.2** Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter) hereof, and there are no oral or parole agreements existing between Sublandlord and Subtenant relative to the subject matter hereof which are not expressly set forth herein and covered hereby.
- 2.3 <u>Headings</u>. The headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation hereof.
- 2.4 <u>Interpretation</u>. Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter, and vice versa.
- 2.5 Notice. Any notice or other writing required or permitted to be given to a party under this Agreement will be given in writing and will be (i) delivered by hand or (ii) delivered through the United States mail, postage prepaid, certified, return receipt requested, (iii) delivered through or by UPS, Federal Express, or other nationally-recognized overnight mail or package service, or (iv) by electronic mail (so long as each notice delivered by electronic mail is also delivered by one of the methods described above in clauses (i) (iii) above addressed to the parties at the addresses set forth below. Any notice or demand that may be given hereunder will be deemed complete; (a) upon depositing any such notice or demand in the United States mail with proper postage affixed thereof, certified, return receipt requested; (b) upon depositing any such notice or demand with UPS, Federal Express, or other nationally recognized overnight mail or package delivery, or (c) upon hand delivery to the appropriate address as herein provided. Any

party hereto may change said address by notice in writing to the other parties in the manner herein provided. The appropriate addresses for notice hereunder will be the following:

Sublandlord:

HCA Health Services Of Tennessee, Inc.

One Park Plaza

Nashville, Tennessee 37203 Attn: Real Estate Department

Email: Clayton.Lehning@hcahealthcare.com

Subtenant:

Lebanon Surgicenter, LLC

c/o Surgery Ventures Group - TriStar

1000 Health Park Drive Building 3, Floor 5 Brentwood, TN 37027 Attn: Daniel C. Winkler

Email: Daniel.Winkler@surgeryventures.com

- **2.6** Governing Law. This Agreement will be construed under and in accordance with the laws of the State of Tennessee.
- 2.7 <u>Severability</u>. In case any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 2.8 Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will comprise one and the same instrument. Signatures transmitted by facsimile or by email in portable document format and signatures electronically signed in accordance with the Uniform Electronic Transaction Act, as adopted in the State of Tennessee, and with the United States ESIGN Act shall have the same effect as the delivery of original signatures and shall be binding upon and enforceable against the parties hereto as if such facsimile were an original executed counterpart.

[Signatures appear on following page]

EXECUTED AND DELIVERED as of the Agreement Date.

SUBLANDLORD:

HCA	HEALTH	SERVICES	OF	TENNESSEE,
INC	a Tennessee	corporation		

Name: Todd Maxwell

Title: Vice President

Date Signed: 4/8 , 2025

SUBTENANT:

LEBANON SURGICENTER, LLC, a Tennessee limited liability company

By: Surgicare of Lebanon, LLC, a Tennessee limited liability company, its managing member

Name: DANIEL C. WINKLER

Title: VICE PRESIDENT - OPERATIONS

Date Signed: Apr. 17 , 2025

EXHIBIT A

Form Sublease

Sublease of Entire Premises - 125 Willard Hagan Drive, Lebanon, Tennessee Full Pass-Through 3/2018

SUBLEASE				
THIS SUBLEASE, dated, 20 for reference purposes (the "Date of this Sublease"), is made and entered into by and between HCA HEALTH SERVICES OF TENNESSEE, INC., a Tennessee corporation (herein called "Sublandlord"), and LEBANON SURGICENTER, LLC, a Tennessee limited liability company (herein called "Subtenant"), under the following circumstances.				
A. Sublandlord and Hartman SC Partners, a Tennessee general partnership (hereinafter called "Prime Lessor"), have entered into that certain Lease, dated October 31, 2022, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (said Lease as amended is hereinafter referred to as the "Prime Lease"), whereby Prime Lessor has leased to Sublandlord the following property (the "Premises"): (i) the real property located at 125 Willard Hagan Drive, located in Lebanon, Wilson County, Tennessee as more particularly described in Exhibit A attached to the Lease (the "Land"), (ii) the building (the "Building") containing approximately 17,350 square feet of rentable area and all other improvements now or hereafter located on the Land (the Building and such other improvements shall hereinafter be referred to as the "Improvements"), and (iii) all other rights and easements appurtenant to the Land, the Building, and other Improvements;				
B. On and subject to the terms and conditions set forth herein, Subtenant desires to sublease all of the Premises from Sublandlord and Sublandlord desires to sublet all of the Premises to Subtenant.				
NOW, THEREFORE, Sublandlord, in consideration of the rents to be paid and the covenants and agreements to be performed by Subtenant as hereinafter set forth, hereby subleases to Subtenant and Subtenant hereby subleases from Sublandlord the Premises for the term and upon the conditions and agreements hereinafter set forth. This Sublease shall constitute a binding agreement between the parties effective as of the date this Sublease is executed by Sublandlord and Subtenant.				
SECTION 1. TERM.				
The initial term of this Sublease (the "Initial Term") shall commence on the "Commencement Date" and end on the "Expiration Date" (as such terms are defined herein). "Commencement Date" shall mean the later of (a), or (b) the date of execution of this Sublease by Sublandlord as set forth in Sublandlord's signature block; provided, however, in the event Section 11 includes language that adjusts the Commencement Date, then the Commencement Date shall be the date as determined pursuant to Section 11. "Expiration Date" shall mean the later of (a), (b) the last day of the "Sublease Year" (as such terms are below defined), (c) the last day of the full calendar month occurring after the Commencement Date, due to the Initial Term including a partial Sublease Year. The Initial Term, any extension or renewal thereof, any "Unauthorized Holdover Term" and any "One Year Extension Term", as such terms are defined in Section 16, are referred to individually and collectively, as the case may be, as the "Term". Subtenant at Sublandlord's requess shall execute and deliver to Sublandlord a Commencement Date Certificate in the form attached hereto as Exhibit B acknowledging the Commencement Date and the Expiration Date (the "Commencement Date Certificate"). "Sublease Year" shall mean the period beginning on the Commencement Date and ending on the first anniversary of the last day of the calendar month in which the Commencement Date occurs (unless the Commencement Date is the first day of a calendar month, in which event such first Sublease Year shall end on the day prior to the first anniversary of the Commencement Date) and each twelve (12) month period thereafter during the Term of this Sublease.				
SECTION 2. RENT				
2.1. <u>Base Rent.</u> (a) During the Initial Term, Subtenant shall pay to Sublandlord the following as annual base rent for the Premises (the "Base Rent"), subject to adjustment as provided in Section 2.1(b) below:				
Annual Base Rent Monthly Rent Installment				
\$				
(b) Beginning on and on each thereafter during the Term of this Sublease (each such date shall hereinafter be referred to as an "Adjustment Date"), annual and monthly Base Rent shall increase by% of the annual and monthly Base Rent amount payable immediately preceding such Adjustment Date.				
(c) Base Rent shall be payable in monthly installments in advance without notice, demand, setoff or deduction and all such installments shall be paid to Sublandlord or its "Property Manager" (as hereinafter designated) in U.S. Dollars, at the following address:, or at such other address as Sublandlord may designate. Sublandlord's "Property Manager" is Except as otherwise may be provided in Section 11, the first monthly installment for Base Rent shall be due on the Commencement Date and, thereafter, such monthly Installments shall be due on the first day of each calendar month. If Subtenant's obligation to pay Base Rent relates to only a part of a month at the beginning or the end of the Term, Subtenant shall pay Sublandlord a proportionate part of the applicable monthly installment for each such partial month, which shall be payable at the same time as the first or last (as applicable) monthly installment is due under this Sublease.				
2.2. Additional Rent. All taxes, charges, costs and expenses which Subtenant assumes or agrees to pay under any provision of this Sublease, shall constitute additional rent. If Subtenant shall fail to pay any such additional rent or any other sum due hereunder when the same shall become due, Sublandlord shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of non-payment of Base Rent which is then due and payable and shall, except as expressly provided herein, have the right to pay the same on behalf of Subtenant. Subtenant shall perform all of its obligations under this Sublease at its sole cost and				

expense, and shall pay all Base Rent, additional rent and other sums due hereunder when due and payable, without notice or demand.

- 2.3. <u>Taxes on Rent</u>. Subtenant shall pay and be liable for all rental, sales and use taxes or other similar taxes, if any, levied or imposed on Base Rent or Additional Rent payments by any city, county, parish, state or other governmental body having authority. Such payments shall be in addition to all other payments required to be paid to Sublandlord by Subtenant under the terms of this Sublease. Any such payment shall be paid to Sublandlord concurrently with the payment of the Base Rent or Additional Rent upon which such tax is based.
- 2.4. <u>Net Lease</u>. This Sublease is a net lease and it is the intention of the parties that, except as otherwise provided or limited by the specific provisions of this Sublease, Tenant shall be responsible for all costs and expenses of the ownership, maintenance, repair and operation of the Premises incurred or relating to the period of time during the Term.

SECTION 3. SECURITY DEPOSIT

Subtenant has deposited with Sublandlord the sum of \$_____ (the "Security Deposit") as security for the full and faithful performance by Subtenant of all of Subtenant's obligations hereunder. No interest shall be paid upon the Security Deposit nor shall Sublandlord be required to maintain the deposit in a segregated account, unless required by applicable law in which event Sublandlord will comply with such legal requirement. The Security Deposit shall not be construed as prepaid rent. In the event that Subtenant shall default in the full and faithful performance of any of the terms hereof, then Sublandlord may, without notice, either retain the Security Deposit as liquidated damages, or Sublandlord may retain the same and apply it toward any damages sustained by Sublandlord, including but not limited to actual damages sustained by the Sublandlord by reason of the default of Subtenant, including any past due Rent. In the event of bankruptcy or other debtor-creditor proceedings, either voluntarily or involuntarily instituted by or against Subtenant, the Security Deposit shall be deemed to be applied in the following order: to actual damages, obligations and other charges, including any damages sustained by Sublandlord, other than unpaid Rent, due to Sublandlord for all periods prior to the filing of such proceedings; to accrued and unpaid Rent prior to the filing of such proceeding; and thereafter to actual damages, obligations, other charges and damages sustained by Sublandlord and rent due the Sublandlord for all periods subsequent to such filling. In the event of a sale of the Premises or all or any portion of the Building, Sublandlord shall have the right to transfer the Security Deposit to the buyer, and Sublandford shall thereupon be relieved of all obligations to return the Security Deposit to Subtenant, and Subtenant agrees to look solely to the buyer for the return of the Security Deposit. If Subtenant fully and faithfully complies with all of the terms hereof, the Security Deposit or any balance thereof shall be returned to Subtenant within thirty (30) days after expiration of this Sublease. including any renewal thereof

SECTION 4. USE OF PREMISES

- 4.1. Required and Prohibited Uses. (a) The Premises shall continuously and at all times during the Term be used and occupied by Subtenant only as an ambulatory surgery center for the performance of outpatient surgery procedures by licensed physicians ("Physicians") and other related activities incidental thereto, and for no other purpose. Notwithstanding the foregoing, the provision or operation of any of the following services or facilities shall not be permitted in the Premises:
 - (i) a health care facility that has facilities for overnight accommodations of patients;
 - (ii) Intentionally Omitted;
 - (iii) inpatient surgery services;
 - (iv) outpatient or inpatient birthing services;
 - (v) an oncology treatment facility;
 - (vi) an emergency center;
 - (vii) physical, inhalation or respiratory therapy services;
 - (viii) a laboratory (including, without limitation, a pathology laboratory or a clinical laboratory); and
 - diagnostic or therapeutic testing services, including without limitation, all diagnostic imaging services, including without limitation:
 - A. fluoroscopy;
 - B. x-ray;
 - C. plain film radiography;
 - D. computerized tomography (CT);
 - E. ultrasound;
 - F. radiation therapy;
 - G. mammography and breast diagnostics;
 - nuclear medicine testing;
 - magnetic resonance imaging; and

- positive emission tomography.
- (b) Notwithstanding the foregoing, (i) nothing herein shall prevent Physicians from performing outpatient surgeries in the Premises, and (ii) nothing herein shall prevent Physicians who perform medical procedures or provide medical services on the Premises from rendering pathological laboratory or x-ray services for which Tenant has obtained Landlord's consent pursuant to Section 4.1(c); provided that such pathological laboratory or x-ray services are the kind usually and customarily provided in an ambulatory surgery center, are provided to patients obtaining outpatient surgery procedures at the Premises, and are merely ancillary and incidental to the performance of ambulatory surgery procedures and do not constitute the predominant services rendered to such patients.
- (c) Prior to providing pathological laboratory or x-ray services, Subtenant shall have submitted to Sublandlord a detailed description of the laboratory or x-ray services Subtenant desires to provide or perform and Sublandlord shall have consented in writing to the provision or performance of such services, which consent may be denied in Sublandlord's sole and absolute discretion (the provision of such services and procedures shall be strictly limited to those services and procedures to which Sublandlord has expressly consented in writing and the terms of this paragraph shall be strictly construed to prohibit any expansion or addition to such services or procedures without Sublandlord's written consent). Subtenant shall not dispense any drugs or medicines to persons other than Subtenant's own patients. Prior to the installation of any diagnostic, laboratory or radiology equipment for subtenant's ubstances, wastes or materials, as hereinafter defined, which will be used or generated in connection with the use of such diagnostic, laboratory or radiology equipment; and Subtenant's proposed procedures for the use, storage and disposal of any hazardous substances, wastes or materials, including but not limited to the procedure for silver recovery for any radiology equipment.
- 4.2. Approved Services. Notwithstanding anything in this Section 4 to the contrary, Subtenant may provide the following ancillary medical care and services in the Premises to patients of Subtenant or of any Physician owner or employee of Subtenant practicing in the Premises (the "Approved Services"): _______; provided that the provision of Approved Services shall be subject to the following limitations and restrictions: (a) the patients of Subtenant or of any Physician owner or employee of Subtenant practicing in the Premises to whom Approved Services are provided shall not be referred to Subtenant or such Physician for the purpose of obtaining such services or procedures; and (b) the Approved Services are and at all times shall be incidental to and a necessary part of the outpatient surgery procedures provided in the Premises and shall not constitute the predominant services rendered to the patients obtaining outpatient surgery procedures at the Premises. Without the prior written consent of Sublandford, which consent may be withheld in Sublandford's sole discretion, Subtenant shall not modify or expand any of the Approved Services.
- 4.3. <u>Physician Qualifications.</u> All Physicians who conduct a medical practice and related activities in the Premises must be and remain appropriately licensed and in good standing with the state licensing board and any applicable federal, state or local certification or licensing agency or office, without restriction, not subject to any sanction, exclusion order, or other disciplinary order with respect to his or her participation in any federal or state healthcare program. Further, each such Physician must be qualified to be a member of the active medical staff of <u>TriStar Summit Medical Center</u> (the "Hospital"); provided, however, that nothing in this Section 4.3 shall require any Physician who conducts a medical practice in the Premises actually to be a member of the Hospital's active medical staff.
- 4.4. <u>Supervision</u>. Each medical or surgical procedure, all medical or surgical services, and each medical practice performed, provided or conducted in the Premises shall at all times be performed, provided and conducted under the supervision and authority of a Physician.
- 4.5. Compliance with Legal Requirements. Subtenant shall comply with all governmental laws, codes, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances and other activities in or upon, or connected with the Premises. Subtenant shall not use or occupy the Premises in violation of the certificate of use or occupancy issued for the Premises or the Building (the "Certificate"). Subtenant shall act in accordance with and not violate any restrictions or covenants of record affecting the Premises or the Building. Subtenant shall immediately discontinue any use of the Premises which is declared by either any governmental authority having jurisdiction or the Sublandlord to be a violation of any such governmental laws, codes, ordinances or regulations, Certificate, restrictions or covenants. Subtenant shall comply with any direction of any governmental authority having jurisdiction which shall, by reason of the nature of Subtenant's use or occupancy of the Premises, impose any duty upon Subtenant or Sublandlord with respect to the Premises or with respect to the use or occupancy thereof. To the extent any alterations to the Premises are required by the Americans with Disabilities Act, as amended from time to time (the "ADA") or other applicable laws or regulations, Subtenant shall bear the expense of the alterations. Subtenant shall comply with the Controlled Substances Act and its implementing regulations, and any other applicable laws, regulations, or requirements regarding controlled substances, and shall implement and maintain effective controls and procedures to guard against theft and diversion of controlled substances from the Premises.
- 4.6. <u>Prime Lease</u>. Notwithstanding anything to the contrary set forth in this Section 4, Subtenant shall not without the consent of Prime Lessor, use the Premises in any manner that violates the terms, covenants and restrictions set forth in the Prime Lease. If any use that is permitted pursuant to the terms of this Section 4 is otherwise prohibited under the Prime Lease, then Subtenant shall not use the Premises for such use unless and until Subtenant obtains Prime Lessor's written consent to such use.

SECTION 5. SERVICES, MAINTENANCE AND REPAIRS

- 5.1. <u>Sublandlord's Services</u>. Sublandlord shall not be required to provide any utilities, electricity, water, heating or air-conditioning to the Premises or any janitorial or cleaning services for the Premises or any other services whatsoever with respect to the Premises, the Building or any other Improvements.
- 5.2. Medical and Hazardous Waste; Mold. (a) Subtenant, at Subtenant's sole cost and expense, shall be responsible for medical, special and infectious waste removal for the Premises and the maintenance and storage thereof pending removal, all in accordance with all applicable laws, regulations and orders. Subtenant shall not cause or permit the release or disposal of any hazardous substances, wastes or materials, or any medical, special or infectious wastes, on or about the Premises or the Building. "Hazardous substances" as such term is used in this Sublease means any hazardous or toxic substance, material or waste, regulated or listed pursuant to any federal, state or local environmental law, 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. Subtenant shall comply with all rules and policies set by Sublandlord and/or Prime Lessor, and with all federal, state and local laws, regulations and ordinances which govern the use, storage, handling and disposal of hazardous substances, wastes or materials and medical, special or infectious wastes. Subtenant shall indemnify, defend and hold Sublandlord and Prime Lessor harmless from and against any claims or liability arising out of or connected with Subtenant's failure to comply with the terms of this Section 5.2, which terms shall survive the expiration or earlier termination of this Sublease.
- (b) Subtenant shall not permit undue accumulations of garbage, trash, rubbish or other refuse within the Building or on the Premises and shall keep all refuse in proper containers until disposal of such refuse. Subtenant shall not permit the mixing or disposal of any hazardous substances, wastes or materials or any medical, special or infectious waste with the general office refuse and Sublandlord shall have no duty or obligation to remove any hazardous substances, wastes or materials or any medical, special or infectious waste from the Premises.
- Subtenant acknowledges that mold, mildew, fungi and bacteria are naturally occurring organisms. Subtenant acknowledges that it has had the opportunity prior to occupying the Building to test the Building, at its own expense, for the presence of mold, mildew, fungi and other harmful bacteria (mold, mildew, fungi and harmful bacteria shall be referred to herein as "Organics"). Subtenant shall provide Subfandlord with a copy of any such test results. Subtenant covenants, warrants and agrees that (i) Subtenant shall not take or omit to take any action with respect to its use of the Premises so as to cause or contribute to the growth of Organics in the Building, and (ii) Subtenant shall (A) regularly inspect all window areas or other areas where water may condense in or leak into the Building, and (B) cause the HVAC units serving the Building to be inspected and cleaned periodically. Subtenant shall immediately notify Sublandlord in writing of any visible signs of the presence or growth of Organics in the Building or or of any water leak or excessive water condensation in the Building. Furthermore, Subtenant shall immediately notify Sublandlord in writing if Subtenant has reasonable cause to believe that the growth of Organics has or will occur in the Building. Subtenant, at its sole cost and expense, shall be responsible for remediating and removing all Organics from the Building. Sublandlord shall not be responsible for remediating or removing any Organics from the Building.
- 5,3. <u>Sublandlord's Repairs.</u> Sublandlord shall have no duty or obligation to maintain, repair, clean or service the Premises, the Building and other Improvements, the common areas and facilities of the Building and other Improvements, or the mechanical, plumbing and electrical systems serving the Premises, the Building or other Improvements.
- 5.4. <u>Subtenant's Repairs.</u> (a) Except as otherwise provided in Section 6.02 of the Prime Lease, Subtenant shall maintain in good condition and repair the Premises, the Building and other Improvements, the common areas and facilities of the Building and other Improvements, and the mechanical, plumbing and electrical systems serving the Premises, the Building and other Improvements and promptly shall make all repairs and replacements and perform all maintenance necessary to keep the foregoing in such condition. If Subtenant fails to do so, Sublandlord shall have the right to repair any such damage and Subtenant shall pay Sublandlord for the cost of all such repairs, plus interest at the Interest Rate (as defined in Section 20.9).

SECTION 6, ALTERATIONS

Subtenant may not make any changes, alterations, improvements or additions to the Premises or attach or affix any articles thereto without Sublandlord's prior written consent, which consent Sublandlord shall not unreasonably withhold. Such consent shall not be deemed to have been unreasonably denied or withheld if the consent or approval of Prime Lessor for such change, alteration, improvement or addition is required under the Prime Lease and the Prime Lessor denies its consent or approval. All changes, alterations, improvements or additions which may be made upon the Premises by Prime Lessor, Sublandlord or Subtenant (except unattached trade fixtures and office furniture and equipment owned by Subtenant) shall not be removed by Subtenant, but shall become and remain the property of Sublandlord and Prime Lessor, as their interests appear. All changes, alterations, improvements and additions to the Premises shall be done only by Prime Lessor, Sublandlord or contractors or mechanics approved by Sublandlord, and shall be at Subtenant's sole expense and at such times and in such manner as Prime Lessor and Sublandford may approve. If Subtenant shall make any changes, alterations, improvements or additions to the Premises, Sublandford may require Subtenant, at the expiration or earlier termination of this Sublease, to restore the Premises to substantially the same condition as existed at the commencement of the Term. The interest of neither Prime Lessor nor Sublandlord shall be subject to liens for improvements made by Subtenant in and to the Premises. Subtenant shall notify every contractor making such improvements of the provisions set forth in the preceding sentence of this paragraph. Any mechanics or materialmen's lien for which Prime Lessor, Sublandlord or Subtenant has received a notice of intent to file or which has been filed against the Premises or the Building arising out of work done for, or materials furnished to or on behalf of Subtenant, its contractors or subcontractors shall be discharged, bonded over or otherwise satisfied by Subtenant within ten (10) days following the earlier of the date Subtenant receives (a) notice of intent to file a lien or (b) notice that the lien has been filed. If Subtenant fails to discharge, bond over, or otherwise satisfy any such lien, either Prime Lessor or Sublandlord may do so at Subtenant's expense, and the amount expended by Prime Lessor or Sublandlord, including reasonable attorneys' fees, shall be paid by Subtenant within ten (10) days following Subtenant's receipt of a bill from Prime Lessor or Sublandlord, as the case may be.

SECTION 7. INDEMNITY: WAIVER

- 7.1. Subtenant's Indemnity. Subject to Section 20.5 hereof, Subtenant shall and hereby does indemnify, defend and hold harmless Prime Lessor, Sublandlord and their agents from and against any and all claims, demands, actions, losses, damages, orders, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and costs of litigation) incurred by Prime Lessor, Sublandlord and/or their agents as a result of or arising from: (a) the use or occupancy of the Premises by Subtenant or any subtenant of Subtenant; (b) any willful or negligent acts or omissions of Subtenant, any subtenant of Subtenant or Subtenant's agents, employees, contractors or invitees; (c) any breach or violation by Subtenant of the terms of this Sublease; or (d) any breach or violation of the terms of the Prime Lease by Subtenant.
- 7.2. Waiver of Liability. Neither Sublandlord nor its agents shall be liable for any damage to property entrusted to employees of the Building, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface, or from any other place or resulting from dampness or any other cause whatsoever. Subtenant shall give prompt notice to Sublandlord in case of fire or accidents in the Premises or in the Building or of defects therein or in the fixtures or equipment. Subtenant hereby acknowledges that Sublandlord shall not be liable for any interruption to Subtenant's business for any cause whatsoever, and that Subtenant shall obtain business interruption insurance coverage should Subtenant desire to provide coverage for such risk.

SECTION 8. ASSIGNMENT AND SUBLETTING

Subtenant shall not, either voluntarily or by operation of law, directly or indirectly, sell, assign or transfer this Sublease, in whole or in part, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be occupied by any person, corporation, partnership, or other entity except Subtenant or Subtenant's employees, without the prior written consent of Prime Lessor and Sublandlord in each instance. A transfer of stock control in Subtenant, if Subtenant is a corporation, or the transfer of a greater than forty-nine percent (49%) beneficial ownership interest in Subtenant, if Subtenant is a partnership, limited liability company or other entity, shall be deemed an act of assignment hereunder. In addition, any such subletting or assignment transaction shall be in all respects in compliance with the applicable provisions of the Medicare Anti Kick-Back Law, 42 USC 1320a-7(b)(1) and (2) and the Stark Self-Referral Prohibition Act, 42 USC 1395nn et. seq., as the same may be modified, supplemented or replaced from time to time, and all regulations promulgated thereunder from time to time. Any sale, assignment, mortgage, transfer or subletting of this Sublease or the Premises which is not in compliance with the provisions of this Section 8 shall be void. The consent by Prime Lessor or Sublandlord to any assignment or subletting shall not be construed as relieving Subtenant from obtaining the express prior written consent of Prime Lessor and Sublandlord to any further assignment or subletting or as releasing Sublenant from any liability or obligation hereunder, whether or not then accrued. Should Sublandlord permit any assignment or subletting by Subtenant and should the moneys received as a result of such assignment or subletting (when compared to the moneys still payable by Subtenant to Sublandlord) be greater than would have been received hereunder had not Sublandlord permitted such assignment or subletting, then the excess shall be payable by Subtenant to Sublandlord, it being the parties' intention that Sublandlord, and not Subtenant, shall be the party to receive any profit from any assignment or subletting. In the event of any assignment or subletting approved by Prime Lessor and Sublandlord, the assignee or sublessee shall assume all of Subtenant's obligations under this Sublease and shall be bound to comply with all the terms and provisions of this Sublease and Subtenant and such assignee or sublessee shall be jointly and severally liable for the performance of Subtenant's covenants under this Sublease

SECTION 9. PRIME LEASE

This Sublease is a sublease and is and shall at all times be subject and subordinate to the Prime Lease and to all of the matters to which the Prime Lease is or shall be subordinate, all of the terms and conditions thereof and to all amendments and supplements thereto. Subtenant shall only have such rights with respect to the Premises which Sublandlord has pursuant to the Prime Lease. Except as otherwise set forth below, if the Prime Lease expires or otherwise terminates prior to the date of expiration of the term of this Sublease (including without limitation, any extension of the term pursuant to Section 16 or pursuant to any amendment to this Sublease) and such Prime Lease is not renewed or extended, then the term of this Sublease shall expire and terminate on the date of expiration or termination of the Prime Lease. Sublandlord shall have no liability or other obligation to Subtenant, in damages or otherwise, on account of any such termination of this Sublease unless such termination occurs as a result of Sublandlord's default under the Prime Lease (unless Sublandlord's default is caused by Subtenant's default under this Sublease). Subtenant shall have no right, title or interest in any right, claim or cause of action, if any, that Sublandlord may have against Prime Lessor as a result of any such termination. Notwithstanding anything to the contrary set forth herein, in the event of termination or expiration of the Prime Lease prior to the expiration or earlier termination of this Sublease, Prime Lessor may, at its option, take over and assume the rights and interests of Sublandlord under this Sublease (but Prime Lessor shall have no obligation to do so), and in such event, Subtenant shall attorn to the Prime Lessor pursuant to the provisions of this Sublease; provided that, Prime Lessor shall not (i) be liable for any previous act or omission of Sublandlord under this Sublease, (ii) be subject to any offset, not expressly provided in this Sublease, which theretofore accrued to Subtenant against Sublandlord, or (iii) be bound by any previous prepayment of more than one month's rent. Subtenant shall indemnify and hold Sublandlord harmless from and against any and all claims, demands, actions, losses, damages, orders, judgments, costs and expenses (including, without limitation, holdover rent and damages payable under the Prime Lease, reasonable attorneys' fees and costs of litigation) incurred by Sublandlord as a result of or arising from Subtenant's failure to vacate and surrender the Premises in accordance with the terms of Section 16(a) of this Sublease on or before the date of expiration or termination of the Prime Lease. Subtenant acknowledges that Sublandlord shall have no obligation to renew or extend the term of the Prime Lease or enter into a new lease with Prime Lessor; provided, however, Sublandlord shall notify Subtenant of any renewal or extension of the term of the Prime Lease or of the execution of any new lease with Prime Lessor for the Building or Premises.

(b) Subtenant shall perform all of the obligations, covenants and agreements of Sublandlord as tenant/lessee under the Prime Lease as if Subtenant were the original tenant/lessee under the Prime Lease, and Subtenant shall be liable to each of Prime Lessor and Sublandlord for compliance with and performance of same. Such obligations include, without limitation, the obligations under the following Sections of the Prime Lease:

Prime Lease Sections 3 -. Taxes; Permitted Contests; Prime Lease Section 4 - Utilities; Prime Lease Section 6.01 - Tenant's Maintenance; Prime Lease Section 8 - Liens; Prime Lease Section 10 - Compliance with Laws; Prime Lease Section 11 - Insurance; Prime Lease Section 14 - Damage and Destruction; Prime Lease Section 15 - Condemnation; and Prime Lease Section 24 - Environmental Matters.

Subtenant's performance and observance of all such obligations, covenants and agreements shall be affected so that, whenever time periods are specified in the Prime Lease for Sublandlord's compliance as tenant thereunder, Subtenant shall have so complied on or prior to such date. All of the rights, powers, remedies and privileges to which Sublandlord is entitled under the Prime Lease, and all of the obligations of Prime Lessor set forth in the Prime Lease, shall inure to Subtenant's benefit, so that, except as otherwise specifically provided herein, the terms and conditions of this Sublease, and the respective obligations of Sublandlord and Subtenant to each other under this Sublease, shall be the terms and conditions of the Prime Lease. Notwithstanding anything to the contrary set forth herein or in the Prime Lease, it is expressly agreed that the terms of this Sublease do not grant Subtenant any of the following rights under the Prime Lease: (i) any rights of first refusal, options to purchase, options or rights to terminate, or options to renew the Prime Lease or any term or provision thereof, or (ii) any rights to occupy the Premises in a manner contrary to the Prime Lease or this Sublease. Subtenant covenants and agrees that Subtenant will not do or permit to be done any act or omission (A) that violates any term or condition of the Prime Lease, or (B) that might cause the Prime Lease or the rights of the Sublandlord as tenant/lessee thereunder to be canceled, terminated or forfeited; or (C) that might make Sublandlord liable for any damages, costs, claims, expenses or penalties under the Prime Lease.

- Insofar as Prime Lessor is or may be obligated to furnish any services to the Premises, to repair or rebuild the Premises or the Building, to perform any other act whatsoever with respect to the Premises or the Building or to perform any obligation or satisfy any condition of the Prime Lessor under the Prime Lease, Subtenant expressly acknowledges and agrees that notwithstanding anything to the contrary provided in this Sublease, Sublandlord does not undertake the performance or observance of such obligations. Furthermore, Subtenant expressly acknowledges and agrees that notwithstanding anything to the contrary provided in this Sublease, if Sublandlord does not possess the requisite right, power or authority under the Prime Lease to provide or perform any service, duty or obligation required by the terms of this Sublease, then Sublandlord shall have no obligation under this Sublease to provide or perform such service, duty or obligation. Sublandlord, however, agrees to use commercially reasonable efforts to obtain Prime Lessor's performance of Prime Lessor's obligations under the Prime Lease for Subtenant's benefit, but without obligating itself to institute legal action or incur any out of pocket expense. If after receipt of written request from Subtenant, Sublandlord fails or refuses to take commercially reasonable actions for the enforcement of Sublandlord's rights against Prime Lessor with respect to the Premises, Subtenant shall have the right to take such action in Subtenant's own name. Subtenant shall be subrogated to such rights to the extent that the same shall apply to the Premises.
- (d) All of the obligations contained in the Prime Lease that are assumed by and to be performed by Subtenant or the performance of which are to be made to or for the benefit of Prime Lessor, and any right or privilege of Prime Lessor under the Prime Lease, shall also be for the benefit of, applicable to, and exercisable and enforceable by Sublandlord. Any rights or privileges under the Prime Lease that require Prime Lessor's consent or approval also shall require Sublandlord's consent and approval. Any policies of insurance required to be carried and maintained by Subtenant shall name Sublandlord and Prime Lessor as additional insureds, as well as any other persons required to be named as insureds pursuant to the Prime Lease.

SECTION 10. RULES AND REGULATIONS

Subtenant shall observe faithfully and comply strictly with the rules and regulations for the Building adopted by Prime Lessor and attached to the Prime Lease, and such other rules and regulations as Prime Lessor may from time to time reasonably adopt for the safety, care and cleanliness of the Building or the preservation of good order therein (the rules and regulations attached to the Prime Lease, if any, together with any such other rules and regulations shall be referred to herein as the "Rules and Regulations"). Sublandlord shall not be liable to Subtenant for violation of any such Rules and Regulations by any other tenant in the Building, or for the breach of any covenant or condition in any lease by any other tenant in the Building.

SECTION 11. ACCEPTANCE OF PREMISES

Subtenant shall not occupy or use the Premises prior to the Commencement Date as determined pursuant to the first two sentences of Section 1 of this Sublease. If Sublandlord is unable to deliver possession of the Premises to Subtenant by the Commencement Date as determined pursuant to the first two sentences of Section 1, then (a) the Commencement Date shall mean the date that the Premises are available for occupancy as set forth in a written notice from Sublandlord to Subtenant, and (b) Subtenant shall take possession of the Premises within ten (10) days after receipt of written notice from Sublandlord that the Premises are available for occupancy. By taking possession of the Premises, Subtenant shall be deemed to have accepted the Premises in its "assis" condition, fit for occupancy, and acknowledged that the Premises are in satisfactory condition and repair.

SECTION 12. DEFAULTS

- 12.1. <u>Events of Default</u>. The occurrence of any of the following shall constitute a material default and breach of this Sublease by Subtenant:
- (a) The vacating or abandonment of the Premises by Subtenant prior to the expiration or earlier termination of this Sublease.
- (b) A failure by Subtenant to pay Rent or to make any other payment required to be made by Subtenant hereunder by the date that the same is due and payable.
- (c) The failure by Subtenant to vacate and surrender the Premises by the date required pursuant to Section 16.1(b) or Section 16.2 hereof or by the date required pursuant to any other termination option or agreement set forth herein or in any amendment or other agreement.
 - (d) A violation of the terms of Section 8 of this Sublease.
- (e) A failure by Subtenant to observe or perform any other obligation under this Sublease to be observed or performed by Subtenant, other than payment of any Rent, within fifteen (15) days after written notice by Sublandlord to Subtenant specifying wherein Subtenant has failed to perform such obligation; provided, however, that if the nature of Subtenant's obligation is such that more than fifteen (15) days are required for its performance, then Subtenant shall not be deemed to be in default if it shall commence such performance within such fifteen (15) day period and thereafter diligently prosecute the same to completion by not later than 45 days after Subtenant receives Sublandlord's written notice.
- (f) The making by Subtenant or any guarantor of this Sublease of any general assignment for the benefit of creditors; the filing by or against Subtenant or such guarantor of a petition to have Subtenant or such guarantor adjudged a bankrupt or the filing of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Subtenant or such guarantor, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Subtenant's assets located at the Premises or of Subtenant's interest in this Sublease, where possession is not restored to Subtenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Subtenant's assets located at the Premises or of Subtenant's interest in this Sublease, where such seizure is not discharged within thirty (30) days.
- 12.2. <u>Sublandlord's Default.</u> Sublandlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after written notice by Subtenant to Sublandlord specifying wherein Sublandlord has failed to perform such obligation; provided, however, that if the nature of Sublandlord's obligation is such that more than thirty (30) days are required for its performance, then Sublandlord shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecute the same to completion.

SECTION 13. REMEDIES

- 13.1. Remedies. In the event an event of default occurs on the part of Subtenant as set forth in Section 12, Sublandlord may exercise one or more of the following described remedies, in addition to all other rights and remedies available at law or in equity, whether or not stated in this Sublease:
- (a) Upon the occurrence of an event of default on Subtenant's part as set forth in Section 12, Sublandlord may continue this Sublease in full force and effect and shall have the right to collect Rent when due, and Sublandlord may re-enter the Premises with or without legal process and relet them, or any part of them, to third parties for Subtenant's account and Subtenant hereby expressly waives any and all claims for damages by reason of such re-entry, as well as any and all claims for damages by reason of any distress warrants or proceedings by way of sequestration which Sublandlord may employ to recover said rents. Subtenant shall be liable immediately to Sublandlord for all costs Sublandlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, reasonable attorneys' fees and costs and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Sublease, and in no event shall Sublandlord be under any obligation to relet the Premises except as otherwise expressly required by law. On the dates such rent is due, Subtenant shall pay to Sublandlord a sum equal to the Rent due under this Sublease, less the rent Sublandlord receives from

any reletting. No act by Sublandlord allowed by this paragraph shall terminate this Sublease unless Sublandlord notifies Subtenant in writing that Sublandlord elects to terminate the Sublease.

- (b) At any time after the occurrence of an event of default by Subtenant as described in Section 12, Sublandlord may terminate this Sublease. Upon termination, Sublandlord shall have the right to collect an amount equal to the sum of the following: all expenses incurred by Sublandlord in recovering possession of the Premises, including reasonable attorneys' fees and costs; all reasonable costs and charges for the care of the Premises while vacant; all renovation costs incurred in connection with the preparation of the Premises for a new tenant; all past due Rent which is unpaid, plus interest thereon at the Interest Rate (as defined in Section 20.9); the unamortized portion of any and all tenant improvement, finish and/or renovation allowances provided by Sublandlord in connection with this Sublease or any amendment or extension of this Sublease (such amortization to be determined on a straight-line basis); and an amount by which the entire Rent for the remainder of the Term exceeds the loss of Rent that Subtenant proves could have been reasonably avoided.
- (c) No termination of this Sublease, or taking or recovering possession of the Premises with or without termination of this Sublease, shall deprive Sublandlord of any remedies or actions against Subtenant for Rent or for damages due or to become due for the breach of any covenant or condition in this Sublease, nor shall the bringing of any such action for Rent, or breach of any covenant or condition, or the resort to any other remedy be herein construed as a waiver of the right to terminate or to obtain possession of the Premises as otherwise provided herein. No receipt of money by Sublandlord from Subtenant after default or termination of this Sublease shall: (i) reinstate, continue, or extend the Term or affect any notice given to Subtenant, (ii) operate as a waiver of the right of Sublandlord to enforce the payment of Rent then due or to become due, or (iii) operate as a waiver of the right of Sublandlord to terminate the Sublease, recover possession of the Premises or exercise any other remedy.
- (d) In the event of an "Unauthorized Holdover" (as defined in Section 16.1), then in addition to all other remedies available herein, at law or in equity, at Sublandlord's election, Subtenant shall pay to Sublandlord any and all damages, losses, claims, demands, judgments, costs and expenses (including, without limitation, reasonably attorneys' fees and costs of litigation) incurred or suffered by Sublandlord as a direct or indirect result of or arising from Subtenant's failure to timely vacate and surrender the Premises, including without limitation, any lost rent or profit resulting from any delay in Sublandlord's ability to deliver possession of the Premises to another tenant.
- 13.2. Additional Remedies. Should any of these remedies, or any portion thereof, not be permitted by the laws of the state in which the Building is located, then such remedy or portion thereof shall be considered deleted and unenforceable, and the remaining remedies or portions thereof shall be and remain in full force and effect. Sublandlord may avail itself of these as well as any other remedies or damages allowed by law. All rights, options and remedies of Sublandlord provided herein or elsewhere by law or in equity shall be deemed cumulative and not exclusive of one another. In the event Sublandlord employs the services of an attorney to enforce any of its rights under this Sublease or to collect any sums due to it under this Sublease or to remedy the breach of any covenant in this Sublease on the part of Subtenant to be kept or performed, Subtenant shall pay to Sublandlord such reasonable fees and costs as shall be charged by Sublandlord's attorney for such services.

SECTION 15. RIGHT OF ACCESS

Upon reasonable notice to Subtenant, Prime Lessor, Sublandlord and their employees, contractors and agents shall have free access to the Premises during all reasonable hours to inspect the Premises, to make reasonable repairs as required hereunder (provided, however, Sublandlord shall have no obligation as a result of such examination to make any repairs other than as expressly set forth herein), to remediate and remove Organics from the Premises (provided, however, Sublandlord shall have no obligation to remediate and/or remove Organics), to maintain and repair any pipes, ducts, conduits and the like in and through the Premises (whether the same service the Premises or other portions of the Building) and to exhibit the Premises to prospective purchasers, lenders or tenants. Subtenant acknowledges that Prime Lessor may from time to time, construct improvements on, in or about other portions of the Building or in the vicinity of the Building and Subtenant agrees that any noise resulting from such construction activities shall not constitute an actual or constructive eviction of Subtenant or be deemed to violate any covenant of quiet enjoyment set forth in this Sublease. Prime Lessor, Sublandlord and their agents shall have access to the Premises at any time without prior notice in the event of an emergency.

SECTION 16. END OF TERM; HOLDOVER AND LEASE TERM EXTENSIONS

16.1. Surrender of Premises and Unauthorized Holdover. (a) At the termination or expiration of the Term of this Sublease, Subtenant shall surrender the Premises in as good condition and repair as at the Commencement Date, reasonable wear and tear and damage by fire and extended coverage perils excepted, and will leave the Premises broom-clean. If not then in default, Subtenant shall have the right prior to said termination to remove any equipment, furniture, trade fixtures or other personal property placed in the Premises by Subtenant, provided that Subtenant promptly repairs any damage to the Premises or the Building caused by such removal. Notwithstanding the foregoing, Subtenant shall not have the right to remove any fixtures or equipment constructed or installed in the Premises by Sublandlord or Sublandlord's contractor or agents. All of Subtenant's personal property not removed by Subtenant on or before the termination or expiration of the Term of this Sublease shall be considered abandoned by Subtenant and may be appropriated, stored, sold, destroyed or otherwise disposed of by Prime Lessor or Sublandlord without first giving notice thereof to Subtenant, without any payment to Subtenant and without any obligation to account to Subtenant therefor. If any low-voltage cable and/or wiring has been installed by Subtenant or by Prime Lessor or Sublandlord at Subtenant's request in the Premises or removed by Prime Lessor or Sublandlord's election, and at Subtenant's sole cost and expense, such Low Voltage Wiring shall be removed by Subtenant before the expiration or earlier termination of this Sublease or removed by Prime Lessor or Sublandlord before or after the expiration or earlier termination of this Sublease. Subtenant shall

reimburse Prime Lessor and Sublandlord upon demand for all costs incurred by Prime Lessor and Sublandlord in removing or storing any abandoned personal property or Low-Voltage Wiring.

- (b) If Sublandlord notifies Subtenant in writing that Subtenant must vacate the Premises by the end of a Sublease Term and Subtenant holds over and remains in possession of the Premises after such Sublease Term expiration date, or if Sublandlord or Subtenant exercises any right or option to terminate this Sublease or otherwise agree in writing to terminate this Sublease and Subtenant holds over and remains in possession of the Premises after the date by which Subtenant is required to vacate and surrender the Premises, then such holding over shall operate as an extension of this Sublease from month to month (such holdover shall be referred to herein as an "Unauthorized Holdover" and the term of such Unauthorized Holdover shall be referred to herein as an "Unauthorized Holdover Term"). Such Unauthorized Holdover Term shall be on all of the same terms and conditions as herein provided (other than the duration of the term) and Subtenant shall pay Sublandlord monthly Base Rent for the period of its holdover equal to 125% of the amount of the monthly Base Rent installment due and payable hereunder for the last full month of the Term before such holdover. Such Unauthorized Holdover Term may be terminated by Sublandlord or Subtenant delivering not less than thirty (30) days' prior written notice of termination to the other party.
- Automatic One Year Extension Terms. (a) Sublandlord and Subtenant acknowledge and agree that if the parties mutually desire to renew or extend the Term of this Sublease, then the preferred method for accomplishing such renewal or extension shall be by the execution of a new lease of the Premises or an amendment extending the term of this Sublease. Nothing set forth herein, however, shall obligate either Sublandlord or Subtenant to execute a new lease or an amendment. If the parties do not enter into a new lease of the Premises or an amendment extending the term of this Sublease and Subtenant remains in possession of the Premises after the expiration of the Term of this Sublease and such continued possession does not constitute an Unauthorized Holdover, then in order to prevent such continued possession from violating the Stark Law, the parties agree that this Sublease shall be extended automatically for an additional term of one (1) year (each such one (1) year term, a "One Year Extension Term"). Except as otherwise expressly provided in Section 16.1(b) above, Subtenant's failure to vacate and surrender the Premises in accordance with Section 16.1(a) above upon the expiration of the Term of this Sublease shall constitute Subtenant's incontestable and irrevocable consent and agreement to extend the Term of this Sublease by such One Year Extension Term upon such terms and conditions as provided in this Section 16.2. Such One Year Extension Term shall be on the same terms and conditions as contained in this Sublease, except as provided otherwise in this Section 16.2. Annual Base Rent for each One Year Extension Term (the "New Base Rent"), shall be determined as set forth below.
- Sublandlord shall endeavor to notify Subtenant in writing of the New Base Rent payable for the Premises during a One Year Extension Term (a "New Base Rent Notice") not less than 45 days prior to the commencement of such One Year Extension Term; provided, however, failure to deliver a New Base Rent Notice to Subtenant 45 or more days prior to the commencement of such One Year Extension Term shall not constitute a breach or violation of the terms of this Sublease by Sublandlord. Annual Base Rent for a One Year Extension Term as set forth in a New Base Rent Notice shall be the amount equal to the fair market rental value of the Premises, on an annual basis, as determined by Sublandlord. Sublandlord and Subtenant agree that delivery of a New Base Rent Notice before or after the exercise of any right or option to terminate this Sublease shall not be deemed to void, cancel or otherwise affect the exercise of such right or option to terminate unless Sublandlord and Subtenant agree in writing to cancel the exercise of such right or option to terminate.
- If Sublandlord delivers the New Base Rent Notice to Subtenant 45 or more days prior to the commencement of such One Year Extension Term, then the annual New Base Rent for such One Year Extension Term shall be the annual Base Rent for the Premises as set forth in such New Base Rent Notice. If Sublandlord fails to deliver the New Base Rent Notice to Subtenant 45 or more days prior to the commencement of such One Year Extension Term or if Sublandlord does not deliver a New Base Rent Notice, then the annual New Base Rent rate for such One Year Extension Term shall be 115% of the amount of the annual Base Rent rate in effect immediately prior to the commencement of such One Year Extension Term. Beginning on the first day of such One Year Extension Term, Subtenant shall pay the New Base Rent nequal monthly installments on the first day of each month of such One Year Extension Term. The parties agree that delivery of a New Base Rent Notice to Subtenant less than 45 days prior to the commencement of a One Year Extension Term shall not affect the calculation or determination of the New Base Rent payable for such One Year Extension Term. Subject to the rights to terminate this Sublease pursuant to this Section 16.2, the determination pursuant to this paragraph of the New Base Rent payable for a One Year Extension Term shall be incontestably binding on Subtenant, shall not require the execution of any additional agreements by the parties, and shall be effective regardless of any objection to or rejection of the One Year Extension Term or the New Base Rent amount by Subtenant.
- (b) Notwithstanding anything to the contrary set forth in this Sublease, (1) Sublandlord may terminate this Sublease effective at any time during a One Year Extension Term by delivering written notice of termination to Subtenant at any time, and (2) Subtenant may terminate this Sublease effective at any time during a One Year Extension Term by delivering written notice of termination to Sublandlord no later than the thirtieth (30th) day after the commencement of such One Year Extension Term. Such notices may be delivered prior to the commencement of any such One Year Extension Term. In the event of the delivery of any such notice of termination, this Sublease shall terminate upon the later of the following (the "One Year Extension Termination Date"): (i) the date of termination set forth in such notice, (ii) the thirtieth (30th) day after the delivery of such notice to the non-terminating party, or (iii) such other date as may be agreed upon in writing by Sublandlord and Subtenant. In the event of any such termination of this Sublease, Subtenant shall vacate and surrender the Premises to Sublandlord in accordance with the provisions of Section 16.1(a) of this Sublease on or before the One Year Extension Termination Date. Notwithstanding anything to the contrary set forth herein, (x) no exercise of the foregoing termination option shall extend the term of this Sublease and (y) if following the One Year Extension Termination Date, Subtenant has not vacated and surrendered the Premises in accordance with Section 16.1(a) of this Sublease, then this Sublease shall not terminate, but instead shall continue as an Unauthorized Holdover subject to Section 16.1(b). Upon termination as provided above, both parties shall be released of all obligations and liabilities arising under this Sublease following the

effective date of termination; provided that the parties shall remain liable for all obligations under this Sublease that have accrued prior to such termination or are otherwise intended to survive termination of this Sublease.

SECTION 17, TRANSFER OF SUBLANDLORD'S INTEREST

In the event of any transfer or transfers of Sublandlord's interest in the Prime Lease or the Premises, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Sublandlord accruing from and after the date of such transfer.

SECTION 18. ESTOPPEL CERTIFICATE, ATTORNMENT, AND NON-DISTURBANCE

- 18.1. Estoppel Certificate. Within ten (10) days following receipt of Sublandlord's written request, Subtenant shall deliver, executed in recordable form, a declaration to any person designated by Sublandlord: (a) ratifying this Sublease; (b) stating the commencement and termination dates of the Sublease; and (c) certifying (i) that this Sublease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated); (ii) that all conditions under this Sublease to be performed by Sublandlord have been satisfied (stating exceptions, if any); (iii) that no defenses, credits or offsets against the enforcement of this Sublease by Sublandlord exist (or stating those claimed); (iv) the sum of advance Rent, if any, paid by Subtenant; (v) the date to which Rent has been paid; (vi) the amount of the Security Deposit, if any, held by Sublandlord; and (vii) such other information as Sublandlord reasonably requires. Persons receiving such statements of Subtenant shall be entitled to rely upon them.
- 18.2. Sale of Sublandlord's Interest. In the event of the assignment of this Sublease pursuant to any sale or assignment of Sublandlord's interest in the Premises, then upon Subtenant's receipt of written notice of such sale or assignment, Subtenant shall attorn to and recognize such purchaser or assignee as Subtenant's sublandlord under this Sublease, and shall promptly execute and deliver any instrument that may be necessary to evidence such attornment. Upon the effective date of any such sale or assignment, the assigning Sublandlord shall be released from all covenants and conditions as Sublandlord hereunder. Without further agreement between the parties, the purchaser or assignee shall be deemed to have assumed all covenants and conditions of Sublandlord hereunder and this Sublease shall continue in full force and effect as a direct sublease between such purchaser or assignee, as Sublandlord, and Subtenant, subject to all of the terms, covenants and conditions of this Sublease, regardless of whether Subtenant executes and delivers the instrument requested by such successor landlord. No consent of Subtenant shall be required in the event of any such sale or assignment which is made subject to this Sublease.

SECTION 19. NOTICES

- (a) Any notice required or permitted to be given hereunder shall be in writing and may be given by: (i) hand delivery and shall be deemed given, delivered and received on the date of delivery; (ii) registered or certified mail and shall be deemed given, delivered and received on the third day following the date of malling; or (iii) overnight delivery and shall be deemed given, delivered and received on the following day.
 - (b) All notices to Subtenant shall be addressed to Subtenant at the Building of which the Premises are a part.

Lebanon Surgicenter, LLC c/o Surgery Ventures - TriStar 13355 Noel Road, Suite 1200 Dallas, TX 75240 Attention: Chief Executive Officer

With a copy to:

HCA Healthcare, Inc. One Park Plaza Nashville, TN 37203

Attention: Vice President, Real Estate

(c) All notices to Sublandlord shall be addressed to Sublandlord as follows (or to any other address that Sublandlord shall designate in writing):

HCA Health Services of Tennessee, Inc.

5655 Frist Blvd.
Hermitage, TN 37076
Attention: Administration

HCA Healthcare, Inc.
One Park Plaza
Nashville, TN 37203
Attention: Vice President, Real Estate

And to:

Attention: Vice President, Real Estate

(d) All notices to Prime Lessor shall be addressed to Prime Lessor as follows (or to any other address that Prime Lessor shall designate in writing):

Hartmann SC Partners c/o The Capital Corporation 7101 Sharondale Court, Suite 600 Brentwood, TN 37027 Attn: Nick Church

SECTION 20. MISCELLANEOUS PROVISIONS

- 20.1. Attorneys' Fees, in the event that suit is brought by either party against the other for a breach or default under the terms of this Sublease, the prevailing party shall be entitled to reasonable attorneys' fees, which sum shall be fixed by the court.
 - 20.2. Time of Essence. Time is of the essence with respect to the performance of every provision of this Sublease.
- 20.3. <u>Headings; Certain Definitions</u>. The Section and paragraph captions contained in this Sublease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.
- 20.4. Incorporation of Prior Agreements; Amendments. This Sublease, the Addenda and the Exhibits attached hereto and incorporated herein contain all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Sublease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Sublease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.
- 20.5. Waivers of Subrogation and Claims. Sublandlord and Subtenant hereby mutually waive any and all claims and rights of recovery against one another based upon the negligence of either Sublandlord or Subtenant or their agents or employees for real or personal property loss or damage occurring to the Premises or to the Building or any part thereof or any personal property located therein from perils which are able to be insured against in standard fire and extended coverage, vandalism and malicious mischief and sprinkler leakage insurance contracts (commonly referred to as "All Risk"), whether or not such insurance is actually carried. If either party's insurance policies do not permit this waiver of subrogation, then such party will obtain such a waiver from its insurer at its sole expense. Furthermore, notwithstanding anything to the contrary set forth herein, Subtenant, as a material part of the consideration to Sublandlord, hereby assumes all risk of damage to property or injury to persons in or on the Premises from any cause other than Sublandlord's gross negligence or intentional misconduct, and Subtenant hereby waives all claims in respect thereof against Sublandlord.
- 20.6. Waiver. No waiver by Sublandlord or Subtenant of any breach or default of any term, agreement, covenant or condition of this Sublease shall be deemed to be a waiver of any other term, agreement, covenant or condition hereof or of any subsequent breach by Sublandlord or Subtenant of the same or any other term, agreement, covenant or condition. Sublandlord's consent to or approval of any act by Subtenant requiring Sublandlord's consent or approval shall not be deemed to render unnecessary the obtaining of Sublandlord's consent to or approval of any subsequent act of Subtenant, whether or not similar to the act so consented to or approved. No act or thing done by Sublandlord or Sublandlord's agents during the Term of this Sublease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by Sublandlord. The subsequent acceptance of Rent shall not be deemed a waiver of any preceding breach by Subtenant of any agreement, covenant or obligation of Subtenant or any other term or condition of this Sublease. No delay in billing or any failure to bill Subtenant for any Rent, nor any inaccurate billing of Rent shall constitute a waiver by Sublandlord of its right to collect and to enforce Subtenant's obligation to pay the full amount of Rent due and payable under this Sublease, as the same may be adjusted or increased from time to time.
- 20.7. Accord and Satisfaction. Payment by Subtenant or receipt by Sublandlord of an amount less than is due hereunder shall be deemed to be other than payment towards or on account of the longest outstanding portion of the amount then due by Subtenant. Any endorsement or statement on any check or payment (or in any letter accompanying any check or payment) shall not be deemed an accord and satisfaction (or payment in full) and Sublandlord may accept such check or payment without prejudice to Sublandlord's right to recover the balance of such amount or pursue any other remedy provided herein.
- 20.8 No Smoking. Subtenant and its employees, representatives, contractors or invitees shall not smoke within the Premises, the Building, in any common areas (inside or outside), or anywhere on the Hospital campus, or throw cigar or cigarette butts or other substances or litter of any kind in or about the Building, the common areas or the Hospital campus, except in receptacles for that purpose.
- 20.9. <u>Late Payments.</u> If any monthly installment of Base Rent or any payment of Additional Rent is not received by Sublandlord within ten (10) days after such installment or payment is due and payable (the "Late Payment Date"), then Subtenant shall, upon demand, at Sublandlord's election, pay Sublandlord a late charge of five percent (5%) of the amount of such installment or payment. In addition, if any such past due installment of Base Rent or payment of Additional Rent is not received by Sublandlord within the thirty (30) day period following the Late Payment Date or within any subsequent thirty (30) day period, such past due installment or payment shall, upon demand, at Sublandlord's election, be subject to an additional late charge in the same amount for each such thirty (30) day period until paid. Such late charge is to defray the administrative costs and inconvenience and other expenses which Sublandlord will incur on account of such delinquency. If any amount payable to Sublandlord under this Sublease is not paid in full on or before the due date thereof, then Subtenant shall, upon demand, at Sublandlord's election pay interest on the unpaid balance at the lesser of the following rates (the "Interest Rate"): (a) the prime rate of interest as published by *The Well Street Journal* from time to time, plus four percent (4%) per annum, with each change in such prime rate being effective on the date such change is published, or (b) the highest rate permitted by applicable law.

- 20.10. <u>Binding Effect, Counterparts and Electronic Signatures</u>. This Sublease shall be binding upon, and inure to the benefit of the parties hereto, their heirs, successors, assigns, executors and administrators. However, nothing in this Section shall be deemed to amend the provisions of Section 10 on assignment and subletting. If Subtenant comprises more than one person or entity then all such persons and entities shall be jointly and severally liable for the full and prompt performance of all obligations, indemnities and agreements to be performed or observed by Subtenant under and pursuant to this Sublease, including but not limited to the payment of Rent and any and all other sums required to be paid by Subtenant hereunder when due. This Sublease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or by email in portable document format and signatures electronically signed in accordance with the Uniform Electronic Transaction Act, as adopted in the State of Tennessee, and with the United States ESIGN Act shall have the same effect as the delivery of original signatures and shall be binding upon and enforceable against the parties hereto as if such facsimile were an original executed counterpart.
- Charges and Fees. If Subtenant requests from Sublandlord a "Requested Approval" (as defined below) and Sublandlord is willing to provide such Requested Approval, then if required by Sublandlord in its discretion, Subtenant shall, at Sublandlord's option, either (A) pay to Sublandlord the fee set by Sublandlord for processing, negotiating and providing such Requested Approval, or (B) reimburse to Sublandlord the fees and costs paid by Sublandlord to its attorneys for the review, negotiation and preparation and/or modification of the Requested Approval and any additional documents or agreements Sublandlord may require in connection with such Requested Approval. If requested by Subtenant, Sublandlord shall notify Subtenant of the amount of the fee, if any, set by Sublandlord for processing, negotiating and providing such Requested Approval. Subtenant shall pay such fee set by Sublandlord or such attorneys' fees and costs, as the case may be, within thirty (30) days after the submission to Subtenant of an invoice for the same; provided, however, Sublandlord may in its discretion, require that any fee set by Sublandlord be paid prior to the granting of such Requested Approval. As used in this Section, a "Requested Approval" shall mean (a) any consent, approval or waiver requested by Subtenant with respect to (i) any permitted or prohibited use of the Premises, (ii) alterations and improvements to the Premises, (iii) any subletting or assignment, or (iv) any other change in the terms, conditions or provisions of this Sublease or any other matter under this Sublease, and (b) any estoppel certificate, lien waiver or other certificate or agreement requested by Subtenant, with such modifications to such consent, approval, waiver, certificate of other agreement as are required by Sublandlord. If Subtenant is required pursuant to the terms of this Sublease to provide any certificate, statement or other information and Subtenant fails to provide such certificate, statement or other information within the time period required under this Sublease, then in addition to any other rights or remedies that Sublandlord may have under this Sublease with respect to such failure, then if required by Sublandlord in its discretion. Subtenant shall pay to Sublandlord an administrative processing fee in the amount of \$100 (subject to adjustment from time to time by Sublandlord in its reasonable discretion and after delivery of written notice of such adjustment to Subtenant) for each notice subsequent to the first notice sent to Subtenant requesting such certificate, statement or other information, which fee shall be paid to Sublandlord within ten (10) days after invoiced to Subtenant. If a specific time period is not provided, then the time period for delivering a certificate, statement and other information that is to be provided on request or demand shall be ten (10) days after request or demand.
 - 20.12. Governing Law. This Sublease shall be governed by the laws of the state where the Building is located.
- 20.13. Regulatory Matters. (a) Sublandlord and Subtenant enter into this Sublease with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute and regulations, as amended (the "Anti-Kickback Law"), and Section 1877 of the Social Security Act, as amended and the regulations promulgated thereunder (the "Stark Law"). Notwithstanding any unanticipated effect of any of the provisions of this Sublease, neither party will intentionally conduct itself under the terms of this Sublease in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Sublandlord and Subtenant expressly agree that nothing contained in this Sublease shall require either party to refer any patients to the other, or to any affiliate or subsidiary of the other.
- (b) If any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Sublease, then Sublandlord and Subtenant agree to negotiate in good faith for a period of ninety (90) days to modify the terms of this Sublease to comply with applicable law. Should the parties hereto fail to agree upon modified terms to this Sublease within this time, either Sublandlord or Subtenant may immediately terminate this Agreement by giving written notice to the other party.
- (c) Subtenant represents and warrants to Sublandlord that Subtenant (i) is not currently excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act, as amended or as defined in 42 U.S.C. § 1320a-7b(f), as amended (the "Federal Health Care Programs"), (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Subtenant being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation and warranty during the Term of this Sublease and Subtenant shall immediately notify Sublandlord of any change in the status of the representation and warranty set forth in this Section, Sublandlord shall have the right to immediately terminate this Sublease in the event the representation and warranty set forth in this Section is or becomes untrue at any time.
- (d) For purposes of this Section of this Sublease, "Protected Health Information", or "PHI", shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (the "Privacy Standards"), as promulgated by the Department of Health and Human Services ("HHS") pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended

from time to time. Subtenant agrees to reasonably safeguard PHI from any intentional or unintentional disclosure in violation of the Privacy Standards by implementing appropriate administrative, technical and physical safeguards to protect the privacy of PHI. Subtenant further agrees to implement appropriate administrative, technical and physical safeguards to limit incidental disclosures of PHI, including disclosures to Sublandlord, its subcontractors and agents. The parties agree that neither the Sublandlord nor its contractors, subcontractors or agents shall need access to, nor shall they use or disclose, any PHI of Subtenant. However, in the event PHI is disclosed by Subtenant or its agents to Sublandlord, its contractors, subcontractors or agents, regardless as to whether the disclosure is inadvertent or otherwise, Sublandlord agrees to take reasonable steps to maintain, and to require its contractors, subcontractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a "Business Associate" relationship between the parties as that term is defined by the Privacy Standards.

- (e) If the Stark Law applies to this Sublease and there are any other contracts or agreements between Sublandlord and Subtenant (or any "immediate family member" (as defined by the Stark Law) of Subtenant), then Sublandlord shall include this Sublease and such other agreements and contracts on Sublandlord's centrally maintained and updated master list of contracts. Such list of contracts is and shall be available for review by the Secretary of the U.S. Department of Health and Human Services upon request.
- Subtenant represents and warrants to Sublandlord that (a) neither Subtenant nor any person or entity that owns a five percent (5%) or greater equity interest in Subtenant nor any of Subtenant's officers, directors, members, general or limited partners (Subtenant and such owners, officers, directors, members and partners shall be referred to collectively as the "Subtenant Owner") is a "Blocked Party" (as defined below); (b) Subtenant is not controlled by, or acting, directly or indirectly, for or on behalf of, any Blocked Party; and (c) Subtenant has not instigated, negotiated, facilitated, executed or otherwise engaged in this Sublease, directly or indirectly, for or on behalf of any Blocked Party. The foregoing representation shall be an ongoing representation and warranty during the Term of this Sublease and Subtenant shall immediately notify Sublandlord of any change in the status of the representation and warranty set forth in this Section. Sublandlord shall have the right to immediately terminate this Sublease in the event the representation and warranty set forth in this Section is or becomes untrue at any time. As used herein "Blocked Party" shall mean any party or nation that (a) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the U.S. Treasury ("OFAC") pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) or other similar requirements contained in the rules and regulations of OFAC (the "Order") or in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders") or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"), all as amended from time to time; or (b) has been determined by competent authority to be subject to the prohibitions contained in the Orders.
- 20.14 <u>Submission of Sublease</u>. Submission of this Sublease to Subtenant does not constitute an offer to lease; this Sublease shall become effective only upon execution and delivery thereof by Sublandlord and Subtenant.

SECTION 21. ADDENDA

The following Addenda and/or Riders are attached to this Sublease and made a part hereof: Exhibit A – Prime Lease and Exhibit B – Form Commencement Date Certificate.

Isignatures on next page(s)]

IN WITNESS WHEREOF, the parties have duly executed this Sublease the day and year first above written.

SUBTENANT:

	icare of Lebanon, LLC, a Tennessee limited liability , its managing member
Ву:	(Signature)
	(Signature)
Nam	ne:
Title	
Date	[Date must be inserted at time of execution]
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SURGERY CENTER GROUND LEASE

Between

HCA REALTY, INC. a Tennessee corporation, (as Landlord)

and

HARTMANN SC PARTNERS a Tennessee general partnership (as Tenant)

Dated as of

October 31, 2022

125 Willard Hagan Drive, Lebanon, Tennessee

SURGERY CENTER GROUND LEASE

THIS SURGERY CENTER GROUND LEASE (this "Lease") is made as of October 31, 2022 (the "Effective Date"), by and between HCA Realty, Inc., a Tennessee corporation, "Landlord"), and HARTMANN SC PARTNERS, a Tennessee general partnership ("Tenant"), under the following circumstances:

- A. Landlord, as "HCA Realty" (as defined in the "Development Agreement" as hereinafter defined), and Tenant, as "Developer" (as defined in the Development Agreement), have entered into that certain Surgery Center Development Agreement dated September 30, 2022 (the "Development Agreement"), whereby Landlord and Tenant have made certain agreements regarding the development and construction of the "Building" and the "Related Improvements" (each as defined herein) on a portion of the land owned by HCA Realty 125 Willard Hagan Drive, Lebanon, Wilson County, Tennessee.
- B. The Development Agreement contemplates that the parties will enter into this Lease at the "Closing" (as defined therein).

NOW THEREFORE, in consideration of the "Leased Premises" (as defined below) and the other agreements set forth in this Lease, Landlord and Tenant agree as follows:

In consideration of the mutual agreements contained in this Lease, Landlord ground leases and conveys, as applicable, to Tenant the following:

- (a) That certain real property located in the City of Lebanon, Wilson County, Tennessee, being more particularly described in <u>Exhibit A</u> attached hereto (the "<u>Surgery Center Parcel</u>"), together with all appurtenant easements, rights and privileges and subject to all covenants, conditions and restrictions existing thereon including, without limitation, the "Permitted Encumbrances" and the "Declaration" (each as defined herein);
- (b) Easements during the "Term" (as hereinafter defined) for the nonexclusive use of parking facilities, driveways, sidewalks, water, sewer, storm detention, landscaping, utility service lines and related structures as such improvements are identified and described in the Declaration executed by Landlord, as "Declarant" (as defined in the Declaration) (collectively, the "Leasehold Easements"), and recorded in the Register's Office of Wilson County, Tennessee immediately prior to the recordation of a memorandum of this Lease as described in Section 23 of this Lease; and
- (c) An easement for the temporary, nonexclusive use of additional portions of the "Related Improvements Area" (as herein defined), as requested by Tenant and reasonably designated by Landlord, during the period of the construction of the Building (or any future renovation, repair or alteration thereof), for purposes of access to the Surgery Center Parcel, construction-related storage and construction, renovation, repair or alteration of the Building (the "Construction Area"). Upon completion of the construction of the Building and the Related Improvements, the Construction Area shall be restored by Tenant as nearly as reasonably possible to the grade and condition the

Construction Area was in immediately prior to its use for construction activities (the "Temporary Construction Easement").

As used in this Lease, the following terms shall have the following meanings:

- (1) "<u>Affiliate</u>" shall mean any Person that, directly or indirectly, owns or "Controls" (as hereinafter defined), is owned or "Controlled" (as hereinafter defined) by, or is under common ownership or "Control" (as hereinafter defined) with the Person in question.
- (2) "<u>Control</u>" (including the correlates of "<u>Controls</u>", "<u>Controlled</u>" and "<u>Controlling</u>") shall mean the possession, directly or indirectly (including through one or more intermediaries), of the power to direct or cause the direction of the management and policies of the specified Person, through the ownership or control of voting securities, partnership interests or other equity interests, by contract or otherwise.
- (3) "<u>Declaration</u>" shall mean that certain Declaration of Covenants, Restrictions and Easements, entered into effective as of the Effective Date by Landlord, relating to the Surgery Center Parcel and the "Declarant Land" (as defined in the Declaration).
- (4) "Permitted Encumbrances" shall mean (a) easements, rights-of-way, covenants, agreements, restrictions, reservations and other matters affecting the Surgery Center Parcel (including, but not limited to, those covenants and easements set forth in the Declaration), (ii) the rights of the public in any streets and highways, if any, adjoining the Surgery Center Parcel; (iii) zoning and building laws, ordinances, resolutions and regulations, (iv) ad valorem real estate taxes and assessments for public improvements not due and payable; and (v) easements, rights-of-way, encroachments, boundary line disputes and other matters which would be disclosed by an accurate survey and inspection of the Surgery Center Parcel.
- (5) "Person" shall mean any natural person, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, trustee, government, governmental authority, other entity, or other organization recognized at law.
- (6) "Precluded Transferee" shall mean and include (i) any Person which is engaged in the ownership, operation or management of any acute care general hospital, medical/surgical hospital, specialty hospital or other hospital facility, extended care facility, rehabilitation center or facility, emergency center, outpatient or inpatient surgery center or facility, outpatient or inpatient birthing center or facility, diagnostic imaging center or facility, physical therapy center or facility, respiratory therapy center or facility or inhalation therapy center or facility; (ii) any Person who provides insurance to enrollees or accepts, directly or indirectly, delegated risk for the health care of individuals; and (iii) any Person that is an Affiliate of any Person described in clauses (i) and (ii) above.
- (7) "Public Controlling Person" shall mean a Person whose stock is listed for trading or authorized for quotation on any national securities exchange.

- physician, an immediate family member or member of a physician's immediate family, or an entity owned in whole or in part by a physician or by an immediate family member or member of a physician's immediate family; (ii) any other Person who (A) makes, who is in a position to make, or who could influence the making of referrals of patients to any health care facility; (B) has a provider number issued by Medicare, Medicaid or any other government health care program; or (C) provides services to patients who have conditions that might need to be referred for clinical or medical care, and participates in any way in directing, recommending, arranging for or steering patients to any health care provider or facility; or (iii) any Person or entity that is an Affiliate of any Person or other entity described in clause (i) or (ii) above. "Immediate family member or member of a physician's immediate family" means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
- (9) "<u>Related Improvements</u>" shall mean related and ancillary improvements to the Building, including without limitation parking improvements.
- (10) "<u>Related Improvements Area</u>" shall mean that certain tract of land adjacent to the Surgery Center Parcel and owned by Hospital, as more particularly described in <u>Exhibit B</u> attached hereto, on which the Related Improvements are located.

The Surgery Center Parcel, the Leasehold Easements and the Temporary Construction Easement shall be collectively referred to herein as the "Leased Premises." The Leased Premises do not include any improvements to be constructed on the Surgery Center Parcel by Tenant. Any improvements located on the Surgery Center Parcel (collectively, the "Building" or the "Project") shall be and remain the property of Tenant during the Term; however, any improvements located on the Related Improvements Area will be and remain the property of Landlord subject to the Leasehold Easements and Temporary Construction Easement.

Tenant acknowledges that it is ground leasing and holding an easement interest, as applicable, in the Leased Premises in its "AS IS" condition subject to the provisions of this Lease and subject to all covenants, conditions and restrictions existing thereon including, without limitation, the Permitted Encumbrances and the Declaration. Tenant and Landlord acknowledge and agree that, except as expressly set forth herein or in any other document related to this Lease, neither party has made any representations, warranties or agreements to or on behalf of the other party as to any matter concerning the Leased Premises, or its suitability for Tenant's intended use. Tenant represents and warrants to Landlord that Tenant is sophisticated in the leasing and development of medical office building property, and that it has made its own independent investigation of the Leased Premises.

THIS LEASE is made upon the following terms and conditions:

SECTION 1. TERM.

The term of this Lease (the "<u>Term</u>") shall be ninety-nine (99) years, commencing on the Effective Date, and ending on the ninety-ninth (99) anniversary of the Effective Date (the "<u>Expiration Date</u>").

SECTION 2. RENT.

- 2.1 <u>Term.</u> Tenant covenants and agrees to pay to Landlord "<u>Base Rent</u>" for the Leased Premises for the entire Term as follows: the lump sum of Four Hundred Forty-Five Thousand Dollars (\$445,000.00) on the Effective Date by wire transfer in immediately available funds.
- 2.2 Net Lease. (a) This Lease is a net lease, and except as otherwise expressly provided herein, Tenant shall pay all costs and other expenses of every character, foreseen or unforeseen, for the payment of which Tenant is or shall become liable by reason of its estate or interest in the Leased Premises, or which are connected with or arise out of the ownership of the Project and possession, use, occupancy, construction, maintenance or repair of the Project or any portion thereof, all of which costs shall be considered "Rent" hereunder. Rent and any and all other amounts payable by Tenant hereunder shall be paid by Tenant without notice or demand (except as herein otherwise provided) and without any set-off, deduction, abatement, suspension, deferment, diminution or reduction of any kind for any reason.
- (b) In particular, without limiting the generality of the foregoing Section 2.2(a), Tenant will reimburse Landlord annually for "Tenant's Proportionate Share" (as hereinafter defined) of costs that Landlord incurs in the course of and in connection with any maintenance, repairs, and renewals, as applicable, that Landlord performs pursuant to the Declaration to or for any "Driveway Facilities", "Parking Facilities", "or Utility Facilities" (as such terms are defined in the Declaration to the extent that any of the foregoing terms are applicable to the Project) that Tenant has any right to use in any way pursuant to the Declaration. "Tenant's Proportionate Share" will mean a fraction, the numerator of which shall be the total gross square footage of all enclosed building area within the "MOB Improvements" (as defined in the Declaration) as of the end of each calendar year during the Term, and the denominator of which shall be the total gross square footage of the enclosed building area within the buildings located on the "Declarant Land" (as defined in the Declaration) and the Surgery Center Parcel at such time. Tenant's Proportionate Share shall adjust from time to time as construction of additional buildings is completed on the Declarant Land and/or the Surgery Center Parcel.

SECTION 3. CONSTRUCTION OF PROJECT; ALTERATIONS.

3.1 Construction of the Project by Tenant.

(a) Tenant shall construct the Project on the Surgery Center Parcel and the Related Improvements on the Related Improvements Area. Tenant shall construct the Project and the Related Improvements in a good and workmanlike manner, at Tenant's cost and expense, all in accordance with the terms and conditions of this Lease and the Development Agreement and in accordance with the "Final Plans and Specifications," the "Project Budget" and the "Development Schedule" therefor, on or before the "Estimated Date of Completion" subject only to any

"Permitted Construction Delay" (all as set forth in the Development Agreement.) The Final Plans and Specifications, the Project Budget and the Development Schedule have been reviewed and approved by Landlord and Tenant as described in the Development Agreement.

- (b) Tenant shall cause substantial completion of the Project by not later than the Estimated Date of Completion, subject only to any Permitted Construction Delay. In the event substantial completion of the Project has not occurred by the Estimated Date of Completion, subject to any Permitted Construction Delay, Tenant shall be in default under this Lease, and in addition to all other rights and remedies available to Landlord under the Development Agreement for failure to complete construction by the Estimated Date of Completion (subject to any Permitted Construction Delay), including, without limitation, Landlord's obligation to terminate this Lease and release the memorandum of this Lease in connection with Landlord's exercise of the "Purchase Option" (as defined in the Development Agreement), Landlord shall have available the remedies for default hereunder after giving effect to any applicable cure periods contained in this Lease or the Development Agreement.
- 3.2 <u>Alterations</u>. At any time during the Term, Tenant, at its sole expense, may make interior, exterior and structural alterations and additions to any portion of the Building, provided that Tenant shall first obtain (i) all permits, approvals or consents required by any governmental entities, under any Permitted Encumbrances encumbering the Surgery Center Parcel, or under the Declaration and (ii) Landlord's prior written approval, which shall not be unreasonably withheld with respect to interior and non-structural alternations, but which may be withheld in Landlord's sole and absolute discretion with respect to exterior and structural alterations and additions. Such additions and alterations shall be constructed with new materials, in a good and workmanlike manner and in accordance with all requirements imposed by law, under any of the Permitted Encumbrances or under the Declaration. All alterations and additions made in accordance with this Section shall become part of the Building and shall remain the property of Tenant during the Term.

SECTION 4. REPAIR AND MAINTENANCE.

Throughout the Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Project in good repair and condition at least equal to the condition of a medical office building of similar age in the Lebanon, Tennessee area and shall make all repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Project in such state of repair and condition. Landlord shall not be required to maintain, repair or rebuild all or any part of the Project. Tenant waives the right to (a) require Landlord to maintain, repair or rebuild all or any part of the Project or (b) make repairs at the expense of Landlord pursuant to any legal requirement, contract, easement, covenant, condition or restriction at any time in effect. In addition, Tenant shall keep the Project in a safe and sanitary condition as required by all applicable governmental laws, codes, and regulations.

SECTION 5. LEASING OF THE PROJECT.

5.1 <u>Use of Leased Premises</u>. The use of the Leased Premises shall be limited to the construction, maintenance and, upon completion of construction, operation of a surgical facility as set forth in the Declaration, with which Tenant shall strictly comply. Tenant shall use

commercially reasonable efforts to keep the Project leased. Tenant hereby covenants and agrees that no tenant or subtenant of the Project that is a Referral Source and is not Landlord or an Affiliate of Landlord shall be charged rent that is determined in whole or in part by the revenues (net or gross) or income of such tenant or subtenant. Tenant covenants and agrees to abide by all leasing compliance requirements of the federal regulations promulgated from time to time pertaining to the Medicare Medicaid Anti-Kickback statute (the "Anti-Kickback Law") and the "Stark Law" (as defined below in Section 5.2), as supplemented, amended or replaced as would be applicable to Landlord in the leasing of a medical office building. Tenant's covenants and agreements in the foregoing sentence are in addition to the obligations of Tenant set forth below in Section 5.2 in connection with "Space Leases" (as defined below) to Referral Sources. Tenant shall comply with, and shall cause all leases with subtenants to require compliance with, the covenants and restrictions that are set forth in the Permitted Encumbrances, and all federal, state, county, municipal and other governmental and quasi-governmental statutes, laws, rules, regulations, orders, decrees or injunctions affecting the Leased Premises and shall enforce such lease provisions in a commercially reasonable manner.

Coordinated Management of Buildings, Space Leases to Referral Sources. The parties recognize that to ensure that the use of the Leased Premises is used in a manner which promotes compliance with all federal guidelines and requirements is desirable and beneficial to both Landlord and Tenant. Any subleases, timeshares, licenses, or any other use or occupancy agreements (each a "Space Lease, and collectively, the "Space Leases") for any space in the Building that Tenant enters into with a Referral Source during the Term will comply with the Rental of Office Space exception set forth in 42 CFR §411.357(a) to Section 1877 of the Social Security Act (42 U.S.C. 1395nn), commonly referred to as the "Stark Law". In particular, without limiting the generality of the foregoing, any Space Lease between Tenant and any Referral Source that is not Landlord or an Affiliate of Landlord will provide for rent and other terms that are "fair market value" at the time each such Space Leases was entered into, using the definition of "fair market value" for the lease of real property set forth in the Stark Law, as amended. At any time during the Term of this Lease during which there are any Space Leases between Tenant and a Referral Source that is not Landlord or an Affiliate of Landlord, Tenant will provide to Landlord annually current documentation for market rental terms, which documentation will be consistent with Tenant's then-current practices and reasonably satisfactory to Landlord.

SECTION 6. COMPLIANCE WITH LAWS AND AGREEMENTS; HAZARDOUS WASTE.

6.1 <u>Compliance with Laws</u>. During the Term, Tenant shall comply with, cause the Project to be in compliance with and use commercially reasonable efforts to cause the Building occupants to comply with (a) all laws, ordinances and regulations, and other governmental rules, orders, determinations and the like, whether or not presently contemplated, applicable to the Project or the uses of the Project (collectively, the "<u>Legal Requirements</u>"), (b) the provisions of any insurance policies required to be maintained by Tenant with respect to the Project, and (c) the terms of any easements, covenants, conditions and restrictions affecting the Project which are Permitted Encumbrances, including, without limitation, any easements, covenants, conditions and restrictions affecting the Project contained in the Declaration, or are created after the Effective Date relating to the Project. If any addition, alteration, change, repair or other work of any nature,

structural or otherwise to the Project shall be required or become necessary at any time during the Term pursuant to clauses (a) - (c) of this Section 6.1, the entire expenses of such addition, alteration, change, repair or other work, irrespective of when such expenses shall be incurred or become due, shall be initially paid by Tenant and amortized over the useful life of such addition, alteration, change, repair or other work, except to the extent that any such addition, alteration, change, repair or other work is attributable to any act or omission of Landlord.

6.2 Hazardous Waste.

- Tenant shall not cause or permit any "Hazardous Substance" (as hereinafter defined) to be brought, kept or used in or about the Project or the Leased Premises by Tenant, its subtenants, agents, employees, contractors, or invitees (each a "Tenant Party") except in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession. Tenant and each Tenant Party shall store, use, manage, and dispose of any such Hazardous Substance in compliance with all applicable federal, state and local laws, including, without limitation, "Applicable Environmental Law" (as hereinafter defined). If any Hazardous Substance which is found, kept or brought on, in or under the Project, or the Leased Premises, during the Term by Tenant or a Tenant Party is released or otherwise results in any contamination of the Project, any adjoining property, or the environment, including but not limited to the air, soil, surface water or ground water, as a result of any act or omission by Tenant or a Tenant Party (a "Tenant Release"), Tenant shall promptly take all actions, at its sole expense, or shall cause its subtenants at such subtenants' sole expense, as applicable, to take all actions, as are reasonably necessary to comply with Applicable Environmental Law and to return the affected area(s) to the condition existing prior to a Tenant Release, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work (collectively, the "Remedial Work"). Tenant shall obtain or shall cause its subtenants, as applicable, to obtain all necessary licenses, manifests, permits and approvals to perform such Remedial Work. Tenant shall perform or shall cause its subtenants, as applicable, to perform such Remedial Work and the disposal of all waste generated by such Remedial Work in accordance with Applicable Environmental Law.
- (b) Without limiting the generality of the foregoing or any other provision of this Lease, as between Landlord and Tenant, Tenant shall be solely and completely responsible for (i) responding to, defending against and/or complying with any administrative order, regulatory action, enforcement action, judicial proceeding or legislation, request, demand or third party claim relating to a Tenant Release (including but not limited to, the claims of Landlord, current or future subtenants in the Project, or owners, tenants or subtenants of parcels adjoining or near the Project), whether such order, request, demand or claim names Landlord, Tenant or both, or refers to the Project in any way, in each case to the extent of a Tenant Release and (ii) the Remedial Work relating to a Tenant Release or for the costs of such Remedial Work (including such costs resulting from such Remedial Work any third-party claimant has undertaken). The responsibility conferred under this Section 6.2(b) includes but is not limited to responding to such orders, requests, demands and claims relating to a Tenant Release on behalf of Landlord and defending against any assertion of Landlord's financial responsibility or individual duty related to a Tenant Release.

- Tenant shall indemnify, save harmless and defend "Landlord's Indemnified (c) Parties" (as defined in Section 10 below) from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, diminution in value of the Leased Premises and sums paid in settlement of claims, attorneys' fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by any of Landlord's Indemnified Parties during or after the Term as a result of a Tenant Notwithstanding the foregoing, Tenant shall assume, pursuant to the foregoing indemnity, any liabilities or responsibilities which are assessed against Landlord's Indemnified Parties in any action described under this Section 6.2(c) and under Section 6.2(b) above. Tenant shall promptly provide to Landlord copies of all communications, filings or other writings, photographs or materials given to or received from any person, entity or agency in connection with any Remedial Work conducted by Tenant or any Tenant Party, and shall notify Landlord of, and permit an employee of Landlord or designated representative of Landlord to attend any meetings or oral communications relating to any Remedial Work conducted by Tenant or any Tenant Party.
- As used herein, the term "Hazardous Substance" means any hazardous or (d) toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Tennessee or the United States Government, including, without limitation, (i) any substance, chemical or waste that is or shall be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law, (ii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state or local governmental authority pursuant to any environmental, health and safety or similar law, code, ordinance, rule, regulation, order or decree and which may or could pose a hazard to the health and safety of occupants or users of the Project or any part thereof, or any adjoining property or cause damage to the environment, (iii) any petroleum products, (iv) PCBs, (v) lead paint, (vi) mold, and (vii) asbestos. As used herein, the term "Applicable Environmental Law" shall include the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seg., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seg., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. § 300f through 300j-26, as such acts have been or are hereafter amended from time to time; any so called superfund or superlien law; and any other federal, state and local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substance as now or any time hereafter in effect.
- (e) The obligations of Tenant indemnities set forth in this Section 6.2 shall survive the termination or expiration of this Lease.

SECTION 7. MECHANICS' LIENS.

Tenant will not create or permit to be created any lien, encumbrance or charge upon any land or property owned by Landlord or the Project, any part thereof or upon Tenant's leasehold interest in the Leased Premises, which arises out of the use or occupancy of the Leased Premises

by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, addition, alteration or repair of any part of the Project. If any such lien is filed, Tenant shall, at its sole cost and expense, within ninety (90) days after notice of the filing thereof cause such lien to be released or discharged. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance by any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Leased Premises or any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Leased Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Leased Premises.

SECTION 8. TAXES, ASSESSMENTS AND OTHER CHARGES.

Tenant shall pay, prior to delinquency: (a) all taxes, assessments, levies, fees, fines, penalties and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are during the Term hereof imposed or levied upon or assessed against (i) the Surgery Center Parcel, (ii) the Building, (iii) Base Rent, Rent or any additional rent or other sum payable by Tenant hereunder, (iv) this Lease or (iv) the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Project; and (b) all gross receipts or similar taxes (i.e., taxes based upon gross income which fail to take into account all customary deductions (e.g. depreciation and interest) relating to the Project) imposed or levied upon, assessed against or measured by Rent. If Tenant fails to pay any of the foregoing before they become delinquent, Landlord, after written notice to Tenant and thirty (30) days for Tenant to cure, may pay such delinquent taxes, assessments, levies, fees, fines, penalties and governmental charges, and all reasonable expenditures and costs incurred thereby shall be payable as additional rent hereunder within thirty (30) days after Landlord provides to Tenant reasonable evidence of payment of the foregoing. If the Project or any portion thereof is included in a tax parcel with other properties, Tenant shall be responsible for only that portion of taxes and assessments allocated to the Project, as determined in Landlord's reasonable judgment. Unless Tenant receives tax bills directly from the taxing authority, Landlord shall furnish to Tenant copies of tax bills together with statements of the amount due from Tenant. Tenant shall pay these amounts to Landlord within thirty (30) days after receipt of Landlord's statement. Tenant shall deliver to Landlord, prior to delinquency, evidence of payment of all taxes, assessments, levies, fees and charges payable by Tenant hereunder. Tenant's obligations under this Section for taxes and assessments imposed or levied during the Term hereof shall survive the expiration or termination of this Lease.

SECTION 9. UTILITIES.

Subject to Landlord's obligations under this Lease, Tenant at its sole cost and expense shall obtain and promptly pay for all utility services furnished to or consumed on the Project, including, but not limited to, electricity, gas, water, sewer, heat, telephone, cable, garbage collection, and all charges related to any of these services. This obligation shall include payment for all hook up,

connection, permitting, tap and similar fees incurred for the initial furnishing of such utilities to the Project upon construction thereof.

SECTION 10. INDEMNIFICATION

Tenant shall defend all actions against Landlord, its Affiliates and any officer, director, partner, member, shareholder or manager of Landlord and its Affiliates (collectively, "Landlord's Indemnified Parties"), with respect to, and shall pay, protect, indemnify and hold harmless Landlord's Indemnified Parties against, any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) of any nature (collectively, "Liabilities") (a) to which any of Landlord's Indemnified Parties is subject because of the acts or omissions or Tenant, or Tenant's agents or employees in connection with Landlord's estate in the Leased Premises, and (b) arising from (i) injury to or death of any person, or damage to or loss of property, on the Project, connected with the use, condition or occupancy of the Project where such injury, death or damage is caused by the negligence or willful misconduct of Tenant or Tenant's agents or employees; (ii) "Events of Default" (as hereinafter defined) under this Lease; or (iii) any negligent act or omission of Tenant or its agents, contractors, licensees, subtenants, or invitees.

SECTION 11. INSURANCE.

- 11.1 <u>Tenant Coverage</u>. Tenant shall, throughout the Term, provide and keep in force, with responsible insurance companies reasonably acceptable to Landlord, the following insurance:
- (a) Commercial general liability insurance against claims for personal injury, death and property damage occurring in connection with the occupancy, use, ownership or maintenance of the Leased Premises and any equipment contained therein, with limits of liability of not less than \$2,000,000 per occurrence. Such insurance may be furnished by Tenant under any blanket or umbrella policy carried by it or under a separate policy therefor.
- (b) Property insurance on the Project on a causes of loss special form property insurance policy including equipment breakdown coverage or boiler and machinery coverage, in an amount equal to at least 100% of the full replacement value, without co-insurance (the "Insurable Value"). Notwithstanding anything to the contrary set forth herein, Tenant shall not be required to obtain and maintain the insurance described in this Section 11.1(b) until immediately prior to the termination of the builder's risk insurance described in Section 11.2 below.
- (c) The insurance described in Section 11.1(b) above shall also include business interruption or loss of rents coverage for the period of time beginning on the date of damage or destruction to the Project and continuing for the length of time, which with the exercise of due diligence and dispatch, would be required to repair, rebuild or replace the portions of the Project which are damaged or destroyed and to restore the business at the Project to the level it would have been had no loss occurred, but ending no later than one hundred eighty (180) days after the date repair or replacement is completed.
- 11.2 <u>Builder's Risk Insurance</u>. Until completion of construction of the Project and at any time thereafter during construction or reconstruction of the Project, Tenant, at its sole expense,

shall maintain or cause to be maintained builder's risk insurance covering the construction or reconstruction of the Project, in an amount not less than the full Insurable Value of the Building and materials supplied in connection with the Project and financial losses from delayed Project completion (soft costs). Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord shall be named as an additional insured under this policy. Landlord, however, waives all rights and disclaims any interest in any settlements with respect to damage to the Project unless this Lease is terminated, in which event the proceeds shall be paid to Landlord. Tenant may provide this coverage through a builders risk program or may include this course of construction coverage in its property insurance program.

- Limits of Coverage. Tenant shall maintain the limits of liability for the insurance described in Section 11.1(a) above at such amounts as are normal and customary for medical office buildings as Tenant shall determine in its reasonable judgment; provided, however, such limits will not be less than as described in Section 11.1(a) above. The policy of insurance referred to in Section 11.1(b) above shall be on a causes of loss special form property insurance policy (or if at any time such form is no longer available, such form of available coverage as is reasonably similar).
- 11.4 Notice; Additional Insured. The insurance described in Section 11.1(a) above shall name Landlord and any parties in interest designated by Landlord and provided to Tenant in writing as additional insureds thereunder and all insurance maintained by Tenant pursuant to this Article 11 shall provide, to the extent commercially available, that (a) no cancellation thereof shall be effective until at least 30 days after written notice thereof is given to Landlord, (b) the rights of the insured(s) to receive and collect the proceeds thereof shall not be diminished because of any additional insurance carried by Landlord on its own account, and (c) all losses shall be payable notwithstanding any act or negligence of Landlord or Tenant or anyone for whom either of them is legally responsible, which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding the occupation of the Project for purposes more hazardous than permitted by the terms of such policy.
- 11.5 <u>Certificates</u>. Prior to the Effective Date, Tenant shall deliver to Landlord certificates of insurance evidencing the insurance required to be maintained under this Article 11. Tenant covenants to furnish promptly upon request of Landlord copies of insurance policies required to be maintained by Tenant hereunder. All such certificates shall be in form reasonably acceptable to the party receiving such certificate.
- 11.6 Waiver of Subrogation. Landlord and Tenant, on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief and any of the other perils normally insured against in a causes of loss special form property insurance policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of any party. To the extent of any conflict between the preceding sentence and any other provision of this Lease, the provision of the preceding sentence shall control. Landlord and Tenant shall each secure with respect to each insurance policy maintained by it which is applicable to the Leased Premises or any buildings or other improvements owned by Landlord or any of its

Affiliate located in the vicinity of the Leased Premises, or any fixtures or personal property located thereon or therein, an appropriate policy provision or endorsement by which each insurance company waives subrogation against the others. Each party shall deliver copies of policy such endorsements or policy language evidencing this waiver of subrogation by each other party's insurer(s) upon the reasonable request of the other party. Such waiver shall apply to the extent of any deductible, self-insured retention or self-insurance maintained by either party.

SECTION 12. CONDEMNATION AND CASUALTY.

12.1 Casualty.

- (a) If the Building shall be damaged or rendered wholly or partially untenantable by fire or other casualty during the Term, Rent shall abate during such period to the extent that the Project is untenantable, subject, however, to Tenant's right to terminate this Lease as provided in Section 12.1(b) below. Unless this Lease is so terminated, and provided insurance proceeds are paid and available to Tenant for the full costs of reconstruction, Tenant shall promptly rebuild or repair the Building to at least substantially equal to or better than its former condition.
- In case of any damage or destruction, to the extent such damage or destruction results in damages of an amount that is in the aggregate eighty percent (80%) or more of the replacement cost of the Building, Tenant may, at Tenant's option, by notice in writing given to Landlord within one hundred eighty (180) days after the occurrence of such damage or destruction, elect to terminate this Lease. This Lease shall then terminate on the date specified in such notice, except as provided below and except with respect to obligations and liabilities of Landlord and Tenant under this Lease that have arisen on or before such date of termination. In the event of termination of this Lease pursuant to this Section, the insurance proceeds payable in connection with the damage or destruction of the Building shall be payable to the "Mortgagee" in the event a "Mortgage" (as such terms are defined in Section 18 hereof) is in effect, with the balance to Tenant. In no event shall Landlord be entitled to any proceeds or compensation awarded for Tenant's lost revenues under any policy of insurance maintained by Tenant. In the event of termination of this Lease pursuant to this Section, regardless of the amount of proceeds available, Tenant shall (i) satisfy and cause to be released any mortgages (including any Mortgage), liens or other encumbrances placed or suffered to be placed on the Project by Tenant and (ii) do any work (e.g. demolition) necessary so that the Leased Premises will be surrendered to Landlord in safe and proper condition. Rent shall be abated as of the date of casualty.

12.2 Condemnation.

- (a) Unless this Lease is terminated pursuant to Section 12.2(b) below, if a portion of the Project shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority (a "Condemning Authority") having the power of eminent domain, or is sold to a Condemning Authority under threat of the exercise of that power, this Lease shall continue with respect to the remaining portion of the Surgery Center Parcel and there shall be abatement of Rent to the extent the Project is taken or rendered untenantable.
 - (b) If a portion of the Project is taken or sold as described in Section 12.2(a)

above, and that portion is material to the operation of the Project in Tenant's reasonable judgment, or if all of the Project is so taken or sold, then either Landlord or Tenant may terminate this Lease by giving written notice to the other within one hundred eighty (180) days after the date a Condemning Authority acquires or takes title to the Project or such portion of the Project. This Lease shall then terminate on the day following the vesting of title in such Condemning Authority, except as provided below and except with respect to obligations and liabilities of Landlord and Tenant under this Lease that have arisen on or before the date of termination of this Lease. Rent and other charges under this Lease shall be prorated as of such date of taking, and upon such termination Tenant shall satisfy and cause to be released any mortgages (including any Mortgage), liens or other encumbrances placed or suffered to be placed on the Project by Tenant, but only to the extent proceeds of the taking are available for payment of such liens or enbumbrances. In the event that neither party exercises its option to terminate this Lease as provided in this subsection, or in the event that a part of the Project shall be taken under circumstances in which neither Tenant nor Landlord will have such option. Tenant shall have the sole responsibility for restoring and shall promptly restore the Project to a complete architectural unit, available for leasing to tenants as set forth herein, but only to the extent proceeds of the taking are available for use for such purposes.

(c) Any award or compensation paid on account of any taking or sale described in this Section 12.2 shall be divided between Landlord and Tenant as follows: first to Tenant for the value of Tenant's leasehold interest in the Leased Premises that is taken; next to Tenant for the value of any portion of the Building that is taken less the value of Landlord's reversionary interest in the Building; and the balance to Landlord.

SECTION 13. ASSIGNMENT AND SUBLETTING; SALE OF THE PROJECT.

13.1 Successors and Assigns; Assignment.

- Except as expressly set forth in Sections 13.1(b), Tenant shall not sell, (a) assign, transfer, contract to sell, or otherwise convey all or substantially all of its interest under this Lease, or all or substantially all of the Building or the Leased Premises (a "Transfer"), in each instance, without Landlord's prior written consent. For purposes hereof, the following shall constitute a Transfer: (i) the sale, assignment or transfer, in one or more transactions, of more than twenty percent (20%) of the ownership interest in Tenant, which is intended to transfer more than twenty percent (20%) of the beneficial interest in Tenant in this Lease to any third party that is not an Affiliate of Tenant, or HCA Healthcare, Inc., a Delaware corporation ("HCA"); or (ii) the sublease to a single party (that is not an Affiliate of either Tenant or HCA) of the entire Project for all or substantially all of the remaining Term. Any Transfer in violation of the foregoing shall be void. In the event of a sale, assignment or transfer of an ownership interest or interests in Tenant which is not a Transfer and does not require Landlord's consent, Tenant agrees to inform Landlord promptly after such sale, assignment or transfer, in writing, of the full name of the transferee and ownership interest in Tenant so obtained. No transfer nor any sale, assignment or transfer of any ownership interests in Tenant that is not deemed a Transfer and does not require Landlord's consent will be to a Precluded Transferee.
- (b) Landlord's consent shall not be necessary with respect to any acquisition of Tenant's interest upon foreclosure or a transfer in lieu of foreclosure by any Mortgagee, or upon the assignment by such Mortgagee following acquisition through foreclosure or transfer in lieu of

foreclosure or to any subsequent transferee after such foreclosure or transfer; provided, however, that no such assignment, transfer or other conveyance to or by any Mortgagee or any such subsequent transferee shall be to a Precluded Transferee or in violation of the Permitted Encumbrances, including without limitation, the Declaration; and further provided, that any Mortgagee or any such subsequent transferee assumes in writing the obligations of Tenant hereunder. For the avoidance of doubt, the transactions described in this Section 13.1(b) shall not be deemed a Transfer.

- (c) Consent to one or more Transfers shall not operate to exhaust Landlord's rights under this Section. In the event of any sale, assignment, or other conveyance of all or substantially all of Tenant's interest under this Lease, or all or substantially all of the Premises, with the express consent of Landlord, or as expressly permitted without the consent of Landlord, Tenant shall be released and relieved of all liability for the performance and observance of all of its covenants and agreements under this Lease arising from and after the date of such assignment or transfer. Subject to the foregoing, this Lease shall inure to the benefit of and be binding upon any permitted successor or assign of Tenant.
- (d) As a condition precedent to Landlord's consideration of a proposed Transfer by Tenant, Tenant shall provide to Landlord the following documents and information: (i) the full name of the proposed assignee or transferee; (ii) a detailed disclosure statement describing the ultimate ownership of said transferee and the business conducted by said transferee; (iii) the form of transfer document(s) which shall contain restrictions on the use of the Leased Premises consistent with existing use restrictions applicable to the Leased Premises, and (iv) financial information regarding the transferee or assignee that is reasonably satisfactory to Landlord.

SECTION 14. PERMITTED CONTESTS.

Tenant shall not be required, nor shall Landlord have the right, to pay, discharge or remove any taxes, charges, liens, assessments, or encumbrances, or to comply with the Legal Requirements, as long as Tenant contests the existence, amount or validity of the matter in question by appropriate proceedings. The right of Tenant to withhold performance while proceedings are pending shall apply only if Tenant's proceedings effectively prevent any sale, forfeiture or loss of the Project, Landlord's remainder interest in the Surgery Center Parcel, or Landlord's rights under this Lease while such proceedings are pending. Nothing contained in this Section shall be deemed to relieve Tenant from any obligation to pay Rent or any other sum required to be paid under this Lease. Tenant shall give such reasonable security as may be demanded by Landlord to insure ultimate payment of the amounts contested and compliance with the Legal Requirements contested, and/or any potential sale or forfeiture of the Project or Rent or any other sum required to be paid by Tenant under this Lease.

SECTION 15. TENANT'S DEFAULTS; REMEDIES.

15.1 <u>Default</u>. Any of the following occurrences or acts shall constitute an event of default (each an "<u>Event of Default</u>", and collectively, "<u>Events of Default</u>") by Tenant under this Lease: (a) Tenant fails to pay when due Base Rent, additional rent or any other amount to be paid under this Lease by Tenant, and the failure continues for 30 days after written notice from Landlord; (b) Tenant violates the terms of Section 13 hereof and Tenant fails to cure such violation

within thirty (30) days of receiving written notice from Landlord; (c) Tenant fails to perform or observe any other covenant or condition to be performed or complied with by Tenant under this Lease, and the failure continues for sixty (60) days after written notice by Landlord to Tenant, or, if the default complained of is of such a nature that it cannot reasonably be completely cured or remedied within such 60-day period, Tenant fails to commence to cure the default during such 60-day period, or does not thereafter diligently prosecute such remedy or cure to completion. Notwithstanding anything to the contrary contained herein, it shall not be a default by Tenant or a breach of this Lease by Tenant if such breach or default is the result of or caused by any act or failure to act of the tenant (if such tenant is the same entity as Landlord or an Affiliate of Landlord) under any Hospital Tenant Lease.

- 15.2 <u>Remedies</u>. If an Event of Default shall have happened, Landlord shall be entitled to (a) retain all prepaid Base Rent, (b) exercise all rights and remedies available at law or in equity and (c) recover and collect from Tenant all damages that may be available under the laws of the state in which the Leased Premises are located; provided, however, with respect to clauses (a) (c) of this Section 15.2, Landlord shall not be entitled to terminate this Lease except pursuant to a foreclosure pursuant to Section 15.4 hereof. Landlord agrees to use commercially reasonable efforts to mitigate damages upon an Event of Default.
- 15.3 Right to Cure Defaults. If Tenant shall fail to make any payment of taxes, assessments or other charges, maintain required insurance coverages, or perform any other act required to be made or performed under this Lease, Landlord, without waiving or releasing any obligation or default, may (but shall be under no obligation to) upon notice to Tenant, make such payment, maintain such insurance coverages or perform such act for the account and at the expense of Tenant. All sums so paid by Landlord, together with interest thereon, shall constitute additional rent and shall be paid by Tenant to Landlord on demand. Landlord's rights under this Section 15.3 are subject to the provisions of Sections 14 and 15.1 hereof.
- Lien. Landlord hereby reserves and Tenant hereby grants to Landlord a continuing 15.4 lien in the nature of a mortgage lien on the Leased Premises to secure payment of all of Tenant's obligations under this Lease. If Tenant shall fail or refuse to pay any sum which is due and payable to Landlord under this Lease within thirty (30) days following written demand therefor, Landlord shall be entitled to record a notice of lien (the "Notice of Lien") in the land records for the county in which the Leased Premises is located, setting forth such amount due and payable and Landlord shall thereafter be entitled to foreclose the lien with respect to such amount as set forth in the Notice of Lien, together with interest thereon at the "Interest Rate" (as hereinafter defined) in the same manner as the foreclosure of mortgage liens under the laws of the State in which the Leased Premises is located, and recover all such amounts, together with reasonable attorneys' fees and expenses and court costs incurred in connection with the enforcement of such lien and the collection of such unpaid amount. The lien hereinabove provided shall have priority from the date and time the Notice of Lien is filed. Notwithstanding the foregoing, the above described lien shall not have priority over any Mortgage lien recorded prior to the recording of the Notice of Lien. As used herein, the term "Interest Rate" shall mean the prime rate of interest as published by The Wall Street Journal from time to time, plus one percent (1%) per annum. The lien and Notice of Lien reserved and granted herein shall be subordinate to any deed of trust placed upon Tenant's leasehold estate in and to the Project or the Building.

- 15.5 Remedies Not Exclusive. No right or remedy conferred upon or reserved to Landlord under this Lease or otherwise available at law or in equity is intended to be exclusive of any other right or remedy. Each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Lease or existing at law or in equity; provided, however, Landlord shall not be entitled to terminate this Lease except pursuant to a foreclosure pursuant to Section 15.4 hereof.
- 15.6 <u>Landlord Default</u>. Should Landlord fail to perform or observe any covenant or condition of this Lease, and the failure continues for sixty (60) days after written notice by Tenant to Landlord; or if the default complained of is of such a nature that it cannot reasonably be completely cured or remedied within such 60-day period, Landlord fails to commence to cure the default during such 60-day period, or does not thereafter diligently prosecute such remedy or cure to completion, then, Landlord shall be in default hereunder and Tenant shall have the right, at its option, to perform such obligations of Landlord and Tenant may charge Landlord the reasonable and actual cost or performing such obligations, including reasonable attorneys' fees. Tenant may bring a separate action against Landlord for any default of Landlord hereunder; however, in no event shall Landlord be responsible for consequential or other damages incurred by Tenant.

SECTION 16. HOLDING OVER.

A holding over beyond the expiration of the Term shall operate as an extension of this Lease from month to month on the same terms and conditions in effect immediately prior to the expiration of the Term except that monthly base rent shall be calculated by dividing the prepaid Base Rent into equal monthly installments, each installment to be paid monthly, on or before the first day of the month. Any such holdover term may be terminated either by Landlord or Tenant by giving ninety (90) days written notice to the other.

SECTION 17. SURRENDER.

At the expiration or earlier termination of the Term, Tenant shall yield the Project to Landlord in good order and repair unless such termination is a result of casualty or condemnation pursuant to Section 12 of this Lease, in which event the provisions of Section 12 of this Lease shall control. Except as otherwise provided in this Lease, the Building and any other improvements on the Surgery Center Parcel shall become the sole property of Landlord at the expiration or earlier termination of the Term without any compensation to Tenant. On or before expiration or earlier termination of this Lease, Tenant may remove any of Tenant's trade fixtures, furniture, furnishings, and other personal property from the Project and Tenant shall repair any damage which may result to the Project from such removal. In the event Tenant fails to remove such items on or before expiration or termination of this Lease, such items shall be deemed abandoned and shall become the property of Landlord without any compensation to Tenant. On or before the expiration or termination of this Lease, Tenant shall cause any mortgages, deeds of trust, liens or encumbrances created by, through or under Tenant to be fully released and discharged.

SECTION 18. FINANCING.

18.1 <u>Tenant's Financing</u>. Tenant shall have the right during the Term to subject the Building and Tenant's leasehold interest in the Surgery Center Parcel and this Lease to one or

more mortgages, deeds of trust, assignments of lease, security agreements or other methods of financing or refinancing (each a "Mortgage," and any holder of which is called a "Mortgagee"), or to any extensions, modifications, renewals or replacements of a Mortgage. Tenant shall immediately notify Landlord in writing of the name and address of any Mortgagee. The "First Mortgage" shall mean the first or most senior mortgage, and "First Mortgagee" shall mean the holder of the First Mortgage.

18.2 <u>Landlord's Financing</u>. Landlord shall have the right to mortgage its fee simple title to the Surgery Center Parcel, provided that any such mortgage as to the Surgery Center Parcel shall be expressly subordinate to all of the rights and interests of Tenant under this Lease and to the rights of any Mortgagee.

SECTION 19. RIGHTS OF MORTGAGEE.

- 19.1 Notice to First Mortgagee. In the event of an Event of Default, Landlord shall send a copy of the written notice of such Event of Default to First Mortgagee at its address as provided in writing to Landlord by Tenant or by First Mortgagee. First Mortgagee shall have thirty (30) days after receipt of such written notice from Landlord to cure or remedy such Event of Default, and if such Event of Default is curable but cannot with diligence be cured within such 30-day period, then First Mortgagee shall have a reasonable time thereafter to effect such cure, provided that First Mortgagee promptly commences to cure such Event of Default and thereafter pursues the curing of such Event of Default with diligence. Notwithstanding any other provision of this Lease, Landlord shall not have any right pursuant to this Lease or otherwise to exercise its remedies under this Lease due to an Event of Default unless Landlord shall have first given a copy of the written notice of such Event of Default to First Mortgagee pursuant to the provisions hereof and unless First Mortgagee shall have failed to cure or remedy, or cause to be cured or remedied, such Event of Default, within the time required by this Section 19.1.
- 19.2 <u>Acceptance of Cure</u>. Landlord will accept performance by First Mortgagee of any covenant, agreement or obligation of Tenant contained in this Lease with the same effect as though performed by Tenant.
- 19.3 New Lease. If this Lease is terminated for any reason, including, but not limited to any termination following First Mortgagee's failure to cure an Event of Default as permitted in Section 19.1 above, or in the event of the rejection or disaffirmance of this Lease pursuant to bankruptcy laws or other laws affecting creditors' rights, Landlord will enter into a new lease of the Leased Premises with First Mortgagee, or any party designated by First Mortgagee (other than a Precluded Transferee), within thirty (30) days after the request by First Mortgagee pursuant to this Section 19.3. The new lease shall be effective as of the date of termination, rejection or disaffirmance of this Lease and shall be upon the same terms and provisions contained in this Lease (including the amount of Base Rent and other sums due from Tenant hereunder). In order to obtain a new lease, First Mortgagee must make a written request to Landlord for a new lease within sixty (60) days after First Mortgagee is notified of the effective date of termination, rejection or disaffirmance of this Lease, as the case may be, and such written request must be accompanied by a copy of the new lease, duly executed and acknowledged by First Mortgagee or the party designated by First Mortgagee as tenant. In addition, First Mortgagee must cure all Events of Default under this Lease that can be cured by the payment of money and pay to Landlord all Rent

and other sums that would have been due and payable by Tenant under this Lease but for the rejection, disaffirmance or termination of this Lease. If First Mortgagee, or the party so designated by First Mortgagee, shall have entered into a new lease with Landlord pursuant to this Section 19.3, then any Event of Default under this Lease that cannot be cured by the payment of money shall be deemed cured. It is the intention of the parties that any new lease made pursuant to this Section 19.3 shall be senior and superior to any other encumbrances on the Project, and the parties agree to execute such other reasonable documents and to provide such further assurances to one another to accomplish the same. First Mortgagee's rights under this Section 19.3 are in addition to, and not limited by, First Mortgagee's right to cure under Section 19.1 above. From the effective date of termination, rejection or disaffirmance of this Lease to the date of execution and delivery of such new lease or the expiration of the period during which First Mortgagee may make a request for a new lease, First Mortgagee may, upon payment to Landlord of Rent and any other sums as may be due from Tenant, use and enjoy the leasehold estate created by this Lease without hindrance by Landlord.

- Delay for Foreclosure. If Landlord has given First Mortgagee notice of an Event of Default pursuant to Section 19.1 above and First Mortgagee desires to cure such Event of Default but is unable to do so while Tenant is in possession of the Project, or during the period of time that First Mortgagee's proceedings are stayed by reason of Tenant being subject to Chapter 7 or 11 of the Federal Bankruptcy Code, or if Landlord has elected to exercise its remedies under this Lease and First Mortgagee desires to obtain a new lease pursuant to Section 19.3 above but has not yet acquired Tenant's leasehold interest in this Lease, then First Mortgagee shall have the right to postpone the specified date for effecting a cure of such Event of Default or obtaining a new lease for a period reasonably sufficient to enable First Mortgagee or its designee employing reasonable diligence, to acquire Tenant's interest in this Lease by foreclosure of the First Mortgage or otherwise, as long as First Mortgagee pays Landlord Rent and other sums due under this Lease during such postponement. First Mortgagee shall exercise its right to extend the cure period or the date for obtaining a new lease by giving Landlord notice and by tendering to Landlord any Rent and other charges due and payable prior to the last date that First Mortgagee would otherwise be entitled to elect a cure or obtain a new lease.
- 19.5 <u>No Surrender</u>. If the First Mortgage is in effect, Landlord will not accept a voluntary surrender of this Lease. If the First Mortgage is in effect, this Lease shall not be modified or amended without the prior written consent of First Mortgagee which shall not be unreasonably withheld.
- 19.6 <u>Nonliability for Covenants</u>. The provisions of this Section 19 are for the benefit of First Mortgagee and may be relied upon and shall be enforceable by First Mortgagee. First Mortgagee shall not be liable for the covenants, agreements or obligations of Tenant contained in this Lease, unless and until First Mortgagee acquires the interest of Tenant hereunder, and/or takes possession of the Project.
- 19.7 <u>Certain Conditions; Rights of Landlord</u>. In order for First Mortgagee to be entitled to the benefits provided by this Section 19.7 and in order for First Mortgagee not to violate the prohibitions set forth in Section 13 above, First Mortgagee must agree in a written agreement with Landlord in recordable form substantially as follows: (a) that First Mortgagee will give Landlord

notice of any default by Tenant under the First Mortgage, and that Landlord will have the option, but not the obligation, to exercise either of the following rights within ninety (90) days after receipt of such notice: (i) Landlord may cure said default within such 90-day period if Landlord shall so choose, unless such default is of such a nature that such default cannot be completely cured within such 90-day period, in which event Landlord shall have a longer period as shall be reasonably necessary to cure such default if Landlord shall so choose, provided Landlord commences such cure within such 90-day period and thereafter diligently prosecutes such cure to completion, or (ii) Landlord may purchase the outstanding loan secured by the First Mortgage and all related documents by giving First Mortgagee written notice of its intent to do so within such 90-day period; (b) the purchase price for the outstanding loan secured by the First Mortgage shall be the total of (i) the outstanding principal balance of such loan as accelerated, (ii) all accrued but unpaid interest on such loan, (iii) all reasonable costs incurred by First Mortgagee in connection with any of its attempts to collect such loan and enforce its remedies, including reasonable attorneys' fees and other costs in connection with preparation for foreclosure, and (iv) all other amounts due and payable under the loan documents related to such loan; provided, however, the purchase price shall not include any prepayment penalties or fees; (c) Landlord will be responsible for the payment of all fees and costs of First Mortgagee in connection with Landlord's acquisition of such loan; and (d) the transfer of such loan to Landlord will be without recourse. Tenant shall not unreasonably withhold its consent to any written agreement with First Mortgagee that substantially achieves the objectives set forth in the foregoing sentence. Tenant hereby consents to any cure by Landlord of any default by Tenant under the First Mortgage. Tenant shall reimburse Landlord for all payments made and any incidental costs and expenses incurred, including attorneys' fees, together with interest thereon, which payments costs, expenses and interest shall be considered additional rent hereunder, by Landlord in connection with the cure of any such default or the acquisition of such loan by Landlord (but excluding the purchase price of such loan), immediately upon receipt of Landlord's written demand for reimbursement. No provision of this Lease shall be construed as preventing Landlord, following the acquisition by Landlord of such loan, from exercising all rights and remedies available to it on account of a default under the First Mortgage.

19.8 <u>No Subordination of Fee</u>. Nothing contained in this Lease shall be construed as a subordination of Landlord's fee interest in the Leased Premises or its reversionary interest in the Building to any Mortgage. Upon the expiration or termination of this Lease, except as specifically otherwise provided in this Section 19, any Mortgage of Tenant's interest in the Leased Premises shall be null and void.

SECTION 20. QUIET ENJOYMENT AND TITLE.

So long as Tenant pays Rent and performs Tenant's covenants, Tenant shall peacefully and quietly hold the Leased Premises throughout the Term free from hindrance or molestation by Landlord and others claiming by, through, or under the Landlord, but subject, however, to the Permitted Encumbrances and the terms of this Lease.

SECTION 21. NOTICES.

Any notice, demand or communication required, permitted, or desired to be given hereunder must be in writing and shall be deemed effectively given when personally delivered, when received by electronic means (including electronic mail), so long as such electronic means

is accompanied by prompt notice by United States mail, or overnight courier, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to Landlord:

HCA Realty, Inc. 1100 Dr. Martin Luther King, Jr. Blvd. Nashville, TN 37203 Attn: Vice President, Real Estate

Email: Nick.Paul@hcahealthcare.com

and a simultaneous copy (which will not constitute notice) to:

Waller Lansden Dortch & Davis, LLP 511 Union Street, Suite 2700 Nashville, TN 37219 Attn: Carla F. Fenswick, Esq.

Email: Carla.Fenswick@wallerlaw.com

If to Tenant:

Hartmann SC Partners c/o The Capital Corporation 7101 Sharondale Court, Suite 600 Brentwood, TN 37027 Attn: Nick Church Email: Nick@capitalcorporation.net

with a simultaneous copy to:

Gullet Sanford Robinson & Martin, PLLC 150 Third Avenue South, Suite 1700 Nashville, TN 37201 Attn: Will Brown, Esq.

Attn: Will Brown, Esq. Email: WBrown@gsrm.com

or to such other address and to the attention of such person or officer as any party to this Lease may designate.

SECTION 22. ESTOPPEL CERTIFICATE.

When needed by either party in connection with mortgage financing, a sale or otherwise, the other party shall promptly execute an Estoppel Certificate to evidence (a) the existence or non-

existence of any default under this Lease or any amendment to this Lease, and (b) such other facts with respect to this Lease as may be reasonably required.

SECTION 23. RECORDING OF LEASE.

Landlord and Tenant agree that neither this Lease nor any affidavit of this Lease shall be recorded, but the parties shall record a memorandum of this Lease in a form approved by Landlord and Tenant and in recordable form, which will include a reference to Landlord's purchase option in Section 36 of this Lease. Upon the termination of this Lease, such Landlord and Tenant shall record a termination of such memorandum of this Lease.

SECTION 24. NO WAIVER.

. No failure by either party to insist upon strict performance of any term hereof or to exercise any right, power or remedy hereunder shall be deemed to be a waiver of any other term, right, power or remedy hereunder and no acceptance of full or partial payment by Landlord during the continuance of any Event of Default shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy, or a waiver of any such Event of Default.

SECTION 25. BINDING EFFECT.

This Lease and the covenants and agreements of the parties shall be binding upon and inure to the benefit of Landlord and its successors and assigns and shall be binding upon and inure to the benefit of Tenant and its permitted successors and assigns.

SECTION 26. PARTIAL INVALIDITY.

If any provision of this Lease held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of Landlord or Tenant under this Lease will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Lease will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Lease will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Lease a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

SECTION 27. COUNTERPARTS/NO OFFER.

This Lease may be executed in any number of counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. The facsimile signature of any party to this Lease or a PDF copy of the signature of any party to this Lease delivered by electronic mail for purposes of execution or otherwise, is to be considered to have the same binding effect as the delivery of an original signature on an original contract. The submission of an unsigned copy of this Lease to Tenant or Landlord shall not be construed as an offer, and Tenant and Landlord shall not have any rights under this Lease unless Landlord and Tenant execute a copy of this Lease and deliver it to the other party.

SECTION 28. GOVERNING LAW.

This Lease shall be governed, construed and enforced in accordance with the laws of the State in which the Surgery Center Parcel is located without reference to its choice of law rules.

SECTION 29. LIABILITY OF LANDLORD.

The term "Landlord" as used in this Lease shall mean only the owner at the time in question of the fee title to the Leased Premises, and in the event of any transfer of such title, Landlord named herein (and in case of any subsequent transfers the then "Landlord") shall be relieved from and after the date of such transfer of all liability with respect to Landlord's obligations thereafter to be performed under this Lease, provided that any funds in the hands of Landlord or the then "Landlord" at the time of such transfer, in which Tenant has an interest shall be delivered to the grantee of the Leased Premises.

SECTION 30. RELATIONSHIP OF LANDLORD AND TENANT.

Nothing contained in this Lease shall be deemed or construed as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease, nor any acts of the parties hereto shall be deemed to create any relationship hereunder other than the relationship of landlord and tenant.

SECTION 31. COVENANTS INDEPENDENT.

This Lease shall be construed as though the covenants herein are independent and neither party shall be entitled to an offset against the other in the event either party fails to perform its obligations hereunder.

SECTION 32. REAL ESTATE BROKERS

Each party covenants to pay, hold harmless and indemnify the other party from and against any and all cost, expense or liability for any compensation, commissions, charges, or claims by any broker or other agent with respect to this Lease or the negotiation hereof, contracted, employed or used by such party in connection herewith.

SECTION 33. HEADINGS, MEANING OF WORDS, ENTIRE AGREEMENT.

The headings used in this Lease are inserted for convenience and are not to be considered in the construction of the provisions of this Lease. This Lease together with the exhibits hereto constitute the entire agreement of the parties and may be amended or modified only in writing signed by both parties, and all prior agreements or understandings between the parties, either oral or written, are superseded hereby.

SECTION 34. REGULATORY MATTERS.

To the extent Tenant is subject to the laws and programs referred to in this Section 34:

- Tenant represents and warrants to Landlord that Tenant (i) is not currently 34.1 excluded, debarred or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. § 1320a-7b(f) (each a "Federal Health Care Program"); (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services and has not ever been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in Tenant being excluded from participation in any Federal Health Care Program. representation and warranty shall be an ongoing representation and warranty during the term of this Lease and Tenant shall immediately notify Landlord of any change in the status of the foregoing representation and warranty, at which time, if such change is the result of any Referral Source or Affiliate of a Referral Source having an ownership or beneficial interest in Tenant (other than a non-"Controlling" (as hereinafter defined) interest in any Public Controlling Person), Tenant shall have one hundred eighty (180) days to cause any such Referral Source or Affiliate of a Referral Source to be divested of its ownership or beneficial interest in Tenant. If Tenant fails to cause such divestiture within such 180-day period, Landlord will have the right to terminate this Lease upon written notice to Tenant.
- 34.2 Landlord and Tenant enter into this Lease with the intent of conducting their relationship and implementing the agreements contained herein in full compliance with applicable federal, state and local law, including without limitation, the Medicare/Medicaid Anti-Kickback statute (the "Anti-Kickback Law") and the Stark Law, as amended. Notwithstanding any unanticipated effect of any of the provisions of this Lease, neither party will intentionally conduct itself under the terms of this Lease in a manner that would constitute a violation of the Anti-Kickback Law or the Stark Law. Without limiting the generality of the foregoing, Landlord and Tenant expressly agree that nothing contained in this Lease shall require either party to refer any patients to the other, or to any Affiliate of the other.
- 34.3 Subject to the provisions of Section 34.4 below, if any legislation, regulation or government policy is passed or adopted, the effect of which would cause either party to be in violation of such laws due to the existence of any provision of this Lease, then Landlord and Tenant agree to negotiate in good faith for a period of one hundred eighty (180) days to modify the terms of this Lease to comply with applicable law. Should the parties hereto fail to agree upon modified terms to this Lease within such 180-day period, then either Landlord or Tenant may immediately terminate the Lease by giving written notice to the other party.
- 34.4 Notwithstanding anything in this Lease to the contrary, the provisions of this Section 34 shall be effective only if, at the time that the legislation, regulation or government policy described in this Section 34, is in effect, passed or adopted, any Referral Source or Affiliate of a Referral Source has an ownership or beneficial interest in Tenant (other than a non-Controlling interest in any Public Controlling Person) and, during the 180-day negotiation period described in Section 34.3 above, Tenant fails to cause any such Referral Source or Affiliate to be divested of its ownership or beneficial interest in Tenant.

SECTION 35. ARBITRATION.

Landlord and Tenant agree that all disagreements, disputes or claims arising out of

or relating to this Lease contemplated herein that cannot be settled by the relevant parties, including any claims for injunctive relief, shall be settled by arbitration in accordance with the provisions set forth below.

- (a) Forum. The forum for arbitration shall be Nashville, Tennessee.
- (b) <u>Law</u>. The governing law shall be the law of the State in which the Surgery Center Parcel is located without reference to its choice of law rules.
- (c) <u>Administration</u>. The arbitration shall be administered by the American Arbitration Association ("<u>AAA</u>").
- Lease for which the amount in controversy, whether for an individual claim or dispute or in the aggregate as to multiple claims or disputes, is less than \$500,000.00, the parties agree to submit such claims or disputes to a single arbitrator, to be chosen in the manner prescribed below. In the event the amount in controversy, whether for an individual claim or dispute or in the aggregate as to multiple claims or disputes between the parties, is \$500,000.00 or more, or, in the event the parties do not agree as to whether such amount in controversy is \$500,000.00 or more, the parties agree to submit such claims or disputes to a board of arbitrators consisting of three arbitrators, as set forth below (the term "Arbitrators" shall refer to the board of arbitrators or the single arbitrator, as applicable). For the avoidance of doubt, in determining the aggregate amount in controversy for purposes of the two preceding sentences, in the event that there are multiple claims or disputes such claims or disputes need not be related, including as to the same subject matter, the same provisions of this Lease or the same set of facts.
- (e) If a party to this Lease determines to submit a dispute for arbitration pursuant to this Section, such party shall furnish the other parties to the dispute with a dated, written statement (the "Arbitration Notice") indicating (A) such party's intent to commence arbitration proceedings, (B) the nature, with reasonable detail, of the dispute and (C) the remedy or remedies such party will seek.
- Arbitration Notice, the parties shall select a single arbitrator from a list of members of the AAA's National Panel of Commercial Arbitrators. Such arbitrator must be "neutral" and must have at least fifteen (15) years' experience in development transactions substantially similar to the Project. If the parties do not reach agreement on the selection of a single arbitrator within the twenty (20) day period, the AAA shall have the right to make such selection upon the request of any party to the arbitration proceedings. Where the parties use a board of arbitrators, within twenty (20) days of the date of the Arbitration Notice, the party commencing the arbitration (collectively, the "Petitioner") and the party with whom the Petitioner has its dispute (collectively, the "Respondent") shall each select one qualifying arbitrator (and provide written notice of such selection to the Respondent and Petitioner). A "qualifying" arbitrator is a person who is not (A) an Affiliate of either the Petitioner or Respondent or (B) counsel to any such party at such time. If either the Petitioner or Respondent fails to select a qualifying arbitrator or provide such notice within the twenty (20) day period, the AAA shall have the right to make such selection upon the request of any party to the arbitration proceedings. (Such qualifying arbitrators hereafter may be

referred to, respectively, as the "<u>First Arbitrator</u>" and the "<u>Second Arbitrator</u>"). Within ten (10) days following their selection, the First Arbitrator and Second Arbitrator shall select (and provide written notice to the Respondent and the Petitioner of such selection) a third arbitrator (the "<u>Third Arbitrator</u>") from a list of members of the AAA's National Panel of Commercial Arbitrators. The Third Arbitrator must be "neutral" and must have at least fifteen (15) years' experience in development transactions substantially similar to the Project. For purposes of this Section, a "neutral" arbitrator shall be a Person who would not be subject to disqualification under rule No. 18 of the Commercial Arbitration Rules of the AAA.

- (g) Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the AAA, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the United States District Court for the Middle District of Tennessee. The Arbitrators shall not modify the terms of this Lease.
- (h) <u>Award</u>. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction of the United States. The Arbitrators shall have authority to award legal fees and associated costs to the party that substantially prevails in any arbitration proceeding.

(i) Consolidation or Joinder.

- i. Subject to the rules of the AAA or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Lease with any other arbitration to which it is a party provided that (A) the arbitration agreement governing the other arbitration permits consolidation, (B) the arbitrations to be consolidated substantially involve common questions of law or fact, and (C) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- ii. Subject to the rules of the AAA or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- iii. Landlord and Tenant grant to any person or entity made a party to an arbitration conducted under this Section 35, whether by joinder or consolidation, the same rights of joinder and consolidation as those of Landlord and Tenant under this Lease.
- (j) <u>Waiver of Jury Trial</u>. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS LEASE OR THE CONTEMPLATED TRANSACTIONS.

SECTION 36 PURCHASE OPTION.

- 36.1 Beginning on the fifth anniversary of the date a final certificate of occupancy (or its equivalent) is issued for the Building (the "CO Date") and thereafter on every fifth anniversary of the CO Date throughout the remainder of the Term, Landlord will have the right and option (the "Purchase Option") to purchase and acquire from Tenant all of Tenant's interest in and to the Property and all of Tenant's interests in and to the Leased Premises (collectively, the "Tenant's Interests"). The purchase price for Tenant's Interests (the "Option Purchase Price") will be an amount determined as set forth on Exhibit C attached hereto and mad a part of this Lease.
- If Landlord elects to exercise the Purchase Option, Landlord will notify Tenant in writing of its exercise of the Purchase Option on the applicable anniversary of the CO Date or during the thirty-day period following such anniversary of the CO Date before 5:00 pm local time on the thirtieth (30th) day after such anniversary. If the thirtieth (30th) day of such thirty-day period occurs on a Saturday, Sunday or federal holiday, then Landlord may give notice of its exercise before 5:00 pm local time on the first Business Day thereafter. The closing of the purchase (the "Option Closing") will be held in a place and at a time mutually agreed upon by Landlord and Tenant thirty (30) days after the Option Purchase Price is determined in accordance with Exhibit C to this Lease, unless such day is a Saturday, Sunday, or federal holiday, in which event the Option Closing will be on the next business day thereafter. If this Lease is set to expire before the time for the Option Closing, this Lease will be extended to the date of the Option Closing provided herein, on the same terms as are in effect on such date that this Lease is set to expire. The Option Purchase Price will be paid in full at the Option Closing, although Tenant may at its option, use all or any portion of the Option Purchase Price as may be necessary to discharge any mortgages or other liens or encumbrances affecting the Tenant's Interests, including, but not limited to, any deeds of trust, mortgages and mechanics' and materialmen's liens.
- At the Option Closing, Tenant will convey to Landlord or its designee good, record and marketable title to the Tenant's Interests, subject only to the Permitted Encumbrances. The Option Purchase Price will be paid in cash by wire transfer of immediately available funds at the time of the Option Closing or by such other method as Landlord may approve; provided that if the Tenant's Interests or any part thereof has suffered any damage that would have been covered by a causes of loss special form property insurance policy if such insurance had been obtained, then either Tenant or the holders of the mortgages on the Tenant's Interests will pay to Landlord all of the proceeds of such insurance or to the extent such proceeds have not been collected, assign all of their respective rights and interests therein to Landlord; or at its election Landlord may reduce the Option Purchase Price paid by the amount of such proceeds and deduct such sum from the Option Purchase Price payable at the Option Closing. Landlord will pay the Option Purchase Price and the costs of any title insurance which it may require in connection with the purchase of Tenant's Interests, but each party will be responsible for and will pay fifty percent (50%) of all other closing costs. Closing costs will include the costs of a survey, any escrow charges, costs of recording documents or required by applicable law to effect the acquisition of the Tenant's Interests and all documentary stamps and similar taxes on the recordation of such recordable documents. Each party will be responsible for the fees of its respective counsel.

36.4 Prior to the closing of Landlord's purchase of the Tenant's Interests, Tenant will execute and cause to be recorded in the public real property records of the County in which the Property is located, a termination of this Lease in form and with such terms that are reasonably satisfactory to Landlord.

(Remainder of page left intentionally blank)

IN WITNESS WHEREOF, the parties hereto have executed this Surgery Center Ground Lease as of the date first written above.

LANDLORD:

Title:

IN WITNESS WHEREOF, the parties hereto have executed this Surgery Center Ground Lease as of the date first written above.

LANDLORD:

HCA Realty, Inc., a Tennessee corporation,

By:	
Name:	
Title:	

TENANT:

HARTMANN SC PARTNERS, a Tennessee general partnership

By: AC Group, LLC, its general partner

By:
Name:
Title:

MANAGING PASTNER

EXHIBIT A

Surgery Center Parcel

BEING A CERTAIN TRACT OF LAND LYING AND BEING IN THE FOURTH (4TH) CIVIL DISTRICT OF WILSON COUNTY, CITY OF LEBANON, TENNESSEE. BEING A PORTION OF THE SAME PROPERTY CONVEYED TO HCA REALTY, INC. OF RECORD IN DEED BOOK 1108, PAGE 755, REGISTER'S OFFICE OF WILSON COUNTY (R.O.W.C.T), THE SAME BEING A PORTION OF LOT 3 AS SHOWN ON PLAT ENTITLED "ONE PARK PLAZA SUBDIVISION" OF RECORD IN PLAT BOOK P29, PAGE 339, R.O.W.C.T. BEING BOUNDED ON THE EAST BY THE REMAINING LOT 3 AS SHOWN ON SAID PLAT; ON THE SOUTH BY LOTS 1 AND 2 OF SAID PLAT; ON THE WEST AND NORTH BY THE ANTHONY E. HAGAN, ETAL PROPERTY OF RECORD IN DEED BOOK 1272, PAGE 774, R.O.W.C.T. AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING ON A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC" IN THE EAST RIGHT-OF-WAY LINE OF SAID SOUTH HARTMANN DRIVE AT THE NORTHEAST CORNER OF SAID LOT 1 AND PROCEEDING AS FOLLOWS:

THENCE, LEAVING THE WEST RIGHT-OF-WAY OF SAID HARTMANN DRIVE WITH THE NORTH LINE OF SAID LOT 1, SOUTH 81 DEGREES 56 MINUTES 59 SECONDS WEST, 383.23 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED TRACT;

THENCE, CONTINUING WITH SAID NORTH LINE OF LOT 1, SOUTH 81 DEGREES 56 MINUTES 59 SECONDS WEST, 13.30 FEET TO A 1/2-INCH IRON ROD (NEW) WITH CAP STAMPED "RAGAN SMITH ASSOC":

THENCE, WITH THE EAST LINE OF SAID LOT 1 THE NEXT TWO (2) CALLS:

- 1. SOUTH 06 DEGREES 28 MINUTES 51 SECONDS WEST, 38.53 FEET TO A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC";
- 2. WITH A CURVE TO THE LEFT HAVING A RADIUS OF 716.13 FEET, AN ARC LENGTH OF 62.04 FEET, A DELTA ANGLE OF 04 DEGREES 57 MINUTES 50 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 04 DEGREES 18 MINUTES 16 SECONDS WEST, 62.02 FEET TO A PK NAIL (NEW) WITH MAGNETIC NAIL MARKED "RAGAN SMITH ASSOC" AT THE NORTHEAST CORNER OF SAID LOT 2;

THENCE, WITH THE NORTH LINE OF SAID LOT 2, SOUTH 83 DEGREES 04 MINUTES 12 SECONDS WEST, 354.58 FEET TO A 1/2-INCH IRON ROD (NEW) WITH CAP STAMPED "RAGAN SMITH ASSOC" IN THE EAST LINE OF SAID ANTHONY E. HAGAN, ETAL PROPERTY;

THENCE, WITH THE EAST LINE OF SAID PROPERTY, NORTH 06 DEGREES 55 MINUTES 48 SECONDS WEST, 493.77 FEET TO A 5/8-INCH IRON ROD (OLD);

THENCE, WITH THE SOUTH LINE OF SAID PROPERTY, NORTH 81 DEGREES 56 MINUTES 01 SECONDS EAST, 415.03 FEET;

THENCE, LEAVING SAID SOUTH LINE CROSSING SAID LOT 3 THE NEXT THREE (3) CALLS:

- 1. SOUTH 08 DEGREES 03 MINUTES 30 SECONDS EAST, 266.23 FEET;
- 2. WITH A CURVE TO THE RIGHT, HAVING AN ARC LENGTH OF 11.43 FEET, A RADIUS OF 45.00 FEET, A DELTA ANGLE OF 14 DEGREES 33 MINUTES 32 SECONDS AND A CHORD BEARING AND DISTANCE OF SOUTH 00 DEGREES 46 MINUTES 44 SECONDS EAST, 11.40 FEET;
- 3. SOUTH 06 DEGREES 30 MINUTES 02 SECONDS WEST, 129.45 FEET TO THE POINT OF BEGINNING, CONTAINING 200,979 SQUARE FEET OR 4.61 ACRES, MORE OR LESS.

EXHIBIT B

Related Improvements Area

The Related Improvements Area is the driveways and parking areas noted on the preliminary site plan attached to this Exhibit B.



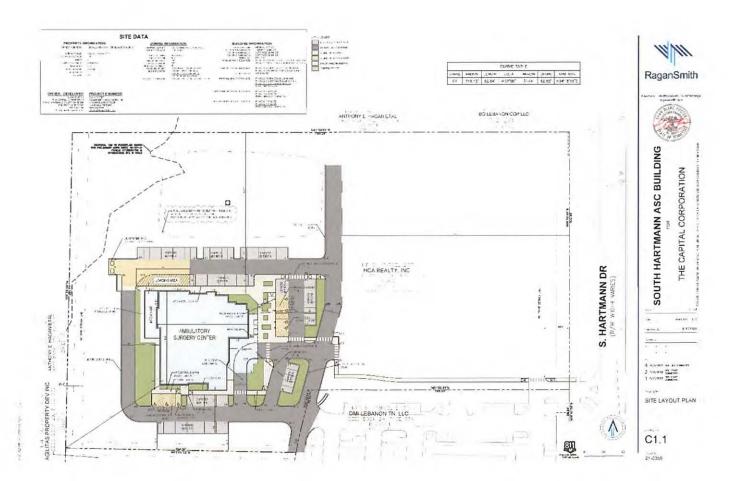


EXHIBIT C

Option Purchase Price

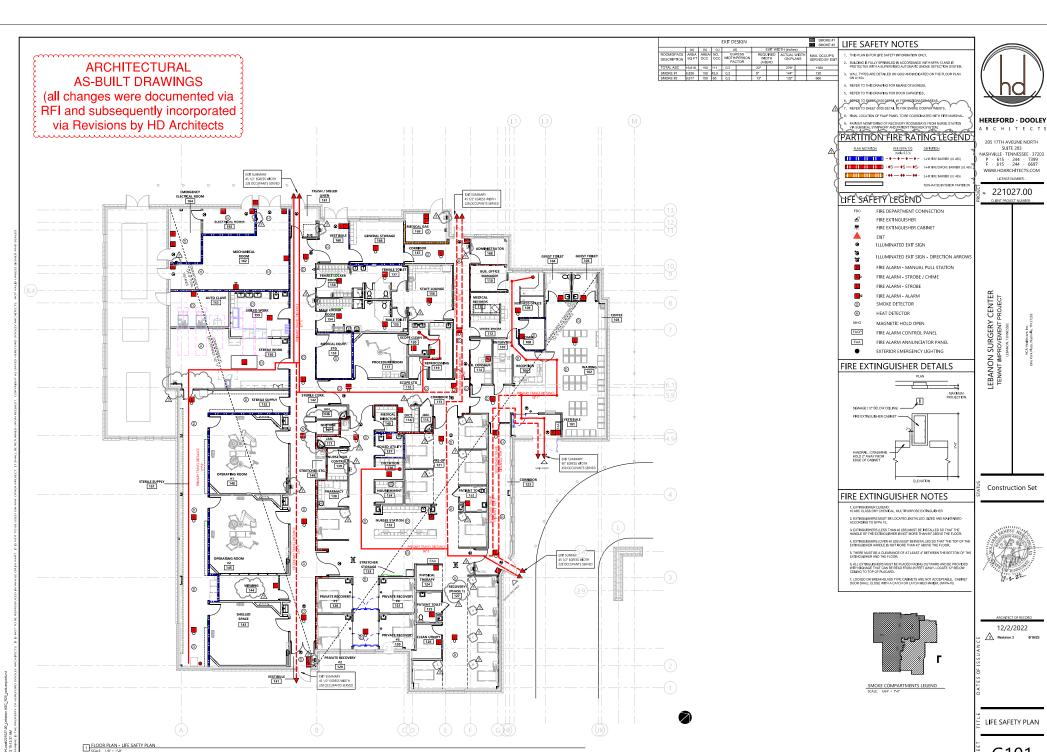
In the event Landlord exercises its Purchase Option as set forth in Section 36 of this Lease, then the Option Purchase Price will be a sum equal to the then fair market value (the "Fair Market Value") as determined in accordance with the terms of this Exhibit C, using the definition of fair market value for the sale and purchase of real property set forth in the "Stark Law" (as defined in Section 5.2 of this Lease), for property comparable to the Tenant's Interests and not in possession of the Leased Premises, with neither purchaser nor seller under any compulsion to buy or sell.

- (i) During the thirty (30) day period following the delivery of Landlord's written notice exercising the Purchase Option, Landlord and Tenant will attempt to agree on the Fair Market Value, and failing such agreement, Landlord and Tenant will attempt to agree within such thirty (30) day period on an appraiser to determine the Fair Market Value. If Landlord and Tenant are able to agree on the Fair Market Value, then that shall be the Option Purchase Price. If Landlord and Tenant are able to agree on the appraiser, then within thirty days after the selection of such appraiser, such appraiser will determine in good faith the Fair Market Value using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Value was determined by such appraiser using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law. If Landlord and Tenant are able to agree on the appraiser, then the Option Purchase Price shall be a sum equal to the Fair Market Value determined by such appraiser.
- If Landlord and Tenant are unable to agree as to the Fair Market Value or any such (ii) appraiser within the above referenced thirty (30) day period, then within forty-five (45) days after the date written notice exercising the Purchase Option is delivered to Tenant, Landlord and Tenant will each designate a professional M.A.I. appraiser who is engaged in the business of appraising commercial rental property in the county in which the Property is located, and will notify each other of the appraiser so selected. Within seventy-five (75) days after the date written notice exercising the Purchase Option is delivered to Tenant, each selected appraiser will determine in good faith the Fair Market Value using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Value was determined by such appraiser using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law. If the two selected appraisers mutually agree on the Fair Market Value, then the Option Purchase Price payable shall be the Fair Market Value as determined by such two appraisers. If the lower appraised Fair Market Value is at least eightyfive percent (85%) of the higher appraised Fair Market Value ("Acceptable Deviation"), then the Option Purchase Price shall be the average of the Fair Market Value as determined by such two appraisers.
- (iii) If the appraised values of the two selected appraisers are not within the Acceptable Deviation, then the two appraisers shall within ninety (90) days after the date written notice exercising the Purchase Option is delivered to Tenant, select a third appraiser who is similarly qualified. Within thirty (30) days after the selection of the third appraiser, the third appraiser shall

determine in good faith the Fair Market Value using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law and will deliver an appraisal report to Landlord and Tenant in accordance with current standards of appraisal practice and attesting that the Fair Market Value was determined by such appraiser using the definition of fair market value for the sale and purchase of real property set forth in the Stark Law. If an appraisal by a third appraiser is required, then the Option Purchase Price shall be the average of the Fair Market Value as determined by the third appraisal with the nearest Fair Market Value as determined by the other two appraisers.

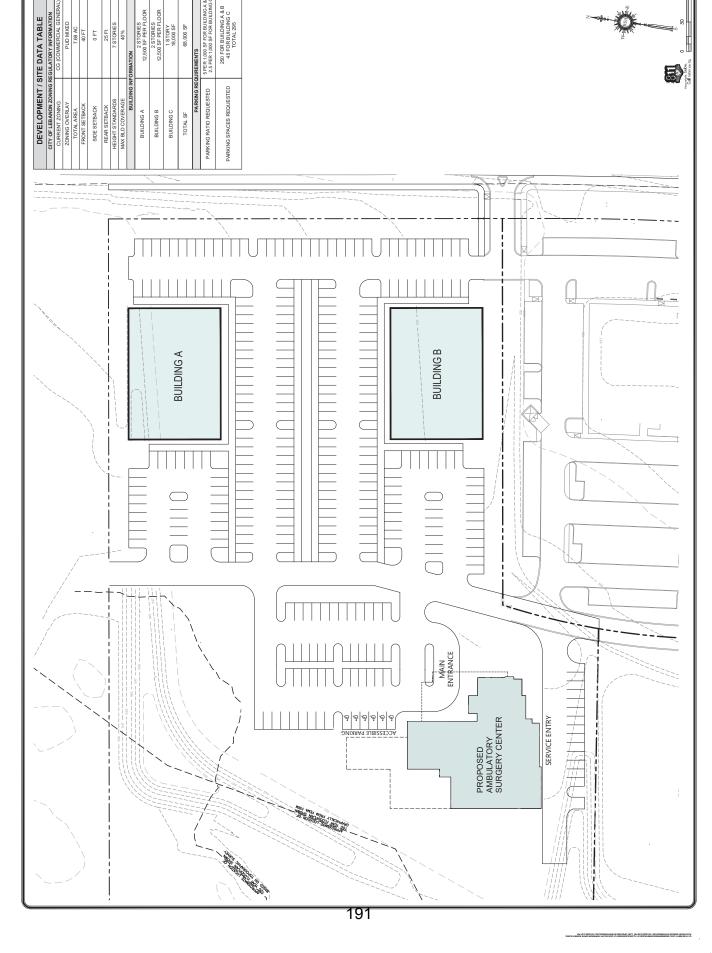
- (iv) Each appraiser shall work in dependently and without consulting with the other appraisers and the conclusions and appraisal report of each appraiser shall not be provided to any other appraiser.
- (v) Each party will bear the cost of the appraiser selected by it (unless the parties agreed as to the appraiser, in which event the cost of such appraiser will be divided equally between Landlord and Tenant) and the cost of the third appraiser shall be paid by the party whose appraiser's determination of the Fair Market Value is not averaged with the third appraiser's determination of the Fair Market Value.

Attachment 10A Line Drawings



G101

Attachment 12A Plot Plan



Attachment 2N Service Area Map

TENNESSEE COUNTY MAP



Attachment 3N.BR Service Area Demographics

	Department of Health/Health Statistics Cer				Census	s Bureau		TennCare					
Demographic Variable/ Geographic Area	Total Population Current Year (2025)*	Total Popoulation Projected Year (2029)	Total Population % Change	Target Population** Current Year (2025)	Target Population Projected Year (2029)	Population %	Target Population Projected Year as % of Total	Median Age^	Median Household Income	Person Below Poverty Level^^	Person Below Poverty Level as % of Total	TennCare Enrollees^^	TennCare Enrollees as % of Total
Wilson	171,708	187,530	9.2%	171,708	187,530	9.2%	100.0%	40.0	\$94,048	11,333	6.6%	21,837	12.7%
State of TN Total	7,242,733	7,462,831	3.0%	7,242,733	7,462,831	3.0%	100.0%	38.9	\$67,097	1,013,983	14.0%	1,410,040	19.5%

^{*} As sourced from the The University of Tennessee Knoxville Boyd Center Population Projections, accessed via https://tnsdc.utk.edu/estimates-and-projections/boyd-center-population-projections/.

^{**} As noted in 3N-A, the target population of the proposed project is the same as the total population.

[^] Median age information was gathered via the most recently available American Consumer Survey (ACS) 5-Year Estimate Subject Tables, 2017-2022, accessed via https://data.census.gov/

^{^^} Persons Below Poverty Level has been approximated by mutliplying the Person Below Poverty Level as % of Total value for Wilson County by its respective Total 2024 population, as sourced from the Tennessee Department of Health

^{^^} Most recent data set at time of drafting of proposal is from February 2025.

Attachment 1C Transfer Agreement

FACILITY TRANSFER AGREEMENT (Revised 04-2011)

This Transfer Agreement (the "Agreement") is made as of this Lebanon Surgicenter, LLC		March	, 20 <u>25</u>	, by and between:, doing business as
HCA Health Services of Tennessee, Inc., d/b/a TriStar Sum	mit Medical Cen	ter		anc
each individually referred to herein as "facility," or "Transferring a patient, pursuant to the terms and provisions of this Agreemen				ving Facility" if receiving

WITNESSETH:

WHEREAS, the parties hereto desire to enter into this Agreement governing the transfer of patients between the two facilities; and,

WHEREAS, the parties hereto desire to enter into this Agreement in order to specify the rights and duties of each of the parties and to specify the procedure for ensuring the timely transfer of patients between the facilities;

NOW, THEREFORE, to facilitate the continuity of care and the timely transfer of patients and records between the facilities, the parties hereto agree as follows:

- 1. Transfer of Patients. In the event any patient of either facility is deemed by that facility (the "Transferring Facility") as requiring the services of the other facility (the "Receiving Facility") and the transfer is deemed medically appropriate, a member of the nursing staff of the Transferring Facility or the patient's attending physician will contact the admitting office or Emergency Department of the Receiving Facility to arrange for appropriate treatment as contemplated herein. All transfers between the facilities shall be made in accordance with applicable federal and state laws and regulations, the standards of the Joint Commission and any other applicable accrediting bodies, and reasonable policies and procedures of the facilities. Neither the decision to transfer a patient nor the decision to not accept a request to transfer a patient shall be predicated upon arbitrary, capricious, or unreasonable discrimination or based upon the patient's inability to pay for services rendered by either facility. The Receiving Facility's responsibility for the patient's care shall begin when the patient is admitted to the Receiving Facility.
- 2. <u>Responsibilities of the Transferring Facility</u>. The Transferring Facility shall be responsible for performing or ensuring performance of the following:
 - (A) Provide, within its capabilities, for the medical screening and stabilizing treatment of the patient prior to transfer;
 - (B) Arrange for appropriate and safe transportation and care of the patient during transfer, in accordance with applicable federal and state laws and regulations;
 - (C) Designate a person who has authority to represent the Transferring Facility and coordinate the transfer of the patient from the facility:
 - (D) Notify the Receiving Facility's designated representative prior to transfer to receive confirmation as to availability of appropriate facilities, services, and staff necessary to provide care to the patient;
 - (E) Prior to patient transfer, the transferring physician shall contact and secure a receiving physician at the Receiving Facility who shall attend to the medical needs of the patient and who will accept responsibility for the patient's medical treatment and hospital care;
 - (F) Provide, within its capabilities, appropriate personnel, equipment, and services to assist the transferring physician with the coordination and transfer of the patient;
 - (G) Provide, within its capabilities, personnel, equipment, and life support measures determined appropriate for the transfer of the patient by the transferring physician;
 - (H) Forward to the receiving physician and the Receiving Facility a copy of those portions of the patient's medical record that are available and relevant to the transfer and continued care of the patient, including records related to the patient's condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests, and with respect to a patient with an emergency medical condition that has not been stabilized, a copy of the patient's informed

consent to the transfer or physician certification that the medical benefits of the transfer outweigh the risk of transfer. If all necessary and relevant medical records are not available at the time the patient is transferred, then the records will be forwarded by the Transferring Facility as soon as possible;

- (I) Transfer the patient's personal effects, including, but not limited to, money and valuables, and information related to those items;
- (J) Notify the Receiving Facility of the estimated time of arrival of the patient;
- (K) Provide for the completion of a certification statement, summarizing the risk and benefits of the transfer of a patient with an emergency condition that has not been stabilized, by the transferring physician or other qualified personnel if the physician is not physically present at the facility at the time of transfer;
- (L) Acknowledge any contractual obligations and comply with any statutory or regulatory obligations that might exist between a patient and a designated provider;
- (M) Recognize the right of a patient to request to transfer into the care of a physician and facility of the patient's choosing;
- (N) Recognize the right of a patient to refuse consent to treatment or transfer;
- (O) Complete, execute, and forward a memorandum of transfer form to the Receiving Facility for every patient who is transferred;
- (P) Establish a policy and/or protocols (i) for maintaining the confidentiality of the patient's medical records in accordance with applicable state and federal law, and (ii) for the inventory and safekeeping of any patient valuables sent with the patient to the Receiving Facility; and,
- (Q) Recognize and comply with the requirements of any state law and regulations or local ordinances that apply to the care and transfer of patients.
- 3. Responsibilities of the Receiving Facility. The Receiving Facility shall be responsible for performing or ensuring performance of the following:
 - Provide, as promptly as possible, confirmation to the Transferring Facility regarding the availability of bed(s), appropriate facilities, services, and staff necessary to treat the patient and confirmation that the Receiving Facility has agreed to accept transfer of the patient. The Receiving Facility shall respond to the Transferring Facility within thirty (30) minutes after receipt of the request to transfer a patient with an emergency medical condition or in active labor;
 - (B) Provide, within its capabilities, appropriate personnel, equipment, and services to assist the receiving physician with the receipt and treatment of the patient transferred and maintain a call roster of physicians at the Receiving Facility;
 - (C) Reserve beds, facilities, and services as appropriate for patients being transferred from the Transferring Facility who have been accepted by the Receiving Facility and a receiving physician, if deemed necessary by a transferring physician unless such are needed by the Receiving Facility for an emergency;
 - (D) Designate a person who has authority to represent and coordinate the transfer and receipt of patients into the facility;
 - (E) When appropriate and within its capabilities, assist with the transportation of the patient as determined appropriate by the transferring or receiving physician;
 - (F) Provide the Transferring Facility with a copy of the patient's clinical or medical records, including any record generated in the emergency department;
 - (G) Maintain the confidentiality of the patient's clinical or medical records in accordance with applicable state and federal law;
 - (H) Establish a policy and/or protocols (i) for maintaining the confidentiality of the patient's clinical or medical records in accordance with applicable state and federal law, (ii) for the receipt of the patient into the facility, and (iii) for the acknowledgment and inventory of any patient valuables transported with the patient;

- (I) Provide for the return transfer of patients to the Transferring Facility when requested by the patient or the Transferring Facility and ordered by the patient's attending/transferring physician, if the Transferring Facility has a statutory or regulatory obligation to provide health care assistance to the patient, and if transferred back to the Transferring Facility, provide the items and services specified in Section 2 of this Agreement;
- (J) Provide the Transferring Facility any information available about the patient's coverage or eligibility under a third party coverage plan, Medicare or Medicaid, or a healthcare assistance program established by a county, public hospital, or hospital district;
- (K) Upon request, provide current information concerning its eligibility standards and payment practices to the Transferring Facility and patient;
- (L) Acknowledge any contractual obligations and comply with any statutory or regulatory obligations that might exist between a patient and a designated provider;
- (M) Complete, execute, and return the memorandum of transfer form to the Transferring Facility; and,
- (N) Recognize and comply with the requirements of any state law and regulations or local ordinances that apply to the care and transfer of patients.
- 4. Billing. All claims or charges incurred with respect to any services performed by either facility for patients received from the other facility pursuant to this Agreement shall be billed and collected by the facility providing such services directly from the patient, third party payer, Medicare or Medicaid, or other sources appropriately billed by that facility, unless applicable law and regulations require that one facility bill the other facility for such services. In those cases in which the regulations apply, the facilities shall bill in accordance to the regulations that apply to skilled nursing facility prospective payment system ("SNF PPS") and consolidated billing. In those cases in which payment rates are consistent with SNF PPS regulations and have been negotiated, such payment shall be made at _n/a % of charges or in accordance with the payment fee schedule, labeled as Exhibit n/a, attached hereto and incorporated herein by this reference. In addition, it is understood that professional fees will be billed by those physicians or other professional providers who actually participate in the care and treatment of the patient and who are entitled to bill for their professional services at usual and customary rates. Each facility agrees to provide information in its possession to the other facility and such physicians or professional providers sufficient to enable them to bill the patient, responsible party, or appropriate third party payer.
- 5. Transfer Back: Discharge: Policies. At such time as the patient is ready for transfer back to the Transferring Facility or another health care facility or discharge from the Receiving Facility, in accordance with the direction from the Transferring Facility and with the proper notification of the patient's family or guardian, the patient will be transferred to the agreed upon location. If the patient is to be transferred back to the Transferring Facility, the Receiving Facility will be responsible for the care of the patient up until the time the patient is re-admitted to the Transferring Facility. Such transfers shall be conducted in accordance with HCA Healthcare Corporation Ethics and Compliance Policies and Procedures (e.g., Discharge Planning and Referrals of Patients to Post Discharge Providers Policy, LL.HH.016 and EMTALA Transfer Policy, EM.003).
- 6. <u>Compliance with Law</u>. Both facilities shall comply with all applicable federal and state laws, rules and regulations, including, without limitation, those laws and regulations governing the maintenance of clinical or medical records and confidentiality of patient information as well as with all standards promulgated by any relevant accrediting agency.
- 7. <u>Indemnification: Insurance</u>. The facilities shall each be responsible for their own acts and omissions in the performance of their duties hereunder, and the acts and omissions of their own employees and agents, and shall indemnify and hold harmless the other party from and against any and all claims, liabilities, causes of action, losses, costs, damages and expenses (including reasonable attorney's fees) incurred by the other party as a result of such acts and omissions. In addition, each party shall maintain, throughout the term of this Agreement, comprehensive general and professional liability insurance and property damage insurance coverage in amounts reasonably acceptable to the other party, and shall provide evidence of such coverage upon request.
- 8. Term: Termination. The term of this Agreement shall be a minimum of one (1) year, commencing on the 1st day of April ,2025, and ending on the 31st day of March ,2028, unless sooner terminated as provided herein. Either party may terminate this Agreement without cause upon thirty (30) days advance written notice to the other party. Either party may terminate this Agreement upon breach by the other party of any material provision of this Agreement, provided such breach continues for five (5) days after receipt by the breaching party of written notice of such breach from the non-breaching party. In addition, this Agreement may be terminated immediately upon the occurrence of any of the following events:
 - (A) Either facility closes or discontinues operation to such an extent that patient care cannot be carried out adequately, or

This Agreement may be re	enewed for subsequent one (1) year terms upon the mutual written consent of the parties.
or any amendment hereof, Tennessee Resolution Services and ap and binding upon each of borne equally by both par	tion. Any dispute or controversy arising under, out of or in connection with, or in relation to this Agreement, or the breach hereof shall be determined and settled by arbitration in
the subject matter hereof a	Agreement: Modification. This Agreement contains the entire understanding of the parties with respect to nd supersedes all prior agreements, oral or written, and all other communications between the parties relating his Agreement may not be amended or modified except by mutual written agreement.
11. <u>Govern</u>	ing Law. This Agreement shall be construed in accordance with the laws of the State of Tennessee in which the facility affiliated with HCA is located.
12. Partial prohibition shall not inval	Invalidity. If any provision of this Agreement is prohibited by law or court decree of any jurisdiction, said idate or affect the remaining provisions of this Agreement.
registered mail, return rece	. All notices hereunder by either party to the other shall be in writing, delivered personally, by certified or eipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally United States mail, postage prepaid, addressed as follows:
If to:	Lebanon Surgicenter, LLC 125 Willard Hagan Drive Lebanon, Tennessee 37090 Attention: Chief Executive Officer
Copy to:	One Park Plaza, P.O. Box 550 Nashville, Tennessee 37202-0550 Attention: Brittain Sexton , Operations Counsel
If to:	HCA Health Services of Tennessee, Inc. d/b/a Summit Medical Center 5655 Frist Blvd. Hermitage, Tennessee 37076
or to such other persons of	Attention: Chief Executive Officer or places as either party may from time to time designate by written notice to the other.
-	r. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any
its rights, duties or obligat by either Facility without	ment; Binding Effect. Each facility shall not assign or transfer, in whole or in part, this Agreement or any of ions under this Agreement without the prior written consent of the other Facility, and any assignment or transfer such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the parties te heirs, representatives, successors and permitted assigns.
representatives) which ac	e in Law. Notwithstanding any other provision of this Agreement, if the governmental agencies (or their liminister Medicare, any other payer, or any other federal, state or local government or agency passes, issues or a reculation, crandard or interpretation, or if any court of competent jurisdiction renders any decision or issues

(B)

Either facility loses its license, or Medicare certification.

any order, at any time while this Agreement is in effect, which prohibits, restricts, limits or in any way substantially changes the method or amount of reimbursement or payment for services rendered under this Agreement, or which otherwise significantly affects either party's rights or obligations hereunder, either party may give the other notice of intent to amend this Agreement to the satisfaction of both parties, to compensate for such prohibition, restriction, limitation or change. If this Agreement is not so amended in writing within thirty (30) days after said notice was given, this Agreement shall terminate as of midnight on the thirtieth (30th) day after said notice was given.

- Warranty of Non-Exclusion. Each party represents and warrants to the other that the party, its officers, directors and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "federal healthcare programs"), (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the federal healthcare programs, and (iii) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in the party or any such individual being excluded from participation in the federal healthcare programs. This shall be an ongoing representation and warranty during the term of this Agreement and each party shall immediately notify the other of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give the other party the right to terminate this Agreement immediately for cause.
- HIPAA Compliance Requirements. To the extent applicable to this Agreement, Contractor agrees to comply with the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8 ("HIPAA") and any current and future regulations promulgated under either the HITECH Act or HIPAA, including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the "Federal Privacy Regulations"), the federal security standards contained in 45 C.F.R. Parts 160, 162 and 164 (the "Federal Security Regulations"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162 (the "Federal Electronic Transactions Regulations"), all as may be amended from time to time, and all collectively referred to herein as "HIPAA Requirements." Contractor agrees to enter into any further agreements as necessary to facilitate compliance with HIPAA Requirements.
- 19. Access To Records. Pursuant to the requirements of 42 CFR §420.300 et seq., each party agrees to make available to the Secretary of Health and Human Services ("HHS"), the Comptroller General of the Government Accounting Office ("GAO") or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of costs hereunder for a period of four (4) years after the furnishing of Services hereunder for any and all Services furnished under this Agreement. In addition, each party hereby agrees to require by contract that each subcontractor makes available to the HHS and GAO, or their authorized representative, all contracts, books, documents and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of Services thereunder.
- 20. Execution of Agreement. This Agreement shall not become effective or in force until all of the below named parties have fully executed this Agreement.

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

Lebanon Surgicare, LLC
25 Willard Hagan Drive
Lebanon, Tennessee 37090
By K- day 12 Intelen
ts: Danier C. Winkler - Vice President, Operations
VIOA IV - W. Samines of Transcess Inc d/h/a Summit Med Cont.
HCA Health Services of Tennessee, Inc d/b/a Summit Med Cent. 5655 Frist Blvd.
HCA Hearn Services of Tennessee, the d <i>ibra</i> Summit Fied Cente 5655 Frist Blvd. Hermitage, Tennessee 37076
5655 Frist Blvd. Hermitage, Tennessee 37076
5655 Frist Blvd.

INDEX OF ADDITIONAL ATTACHMENTS

LEBANON CENTER FOR OUTPATIENT SURGERY

Attachment 7A-2. Ownership Structure for Lebanon Center for Outpatient Surgery

Attachment 1E-1. Fair Market Valuation

Attachment 1E-2. List of New Equipment over \$50,000

Attachment 1N-1.1. HSDA Minutes and Transcript

Attachment 1N-1.2. Letters of Support

Attachment 1N-1.3. Esri ZIP Code Population Data

Attachment 1N-1.4. Press Ganey Patient Survey Results

Attachment 1N-1.5. Collected Policies and Procedures

Attachment 1N-4. STH-USPI/Ascension Opposition

Attachment 1N-11. Designation of Medically Underserved area

Attachment 3N-1. Population Data Utilized for Service Area Demographics Table

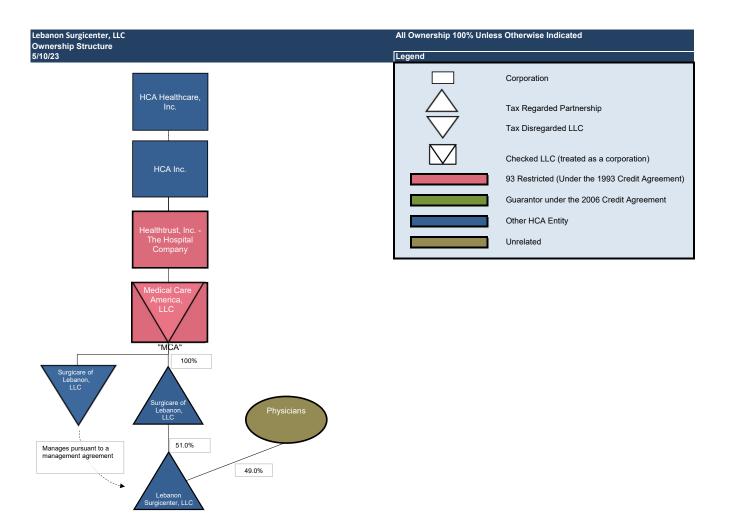
Attachment 3N-2. US Census Supplementary Demographic Data

Attachment 3N-3. TennCare Enrollment Report

Attachment 2C. Payors Contracted by Lebanon Center for Outpatient Surgery

Attachment 7Q. Additional Information for Question 7Q

Attachment 7A-2 Ownership Structure for Lebanon Center for Outpatient Surgery



Attachment 1E-1 Fair Market Valuation

Calculation of FMV Amount - Lebanon Center for Outpatient Surgery

FMV of Ownership

Formula	Description	Amount
Α	Building Improvements	\$9,151,436
В	Existing Equipment	5,694,690
С	New Equipment	\$838,818
D =(A + B + C)	Total Fixed Assets Ownership	\$15,684,944

FMV of Lease		<u>NOTES</u>
Initial Lease Term	10 years	Initial 10-year lease executed in 2022
Base Rent (2025)	\$607,232	
Annual Increase	2.5%	2.5% annual increase in base rent
Annual Total	\$607,232	
Total Rent	\$6,803,049	
Cost per Square Foot	\$35.00	

The amount shown in 'D' reflects the building's assessed value, existing equipment, and budget for new equipment. This is the greater amount of the rent in the initial lease or the value of the building and fixed assets.

Attachment 1E-2 List of New Equipment over \$50,000

Item	Vendor	ItemNo	Qty	Unit \$	Ext\$
Microscope, Surgical Specialty ENT. KMAT OPMI Pentero 800	CARL ZEISS MEDITEC USA INC	357306	1	170,338.22	170,338.22
Monitor, Nerve Integrity. NIM Vital	MEDTRONIC USA INC	719423	1	152,574.79	152,574.79
Surgical Navigation System, ENT #8000-010-003 - per quote	STRYKER INSTRUMENTS- NET 30 ON POs	730190	1	112,649.64	112,649.64
Microscope, Surgical Specialty Ortho. KMAT OPMI Pentero 800	CARL ZEISS MEDITEC USA INC	357306	1	170,338.22	170,338.22

Attachment 1N-1.1 HSDA Minutes and Transcript

HEALTH SERVICES AND DEVELOPMENT AGENCY MINUTES

February 24, 2021

AGENCY MEMBERS PRESENT

Douglas Scarboro, Chair
R.G. Rick Chinn, Vice-Chair
Thomas Alsup
Laura Beth Brown
Paul Korth
Dr. Kenneth Patric
Corey Ridgway
Todd Taylor
Keith Gaither, Designee for TennCare
Jaclyn Harding, Designee for Comptroller
Lisa Jordan, Designee for Commerce & Insurance Commissioner

AGENCY STAFF PRESENT

Logan Grant, Executive Director Jim Christoffersen, General Counsel Lowavia Eden-Hoback, Office and Resource Manager Phillip Earhart, Deputy Director Steve Bock, Administrative Assistant I Alecia Craighead, Information and Data Analyst Dave Elenbaas, HSDA Health Data and Policy Administrator Thomas Pitt, HSD Examiner

COURT REPORTER

April Daniel

GUESTS PRESENT

Imad Abdullah
Tim Adams
Graham Baker
Michael Banks
Camille Barkalow
Michael Brent
S. Brinkley
Mayor Bill Brittain
Dere Brown
Wade Bryant
Joe Burchfield
Brittney Burns
Charlotte Burns
Mayor Gary Chesney

Chad Clabough
Dr. Jon Cornelius
Patti Cotton
Dr. David Crawford
Christopher Cunningham
Sue Dyer
Danny Edsell
Dan Elrod
Tim Evans
Ginna Felts
Bryce Fitzgerald
Susan Gant
Donovan Guidry
Chris Hartshorn
Joey Hassell
Jay Hinesley
Dr. Brett Inglis
EB Jackson-Bratcher
Jordan Johnson
Elizabeth Jones
Kyle Kopec
Matthew Kroplin
Peggy Leath
Laura Linn
Gordan Lintz
Dr. Jackie Livesay
Mayor David Livingston
Kim Looney
Ron Luke
Arthur Maples
Brian Marger
Ginger Martindale
Jennifer McGugin
Martin McKay
Trey McNear
Robyn Morrissey
Scott Nation
Dr. Keith Nord
Kristen O'Connor
Kathy Platt
Ruth Portacci
M. Ramey
Mayor Bill Rawls

Ann Reed
Mike Richardson
Katherine Rippey
Zach Roberts
Allison Rogers
Billy Rolfe
Grant Rutledge
John Snyders
Clark Spoden
Dan Sullivan
Travis Swearingen
Fahad Tahir
Jerry Taylor
Will Taylor
Byron Trauger
Wells Trompter
Todd Ussery
Rick Wagers
Senator Page Walley
David Whelan
Kari Widdifield
John Wesley Williamson
Daniel Winkler

CALL TO ORDER:

The meeting was called to order at 8:30 a.m. by Mr. Scarboro with the following members present: Ridgway, Jordan, Gaither, Korth, Brown, Harding, Patric, Alsup, and Scarboro. A quorum was established with nine members being present. Taylor joined after roll call.

DIRECTOR'S ANNOUNCEMENTS

- The April 28, 2021 board meeting will be held by WebEx.
- Logan Grant introduced Tom Pitt as HSDA Examiner who filled the position of Phillip Earhart, after his promotion to Deputy Director.

APPROVAL OF MINUTES

Mr. Scarboro presented the December 12, 2020 minutes for approval. The motion CARRIED [10-0-0] unanimously by voice vote. **APPROVED**

CONSENT CALENDER

Haywood County Community Hospital, Brownsville (Haywood County), TN CN2012-037

Request: The establishment of a 49-bed full service acute care hospital located at 2545 North Washington Avenue, Brownsville (Haywood County), TN 38012. The applicant is owned by Braden Health, Inc. The proposed service area consists of Haywood County. The estimated project cost is \$2,568,700.

Dr. Patric moved for approval with Ms. Harding providing the second.

Factual and Legal Basis for Approval:

Need – The applicant is proposing to establish a 49-bed rural acute care hospital facility in Haywood County, Tennessee, which does not have any existing licensed hospital beds, forcing residents to travel a minimum of 24 miles to the nearest hospital for emergency and inpatient services. Additionally, the applicant states that there is an increased bed need in this part of the west Tennessee region that is resulting from Covid-19, along with the closure of a rural hospital in the region in Perry County. The applicant is projecting 4,500 emergency department visits and 1,680 inpatient admissions in Year One, and 6,500 emergency visits and 2,280 inpatient admissions in Year Two.

Economic Feasibility – The applicant projects free cash flow of \$390,900 by Year Two of the project. The project will be funded by cash reserves through the applicant's owner, Braden Health, Incorporated, during the hospital starter period.

Healthcare that Meets Appropriate Quality Standards – The applicant will pursue Medicare and Medicaid certification and will seek accreditation from DNV GL.

Contribution to the Orderly Development of Healthcare – The 49-bed acute care hospital will contribute to the continuum of care in delivering a range of medical services available in Haywood County.

Ten members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Taylor, Harding, Alsup, and Scarboro. The motion CARRIED [10-0-0].

Wellmont Medical Associates, Johnson City (Washington County), TN CN2012-038

Request: The establishment of an outpatient diagnostic center (ODC) and initiation of MRI services located at 301 Med Tech Parkway, Suite 100, Johnson City (Washington County), TN 37604. Diagnostic services to be provided include MRI (1.5 Tesla), CT, Ultrasound, and X-Ray services. The applicant is owned by Ballad Health. The proposed service area consists of Carter, Sullivan, and Washington Counties. The estimated project cost is \$2,983,522.

Mr. Korth moved for approval with Dr. Patric providing the second.

Factual and Legal Basis for Approval:

Need – The proposed project involves reclassification of existing hospital-based imaging services at its affiliate hospital, Johnson City Medical Center. As a freestanding ODC, it does not involve the addition of imaging services, including the MRI service in the service area. The applicant projects 11,361 total imaging procedures in Year One. And, in Year Two of the proposed project. The total project cost of the proposed project will be funded by cash reserves.

Economic Feasibility – The applicant projects free cash flow of \$779,498 in Year One and \$768,406 in Year Two. The project will be funded by cash reserves.

Healthcare that Meets Appropriate Quality Standards – The applicant will seek licensure of the proposed Outpatient Diagnostic Center with MRI by the Tennessee Department of Health, Medicare and Medicaid certification, and accreditation with the American College of Radiology.

Contribution to the Orderly Development of Healthcare – Approval of this project only results in the applicant's reclassification of existing hospital-based imaging center to a separately licensed Outpatient Diagnostic Center.

Ten members voted to approve the application-Ridgway, Jordan, Gaither, Patric, Korth, Brown, Taylor, Harding, Alsup, and Scarboro. The motion CARRIED [10-0-0].

Regional One Health, Memphis (Shelby County), TN CN2012-039

Request: The initiation of PET/CT services located at 1588 Union Avenue, Memphis (Shelby County), TN 38104. If approved, the existing PET/CT unit will be leased from West Cancer Clinic-Midtown (West) and operated as a department of Regional One Health. The application will not add to the number of PET units in Shelby County. The applicant is owned by Shelby County Healthcare Corporation, dba Regional One Health. The proposed service area is Shelby County. The estimated project cost is \$932,064.

Mr. Ridgway moved for approval with Dr. Patric providing the second.

Factual and Legal Basis for Approval:

Need – The applicant is proposing to continue the operation of an existing PET/CT service without any location change or the addition of a PET/CT unit in the service area. While this scanner has not met the minimum standard for the number of scans per year, it has provided a convenient accessible service for cancer patients in the Midtown area of Memphis, which concludes a higher minority population, greater percentage of TennCare patients, and a greater rate of mortality of cancer in the state.

Economic Feasibility – The applicant projects free cash flow of \$144,215 in Year One, increasing to \$175,509 in Year Two. The project will be funded by cash reserves.

Healthcare that Meets Appropriate Quality Standards – The applicant is Medicare and Medicaid certified and will seek accreditation from The Joint Commission and the American College of Radiology.

Contribution to the Orderly Development of Healthcare - Approval of this project results in the continuation of PET/CT services to oncology patients at an established location. The PET/CT service will operate as a department of Regional One Health, which already has transfer agreements with local hospitals.

Ten members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Taylor, Harding, Alsup, and Scarboro. The motion CARRIED [10-0-0].

Rick Chinn joined the meeting.

CERTIFICATE OF NEED APPLICATIONS

Five certificate of need applications were considered under TCA § 68-11-1609(b) which notes the conditions that must be met in order to grant a certificate of need—when the action proposed in the application is necessary to provide needed health care in the area to be served, can be economically accomplished and maintained, will provide health care that meets appropriate quality standards, and will contribute to the orderly development of adequate and effective health care facilities or services.

Phillip Earhart introduced each of the five applications under consideration with four being approved and one denied.

Oak Ridge Surgery Center, Oak Ridge (Anderson County), TN CN2007-018

Mr. Taylor recused

Request: The establishment of a single specialty ambulatory surgical treatment center (ASTC) located at 101 Donner Drive, Oak Ridge (Anderson County), TN 37830. If approved, the ASTC will provide interventional pain management procedures and injections in one (1) procedure room within a 3,484 square foot facility. The applicant is owned by Oak Ridge Surgery Center, LLC. The proposed service area consists of Anderson, Campbell, Loudon, Knox, Monroe and Roane Counties. The estimated project cost is \$994,650.

Mr. Ridgway moved to approve the application with Dr. Patric providing the second.

Factual and Legal Basis for Approval:

Need – This is necessary for Elite Pain Consultants to be able to have this surgery center and the procedure room to offer IV conscious sedation to their patients that are undergoing these pain management procedures. And, there is a growing need across the country, as we continue to have a need for conservative non-opioid treatment modalities.

Economic Feasibility – The applicant has provided support that they have adequate funding with a commercial loan up to \$750,000 from Southern Heritage Bank, and they have positive operating margins and cash flows in the first two years of the operation.

Healthcare that Meets Appropriate Quality Standards – The applicant will pursue licensure through the Tennessee Department of Health and also accreditation through AAAHC.

Contribution to the Orderly Development of Healthcare – This proposed ASTC is practice-based and single-specialty and will only be serving EPC patients, so it will not have any adverse effect on any existing facilities. And there was no opposition for this application.

Ten members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Harding, Alsup, Chinn, and Scarboro. The motion CARRIED [10-0-0].

Covenant Health Diagnostic Center South, Knoxville (Knox County), TN CN2010-031

Mr. Taylor recused

Request: The establishment of an Outpatient Diagnostic Center (ODC), at a currently unaddressed site on the southeast corner of Chapman Highway (US-441/SR-71) and Mountain Grove Drive in Knox County, TN 37920. The proposed ODC will provide the following imaging services: Mobile MRI (1.5T); CT (64-slice); X-Ray; Mammography; Ultrasound; Bone Density; Fluoroscopy; EKG; and Echocardiography. The proposed project will not include pediatric MRI services. The proposed service area consists of Knox and Sevier Counties. The applicant is owned by Covenant Health. The estimated project cost is \$11,498,692.

Ms. Jordan moved to approve the application with Mr. Ridgway providing the second.

Factual and Legal Basis for Approval:

Need – The project is needed to address the utilization demands at other Covenant facilities and to complement Covenant Health's network of healthcare services. The ODC is needed to adapt to the increase steerage of imaging patients to ODCs to decrease costs. There is also a need to address the increasing demand for outpatient diagnostic services due to population growth in the area and in aging population.

Economic Feasibility – The project can be funded by the parent's cash reserves and is expected to achieve positive cash flow in the first year of operation.

Healthcare that Meets Appropriate Quality Standards – The applicant will obtain licensure of the Department of Health and will seek Medicare and Medicaid certification and accreditation by the American College of Radiology.

Contribution to the Orderly Development of Healthcare –The project will provide better access to state-of-the-art imaging services and a lower-cost alternative to hospital-based imaging, especially to residents of Sevier County and south Knox County where no other ODCs exist. Since most patients referred to the ODC will be Covenant patients being steered from Covenant hospitals, there should not be a negative impact on nonaffiliated providers in this service area.

Ten members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Harding, Alsup, Chinn and Scarboro. The motion CARRIED [10-0-0].

NOMA, PC, dba Sports, Orthopedics, and Spine, Jackson (Madison County), TN CN2011-034

Request: The initiation of a 1.5T MRI service at 111 Stonebridge Blvd, Jackson (Madison County), TN 38305. The proposed service area consists of Dyer, Decatur, Gibson, Hardeman, Madison, and McNairy Counties. The applicant is owned by Noma P.C. The estimated project cost is \$1,226,439.

Ms. Jordan moved for approval with Ms. Harding providing the second.

Factual and Legal Basis for Approval:

Need – The purpose of this CON is to approve the initiation of MRI services under a new corporate entity. The MRI referenced in this application is an existing physician practice-based unit. MRI services are still needed for the patients of Sports, Orthopedic and Spine, and this MRI is the only one in Madison County that has metal suppression technology, which allows MRIs on patients with metal in their bodies.

Economic Feasibility – The project can be funded by a commercial loan and is expected to basically break even in Year Two of operation. It's noted in the application that the applicant serves a large percentage of Medicare and TennCare patients, and the applicant intends to contract with all four TennCare MCOs and continue serving Tricare patients.

Healthcare that Meets Appropriate Quality Standards – The practice physicians are currently Medicare and Medicaid certified, and the applicant is accredited by the American College of Radiology, and the applicant commits to maintaining these certifications and accreditation.

Contribution to the Orderly Development of Healthcare - This project is not adding MRI services to the service area, and because its use will be limited to patients at Sports, Orthopedic and Spine, it will not have a negative impact on other MRI providers.

Eleven members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Taylor, Alsup, Harding, Chinn and Scarboro. The motion CARRIED [11-0-0].

Lebanon Surgicenter, Lebanon (Wilson County), TN CN2011-033

Ms. Brown, Ms. Harding, and Mr. Ridgway recused

Request: The establishment of a multi-specialty ambulatory surgical treatment center with two (2) operating rooms and one (1) procedure room located at an undeveloped site west of South Hartmann Drive and North of Willard Hagan Drive (adjacent to 920 South Hartmann Drive) in Lebanon (Wilson County), Tennessee 37090. The proposed service area consists of Wilson County. The applicant is wholly owned by Surgicare of Lebanon, LLC. The estimated project cost is \$12,910,712.

OPPOSITION: Was filed by Vanderbilt Wilson County Hospital and St. Thomas/USP Surgery Centers, LLC.

Mr. Taylor moved for approval to deny with Dr. Patric providing the second.

Factual and Legal Basis for Denial:

Two reasons: The application does not meet the need standard, based off the unused capacity at the current facilities in the service area. And it also doesn't meet orderly development as I don't feel it would improve the access to care, and it's certainly a duplication of unnecessary services at this time.

Eight members voted to approve the denial of the application— Jordan, Gaither, Patric, Korth, Taylor, Alsup, Chinn and Scarboro. The motion CARRIED [8-0-0].

Morristown Hamblen Hospital Association dba Morristown Hamblen Healthcare System, Morristown (Hamblen County), TN CN2011-036

Mr. Alsup excused himself from the meeting.

Request: The establishment of a newly constructed Freestanding Emergency Department (FSED) to be licensed and operated as a satellite emergency department of Morristown-Hamblen Healthcare System. The 27,050 SF eight (8) treatment room facility will be located 4.7 miles from the host hospital at a currently unaddressed site at the intersection of 400 South Bellwood Road and 700 Merchants Greene Boulevard in Morristown (Hamblen County), Tennessee, 37920. The proposed project will also initiate MRI services at this location, by relocating an existing 1.5T MRI unit from the main hospital campus. The proposed service area consists of Hamblen County. The applicant is owned by Covenant Health. The estimated project cost is \$16,917,374.

OPPOSITION: Was filed by Tennova Healthcare Jefferson Memorial Hospital.

Dr. Patric moved for approval with Mr. Taylor providing the second.

Factual and Legal Basis for Approval:

Need – There has been and appears to be increased utilization in the ER services for the current facility since the closure of the other hospital in 2018. Owing to some of the socioeconomic ethnicity issues in that particular area, particularly the county, the complexity of the patients in the emergency room, as we heard from the medical director there, mean that there is more waiting time and even more medical complexity. And all of this being done in a 50-year-old facility with no reasonable way for updating or expanding.

Economic Feasibility – While the freestanding unit will not break even for at least three years, they can rely on the reserves of the mothership and other revenue and financing.

Healthcare that Meets Appropriate Quality Standards – They will seek all the required licensure, certification, and accreditation that will be required, and the current mothership already has all of those in place.

Contribution to the Orderly Development of Healthcare – There is broad based support from the physicians, local physicians, local business, and officials. And, again, rather than looking at this as a, quote, piecemeal, unquote, approach, I view it as a more rational incremental planning approach and see that the decision of approving this is consistent with other decisions that we've made such as in the Clarksville area.

Nine members voted to approve the application—Ridgway, Jordan, Gaither, Patric, Korth, Brown, Taylor, Harding, and Scarboro. Chinn voted nay. Alsup abstained. The motion CARRIED [9-1-1].

BHG LXIV dba BHG Clinton Treatment Center, Clinton (Anderson County), TN - CN2011-035 (Deferred to April 2021 Meeting)

<u>General Counsel</u> <u>Optum Infusion Services 305, LLC, Memphis (Shelby County), TN CN1606-022A</u>

Request to Modify Condition

CN1606-022A is conditioned to limit the scope of services to infusion of immune globulin ("IVIG") pharmaceuticals only. Optum seeks a modification of that condition to expand the scope of services to allow for infusion of all pharmaceuticals dispensed by Optum pharmacies.

The service area impacted by this request is limited to the following West Tennessee counties: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley.

OPPOSITION: Was filed by Baptist Memorial, Regional One Medical Center, West Tennessee Health Care, and The West Clinic.

(Deferred to April 2021)

Optum Infusion Services 305, LLC, Memphis (Shelby County), TN CN1702-008A

Request to Modify Condition

CN1702-008A is conditioned to limit the scope of services to infusion of immune globulin ("IVIG") pharmaceuticals only. Optum seeks a modification of that condition to expand the scope of services to allow for infusion of all pharmaceuticals dispensed by Optum pharmacies.

The service area impacted by this request is limited to the following East Tennessee counties: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union and Washington.

OPPOSITION: Was filed by University of Tennessee Medical Center, Covenant/Thompson Cancer Survivor Institute, Tennessee Cancer Specialists, Tennessee Oncology Practice Society and Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Health System.

(Deferred to April 2021)

Mr. Christoffersen provided a Contested Case Update.

Mr. Earhart provided an Annual Continuing Need/Quality Measures Report Update.

ADJOURNMENT

There being no further business, the meeting adjourned.

Logan Grant, Executive Director

HSDA Minutes provide a brief summary of agency actions. A detailed record of each meeting (recording and transcript) is available upon request by contacting the HSDA office.

1	STATE OF TENNESSEE
2	HEALTH SERVICES AND DEVELOPMENT AGENCY
3	
4	
5	EXCERPT OF PROCEEDINGS
6	February 24, 2021
7	LEBANON SURGICENTER,
8	CN2011-033 (Motion to Deny)
9	(MOCION CO Deny)
10	
11	
12	
13	
14	Hearing Conducted Through CISCO WEBEX
15	
16	
17	
18	
19	Prepared By: Ace Court Reporters
20	April N. Daniel License No. 141
21	Post Office Box 158395
22	Nashville, Tennessee 37219 (615) 516-9921
23	stenoquick82@gmail.com
24	
25	

1	The following excerpt contains project
2	CN2011-033, Lebanon Surgicenter, and was heard on
3	Wednesday, February 24, 2021, beginning at 8:30 a.m.,
4	via Cisco Webex before a quorum of the following board
5	members:
6	
7	DOUGLAS SCARBORO, CHAIRMAN
8	R.G. RICK CHINN, JR., VICE CHAIRMAN COREY RIDGWAY
9	LISA JORDAN KEITH GAITHER
10	KENNETH PATRIC, M.D. PAUL KORTH
11	LAURA-BETH BROWN TODD TAYLOR
12	THOMAS ALSUP JACLYN HARDING
13	
14	AGENCY STAFF PRESENT:
15	Logan Grant, Executive Director
16	Jim Christoffersen, General Counsel
17	Phillip Earhart, Deputy Director
18	Alecia L. Craighead, Information and Data Analyst
19	Lowavia Eden-Hoback, Office and Resource Manager
20	David Elenbass, Health Data and Policy Administrator
21	Thomas Pitt, HSD Examiner
22	
23	
24	Court Reporter: April N. Daniel, LCR
25	LCR No. 141 Expires 6/30/2022

1	LEBANON SURGICENTER, CN2011-033
2	(Motion to Deny)
3	MR. SCARBORO: All right. Let's get
4	everybody back on. I know we have a few recusals on
5	this one. Ms. Brown, Ms. Harding, and Mr. Ridgway are
6	recusing on this one. All right. I think we have
7	everybody on. So let's hear the CON for Lebanon
8	Surgicenter, CN2011-033. Mr. Earhart, could you
9	introduce the application, please.
10	MR. EARHART: Lebanon Surgicenter,
11	Lebanon, Wilson County, Tennessee, CN2011-033. This
12	application is for the establishment of a
13	multi-specialty ambulatory surgical treatment center
14	with two operating rooms and one procedure room located
15	at an undeveloped site west of South Hartmann Drive and
16	north of Willard Hagan Drive adjacent to 920 South
17	Hartmann Drive in Lebanon, Wilson County, Tennessee
18	37090. The proposed service area consists of Wilson
19	County. The applicant is wholly owned by Surgicare of
20	Lebanon, LLC. The estimated project cost is
21	\$12,910,712. There is opposition to this project,
22	Vanderbilt Wilson County Hospital, LLC. Speaking on
23	behalf of the applicant will be Matt Kroplin and Clark
24	Spoden.
25	MR. SCARBORO: All right. Thank you,

- 1 Mr. Earhart. As you've heard, there is registered
- 2 opposition to this. Is there anybody who supports the
- 3 application that's not part of the application?
- 4 (None noted.)
- 5 MR. SCARBORO: All right. Seeing none.
- 6 The applicant has asked for additional --
- 7 MR. SPODEN: Mr. Chairman --
- MR. SCARBORO: Go ahead.
- 9 MR. SPODEN: Mr. Chairman, there is a
- 10 member of the public who has signed on this morning who
- 11 wants to speak in favor of the application.
- MR. SCARBORO: All right. When we get to
- 13 that point, we'll make sure we recognize them. The
- 14 applicants asked for ten additional minutes, so that's
- 15 a total of 20 minutes, and I had approved that. So,
- 16 applicant, you can go ahead and start with 20 minutes,
- 17 and then we'll give equal time to the opposition as
- 18 well. You can go right ahead.
- MR. SPODEN: Thank you, Mr. Scarboro and
- 20 Agency. This is Clark Spoden. I represent Lebanon
- 21 Surgicenter in this application for a Certificate of
- 22 Need. With me today is also my partner, Matt Kroplin.
- 23 And then also speaking today in addition myself in this
- 24 order will be Tim Evans, the senior vice president for
- 25 the HCA ambulatory surgery division, Dr. Jonathan

- 1 Cornelius with the Hughston Clinic, and Brian Marger,
- 2 CEO of TriStar Summit Medical Center.
- 3 The requested medical ASTC will be
- 4 located, as stated before, in Lebanon, Tennessee,
- 5 centrally located in Wilson County. It will be a
- 6 multi-specialty ASTC with various specialties you'll
- 7 hear about during the presentation today, two operating
- 8 rooms and one procedure room, and will cost just shy of
- 9 \$13 million. The project is funded by HCA Healthcare,
- 10 Inc. and the physicians who will be participating in
- 11 the ASTC.
- 12 The primary reason for this ASTC request
- 13 for this Certificate of Need is because the vast
- 14 majority of Wilson County residents who are getting
- 15 outpatient surgeries in surgery centers are getting
- 16 them in places other than Wilson County. Almost
- 17 80 percent of the patients who get outpatient surgeries
- 18 in surgery centers are going to TriStar Summit Medical
- 19 Center and TriStar Surgery Center, and the purpose of
- 20 this request is to have an ASTC in Wilson County so
- 21 that those Wilson County residents can get their
- 22 surgeries in the county.
- 23 And the doctors who are interested in
- 24 participating in this surgery center are affiliated
- 25 with TriStar today, so these are not cases that would

- 1 be taken from the parties that are opposing the
- 2 application today. These are cases that are currently
- 3 being performed by TriStar affiliated physicians in
- 4 TriStar facilities in Nashville primarily. And so the
- 5 purpose is to offer Wilson County residents an
- 6 effective mechanism to get their surgeries in Wilson
- 7 County. And, as I said, it will have many different
- 8 surgeries involved, 14 in all.
- 9 So need is shown in this case by the fact
- 10 that 80 percent of the -- almost 80 percent of the
- 11 patients who are getting treated are going outside of
- 12 the county. So, obviously, the need for those patients
- is not being met. There's been some reference to the
- 14 fact that the population of Wilson County is located
- 15 centrally or significantly in Mt. Juliet, but the
- 16 congestion is going to be less going from Mt. Juliet to
- 17 Lebanon than it will be going from Mt. Juliet to
- 18 Nashville.
- 19 And it contributes to orderly development
- 20 because it is not going to hurt the other centers
- 21 because the patients that are being treated are not
- 22 being treated at those centers today. They're being
- 23 treated in TriStar centers in Nashville.
- It meets the appropriate quality
- 25 standards. It will be certified by the appropriate

- 1 agency. And it's economically feasible, as
- 2 demonstrated by the application, which shows the cash
- 3 flows in year one and even more significantly in year
- 4 two.
- 5 So let me turn this over now to
- 6 Tim Evans, who is in charge of the ambulatory surgery
- 7 division for HCA. Thank you.
- 8 MR. EVANS: Thank you, Clark. Good
- 9 morning. My name is Tim Evans, and I'm senior vice
- 10 president for HCA for the ambulatory surgery division.
- 11 I thank you this morning for the opportunity to speak.
- 12 I would like to provide a few details, more details,
- 13 about the project and about the need.
- 14 First, Lebanon Surgicenter will offer a
- 15 wide array of specialty. Initially, the center will be
- 16 doing orthopedics, pain management, general surgery,
- 17 plastics, ENT, and GI. Currently, in Wilson County,
- 18 there are no multi-specialty ASTCs that will offer this
- 19 range of specialties. The two multi-specialty ASTCs in
- 20 Wilson County, Phoenix Surgery Center, only offers
- 21 orthopedics. And Providence, based on the Joint Annual
- 22 Reports from the past three years, primarily have only
- 23 been doing orthopedic, ENT, and pain management.
- We've provided a map of the service area
- 25 for the project. And, as you can see, the Lebanon

- 1 Surgicenter, which is the star on the map, is located
- 2 in the heart of Wilson County, providing convenient
- 3 access for all Wilson County patients. And, really,
- 4 that's what this project is about. It's about the
- 5 patients in Wilson County and about the residents in
- 6 Wilson County.
- 7 As you can see in slide A, and to expand
- 8 on what Clark said earlier, there's a huge out
- 9 migration of residents leaving Wilson County for
- 10 surgery and for healthcare. In 2019, 79 percent of the
- 11 Wilson County residents having surgery in an ASTC left
- 12 Wilson County, 79 percent. Most were done in Davidson
- 13 County. And many of these Wilson County residents had
- 14 surgery at a TriStar ASTC. Of the almost 9,000
- 15 patients that went outside of Wilson County, 24 percent
- 16 of those were done at a TriStar ASTC located in
- 17 Davidson County.
- 18 This project will provide an opportunity
- 19 to reduce this out migration. In year two of our
- 20 five-year projection, the center will be at 68 percent
- 21 capacity, and by year four, 71 percent capacity,
- 22 satisfying the State Health Plan's optimal utilization
- 23 standard.
- 24 It would be poor health planning on our
- 25 part if we only requested one OR or one operating room

- 1 because we would be over capacity by the end of year
- one. And, by comparison, the Lebanon Surgicenter far
- 3 exceeds project utilization from the Westlawn Surgery
- 4 Center CON application that was approved by the board
- 5 back in June of 2020.
- 6 With the approval of Lebanon Surgicenter,
- 7 there will still be plenty of growth opportunity and
- 8 growth potential for the existing providers in Wilson
- 9 County. The bar on the left represents the 79 percent
- 10 of Wilson County residents that traveled outside of
- 11 Wilson County for surgery. Only 21 percent stayed in
- 12 Wilson County. Looking at the bar on the right, by
- 13 year five, our project, Lebanon Surgicenter, will
- 14 reduce this out migration by 24 percent. The remaining
- 15 60 percent -- that's almost 7,000 patients -- there
- 16 leaves plenty of opportunity and growth potential for
- 17 the two existing ASTCs -- excuse me -- for the two
- 18 existing multi-specialty ASTCs in the market.
- 19 Our project has strong physician support,
- 20 and our project's 2,158 cases that you see there are
- 21 all from our TriStar affiliated physicians. The
- 22 Hughston Clinic orthopedic physicians and other TriStar
- 23 affiliated physicians want and desire an ASTC in
- 24 Lebanon for their Wilson County residents.
- 25 And with that, I would like to introduce

- 1 our next speaker, Dr. John Cornelius, with the Hughston
- 2 Clinic. Thank you.
- 3 DR. CORNELIUS: Thank you, Tim. My name
- 4 is John Cornelius. I'm an orthopedic surgeon in
- 5 Lebanon, Tennessee. I'm also the president of Hughston
- 6 Clinic Orthopaedics. We have 28 providers and 11
- 7 office locations throughout middle Tennessee, so I do
- 8 feel equipped to comment on the healthcare landscape
- 9 here in middle Tennessee.
- 10 That being said, my practice is located
- 11 entirely in Lebanon, Tennessee, in the heart of Wilson
- 12 County. I started practice in 2009. My practice
- 13 predates the arrival of HCA as well as Vanderbilt and
- 14 Saint Thomas. So I do feel uniquely positioned to
- 15 comment on the need of our community. Our practice in
- 16 Lebanon includes myself, as well as Dr. Shawn Mountain
- 17 and Dr. Luke Richie. The three of us have been
- 18 practicing together since 2015. We perform
- 19 approximately 1,500 surgical procedures per year;
- 20 including this past year, Covid year, we did 1,500
- 21 surgical cases. So we've managed to care for our
- 22 patients in our community through these difficult
- 23 times.
- In spite of the difficulty, we've added
- 25 services to our Lebanon office. We've added a hand

- 1 surgeon as well as a pain specialist to our practice.
- 2 So these providers here in Wilson County are certainly
- 3 longing for an ASTC that would accommodate all the
- 4 patients in Wilson County.
- 5 It's not just the Hughston Clinic that
- 6 supports this project. There are 20 letters of support
- 7 from colleagues, 14 of which are surgical colleagues of
- 8 mine. Varying locations throughout middle Tennessee,
- 9 but we all provide surgical care for Wilson County
- 10 patients in Davidson County currently. They've -- some
- 11 practices here have invested in a health park in
- 12 Lebanon, and Hughston Clinic intends to support this
- 13 health park as well.
- 14 As I've stated, our surgical volume now
- 15 is being performed in Davidson County currently. Not
- 16 just our practice, but these 14 surgeons as well
- 17 unanimously support the development of an ASTC here in
- 18 Wilson County.
- The bigger need really speaks to the
- 20 future of healthcare. Currently, joint replacements
- 21 are being done in hospital-based settings. Of our
- 22 1,500 surgical cases last year, greater than 600 were
- 23 arthroplasty cases or joint replacements. In the year
- 24 2016, the American Academy of Orthopedic Surgeons
- 25 estimated that 10 percent of joint replacements were

- 1 done in an ASC setting. The same academy projects
- 2 that, by the year 2026, 60 percent of joint
- 3 replacements will be performed in an ambulatory
- 4 surgical center. That's approximately one million
- 5 patients in America every year going forward. So,
- 6 certainly, the practice of orthopedics is transitioning
- 7 essentially entirely to an ambulatory surgical
- 8 environment.
- 9 That meets the need for the future of our
- 10 patients to be able to have joint replacement surgeries
- 11 as well as other traditional ambulatory surgeries in an
- 12 ambulatory surgical center. The only current
- 13 ambulatory surgical center in Lebanon is Phoenix
- 14 Surgery Center, which is wholly owned by a sole
- orthopedic surgeon, a competitor of ours, and is not
- 16 contracted with any of our patients' payors. So it's
- 17 not a currently viable alternative for our practice.
- 18 Make no mistake, the need is very clear.
- 19 The future of orthopedics involves arthroplasty in
- 20 ASCs, and there are currently no ASCs in Wilson County
- 21 to accommodate that.
- 22 With that, I will introduce Brian Marger,
- 23 the CEO of Summit hospital.
- MR. MARGER: Thank you, Dr. Cornelius.
- 25 Good morning. My name is Brian Marger, and I have the

- 1 pleasure of serving as the CEO of TriStar Summit
- 2 Medical Center. I appreciate some time this morning.
- 3 As you've heard, TriStar Summit Medical
- 4 Center and Summit Surgery Center are the largest
- 5 providers of outpatient surgery for the residents of
- 6 Wilson County. While we are the largest surgical
- 7 provider for Wilson County residents, TriStar Summit
- 8 has no surgical location in Wilson County. So
- 9 thousands of patients each year are driving west to
- 10 receive their care at our locations in Davidson County.
- 11 Our patients who reside in Lebanon want
- 12 to receive care at a TriStar facility by a TriStar
- 13 affiliated physician, and they want and deserve to get
- 14 this care in the community where they live.
- 15 The Lebanon Surgicenter project addresses
- 16 this significant gap and furthers TriStar Summit's
- 17 mission of providing high-quality, cost-effective care
- 18 in the community where our patients live, in this case,
- 19 Lebanon, Tennessee, in Wilson County. While you will
- 20 hear the opposition state that optimal utilization has
- 21 not been achieved at the two existing multi-specialty
- 22 ASTCs, one thing for certain is that it is not due to
- 23 lack of community need nor demand. As discussed
- 24 earlier, nearly 9,000 patients are leaving Wilson
- 25 County to get their care in an ASTC outside of the

- 1 county.
- 2 Rather than -- rather, existing sites
- 3 have not attracted physician interest for a variety of
- 4 reasons. This could be facility limitations, size of
- 5 the rooms, availability of specialty equipment,
- 6 insurance plan limitations, as Dr. Cornelius just
- 7 mentioned with several of his patients, or physician
- 8 ownership or syndication opportunities. Because of the
- 9 broad physician support -- again, fourteen surgeons
- 10 across six different specialties -- we are fully
- 11 confident that our project will achieve optimal
- 12 capacity over the two-year period of time. In fact,
- 13 and as Dr. Cornelius mentioned, subsequent to the
- 14 filing of this application, additional surgeons have
- 15 moved into the community and have expressed full
- 16 interest in participating with this project; and thus,
- 17 we believe that our estimates are actually quite
- 18 conservative and will achieve that optimal capacity in
- 19 advance of year two.
- I would like to stress the point that was
- 21 made earlier that this project will not affect those
- 22 providers opposing the project. The Lebanon
- 23 Surgicenter is partnering with TriStar affiliated
- 24 physicians and serving TriStar patients. The majority
- 25 of our physician partners that we've mentioned do not

- 1 currently perform cases at Vanderbilt Wilson County
- 2 Hospital or any of the Wilson County surgery centers.
- In the end, with 9,000 Wilson County
- 4 residents receiving their care at an ASTC outside of
- 5 the county and TriStar being the leading provider of
- 6 these services, it seems that the Lebanon Surgicenter
- 7 addresses a significant community need and provides a
- 8 needed alternative to those physicians and those
- 9 patients who are either not wanting or able to receive
- 10 care at a Saint Thomas owned center or a Vanderbilt
- 11 owned hospital. Thank you. I'll now turn it back over
- 12 to Clark.
- 13 MR. SCARBORO: You have about four more
- 14 minutes.
- MR. SPODEN: Thank you, Mr. Chairman,
- 16 very much. So the main point I want to highlight is
- 17 this out migration issue, is actually accepted by the
- 18 opponents. We quote in this slide here, slide 20, the
- 19 sentence straight from the USPI opposition letter. The
- 20 out migration for surgery is a function of established
- 21 physician referral pattern, and the addition of an ASTC
- 22 will not disturb those patterns. That's exactly right.
- 23 The ASTC that we're going to put in Lebanon, Tennessee,
- 24 with your approval will provide the same physician
- 25 referral patterns that exists today. The doctors who

- 1 will be providing the services and participating in the
- 2 ownership of this facility are currently providing
- 3 those same cases primarily at Summit Medical Center and
- 4 Summit Surgery Center and other TriStar facilities as
- 5 well, and those same patterns of referral will follow
- 6 them to the ASTC in Lebanon. And so that shows you
- 7 exactly that -- USPI knows this. They put it in their
- 8 own letter expressing their opposition, but that is
- 9 exactly what's going on here.
- 10 In addition, as was mentioned, the
- 11 Providence center that's opposing this project, they
- 12 got approval from this very Agency to change their
- 13 facility, as noted in their application. It lacks the
- 14 physical capabilities to provide the services that are
- 15 needed. And so we are ready to provide those services
- 16 with the approval of this CON.
- 17 Other comments have been made in some of
- 18 the opposition about how some of the poor performance
- 19 of the existing facilities is somehow related to Covid.
- 20 And, of course, none of our data that supports our --
- 21 the facts that show that the patients are leaving the
- 22 county even occurred in 2020. The only data we've used
- 23 is data from up to and including 2019, which was before
- 24 Covid, as we all know. So, really, Covid has nothing
- 25 to do with the poor performance of the other centers

- 1 through 2019.
- 2 So I think I'll get a chance to visit
- 3 with you again in rebuttal and in summation. But I
- 4 want to highlight that this has broad community
- 5 support, as we submitted with our application in a
- 6 letter from the chairman of the chamber of commerce
- 7 there in Wilson County. And so we submit that this
- 8 meets all of the criteria for need, orderly
- 9 development, quality standards, and will be
- 10 economically feasible. As I said, I think I'll get a
- 11 chance to sum up in a little while. Thank you so much.
- 12 We hope you approve this CON application.
- MR. SCARBORO: Thank you much. I know we
- 14 had somebody supporting the application that's not part
- 15 of the application, so we can have that community
- 16 member now.
- 17 MR. SPODEN: Mr. Chairman, there she is.
- 18 MS. LEE. Hi. I'm Peggy Lee. I'm one of
- 19 Dr. Cornelius' patients. We desperately need this
- 20 surgery center in Lebanon because Nashville traffic is
- 21 getting so bad, and the older people, they have to have
- 22 family members to take them to Nashville. Can you hear
- 23 me?
- 24 MR. SCARBORO: We can hear you. Go
- 25 ahead, Ms. Lee.

- 1 MS. LEE: And the surgery centers, at
- 2 least they're cheaper than in the hospitals to be
- 3 admitted, and that way, the surgery centers, we can
- 4 have the surgery and then leave. So I recommend that
- 5 we have a surgery center in Wilson County because it's
- 6 desperately needed.
- 7 MR. SCARBORO: All right. Thank you
- 8 much, Ms. Lee.
- 9 MS. LEE: Thank you.
- 10 MR. SCARBORO: All right. Next we will
- 11 move on to the presentation for the opposition. The
- 12 opposition, you will get the same amount of time the
- 13 applicant gets or the applicant received and that was
- 14 20 minutes. So we will have -- we will hear from the
- 15 opposition now. You're still muted. Mr. Trauger,
- 16 you're muted.
- 17 MR. TRAUGER: Thank you, Mr. Chairman.
- 18 I'm Byron Trauger on behalf of two excellent healthcare
- 19 organizations, United Surgical Partners International
- 20 and Saint Thomas Health, who together comprise the
- 21 Saint Thomas USP Surgery Centers, LLC.
- We oppose this application because the
- 23 three ASTCs in Wilson County are, according to the
- 24 Department of Health, operating at less than 20 percent
- 25 of full capacity and because adding another ASTC will

- 1 damage those existing providers and physicians without
- 2 improving access or patient care one bit.
- 3 Saint Thomas USP operates 14 surgery
- 4 centers across middle Tennessee, including two in
- 5 Wilson County, that have been providing care there for
- 6 more than a decade. Additionally, we're purchasing a
- 7 third. Altogether, these physicians and organizations
- 8 have invested millions of dollars in Wilson County
- 9 existing centers.
- 10 If you'll turn in your packet to
- 11 slide two, it shows the surgical facilities that are
- 12 readily available today to Wilson County residents.
- 13 Number one on that slide is the Lebanon Endoscopy
- 14 Center. Number two is the Phoenix multi-specialty
- 15 surgery center. Number three is the Providence
- 16 multi-specialty center down in Mt. Juliet. Number four
- 17 is the community hospital, Vanderbilt Wilson County
- 18 Hospital. Number five is Associated Endoscopy.
- 19 Number six and seven are HCA's Summit Surgery Center
- 20 and Summit Medical Center respectively.
- 21 Finally, number eight is where the
- 22 applicant proposes to put yet another ASTC. You will
- 23 note that it is located immediately across the
- 24 interstate of two existing ASTCs in Lebanon. The other
- 25 day, I drove that distance in exactly one minute and

- 1 twenty-two seconds.
- 2 As slide three demonstrates, contrary to
- 3 what HCA would have you believe, the existing surgery
- 4 centers offer or in the case of the one under new
- 5 ownership will offer a broad range of medical
- 6 specialties. They just mentioned orthopedics and
- 7 otolaryngology and pain management. Gastroenterology
- 8 is already offered at Lebanon Endoscopy and down the
- 9 road at Associated Endoscopy. And general surgery is
- 10 available at our facility. These are the same
- 11 specialties that the applicant proposes to add. And
- 12 Providence also provides podiatry, which HCA doesn't
- 13 even mention and is in the process of credentialing a
- 14 plastic surgeon. And, in a new location, we'll be able
- 15 to offer urology as well. Thus, the application offers
- 16 no significant increase in the range of surgeries --
- 17 services to the community.
- 18 Let's then look at utilization. Are the
- 19 existing ASTCs full? Is there a need for another one?
- 20 Far from it. Slide four shows the existing ASTCs,
- 21 Lebanon Endoscopy and Providence Phoenix. As you see,
- 22 the overall utilization of operating rooms in yellow is
- 23 at 28 percent, and procedure rooms is at 25 percent.
- 24 Look at the individual utilization; 10 percent at
- 25 Phoenix, 55 percent at Providence, and 41 percent at

- 1 Lebanon. This reality is demonstrated graphically on
- 2 slide five for operating rooms. And there you see we
- 3 have measured utilization against the State Health
- 4 Plan's optimum utilization of 884 cases per OR. The
- 5 state's definition of full capacity, which the
- 6 Department of Health uses, is 30 percent higher and
- 7 results in the overall utilization at less than
- 8 20 percent.
- 9 Similarly, on slide six, you see the
- 10 serious underutilization of existing procedure rooms.
- 11 Well, does this application address the problem of
- 12 access? No, it does not. There are two distinct
- 13 population centers, as my friend Clark Spoden
- 14 mentioned, in Wilson County, one around Lebanon and one
- 15 in east and western extreme around Mt. Juliet.
- 16 Although HCA states that there is no
- 17 multi-specialty ASTC in Wilson County that offers a
- 18 broad range of surgeries, that's just not true.
- 19 Providence offers that broad range today, and under the
- 20 new ownership of Phoenix, when that is in place, it
- 21 will offer a similar broad range. Obviously, the
- 22 proposed center wouldn't improve access in Lebanon
- 23 because they're proposing it to be right on top of two
- 24 existing surgery centers with unused capacity.
- 25 Further, the project does not provide

- 1 improved access or convenience to the residents of
- 2 Mt. Juliet. Not only is there already a surgery center
- 3 there, Providence. But, as you see in slide seven,
- 4 Mt. Juliet residents are closer to the existing ASTCs
- 5 in Davidson County than they are to the ones -- one
- 6 that they propose in Lebanon. So there's no problem
- 7 with capacity, and there's no problem with access.
- 8 What about their argument that they need
- 9 another ASTC in order to treat Wilson County residents
- 10 closer to home? That argument is fichus as well. The
- 11 underutilized open-staff ASTCs; that is, any properly
- 12 credentialed physician can use them. So if
- 13 credentialed HCA affiliated physicians or others want
- 14 to schedule a case closer to home for Wilson County
- 15 residents, they can do so today. You don't have to
- 16 build another building for that to happen. In fact, if
- 17 you take all of the cases that HCA projects to do after
- 18 five years of operation and move every single one of
- 19 them into the existing surgery centers, those surgery
- 20 centers would still not be at half of full capacity.
- 21 And the absence of a current need for
- 22 this project is only part of this story. There's also
- 23 substantial future capacity built into the existing
- 24 centers. Six months ago before Covid hit -- six months
- 25 before Covid hit, this Agency approved the relocation

- 1 and expansion of the Providence ASTC, which continues
- 2 in operation and will be in the new location in 2022.
- 3 Slide eight shows that the relocated
- 4 facility will have capacity for three operating rooms,
- 5 two initially and one if the need arises. This nearly
- 6 \$5 million investment will increase the number and
- 7 range of outpatient surgery centers -- services offered
- 8 just down the road from Summit Surgery Center that HCA
- 9 says is overcrowded.
- 10 Further, Saint Thomas USP has recently
- 11 executed a binding contract to purchase Phoenix Surgery
- 12 Center in Lebanon, and their investment there is
- 13 greater than the total investment that HCA proposes in
- 14 this application. That purchase is far from
- 15 speculative as HCA might suggest. We have a fully
- 16 executed purchase agreement and the closing is
- 17 scheduled.
- 18 As you see, from slide nine, Phoenix was
- 19 only open for just a year before the pandemic arrived
- 20 and has been operating at only 10 percent of the
- 21 optimum capacity and almost exclusively treating
- 22 patients by the single physician who owns it. So,
- 23 clearly, it has great potential. It is effectively a
- 24 brand new surgery center. And now, with the expertise
- 25 that Saint Thomas and USP bring, together with the

- 1 support of physician partners, the Phoenix, if you'll
- 2 forgive me, will rise again.
- Just one example of the change in the new
- 4 ownership, and they've mentioned it in their
- 5 presentation just now: The Phoenix center now isn't
- 6 even contracted with Blue Cross and other payors. That
- 7 will change once Saint Thomas USP manages that system.
- 8 And let me be clear: This investment in Phoenix was
- 9 not a reaction to this application. We were
- 10 negotiating to purchase Phoenix well in advance of the
- 11 filing of this application.
- 12 Some of you will remember that three
- 13 years ago this Agency rejected an ASTC application by
- 14 the local hospital that would have threatened Phoenix
- 15 before it had an opportunity to establish itself. That
- 16 scenario repeats itself today, and the same result
- 17 should apply.
- 18 Additional capacity also exists at
- 19 Lebanon Endoscopy, as shown on slide ten. Recently,
- 20 two physicians who accounted for almost a third of the
- 21 cases there departed, opting to be employed by
- 22 Vanderbilt. Thus, there is even more unused capacity
- 23 there.
- Now, Dr. Brett Inglis, a board certified
- 25 gastroenterologist, will address the application from

- 1 the point of view of a Wilson County physician, and
- 2 I'll return to wrap up this portion of the
- 3 presentation.
- DR. INGLIS: Hello. My name is Brett
- 5 Inglis, and I'm a board certified gastroenterologist
- 6 practicing in Lebanon since 2014. I'm speaking today
- 7 for myself and my physician colleagues at Saint Thomas
- 8 USP, including those at Providence Surgery Center and
- 9 those who will soon practice at Phoenix Surgery Center.
- 10 I perform procedures at Lebanon Endoscopy Center, which
- 11 has been serving our community for a dozen years.
- 12 Lebanon Endoscopy is located across the parking lot
- 13 from Phoenix and just across the interstate from the
- 14 proposed HCA facility. Lebanon Endoscopy Center is
- 15 currently operating at less than half of its capacity.
- 16 Before two of our colleagues recently moved, we were at
- 17 about 60 percent utilization, from what I understand,
- 18 the state described as optimum capacity. Now we are at
- 19 closer to 40 percent. We have a great deal of unused
- 20 capacity at Lebanon Endoscopy Center. The truth is,
- 21 although the center is licensed for two procedure
- 22 rooms, there has never been a need to open the second
- 23 room, but we would like to open the second room. Like
- 24 the other Saint Thomas USP surgery centers, we are an
- 25 open-staff ASTC; that is, we welcome any properly

- 1 credentialed physician to do work at Lebanon Endoscopy
- 2 Center.
- 3 As slide eleven shows, we do quality work
- 4 at Saint Thomas USP surgery centers. I am particularly
- 5 proud of the awards that Lebanon Endoscopy has received
- 6 from the national -- from the National Guardian of
- 7 Excellence award, which is awarded only to the top
- 8 5 percent of surgery centers in the nation to the local
- 9 Best of Wilson County award.
- 10 Slide twelve shows some of the letters
- 11 from my colleagues explaining why putting another ASTC
- 12 in Lebanon at this time is just not a good idea. We
- 13 hope that you will reject this CON application. Thank
- 14 you for your time.
- MR. TRAUGER: Mr. Chairman, I'm Byron
- 16 Trauger again. Slide thirteen summarizes the lack of
- 17 need for this project. There is ample, even excessive,
- 18 outpatient surgical capacity in Wilson County, and that
- 19 capacity will increase significantly in the next few
- 20 months because, among other things, the actions of this
- 21 Agency to expand and support the Providence Surgery
- 22 Center and because of the purchase of Phoenix, which
- 23 will result in it becoming truly a multi-specialty
- 24 surgery center.
- Moreover, this project does nothing to

- 1 improve access to care, reduce costs or improve quality
- 2 of care. It would damage existing providers, both
- 3 physicians and quality health organizations, whose
- 4 invested millions of dollars and should to be given an
- 5 opportunity to mature. Now I'll turn the microphone
- 6 over to Travis Swearingen.
- 7 MR. SWEARINGEN: Thank you, Mr. Trauger.
- 8 Mr. Chairman and members of the Agency, my name is
- 9 Travis Swearingen, along with my partner, Dan Elrod.
- 10 We are here today in opposition of this application on
- 11 behalf of Vanderbilt Wilson County Hospital. I would
- 12 like to ask Mr. Jay Hinesley to begin our opposition,
- 13 and then I will be back up to address the criteria
- 14 after he's finished.
- MR. HINESLEY: Good morning, members. My
- 16 name is Jay Hinesley, and I am the president of
- 17 Vanderbilt Wilson County Hospital. For the past
- 18 40 years, this 245-bed facility has been the backbone
- 19 of medical care in Wilson County and the surrounding
- 20 communities. In 2019, the hospital and its staff
- 21 admitted more than 4,500 patients, treated more than
- 22 60,000 outpatient visits, and delivered more than 400
- 23 babies. We treat all patients, regardless of their
- 24 ability to pay. And, last year, we provided
- 25 14-and-a-half million dollars in uncompensated charity

- 1 care to our community.
- I would like to make two distinct points
- 3 about our opposition to this project. The first point
- 4 I would like to make relevant to this application is
- 5 that Vanderbilt Wilson County Hospital is a surgical
- 6 hub for the medical community. In fiscal year 2019,
- 7 4,600 surgeries were performed in our ORs; 3,200 of
- 8 which were outpatient surgeries. We are very aware of
- 9 the trend of more and more surgeries transitioning to
- 10 an outpatient model. That is why three-and-a-half
- 11 years ago, on April 26th, 2017, I came before this
- 12 Agency and asked that we be permitted to convert our
- 13 existing outpatient surgery department into an
- 14 ambulatory surgery center. This Agency told me no.
- 15 The Agency denied our application. Furthermore, the
- 16 Agency told me that, until the Phoenix Surgery Center
- 17 becomes fully utilized, there is no need for additional
- 18 ambulatory surgery ORs in Wilson County.
- 19 The second point I would like to make is
- 20 the severe impact this project will have on our ability
- 21 to care for the community. Like many hospitals in
- 22 Tennessee, we admitted financial distress for the past
- 23 several years. We are fortunate that, since becoming
- 24 affiliated with Vanderbilt 18 months ago, we have been
- 25 able to begin to invest in our facility again. That

- 1 includes \$3.4 million to upgrade our surgical suites
- 2 and surgical equipment. That is why this application
- 3 is particularly troubling to us.
- 4 The surgeons who have submitted letters
- 5 to support this application represent 32 percent of our
- 6 outpatient surgical volume and 56 percent of our
- 7 orthopedic surgical volume. Conservatively, that
- 8 volume contributes more than \$3 million in net revenue
- 9 and nearly \$1 million in contribution margin to the
- 10 hospital's bottom line. And, as I stated earlier, like
- 11 most community hospitals in our state, we operate on
- 12 razor-thin margins. In fact, the last fiscal year, our
- 13 operating income was in the red.
- 14 The financial harm that this unneeded
- 15 ASTC will cause to our hospital will undermine our
- 16 ability to offer a full array of necessary medical
- 17 services to Wilson County and the rural communities
- 18 that rely on us. For these reasons, we would
- 19 respectfully request that the Lebanon surgery center
- 20 application be denied.
- 21 MR. SWEARINGEN: Members of the Agency,
- 22 Travis Swearingen again. As Mr. Trauger fully
- 23 discussed, there's no need for this surgery center.
- 24 Every single outpatient surgery provider, including the
- 25 hospital, is well below the State Health Plan's

- 1 quidelines, both on optimal and maximum capacity.
- 2 And, as shown in slide three in our
- 3 packet, despite the population growth in Wilson County,
- 4 the number of surgeries being done for Wilson County
- 5 residents on an outpatient basis has not grown by much;
- 6 about 720 cases per year over the last seven years. If
- 7 every single one of those cases were to go to an
- 8 existing provider in Wilson County, it would be five
- 9 years before the existing providers reached optimal
- 10 capacity. It would be nearly a decade before those
- 11 providers reached maximum capacity.
- 12 And the argument made by HCA that there's
- 13 this invisible county line between Mt. Juliet and
- 14 Summit somehow necessitates a new surgery center in
- 15 Lebanon simply doesn't make sense. The Lebanon
- 16 hospital at the end of last year had more than 800
- 17 hours per month of available capacity. If a surgeon
- 18 wants to have one of its Lebanon residents receive
- 19 surgery in Lebanon, all they have to do is pick up the
- 20 phone and call the hospital or pick up the phone and
- 21 call Phoenix Surgery Center. There are no barriers to
- 22 the entry of those facilities, and they can have their
- 23 surgeries done almost literally tomorrow.
- 24 We also know that this is not going to
- 25 improve access because of the reasons Mr. Hinesley just

- 1 indicated. The current -- the surgeons who have
- 2 submitted letters of support are currently doing in
- 3 excess of 800 surgeries at the Lebanon Wilson County
- 4 Hospital. This proposed surgery center is only
- 5 proposing to do 1,700 surgeries by year two. If the
- 6 surgeons take their current volume out of the hospital
- 7 and put it into the surgery center, that means half of
- 8 the patients that they're projecting to do by year two
- 9 are already having their surgeries done in Lebanon.
- 10 That doesn't improve access for anyone. In fact, if
- 11 they live in Lebanon city where the hospital is
- 12 located, now they have to drive out to the interstate.
- 13 That makes things less convenient for them, not more
- 14 convenient.
- And, finally, on this idea that HCA has
- 16 floated that the goal of this project is to improve
- 17 access to patients who don't have to then travel from
- 18 Wilson County to Summit -- I would be remiss if I did
- 19 not remind the Agency that Mr. Hinesley and I were
- 20 before you about 18 months ago asking to initiate
- 21 linear accelerator services at the Wilson County
- 22 Hospital so that people who had cancer didn't have to
- 23 travel down the interstate to Summit Medical Center for
- 24 their care. And who was here opposing that
- 25 application? Summit Medical Center, telling you that

- 1 they didn't need care closer to their homes. So, I
- 2 guess, the messaging for you is that it's okay for
- 3 somebody battling cancer to get in their car and drive
- 4 25 times to Summit Medical Center. But if you need a
- 5 knee replacement or a tummy tuck, then by all means,
- 6 let's make sure you get your care as close to home as
- 7 possible.
- 8 I would suggest that the Agency would be
- 9 right to have some skepticism about HCA's attempt to
- 10 now bring care closer to these patients' homes. Thank
- 11 you.
- 12 MR. SCARBORO: All right. Thank you.
- 13 And that is right at time. Did you have something,
- 14 Mr. Trauger? Okay. All right. So now we have time
- 15 for rebuttal, five-minute rebuttal, from the applicant.
- 16 MR. SPODEN: Thank you, Mr. Chairman.
- 17 Yes, Clark Spoden again for Lebanon Surgicenter. And I
- 18 want to speak, first, to what Mr. Swearingen just
- 19 argued about his client's opposition to this.
- Of course, as you know, the cost of care
- 21 to the payors and to the patients is less at a surgery
- 22 center than at a hospital. So I'm not sure we want to
- 23 be in the business of dictating to people that they
- 24 have to get a higher cost care and have to go to a
- 25 hospital when they could get that same care in a

- 1 surgery center.
- 2 In addressing this -- these points
- 3 that -- regarding Vanderbilt opposition as well as the
- 4 use and availability of the other surgery centers,
- 5 Dr. Cornelius wanted to say a few words.
- DR. CORNELIUS: Thank you, Clark. Again,
- 7 this is John Cornelius with Hughston Clinic
- 8 Orthopaedics. A few comments: We're asking for
- 9 approval for an ASTC, not hospital beds. So the
- 10 Vanderbilt argument about cases being available in the
- 11 hospital doesn't really apply to what we're discussing
- 12 today. Those cases that were referenced, 50 percent of
- 13 orthopedic surgical volume has already shifted to
- 14 TriStar health facilities historically. Really, what
- 15 we're talking about today is ASTC, and we're talking
- 16 about patients having access and choice.
- 17 Currently, patients are choosing to leave
- 18 Wilson County to go get ASTC cases done in Davidson or
- 19 surrounding counties. Some of that is patient choice.
- 20 Some of that is access based on their insurance. Some
- 21 of that is physician preference. So if we purely focus
- 22 on ASTC care, the options currently in Lebanon are
- 23 Lebanon Endoscopy, which will not support orthopedic
- 24 surgery, and Phoenix ASTC, which is, again, owned by a
- 25 competing orthopedic surgeon and not contracted for any

- 1 of my patients. So I do not have access -- my patients
- 2 do not have access to that facility currently.
- 3 The bigger picture of delivering high
- 4 quality orthopedic care really is the setting of a
- 5 continuum of patient care. I can't just show up in a
- 6 surgery center in Gallatin with one of my patients and
- 7 do an excellent knee replacement. I need patient
- 8 optimization. I need nurse navigators. I need
- 9 hospital support. Total joints have always been done
- 10 at a hospital. We are moving to the future of ASTC
- 11 care, but we will still need hospital support.
- 12 The bigger picture -- the pathway of a
- 13 patient's care still will involve a nurse navigator,
- 14 still will involve pre-operative optimizations, still
- 15 will require my colleagues and their specialties to
- 16 provide care to my patients. So going to an ASTC
- 17 that's unaffiliated with my continuum of care is not
- 18 acceptable to me in that I can't deliver the care to my
- 19 patients that they need and that they deserve. So
- 20 we're currently choosing to leave the county. This
- 21 comes down to choice. Patients need to be able to
- 22 choose care by their home and have access to the
- 23 highest quality of care, and that's what we're asking
- 24 for today. Thank you.
- MR. SPODEN: Thank you, Dr. Cornelius.

- 1 Just to sum up, Mr. Chairman and the Agency, I want to
- 2 highlight the opposition. They own all of the surgery
- 3 centers currently in Wilson County, all of them, all
- 4 three. And it's under one entity even now, Saint
- 5 Thomas USP Surgery Center. Mr. Trauger spoke
- 6 eloquently on their behalf, and they want to continue
- 7 and have a monopoly on all the outside surgery
- 8 treatment centers in Wilson County, and it's much
- 9 better for patient care and for the provision of
- 10 legitimate healthcare services to have competition and
- 11 to have other available facilities in that county owned
- 12 by a different provider; here, by TriStar and these
- 13 physicians who want to participate in this.
- 14 So will I have time to sum up,
- 15 Mr. Chairman, or am I done?
- MR. SCARBORO: You have 30 seconds left
- 17 in rebuttal, but you do have summation that will come
- 18 after questions. So you do have time for summation but
- 19 not right now.
- 20 MR. SPODEN: Okay. I appreciate. That
- 21 was our proposal to have this CON approved for the
- 22 Lebanon Surgicenter, and I'll sum up shortly. Thank
- 23 you.
- MR. SCARBORO: All right. Thank you
- 25 much. All right. Time for questions by members,

- 1 questions of both the applicant and also the opposition
- 2 by the members.
- MR. GAITHER: Mr. Chairman, this is Keith
- 4 Gaither. I have a question for -- I think I have a
- 5 question for Mr. Christoffersen. Will it be okay to
- 6 ask that at this time?
- 7 MR. SCARBORO: Yes, go ahead.
- 8 MR. GAITHER: Mr. Christoffersen, I
- 9 wonder if it would be helpful for the Agency if you
- 10 could address for a moment how we apply the criteria to
- 11 this application. It will be helpful in our questions
- 12 and in our motion as well. It seems like need and
- orderly development are going to be the issues here.
- 14 MR. CHRISTOFFERSEN: Could you be more
- 15 specific about what you mean by how to apply the
- 16 criteria?
- 17 MR. GAITHER: Well, for instance, it
- 18 looks like on the summary, for need, they do not meet
- 19 that criteria. Does that criteria -- is that an
- 20 absolute requirement or how do we apply that
- 21 information?
- MR. CHRISTOFFERSEN: It's not an absolute
- 23 requirement, but the Davidson County Chancery Court --
- 24 at least one chancellor there -- has issued an opinion.
- 25 I'm trying to figure out how to sum it up most easily

- 1 in English. But, essentially, if the Agency deviates
- 2 from the criteria, there should be a good reason in the
- 3 record. And if you look at 68-11-1609, which plays out
- 4 what we call the big four criteria of need, economic
- 5 feasibility, quality, and orderly development, it goes
- 6 on to say, though, that the Agency should be guided by
- 7 that but may also look at other factors, including
- 8 those spelled out in Chapter 11 of the Agency's rules,
- 9 which flushes out some of the things to consider when
- 10 looking at need, economic feasibility, quality, and
- 11 orderly development. But it's probably not something
- 12 that should be done by feel, just, oh, well, it sounds
- 13 good, so we're going to give it to them. There really
- 14 needs to be a demonstrable reason why something should
- 15 be approved if it doesn't satisfy the criteria.
- 16 MR. GAITHER: Okay. Thank you. That's
- 17 helpful. I appreciate it.
- 18 MR. CHRISTOFFERSEN: You're welcome.
- MR. SCARBORO: Other questions from
- 20 members to the applicant or to opposition?
- 21 MR. TAYLOR: Mr. Chairman, I've got a
- 22 question for the applicant. I don't know if Mr. Spoden
- 23 is the best to answer this. I guess really kind of a
- 24 basic question is, can the TriStar physicians -- and I
- 25 know there's lots of them involved -- if they have

- 1 patients that are in Lebanon -- not Mt. Juliet, but if
- 2 they're in Lebanon -- the patients living there or
- 3 right in that area, can those physicians schedule a
- 4 surgery there in Lebanon or not?
- 5 MR. SPODEN: Thank you for the question.
- 6 Dr. Cornelius is going to try to answer that question
- 7 for you.
- B DR. CORNELIUS: Again, John Cornelius.
- 9 That question is couple fold from Vanderbilt's
- 10 standpoint. They have an HOPD. I could call and
- 11 schedule a patient there. The current insurance
- 12 environment is requiring us to take certain procedures
- 13 to ASTC-only facilities, so the Vanderbilt facility
- 14 doesn't meet that criteria. Lebanon Endoscopy cannot
- 15 do orthopedic surgery. Phoenix Surgery Center does not
- 16 have any payors that I could take to that center
- 17 currently. So my only ASTC choice currently would be
- 18 to go to Davidson County. Now, I can schedule cases --
- 19 not in an ASC -- in a hospital. But what we've seen in
- 20 the last several years is, you can't choose to do a
- 21 carpal tunnel in a hospital. You have to go to an ASTC
- 22 based on the cost of the procedure.
- 23 MR. TAYLOR: Okay. Thank you. I quess
- 24 that would be the same question back to the opposition
- 25 as well. What say you?

- 1 MR. TRAUGER: Thank you, Mr. Korth.
- 2 Dr. Cornelius is correct about Phoenix today. But two
- 3 months from now, the payors that he is not able to
- 4 send --
- 5 (Interruption occurs.)
- 6 MR. TRAUGER: Two months from now, when
- 7 that center is run by Saint Thomas USP, he will be able
- 8 to send those patients who are covered by Blue Cross or
- 9 other payors who are not now part of Phoenix. That's
- 10 number one.
- Number two, his office is actually
- 12 located across the street.
- 13 (Interruption occurs.)
- 14 MR. TRAUGER: Travis, I think you might
- 15 want to mute. It is across the street from the Phoenix
- 16 center. So he won't have to drive a minute and
- 17 twenty-two seconds to the new center that won't even
- 18 open for two years. He can, in April, walk across the
- 19 parking lot and use the Phoenix center. And not only
- 20 that, he and other colleagues of his and other
- 21 physicians will be welcomed to become investors in
- 22 Phoenix. And the Phoenix center now has the same kind
- 23 of medical home health park that was mentioned earlier,
- 24 clinical space, imaging, PT.
- So when that Phoenix center rises, the

- 1 picture is going to be very, very different and very
- 2 positive for the physicians. Both of the physicians
- 3 who have opposed this application and the physicians
- 4 who supported it all agree that Lebanon needs a fully
- 5 functioning multi-specialty surgery center. And the
- 6 existing center, although it's technically a
- 7 multi-specialty center, the Phoenix center, is owned
- 8 and operated by one physician, and it's pretty much
- 9 been limited to his patients.
- 10 MR. SWEARINGEN: Mr. Taylor, if I could
- 11 just add as well -- Travis Swearingen on behalf of
- 12 Vanderbilt Wilson County Hospital. First,
- 13 Dr. Cornelius has done 51 cases at our hospital just
- 14 this year. So, for six weeks of 2021, 41 of those are
- 15 outpatient cases. So the answer to the question is,
- 16 yes, it's empirical that you can come to our HOPD and
- 17 do these outpatient cases, and they're being done
- 18 today.
- But, also, I would say, too, I mean, that
- 20 this idea that there are some cases that are now
- 21 shifting to more ASC dominant or ASC required, that's
- 22 still not predominant of the cases, but that was the
- 23 reason why Mr. Hinesley was before the Agency a few
- 24 years ago asking to be able to convert the HOPD to an
- 25 ambulatory surgery center, to make sure it was wide

- 1 open on all of those cases, and the hospital was turned
- 2 down.
- 3 So it would really go more to the
- 4 fairness now allowing this surgery center to come in
- 5 and take that volume away from the hospital when the
- 6 hospital was trying to do the right thing a few years
- 7 ago.
- 8 MR. TAYLOR: Thanks. I appreciate your
- 9 answers.
- 10 MR. TRAUGER: Mr. Chairman, Dr. Cornelius
- 11 had another point he would like to make, an answer to
- 12 the question.
- DR. CORNELIUS: Just as a follow up, I've
- 14 been in the Phoenix center. I've been in Providence.
- 15 These surgery centers were built with the past in mind
- 16 they're made for smaller cases, smaller procedures.
- 17 The future of orthopedics is arthroplasty. In a
- 18 surgery center, you need capacity. You need room size.
- 19 You need availability for the patients to come and
- 20 potentially stay longer in the day. So my practice
- 21 can't go to any of the existing facilities currently as
- 22 an ASC facility. Thank you.
- 23 MR. TRAUGER: Mr. Chairman, just to be
- 24 clear, two of the surgery suites at Phoenix are
- 25 outfitted and built for total joint, and the renovated

- 1 Providence center down in Mt. Juliet will also have
- 2 larger surgery suites that will be able to handle those
- 3 outpatient procedures.
- 4 MR. SCARBORO: Thank you, Mr. Trauger.
- 5 Additional questions from members?
- 6 (None noted.)
- 7 MR. SCARBORO: All right. If we don't
- 8 have additional questions by members for the applicant
- 9 or for opposition, then we will go to summation now,
- 10 and it's three minutes of summation that will be given
- 11 to each. We're going to start with the opposition and
- 12 then we'll go to the applicant. Mr. Trauger, you have
- 13 three minutes, and then we'll have three minutes from
- 14 the applicant.
- MR. TRAUGER: Thank you, Mr. Chairman.
- 16 I'm Byron Trauger for the opponents. I don't recall
- 17 any application before this one that has dared to come
- 18 before this Agency to propose another surgery center in
- 19 a service area that the Department of Health says the
- 20 surgery centers existing are operating are at
- 21 20 percent of capacity. If you put every single
- 22 procedure and surgery that they propose, in year
- 23 five -- not the first or second year, in year five --
- 24 into those surgery centers, you still won't be at half
- 25 capacity, and the existing centers can expand. Lebanon

- 1 isn't even using the second procedure room.
- 2 You just approved the expansion of
- 3 Providence to be in a more convenient location with
- 4 better facilities. And Phoenix has been owned and
- 5 operated by a single orthopedic surgeon and really only
- 6 utilized in his practice. It's not even contracted
- 7 with Blue Cross. Now that Saint Thomas USP will manage
- 8 it, it will be able to become the true multi-specialty
- 9 center that Lebanon deserves, and it will happen in two
- 10 months, not two years down the road like this
- 11 application would be.
- 12 They don't offer a broader range of
- 13 services, and this convenience for Wilson County
- 14 residents argument is a red herring. All three of the
- 15 centers existing are open staff. Any credentialed HCA
- 16 affiliated physician can operate there now. While it
- 17 may be understandable that some physicians have chosen
- 18 not to work at a center owned by a single physician,
- 19 particularly as a competitor, that will not be the case
- 20 in two months once Saint Thomas USP owns and manages
- 21 the Phoenix center.
- The project will damage the orderly
- 23 development of healthcare. These providers are in
- 24 Wilson County when, as Barbara Mandrell might sing,
- 25 Wilson County wasn't cool. And their significant

- 1 investments, particularly this investment in Phoenix
- 2 that is larger than HCA's proposed investment, should
- 3 be given time to mature.
- 4 And we cannot ignore the fairness
- 5 argument that the community hospital has raised. If
- 6 ever there was going to be another surgery center in
- 7 Wilson County, surely it should have been owned by the
- 8 community hospital. This project will cost the
- 9 community hospital \$3 million of revenue, a million
- 10 dollars to the bottom line.
- 11 This project is opposed by the community
- 12 hospital, is opposed by all of the existing providers,
- 13 and it's opposed by a host of local physicians. With
- 14 respect, it should be denied.
- MR. SCARBORO: Thank you, Mr. Trauger.
- 16 The applicant, you have three minutes for summation.
- 17 MR. SPODEN: Thank you, and thank you for
- 18 the opportunity to sum up. I want to address very
- 19 quickly the question that was asked about the
- 20 quidelines and the criteria. And I'll acknowledge that
- 21 this is an unusual case where patients are basically
- 22 fleeing the county because the services there are not
- 23 adequate, and that's precisely why the statute gives
- 24 you this discretion.
- 25 The statute says, in making

- 1 determinations, the Agency shall use as guidelines of
- 2 the criteria from the State Health Plan. So while the
- 3 70 percent threshold is certainly a desirable
- 4 threshold, the existing providers have demonstrated
- 5 year over year of not being able to provide
- 6 those services, and the patients aren't -- it's not
- 7 like they're not being treated. They're being treated
- 8 by the very same provider at HCA TriStar that wants to
- 9 provide that treatment more closer to where they are.
- 10 And it will not hurt these folks that are -- these
- 11 wanting to compete with HCA, as shown by the slide we
- 12 have had on the screen this whole time, our slide
- 13 twelve, that shows over 60 percent of the potential
- 14 patients available to be treated in surgery centers
- 15 will still be available. They could still -- if they
- 16 can make their facilities attractive enough to bring
- 17 physicians in who want to provide the services, then
- 18 they will have 60 percent of the patients that are
- 19 still fleeing the county for services to treat in
- 20 Wilson County.
- 21 So I think it's very important that we
- 22 note that the statute gives you the authority to see
- 23 that there are folks in Wilson County, who want to be
- 24 treated in Wilson County, need to be treated in Wilson
- 25 County, and we're trying to provide those services.

- 1 Now, as far as folks in wanting to go to
- 2 Lebanon being a red herring, the only citizen who has
- 3 spoken here to this panel today, she lives in
- 4 Mt. Juliet, and she says she would rather go to Lebanon
- 5 to get treated in Lebanon than to go to Nashville. And
- 6 that's got to be a broad feeling from people who live
- 7 outside of Davidson County. It's just easier to go
- 8 east from Mt. Juliet to Lebanon than it is to go west
- 9 into the more densely populated and densely congested
- 10 part of the community in Nashville.
- 11 And, finally, the doctors, as you've
- 12 heard from Dr. Cornelius and these many doctors, they
- 13 want to participate in this surgery center. And you
- 14 heard Mr. Trauger say, oh, gee, come participate with
- 15 us instead. And so you see the real purpose here for
- 16 USPI is to squelch competition, to squeeze out this
- 17 potential competitor, to try to get these doctors to go
- 18 with them instead of with us.
- 19 So we would submit that this proposal is
- 20 well thought out, it meets all of the criteria,
- 21 especially if you use the guidelines as guidelines, the
- 22 criteria guidelines, and then we are going to be fully
- 23 using the ORs right away, complete capacity by year
- 24 four and almost that in year two. And so we submit
- 25 that this CON application should be approved. Thank

- 1 you very much for your time.
- 2 MR. SCARBORO: All right. Thank you.
- 3 Members, you've heard summation from both the
- 4 applicants and also the opposition. Discussion -- time
- 5 for discussion of the matter by members. Do you all
- 6 have anything?
- 7 DR. PATRIC: So, Mr. Chairman --
- 8 MR. SCARBORO: Go right ahead.
- 9 DR. PATRIC: So just some comments. So]
- 10 think this particular case brings up a number of the
- 11 issues that we have struggled with as a board, both the
- 12 idea of is competition a part of something that needs
- 13 to be considered in orderly development and how far can
- 14 we stretch the guideline part of need in particular as
- 15 well as orderly development sometimes.
- I would also say that one of the -- one
- 17 of the things that was mentioned as a rationale on here
- 18 was -- was the -- I'm trying to guote -- the
- 19 established referral patterns. Because, as a
- 20 physician, I know that a long time there has been this
- 21 issue of, well, I refer to so and so because that's who
- 22 I'm used to working with and I know them and they do a
- 23 good job, et cetera, et cetera. I think a lot of the
- 24 quote, established referral patterns, nowadays have
- 25 more to do with the other issue that was brought up,

- 1 which is payor contracting, which is becoming, you
- 2 know, more and more of an issue amongst, if you will,
- 3 competing organizations, not just physicians, but
- 4 hospitals and larger healthcare organizations. And so,
- 5 in some respects, we've kind of -- we, the greater
- 6 we -- brought that on ourselves in an attempt to keep
- 7 prices down and that kind of thing.
- 8 And I'm sensitive to the local hospital's
- 9 concern about how they've been put in a position now of
- 10 decisions we made as a board a few years back that now
- 11 puts them in an awkward position as things begin to
- 12 move more outpatient. So I think all of that is a
- 13 concern.
- 14 All of that said, I think there is an
- 15 argument here on the basis of need to say that this is
- 16 really stretching the whole, well, it's just a
- 17 guideline when you look at the percent of utilization
- 18 within the -- within the current outpatient surgery
- 19 centers that are available in Lebanon.
- And then, also, when you look at the
- 21 amount of opposition from other physicians that aren't
- 22 even necessarily connected financially to the current
- 23 Phoenix facility and also local officials and that type
- 24 of thing, that this is not -- this is not -- I hate to
- 25 use this word because I know Jim is going to hate it.

- 1 But this doesn't have a good feel for what is orderly
- 2 development of healthcare.
- I think the last time or the time before,
- 4 we actually took a position that when there is
- 5 obviously something in development like the Phoenix
- 6 plan, which was put into place before this current plan
- 7 was proposed, that we took a wait and see. Let's give
- 8 it a year and see if it actually plays out the way that
- 9 the opposition says it's going to. And if it doesn't,
- 10 then the current folks that have made this proposal can
- 11 propose it again since it's going to be at least two
- 12 years before they're available and they have a way of
- 13 taking care of their own patients currently.
- 14 So I'm probably going to -- well, I'm
- 15 going to be in opposition on this one for those
- 16 reasons, but I do think it's a very complex -- a very
- 17 complex situation.
- 18 MR. SCARBORO: Dr. Patric, what's the
- 19 term -- I want to make sure I'm understanding. You
- 20 said -- is it -- payor contracting or --
- DR. PATRIC: Yeah. So, I mean, I think
- 22 if we take -- if we take a strict look at this, if
- 23 we're strict constructionists on this, the need is not
- 24 there. That's my -- that's my opinion anyway. If
- 25 we -- and if we look at -- if we look at orderly

- 1 development, this doesn't look very orderly. This
- 2 looks very, very -- like there's a lot of -- discord
- 3 will be created by this proposal within the -- within
- 4 the provider community. And so I think, from those two
- 5 standpoints, you know, I would -- I would oppose it.
- 6 But all I'm saying on the payor
- 7 contracting thing is that part of this -- part of the
- 8 issue is brought about because of the way contracts --
- 9 the whole referral issue isn't just a professional, I
- 10 prefer to go here because, you know, these folks, I
- 11 work best with. It really does -- it relates back to
- 12 payor contracting. And at least Byron is saying that,
- 13 you know, the Phoenix organization plans to have a lot
- 14 of those contracts in place that it currently doesn't
- 15 have. If I'm understanding that correctly; is that
- 16 right, Byron? Yeah, I see him shaking his head.
- MR. SCARBORO: Okay.
- DR. PATRIC: So those are my comments.
- MR. SCARBORO: All right.
- 20 MR. TAYLOR: Mr. Chairman, I would have
- 21 to concur with Dr. Patric for a number of those
- 22 reasons. Initially, being empathetic to the local
- 23 hospital and the stress and strain it would cause on
- 24 that, but that's kind of antidotal and not really in
- 25 our criteria, but we certainly have to consider those

- 1 things.
- 2 The Providence Surgery Center piece --
- 3 and I guess, as Dr. Patric was eluding to, the payor
- 4 contract issues, I guess, Mr. Trauger had mentioned,
- 5 you know, in two months, that they'll be contracted
- 6 with a lot of payors that currently they're obviously
- 7 not contracted with. I don't know a whole lot. I know
- 8 Nashville has a ton of traffic, and I know going from
- 9 Wilson to Davidson, if you could stop in Mt. Juliet and
- 10 not have to cross into Davidson County, I'm sure that's
- 11 going to make it more accessible or from a time
- 12 standpoint, you know, for residents in Wilson County as
- 13 well. And then again just, I mean, the huge idle
- 14 capacity of the current centers when you combine them
- 15 all together and with modifications in the next couple
- of months, I just can't support this application.
- 17 MR. SCARBORO: Okay. Additional
- 18 discussion by members?
- 19 MR. KORTH: I want to make a couple
- 20 comments here, Mr. Chairman. You know, I know that we
- 21 can deviate from the need, and my deviation in the past
- 22 has always been if they're bringing something new to
- 23 the community or new to the area that's not being
- 24 offered; and it looks like, in this case, that now,
- 25 with the recent change or the upcoming change with

- 1 Phoenix moving over to USPI, it will offer that and
- 2 will offer more general surgery case ability for those
- 3 physicians and for the community in Lebanon and Wilson
- 4 County. So I do have a hard time identifying or
- 5 justifying that there's going to be need for another
- 6 surgery center at this present time.
- 7 I concur with the others that have spoke.
- 8 I think we need to give the two that are in Wilson
- 9 County, the Providence and the Phoenix, you know, time
- 10 to develop. They're kind of brand new surgery centers.
- 11 I know that Phoenix is going to be going under new
- 12 ownership, and it will be brand new in a couple of
- 13 months. And we need to give them a little bit of time
- 14 to see what their optimal capabilities are.
- And, also, I'm sympathetic to the local
- 16 hospital. I know any time you pull anything out of the
- 17 local hospitals that are trying to survive in today's
- 18 economic challenges with everything with rural
- 19 community hospitals, it's very difficult. So anything
- 20 that we pull out of those hospitals makes it very
- 21 difficult for those hospitals to continue to struggle
- 22 and continue to provide the services that they're
- 23 trying to provide. So I think I'm with the others that
- 24 have spoke so far, that I am not in favor of this
- 25 application. Thank you, Mr. Chairman.

- 1 MR. SCARBORO: All right. Thank you,
- 2 Mr. Korth. Any other discussion by members? Anybody
- 3 else?
- 4 (None noted.)
- 5 MR. SCARBORO: All right. If there is no
- 6 other discussion, is there a motion?
- 7 MR. TAYLOR: Mr. Chairman, I'll make a
- 8 motion.
- 9 MR. SCARBORO: All right. Go ahead,
- 10 Mr. Taylor.
- 11 MR. TAYLOR: All right. With respect to
- 12 Lebanon Surgicenter, Lebanon, Wilson County, Tennessee,
- 13 CN2011-033, I move that the application be denied.
- 14 Two reasons: The application does not
- 15 meet the standard, the need standard, based off the
- 16 unused capacity at the current facilities in the
- 17 service area. And it also doesn't meet orderly
- 18 development as I don't feel it would improve the access
- 19 to care, and it's certainly a duplication of
- 20 unnecessary services at this time.
- MR. SCARBORO: All right. It's been
- 22 properly moved by Mr. Taylor. Is there a second?
- DR. PATRIC: I'll second.
- MR. SCARBORO: All right. Moved by
- 25 Mr. Taylor. Seconded by Dr. Patric. Let's have roll

```
1
    call.
                  MS. HOBACK: Jordan?
 2
                  MS. JORDAN: Yes.
 3
                  MS. HOBACK: Gaither?
 4
 5
                  MR. GAITHER: Yes.
                  MS. HOBACK: Patric?
 6
 7
                  DR. PATRIC: Yes.
 8
                  MS. HOBACK: Korth?
9
                  MR. KORTH: Yes.
10
                  MS. HOBACK: Taylor?
11
                  MR. TAYLOR: Yes.
12
                  MS. HOBACK: Alsup?
                  MR. ALSUP: Yes.
13
14
                  MS. HOBACK: Chinn?
15
                  MR. CHINN: Yes.
16
                  MS. HOBACK: Scarboro?
17
                  MR. SCARBORO: Yes.
18
                  MS. HOBACK: That's eight "yes".
19
                  MR. SCARBORO: Eight "yes". The CON
20
    application for Lebanon Surgicenter -- the motion
    fails. So the CON for Lebanon Surgicenter, CN2011-033,
21
22
    is denied.
23
                  (End of Excerpt.)
24
25
```

1	REPORTER'S CERTIFICATE
2	STATE OF TENNESSEE)
3	COUNTY OF WILSON)
4	I, APRIL DANIEL, Licensed Court Reporter in
5	and for the State of Tennessee,
6	DO HEREBY CERTIFY the foregoing transcript of
7	proceedings was taken at the time and place set forth
8	in the caption thereof; the witness therein was duly
9	sworn on oath to testify the truth; the proceedings
10	were stenographically reported by me in shorthand; and
11	the foregoing transcript of proceedings constitutes a
12	true and correct transcript of said proceedings to the
13	best of my ability.
14	I FURTHER CERTIFY I am not a relative or
15	employee or attorney or counsel of any of the parties
16	hereto, nor a relative or employee of such attorney or
17	counsel, nor do I have any interest, financial or
18	otherwise, in the outcome or events of this action.
19	IN WITNESS WHEREOF, I have hereunto affixed
20	my signature this 25th day of March, 2021, at Lebanon,
21	Wilson County, Tennessee.
22	
23	April Daniel
24	License No. 141 Expires: June 30 2022

25

Attachment 1N-1.2 Letters of Support

Lebanon Center for Outpatient Surgery Letters of Support

	Name of Individual	Position/Title
1	Dr. Jon Cornelius	Orthopaedic Surgeon
2	Dr. Nancy Barrett	General Surgeon
3	Dr. G. Lee Bryant	Otolaryngologist
4	Dr. John Burleson	Orthopedic Surgeon
5	Dr. Chris Cook	Orthopedic Surgeon
6	Dr. W.W. Scott Dube	Orthopedic Surgeon
7	Dr. Robert Frank	Otolaryngologist
8	Dr. Scott Fortune	Otolaryngologist
9	Dr. Daniel Hagaman	Orthopedic Surgeon
10	Misty Hawkins	Vice President of Operations, Associates in
		Gastroenterology
11	Dr. Sean Kaminsky	Orthopedic Surgeon
12	Dr. Matthew King	Podiatric Surgeon
13	Dr. Erik Maryniw	Orthopedic Surgeon
14	Dr. William Melton	Orthopedic Surgeon
15	Dr. Justin Morgan	Otolaryngologist
16	Dr. Shawn Mountain	Arthroscopic and Orthopedic Surgeon
17	Dr. Matthew Neuhaus	Foot and Ankle Surgeon
18	Dr. Amit Sharad Patel	Otolaryngologist
19	Dr. Lucas B. Richie	Orthopedic Surgeon
20	Dr. Matthew Sugalski	Orthopedic Surgeon
21	Dr. Michel Taylor	Orthopedic Surgeon



April_, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Jonathan Cornelius. I am a board-certified orthopaedic surgeon and President of Hughston Clinic Orthopaedics located at 100 Physician's Way Suite 110, Lebanon, TN 37090. As a practicing surgeon in Lebanon, Tennessee, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

I have practiced in Wilson County, more specifically in Lebanon, Tennessee, since 2009. Indeed, my practice predates the arrival of Vanderbilt, St. Thomas, and TriStar to Lebanon. Throughout that time, I have seen demand for outpatient orthopaedic surgery substantially increase for multiple reasons, including the growth and aging of the population, traffic to Davidson County facilities, preference for an outpatient setting, and costs. TriStar's proposal will assist in addressing all of those.

TriStar previously came before the Health Services and Development Agency, requesting an ASTC. The request was denied. Recognizing the substantial need in the area, TriStar Summitt Medical Center opened a hospital outpatient department ("TriStar Lebanon HOPD") in June 2024. Since then, I have performed over 300 surgeries in the TriStar Lebanon HOPD, including total and partial knee replacements, total and partial hip replacements, rotator cuff repairs, and carpal tunnel releases. I am happy to continue doing so, as it is a high-quality facility that provides excellent experiences for both patients and providers. However, surgeries performed in an ASTC setting provide a substantial advantage for consumers due to the significantly lower costs.

Further, the area is in great need of a multi-specialty ASTC, especially one that can perform total joint replacements. At present, there is one heavily utilized ASTC in Mt. Juliet – over 10 miles away – and an ASTC in Lebanon, which many providers, including myself, decline to use.

I intend to apply for privileges at LSC and provide services at the proposed multi-specialty ASTC. This ASTC will significantly enhance the offerings provided to the residents of Lebanon and the greater Nashville area.

I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Dr. Jon/Cornelius



April 28, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Nancy Barrett, and I am a general surgeon in Lebanon, Tennessee at Barrett Surgical Clinic. As a practicing surgeon in the Wilson County, Lebanon, Tennessee, area, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). I currently have an office in Lebanon, where I see a number of patients, who would benefit from being able to have their surgeries performed not only in a location close to home but also in a location that is much more cost effective than a hospital setting.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an excellent experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the Lebanon area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. Nancy Barrett, M.D., F.A.C.S.

G. Lee Bryant, Jr., M.D., F.A.A.O.A. Robert Frank, M.D., F.A.A.O.A. Justin Morgan, M.D., F.A.A.O.A. Mitchel Sauvageau, D.O. Kendall Bush, PA-C Kaitlynn Hafeli, PA-C Madison Taylor, FNP-BC



D. Scott Fortune, M.D., F.A.A.O.A.
Marissa Mencio, M.D., F.A.C.S.
Amit Patel, M.D., F.A.A.O.A.
Matthew Speyer, M.D.
Rachel Chamberlin, PA-C
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April 28, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re:

CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Bryant, and I am a board-certified otolaryngologist at Allergy & ENT Associates of Middle Tennessee, which has offices in Hermitage and Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). We need additional options in Wilson County, and Lebanon is a perfect location.

I personally intend to apply for privileges and treat patients at the ASTC. I am confident that LSC will provide patients and providers with a fantastic experience. I am excited to fully support the expansion of high-quality care and to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of Lebanon. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Hermitage: 3901 Central Pike, Suite 351 Hermitage, TN 37076

Lebanon: 920 South Hartmann Dr, Suite 100 Lebanon, TN 37090

Nashville West: 4230 Harding Pike, Suite 400 Nashville, TN 37205

Phone: 615-889-8802

Phone: 615-889-8802

Fax: 615-889-0583

Phone: 615-386-9089

Fax: 615-386-2197

Fax: 615-889-0583

www. MyAllergyENT.com

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. John Burleson, and I am a board-certified orthopedic surgeon, who specializes in orthopedic spinal surgery and pain management procedures at The Hughston Clinic in Lebanon. I focus on minimally invasive surgery techniques, which lends itself to being performed in an ambulatory surgery center ("ASTC") setting. Accordingly, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ASTC.

I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community. I currently see many patients in Lebanon and typically have them drive to Smyrna for high-level outpatient care. I anticipate that we would be able to keep those patients in their community with the potential ASTC in Lebanon. This ASTC will permit patients to have pain management procedures and spinal surgeries in an ASTC setting without having to drive to Summit or Smyrna, which is closer to their home and represents a significant cost savings to them and convenience for their family members and care givers.

I have no doubt the proposed multi-specialty ASTC will significantly enhance the offerings provided to the residents of the Lebanon area, which is a growing and aging population needing these types of procedures. I am excited for the excellent care LSC will provide to my patients. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. John Burleson



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April 22, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Christopher Cook, and I am a board-certified orthopedic surgeon specializing in sports medicine and joint replacement at Advanced Ortho and Spine in Hermitage and Mt. Juliet. As a practicing surgeon in the Lebanon, Wilson County, Tennessee, area, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

At present, if my Wilson County patients wish to have their surgeries at an ASTC, which is more cost effective for them, they must travel to Smyrna or into Nashville. Adding an ASTC in Lebanon will provide my patients with an option to receive the same cost-effective surgery in their own fast growing community.

I intend to apply for privileges and provide services at the ASTC. I am certain the ASTC will provide a fantastic experience for patients receiving care and providers offering services.

I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community. I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the Lebanon and the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility. Please approve the CON Application to develop and operate the proposed ASTC.

Sincerely,

Dr. Christopher Cook



Nashville Bone & Joint, PLLC

April 22, 2025
Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Scott Dube, and I am a board-certified orthopedic surgeon specializing in joint replacement, sports medicine, and general orthopedic conditions at Dube Orthopedics. As a practicing surgeon in the Wilson County, Lebanon, Tennessee, area, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). This project is needed to shift outpatients from the hospital setting to the more cost effective ASTC Setting.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an excellent experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

W.W. Scott Dube, M.D.

G. Lee Bryant, Jr., M.D., F.A.A.O.A. Robert Frank, M.D., F.A.A.O.A. Justin Morgan, M.D., F.A.A.O.A. Mitchel Sauvageau, D.O. Kendall Bush, PA-C Kaitlynn Hafeli, PA-C Madison Taylor, FNP-BC



D. Scott Fortune, M.D., F.A.A.O.A.
Marissa Mencio, M.D., F.A.C.S.
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April 28, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re:

CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Frank, and I am a board-certified otolaryngologist at Allergy & ENT Associates of Middle Tennessee, which has offices in Hermitage and Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). We need additional options in Wilson County, and Lebanon is a perfect location.

I personally intend to apply for privileges and treat patients at the ASTC. I am confident that LSC will provide patients and providers with a fantastic experience. I am excited to fully support the expansion of high-quality care and to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of Lebanon. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely

Dr. Robert Frank

 Hermitage: 3901 Central Pike, Suite 351 Hermitage, TN 37076
 Phone: 615-889-8802
 Fax: 615-889-0583

 Lebanon: 920 South Hartmann Dr, Suite 100 Lebanon, TN 37090
 Phone: 615-889-8802
 Fax: 615-889-0583

 Nashville West: 4230 Harding Pike, Suite 400 Nashville, TN 37205
 Phone: 615-386-9089
 Fax: 615-386-2197

www. MyAllergyENT.com

G. Lee Bryant, Jr., M.D., F.A.A.O.A. Robert Frank, M.D., F.A.A.O.A. Justin Morgan, M.D., F.A.A.O.A. Mitchel Sauvageau, D.O. Kendall Bush, PA-C Kaitlynn Hafeli, PA-C Madison Taylor, FNP-BC



D. Scott Fortune, M.D., F.A.A.O.A.
Marissa Mencio, M.D., F.A.C.S.
Amit Patel, M.D., F.A.A.O.A.
Matthew Speyer, M.D.
Rachel Chamberlin, PA-C
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Allergy Testing & Treatment * Balance Disorders * Comprehensive Hearing Tests

April 28, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Fortune, and I am a board-certified otolaryngologist at Allergy & ENT Associates of Middle Tennessee, which has offices in Hermitage and Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). We need additional options in Wilson County, and Lebanon is a perfect location.

I personally intend to apply for privileges and treat patients at the ASTC. I am confident that LSC will provide patients and providers with a fantastic experience. I am excited to fully support the expansion of high-quality care and to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of Lebanon. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely.

Dr. D. Scott Fortune MI

Hermitage: 3901 Central Pike, Suite 351 Hermitage, TN 37076 Lebanon: 920 South Hartmann Dr, Suite 100 Lebanon, TN 37090 Nashville West: 4230 Harding Pike, Suite 400 Nashville, TN 37205 Phone: 615-889-8802 Phone: 615-889-8802 Phone: 615-386-9089 Fax: 615-889-0583 Fax: 615-889-0583 Fax: 615-386-2197

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April 24, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon

Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Daniel Hagaman, and I am a board-eligible orthopedic surgeon with a specialty in sports medicine at Advanced Ortho and Spine in Hermitage and Mt. Juliet. As a practicing surgeon in the Wilson County, Tennessee, area, I am writing to express my support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). I would love for my patients to have an option to receive their outpatient surgical care at a lower cost setting, closer to their home.

I intend to apply for privileges and provide services at the ASTC. I am certain the ASTC will provide a fantastic experience for patients receiving care and providers offering services.

I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community. I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the Lebanon and the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility. Please approve the CON Application to develop and operate the proposed ASTC.

Sincerely,

Jul Han

Dr. Daniel Hagaman



April 23, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County –

Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Misty Hawkins and I am a Vice President of Operations representing Associates in Gastroenterology. We treat patients at offices in Hermitage, Mt. Juliet, and Lebanon. I am writing to express my support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

A large number of gastroenterology procedures are done in an outpatient setting, and historically, payors push for these procedures to occur in an ASTC, rather than a hospital-based setting. This project will provide our patients with the opportunity to have those procedures performed at a facility they trust at a substantially reduced amount.

Our providers intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an excellent experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

We have not doubt that Lebanon Surgicenter's proposed ASTC will significantly enhance the medical offerings provided to the residents of Lebanon and the surrounding areas. Associates in Gastroenterology is excited for our patients to be able to receive excellent care and have an additional option of where to receive their care. We fully support the proposed CON Application and request approval of the CON Application.

Sincerely,

Misty Hawkins

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Sean B. Kaminsky, and I am a board-certified orthopedic surgeon with specialties in sports medicine, knee surgery, and shoulder surgery at Pinnacle Surgical Orthopedics in Hermitage. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). This project is needed to provide greater access to freestanding surgery services for Lebanon and the surrounding area.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an excellent experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility, and respectfully request that the Health Facilities Commission approve LSC's CON Application.

Sincerely,

Dr. Sean B. Kaminsky



April 24, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Matthew King, DPM, and I am a board certified podiatric surgeon at Advanced Ortho and Spine in Hermitage and Mt. Juliet. As a practicing surgeon in the Wilson County, I am writing to express my strong support for Lebanon Surgicenter, LLC's certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

This facility will be a fantastic addition to the medical landscape of Wilson County. Wilson County, including Lebanon, is seeing significant growth in all ages, including the over 65 population. While the facility will treat all ages, as a person ages, they are less likely to want to travel outside of their community for surgery. Lebanon Surgicenter's proposed ASTC will permit these individual to receive care closer to home in a cost effective manner.

I intend to apply for privileges and provide services at the Lebanon Surgicenter ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

The Lebanon Surgicenter proposed multi-specialty ASC will greatly enhance the offerings provided to the residents of the greater Nashville area. I am confident that Lebanon Surgicenter will provide an outstanding experience for both patients and providers. I fully support the proposed CON Application to develop and operate the proposed Lebanon Surgicenter ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. Matthew King, DPM



COOK | ELALAYLI | HAGAMAN | KING | MARYNIW | PATEL | SWIDEREK

Spine - Joint Reconstruction - Sports Medicine - Foot & Ankle - Hand - Trauma 615.885.0200 | www.AdvancedOrthoandSpine.com

April 25, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re:

CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Erik Maryniw, M.D., and I am a board-certified orthopedic surgeon specializing in hand and upper extremities at Advanced Ortho and Spine in Hermitage and Mt. Juliet. As a practicing surgeon in the Wilson County, Tennessee, area, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

An ASTC is a more cost-effective alternative for my Wilson County patients in need of outpatient surgery. Having a truly functioning ASTC in Lebanon would be extremely beneficial to my patients, providing them with a real option to receive this cost-effective surgery in their own fast-growing community.

I intend to apply for privileges and provide services at the ASTC. I am certain the ASTC will provide a fantastic experience for patients receiving care and providers offering services.

I fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community. I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the Lebanon and the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility. Please approve the CON Application to develop and operate the proposed ASTC.

Sincerely,

Dr. Erik Maryniw, MD



April<u>/</u>, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re:

CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. William N. Melton, and I am a fellowship-trained, board certified orthopedic surgeon specializing in the treatment of the hand, wrist, and elbow at The Hughston Clinic. As a practicing surgeon, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

I currently treat patients in Lebanon. However, at present, if a patient requires surgery, he or she must travel to Nashville or have the surgery performed in a hospital-based surgical department.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an excellent experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. William N. Melton

G. Lee Bryant, Jr., M.D., F.A.A.O.A. Robert Frank, M.D., F.A.A.O.A. Justin Morgan, M.D., F.A.A.O.A. Mitchel Sauvageau, D.O. Kendall Bush, PA-C Kaitlynn Hafeli, PA-C Madison Taylor, FNP-BC



D. Scott Fortune, M.D., F.A.A.O.A.
Marissa Mencio, M.D., F.A.C.S.
Amit Patel, M.D., F.A.A.O.A.
Matthew Speyer, M.D.
Rachel Chamberlin, PA-C
Kelly Strimaitis, FNP-BC

Celebrating 50 Years of Caring for our Community

Adult & Pediatric Diseases of the Ear, Nose, and Throat * Head and Neck Surgery

Allergy Testing & Treatment * Balance Disorders * Comprehensive Hearing Tests

April 28, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Morgan, and I am a board-certified otolaryngologist at Allergy & ENT Associates of Middle Tennessee, which has offices in Hermitage and Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). We need additional options in Wilson County, and Lebanon is a perfect location.

I personally intend to apply for privileges and treat patients at the ASTC. I am confident that LSC will provide patients and providers with a fantastic experience. I am excited to fully support the expansion of high-quality care and to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of Lebanon. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Sincerely,

Justin Morgan MD

Hermitage: 3901 Central Pike, Suite 351 Hermitage, TN 37076 Lebanon: 920 South Hartmann Dr, Suite 100 Lebanon, TN 37090 Nashville West: 4230 Harding Pike, Suite 400 Nashville, TN 37205 Phone: 615-889-8802 Phone: 615-889-8802 Phone: 615-386-9089 Fax: 615-889-0583 Fax: 615-889-0583 Fax: 615-386-2197

www. MyAllergyENT.com



April _, 2025

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re:

CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Contor for Outpatient Burgor

Dear Mr. Grant:

My name is Dr. Shawn Mountain. I am an arthroscopic and orthopedic surgeon specializing in the treatment of the knees and shoulders, and sports medicine at The Hughston Clinic in Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). I currently have an office in Lebanon, where I see patients. This project is needed to shift outpatients from the hospital setting to the more cost effective ASTC Setting. Moreover, I think this ASTC could give my patients a nice, less-stressful place for surgery which can certainly be of benefit for them and their family. The proposed location sits in an area that is easily accessible by many in our area and will permit individuals to have their outpatient surgeries performed at a location closer to their home.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an outstanding experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application. I have no doubt that LSC's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health.

Sincerely,

Dr. Shawn Mountain, DO

April_, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Matthew Neuhaus, and I am board certified in foot and ankle surgery. I practice at Neuhaus Foot and Ankle, which has locations in Lebanon and across Middle Tennessee. As a practicing podiatric surgeon, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). I treat patients from all across Middle Tennessee and this ASTC will provide my patients with the option to address their surgical needs closer to their homes, while also providing savings to the patients.

I personally intend to apply for privileges and provide services at the ASTC. My partners and I currently perform surgeries in ASTC settings, and the growing and aging Lebanon population supports the the need for an ASTC in Lebanon.

This ASTC will significantly enhance the medical offerings provided to the residents of the greater Nashville area and will enable patients to receive treatment closer to home. I am excited for the fantastic care that my patients will receive at this facility and the opportunity for further collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Dr. Matthew Neuhaus, DPM, FACFAS

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon Center for Outpatient Surgery

Dear Mr. Grant:

My name is Amit Sharad Patel, MD, and I am a board certified otolarygologist at Allergy & ENT Associates, which has offices in Lebanon and Hermitage. As a practicing surgeon in the Wilson County, Tennessee area, I am writing to express my support for Lebanon Surgicenter, LLC's certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC"). There is an increasing demand for outpatient procedures in Wilson County, and due to the growing and aging populations, patients do not want to travel for a procedure at an ASTC. Rather, they want to be able to receive outpatient surgery close to their home.

I intend to apply for privileges and provide services at the ASTC, and I am confident that Lebanon Surgicenter will provide a superb experience for both patients and providers at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that Lebanon Surgicenter's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I know that my patients will receive excellent care at this facility. I fully support the proposed CON Application to develop and operate the Lebanon Surgicenter and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. Amit Sharad Patel, MD



April _, 2025

Mr. Logan Grant Executive Director Health Facilities Commission 502 Deaderick Street, Andrew Jackson Bldg., 9th Floor Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County - Lebanon

Center for Outpatient Surgery

Dear Mr. Grant:

My name is Lucas B. Richie, MD, and I am a board certified orthopedic surgeon at The Hughston Clinic in Lebanon. I am writing to express my strong support for Lebanon Surgicenter, LLC's certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

Currently, I perform surgeries at the TriStar Summit Hospital Outpatient Department, which provides excellent care to my patients. However, patients do not have a functioning ambulatory surgery center in Lebanon.

I am confident that Lebanon Surgicenter will provide the same excellent experience for both patients and providers, which is currently being provided at the TriStar Summit Hospital Outpatient Department currently at the proposed location. I personally intend to apply for privileges and provide services at Lebanon Surgicenter.

I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that Lebanon Surgicenter's proposed multi-specialty ASTC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the Lebanon Surgicenter and would appreciate your consideration and approval of the CON Application.

Sincerely,

Dr. Lucas B. Richie, MD

270

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County - Lebanon

Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Matthew Sugalski, and I am a board certified orthopedic surgeon, who focuses in sports medicine at Spine and Orthopedic Solution. As a practicing surgeon in the Wilson County, Tennessee, area, I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

Lebanon currently lacks a functioning platform for surgeons to provide outpatient surgeries in an ASTC setting and the ASTC in Mt. Juliet is heavily utilized. Due to the limitations, it can be difficult to get elective cases on in a timely manner due to this lack of capacity, which leads to frustration of patients and inefficiency as well as at times, progression of disease.

I personally intend to apply for privileges and practice at the surgery center, and I am excited to support the care that will be offered by LSC. Accordingly, I respectfully request that you approve the CON Application for Lebanon Surgicenter.

Sincerely,

Dr. Matthew Sugalski

Mr. Logan Grant
Executive Director
Health Facilities Commission
502 Deaderick Street, Andrew Jackson Bldg., 9th Floor
Nashville, Tennessee 36104

Re: CON Application for Multi-Specialty Ambulatory Surgery Center in Wilson County – Lebanon

Center for Outpatient Surgery

Dear Mr. Grant:

My name is Dr. Michel Taylor, MD, and I am a board-certified orthopaedic surgeon at The Hughston Clinic, where I focus on complex reconstruction of foot, ankle, and knees. I see patients from all over the Middle Tennessee area, including Lebanon and other parts of Wilson County. I am writing to express my strong support for Lebanon Surgicenter, LLC's ("LSC") certificate of need ("CON") application to develop a multi-specialty ambulatory surgery center ("ASTC").

This project is needed to shift outpatients from the hospital setting to the more cost effective ASTC setting. It will have multiple benefits for providers and patients, including providing care at a materially lower cost than a hospital setting, not requiring patients to travel far away from home, and enabling hospital-based departments to be available for higher acuity, emergency, and inpatient cases.

I personally intend to apply for privileges and provide services at the ASTC, and I am confident that LSC will provide an outstanding experience for both patients receiving care and providers offering services at this ASTC. I am excited to fully support the expansion of that high-quality care to the proposed ASTC to increase access for the greater Lebanon community.

I have no doubt that LSC's proposed multi-specialty ASC will significantly enhance the medical offerings provided to the residents of the greater Nashville area. I am excited for the excellent care that my patients will receive at this facility and the opportunities for collaboration that will accompany this facility's affiliation with TriStar Health. I fully support the proposed CON Application to develop and operate the proposed ASTC and would appreciate your consideration and approval of the CON Application.

Dr. Michel Taylor, MD

Attachment 1N-1.3 Esri ZIP Code Population Data

Wilson County ZIP Code Population Data

Location	2020 Total Population	2024 Total Population	2029 Total Population	2020-2024 CAGR	2024-2029 CAGR
37090 (Lebanon)	19,046	23,589	27,376	5.5%	3.0%
37087 (Lebanon)	50,605	57,403	65,803	3.2%	2.8%
37122 (Mount Juliet)	63,549	70,022	75,746	2.5%	1.6%
37184 (Watertown)	6,336	6,468	6,671	0.5%	0.6%
Wilson County, TN	147,737	165,860	184,005	2.9%	2.1%

Source: Esri

Attachment 1N-1.4 Press Ganey Patient Survey Results



OAS Lebanon Surgery Center

Generated: 3/27/2025 9:48 PM ET

Service Date Range: 6/15/2024 - 3/27/2025 TriStar Summit Medical Center (9034223)

OAS Lebanon Surgery Center

Service Overview

Ambulatory Surgery

TriStar Summit Medical Center (9034223) Service Date: 6/15/2024 - 3/27/2025

Report Details

Received Date Period: None Service Date Period: Custom

Enabled Adjustment Options: None
Enabled CMS Views Options: Skip Logic
Distribution of Responses: None

Distribution of Responses: None

Visualization Type: Table Sort by: Survey order

Auto-Addition of New Sites: No



OAS Lebanon Surgery Center

Generated: 3/27/2025 9:48 PM ET

Service Date Range: 6/15/2024 - 3/27/2025 TriStar Summit Medical Center (9034223)

Ambulatory Surgery

TriStar Summit Medical Center (9034223)

Report Details

Filters: IT DCG_LOC: D.LSC

Groups: None

Demographics: None

Benchmarking Options: Peer group score and Peer group rank

Peer Groups: All PG Database

All PG Database PG N = 2430 | CAHPS N = 4707

Benchmarking: All Respondents

Benchmarking Period: 12/1/2024 - 2/28/2025

Generated: 3/27/2025 9:48 PM ET

Service Date Range: 6/15/2024 - 3/27/2025 TriStar Summit Medical Center (9034223)

Ambulatory Surgery

	Тор Вох	n	All PG Database	
Questions			Score	Rank
*Facility rating 0-10	95.74	141	88.40	93
*Recommend the facility	96.53	144	85.53	98
*Communication Domain Performance	95.82	144	92.57	91
*Facility/Personal Trtment Domain Performance	98.96	144	97.19	88
*Discharge Domain Performance	96.76	144	97.03	37
Information about delays †	75.32	77	75.02	45
Extent staff washed their hands †	97.94	97	83.72	99

^{*}CAHPS



OAS Lebanon Surgery Center

Generated: 3/27/2025 9:48 PM ET

Service Date Range: 6/15/2024 - 3/27/2025 TriStar Summit Medical Center (9034223)

Appendix Selected Sites

TriStar Summit Medical Center

Attachment 1N-1.5 Collected Policies and Procedures



DEPARTMENTS: Human Resources	POLICY DESCRIPTION: Access to Services
PAGE: 1 of 3	REPLACES POLICY DATED: 3/1/2011, 5/1/11, 3/1/13, 9/1/13, 3/1/15, 10/17/16
EFFECTIVE DATE: May 1, 2018	REFERENCE NUMBER: ADA.001
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: All Company-affiliated subsidiaries including, but not limited to, hospitals, ambulatory surgery centers, outpatient imaging centers, physician practices, service centers, HealthTrust Workforce Solutions, Corporate Departments, Groups and Divisions.

PURPOSE: To ensure compliance with any applicable public access provisions of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (28 U.S.C. 794), and Section 1557 of the Patient Protection and Affordable Care Act (ACA 2010) in HCA Healthcare-affiliated facilities.

POLICY:

- 1. HCA Healthcare-affiliated facilities are required to comply with any applicable public access provisions of the ADA including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), the Rehabilitation Act of 1973 and Section 1557 of the Patient Protection and Affordable Care Act (ACA 2010). HCA Healthcare- affiliated facilities commit to act in accordance to a designated web accessibility standard. HCA Healthcare facilities may not discriminate on the basis of disability or national origin in employment, public accommodations, commercial facilities, transportation, telecommunications, or web access.
- 2. HCA Healthcare-affiliated facilities are required to provide the same level of service and access to persons with disabilities as for all others.
- 3. All employees, subcontractors, and vendors must carry out their roles and responsibilities in a manner that is in compliance with the ADA and related nondiscrimination laws.
- 4. HCA Healthcare-affiliated facilities are required to follow this and related policies, including:
 - a. ADA Compliance: Removal of Physical Barriers Program Policy, ADA.002; and
 - External Web Accessibility Policy, ADA.003;
 and adopt the following model policies on Atlas, in substantially the same language as is in the model policy:
 - c. Accommodating Persons Who are Deaf or Hard-of-Hearing Model Policy
 - d. Accommodating Persons with Service Animals Model Policy;
 - e. Accommodating Persons Who are Blind or Have Low Vision Model Policy; and
 - f. Accommodating Persons with Limited English Proficiency (LEP) Model Policy
- Concerns about or violations of these policies should be reported to one's supervisor, the facility's Equity Compliance Coordinator, the facility's Director of Facility Management (for ADA Compliance: Removal of Physical Barriers Program Policy, ADA.002), the facility's Ethics and Compliance Officer, the ADA Responsible Executive, or via the Ethics Line at 1-800-455-1996.

PROCEDURE:

1. Each facility chief executive, administrator or practice manager shall designate an Equity



DEPARTMENTS: Human Resources	POLICY DESCRIPTION: Access to Services
PAGE: 2 of 3	REPLACES POLICY DATED: 3/1/2011, 5/1/11, 3/1/13, 9/1/13, 3/1/15, 10/17/16
EFFECTIVE DATE: May 1, 2018	REFERENCE NUMBER: ADA.001
APPROVED BY: Ethics and Compliance Policy Committee	

Compliance Coordinator (ECC) whose responsibilities shall include overseeing compliance with the ADA as it relates to access to services, Section 504, ACA 2010, External Web Accessibility Policy, ADA.003, and the four model policies listed above. The Director of Facility Management is responsible for overseeing compliance with the ADA as it relates to physical barriers to access, Section 504 and ADA Compliance: Removal of Physical Barriers Program Policy, ADA.002.

- 2. The ECC and Director of Facility Management, respectively, should routinely report to the Facility Ethics and Compliance Committee regarding ADA compliance.
- 3. The ECC and the Director of Facility Management, respectively, are responsible for developing and implementing facility ADA compliance procedures. The facility ADA procedures must be consistent with the corporate ADA policies and must include any additional state or local procedures or requirements.
- 4. The ECC and Director of Facility Management, respectively, will ensure that appropriate education is available and has been completed by appropriate audiences.
- 5. ECC and Director of Facility Management, respectively, must report all ADA complaints, problems or incidents, whether informal or formal to facility administration including the facility ECO and the respective ADA Responsible Executive or designee.
- 6. Each facility shall adopt the following model policies;
 - a. Accommodating Persons Who are Deaf or Hard-of-Hearing Model Policy on Atlas, in substantially the same language as is in the model policy. This policy requires development of a language access plan that accommodates individuals who are deaf or hard-of-hearing by providing free auxiliary aids in order to ensure equal opportunity to participate in and benefit from healthcare services.
 - b. Accommodating Persons with Service Animals Model Policy on Atlas, in substantially the same language as is in the model policy. This policy requires the development of a plan to ensure that persons using service animals have an equal opportunity to participate in and benefit from healthcare services. This policy specifically differentiates "service animals" from "therapy animals," and describes types of service dogs, as well as sets behavioral guidelines.
 - c. Accommodating Persons Who are Blind or Have Low Vision Model Policy on Atlas, in substantially the same language as is in the model policy. This policy requires development of a plan that accommodates individuals who are blind or have low vision by providing auxiliary aids at no cost to allow them an equal opportunity to participate in and benefit from healthcare services.
 - d. Accommodating Persons with Limited English Proficiency (LEP) Model Policy on Atlas, in substantially the same language as is in the model policy. This policy requires the development of a language access plan that accommodates persons with LEP in order to ensure the meaningful access to participate in and benefit from healthcare services.
- 7. Changes to the model policies may be made only if they are to address facility procedure.



DEPARTMENTS: Human Resources	POLICY DESCRIPTION: Access to Services
PAGE: 3 of 3	REPLACES POLICY DATED: 3/1/2011, 5/1/11, 3/1/13, 9/1/13, 3/1/15, 10/17/16
EFFECTIVE DATE: May 1, 2018	REFERENCE NUMBER: ADA.001
APPROVED BY: Ethics and Compliance Policy Committee	

Any time a substantive change to an ADA Model Policy is contemplated, the ECC must notify the facility Ethics and Compliance Officer (ECO) and together they should consult with the ADA Responsible Executive or designee.

REFERENCES:

- 1. The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), known as the ADA, including changes made by the ADA Amendments Act of 2008 (P.L. 110-325).
- 28 CFR Part 36, revised as of July 1, 1994 entitled "Non Discrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities" (http://www.ada.gov/regs2010/titleIII_2010/titleIII_2010_regulations.htm
- 3. Rehabilitation Act of 1973, Section 504
- 4. Section 1557 of the Patient Protection and Affordable Care Act (ACA 2010).
- 5. Americans with Disabilities Act, Access To Medical Care For Individuals with Mobility Disabilities, published by the U.S. Department of Justice, dated July 2010 (http://www.ada.gov/medcare mobility ta/medcare ta.htm)
- 6. Section 508 Web Accessibility Standards developed by the United States Access Board.
- 7. Worldwide Web Consortium's Web Content Accessibility Guidelines 2.0.
- 8. ADA Compliance: Removal of Physical Barriers Program Policy, ADA.002
- 9. External Web Accessibility Policy, ADA.003



DEPARTMENT:	POLICY DESCRIPTION:
ASC Business Office	Charity Discount Policy for Patients (for all states
	except Georgia and Virginia)
PAGE: 1	REPLACES POLICIES DATED: 1/26/17, 2/15/18,
	5/1/19, 10/1/19, 03/01/20, 03/01/21,03/01/22,
	11/10/23, 2/1/24
APPROVED:	RETIRED:
EFFECTIVE DATE: 02/01/2025	REFERENCE NUMBER: SVG.BO.DISC.005

SCOPE:

Applies to all surgery centers operated by the Company's Surgery Ventures Group. Facilities located in joint-venture markets may need to follow the local joint venture's policy. Certain states have specific requirements regarding charity care which may affect components of this policy.

PURPOSE:

To define the policy for providing financial relief to patients who have received medically necessary care and who do not qualify for state or federal assistance and are unable to establish partial payments or pay their balance due. Federal Poverty Guidelines (FPG) levels will be used in determining the Charity Discount. Also, to establish protocols for requesting and processing the <u>Financial Assistance Application</u> and defining the supporting income validation documentation requirements.

POLICY:

Charity Discounts may only be provided to patients receiving medically necessary care. The following classes of patients may qualify for a charity discount based on the patient's income and the amount of the net patient liability as outlined in the Federal Poverty Guidelines (FPG) levels set forth below:

- 1) *Under insured* patients (i.e., those patients with some form of third-party payer coverage for health care services but such coverage is insufficient to pay the current bill) with an out of pocket responsibility of \$1,000 or more for an individual account, when FPG thresholds are met, and
- 2) *Uninsured* patients (i.e., those patients with no third-party payer coverage for health care services whatsoever), who have advised that they are unable to pay their account balance(s), when FPG thresholds are met.

The request for applying a Charity Discount adjustment should be initiated by the patient/guarantor (versus center personnel) based on his/her specific situation in meeting the financial obligations of the services received.

Patients who have a financial liability exceeding \$10,000 and who have income levels over 200% but not exceeding 500% of the FPG may be eligible for a Patient Liability Protection (PLP) Discount adjustment to their account balance. Approval must be obtained from your Regional CFO/BOD before processing the PLP Discount adjustment in accordance with the *Patient Liability Protection Financial Assistance Policy, SVG.BO.DISC.011*.



DEPARTMENT:	POLICY DESCRIPTION:
ASC Business Office	Charity Discount Policy for Patients (for all states
	except Georgia and Virginia)
PAGE: 2	REPLACES POLICIES DATED: 1/26/17, 2/15/18,
	5/1/19, 10/1/19, 03/01/20, 03/01/21,03/01/22,
	11/10/23, 2/1/24
APPROVED:	RETIRED:
EFFECTIVE DATE: 02/01/2025	REFERENCE NUMBER: SVG.BO.DISC.005

A validation must be completed to ensure that if any portion of the patient's medical services can be paid by any federal, or state governmental health care program (e.g., Medicare, Medicaid, Champus, Medicare secondary payor), private insurance company, or other private, non-governmental third-party payor, that the payment has been received and posted to the account. No Charity Discount can be applied to a case with any outstanding payer liability, i.e., all other potential payment sources must be posted to the patient's account before application of the Charity Discount adjustment.

All accounts (including Medicare patients) will be required to have supporting income verification documentation. Medicare requires independent income and resource verification for a charity care determination with respect to Medicare beneficiaries.

Income Verification:

All Medicare beneficiaries, in addition to a thoroughly completed <u>Financial Assistance Application</u> (FAA), will be required to have supporting documentation for income verification. The preferred income documentation will be the most recent year's Federal tax return (Form 1040). A Medicare beneficiary unable to provide his/her most recent Federal tax return may provide two pieces of supporting documentation from the following list to meet this income verification requirement:

- State income tax return for the most current year
- Supporting W-2 and 1099 forms
- Most recent bank and broker statements (listed in the Federal tax return)
- Current credit report

For non-Medicare patients, in addition to the FAA, at least one type of supporting income verification documentation should be requested. However, a patient's inability to provide the requested income documentation will NOT affect his or her access to receiving the Charity Discount. The thorough completion of the FAA will be the acceptable "minimum" for determining the discount. In addition to the above-referenced documentation, the following may be used for non-Medicare patients as well:

- Most recent employer pay stubs
- Written documentation from income sources
- Copy of all bank statements for the last three months

After thorough review of the <u>Financial Assistance Application</u>, a manager may waive supporting documentation on non-Medicare, non-Champus, non-Medicaid, and non-Medicare Secondary Payor accounts only when it is apparent that the patient/responsible party is unable to meet the supporting documentation requirement but clearly meets the Charity guidelines.



DEPARTMENT:	POLICY DESCRIPTION:
ASC Business Office	Charity Discount Policy for Patients (for all states
	except Georgia and Virginia)
PAGE: 3	REPLACES POLICIES DATED: 1/26/17, 2/15/18,
	5/1/19, 10/1/19, 03/01/20, 03/01/21,03/01/22,
	11/10/23, 2/1/24
APPROVED:	RETIRED:
EFFECTIVE DATE: 02/01/2025	REFERENCE NUMBER: SVG.BO.DISC.005

Resource Verification: Medicare Accounts Only

Per policy LL.GEN.001 *Waiver of Medicare Copays and Deductibles*, in order to adjust off the patient responsible portion, Medicare patients will need to undergo an individualized, good faith assessment of financial need. Medicare patients will be required to provide the most current year's Federal tax return or the following supporting documentation to support resource testing:

- Supporting W-2
- Supporting 1099
- Most recent bank and broker statements listed in the recent Federal tax return

The financial assessment (to validate adjusting off the patient portion) is in lieu of continuing normal collection efforts to secure payment of the amount.

All efforts should be documented in a clear, concise and consistent manner in the billing system. Staff should demonstrate respect and integrity in all internal and external dealings. Confidentiality and security of the patient's information are considered of utmost importance and will be adhered to by all staff.

Pending Medicaid Effect on Charity Discount

If the patient indicates that Medicaid is pending, the final status of that effort must be known before evaluating the case for a potential Charity Discount. This may force a delay in applying the Charity Discount.

Charity Processing based on Federal Poverty Guidelines

Patients that meet 0-200% of the respective family size FPG levels will have a 100% Charity Discount processed. In those instances where state regulations exceed the Federal Poverty Guidelines, then the state requirements must be utilized. Use the journal code **CHWO** for entry of a Charity Discount.



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For 2025, the qualifying income levels based on the Federal Poverty Guidelines, are as follows:

		All States <u>except</u> GA, VA & Alaska	Alaska ONLY
Family Size	FPG 2025 Level	200% of US FPG Income Level	200% of AK FPG Income Level
1	\$15,650	\$31,300	\$39,100
2	\$21,150	\$42,300	\$52,860
3	\$26,650	\$53,300	\$66,620
4	\$32,150	\$64,300	\$80,380
5	\$37,650	\$75,300	\$94,140
6	\$43,150	\$86,300	\$107,900
7	\$48,650	\$97,300	\$121,660
8	\$54,150	\$108,300	\$135,420
Ea. Add. person	\$5,500	\$11,000	\$13,760

^{*} Georgia and Virginia facilities follow a separate policy

For families with more than eight persons: increase the qualifying incomes amounts by the amount listed for each additional person, adding that total dollar amount for the additional person(s) to the listed values for an eight-person family unit.

For *uninsured* patients, the discount will be applied to total patient liability. For example: a Tennessee patient has 1 other person living with him (total of 2) and the household income is \$30,000. The case's total charges of \$20,000 would be adjusted off with the application of a Charity Discount based on the fact the income level is less than the \$42,300 threshold.

For *under insured* patients, the discount should be applied to the net patient due. For example: an account with total charges of \$20,000 and an insurance payment of \$12,000 would leave a remaining net patient due of \$8,000. If the patient meets the charity guidelines outlined above (ex: 2-person family making under \$42,300) the remaining balance of \$8,000 would be written off as a Charity Discount.



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Refunds on Charity accounts

The general expectation is that all patients pay for services rendered if they are not fully covered by a third party. Therefore, any amount paid by the patient (even if the patient subsequently meets the charity discount guidelines for their balance due), will be retained. Only amounts already paid by the patient that exceed the amount that patient would have paid had they received the Uninsured Discount, or that exceeds their out of pocket responsibility per their insurance, will be refunded. For those patients who do meet the Charity Discount criteria and have made a partial payment, the Charity Discount will be applied to the remaining patient balance.

REFERENCES:

U.S. Dept. of Health & Human Services, U.S. Federal Poverty Guidelines Policy PARA.PP.VCM.016 Charity Financial Assistance Policy for Uninsured and Underinsured Patients

Policy LL.GEN.001 *Waiver of Medicare Copays and Deductibles* Older versions of this policy are dated: 7/21/04; 4/25/05; 1/24/06, 1/23/08, 1/12/09, 1/20/11, 1/26/12, 1/24/13, 1/22/14, 1/22/15, 2/09/16,



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PAGE: 1	REPLACES POLICY DATED: 11/01/2009
APPROVED:	RETIRED:
EFFECTIVE DATE: 01/01/2016	REFERENCE NUMBER: SVG.BO.DISC.010

SCOPE:

Applies to all surgery centers operated by the Company's Surgery Ventures Group. Facilities located in joint-venture markets may need to follow the local joint venture's policy instead.

PURPOSE:

To define the process for implementing an Uninsured Discount Program for surgical procedures and ancillary service/items.

POLICY:

All uninsured procedures and ancillary services and items, excluding those identified by the center as cosmetic on their Cosmetic Procedure List, will be given an Uninsured Discount (journal code UNINS). *The Uninsured Discount is limited only to patients who have no third-party payer source for the scheduled course of treatment.* The discount will be a set percentage which matches the Center's current PPO discount percentage rate, as determined by the center's Regional CFO and VP of Operations. An eligible patient will receive the Uninsured Discount unless the patient qualifies for a Charity Discount as determined by the SVG Charity Discount Policy for Patients, SVG.BO.DISC.005.

To match normal payers' reimbursement for a given market a center may adopt multiple procedure discounting practices of 100/50/50 for uninsured surgical procedures. Multiple procedure reductions will be applied to the net patient responsibly after the UNINS discount has been applied to the center's charge master price (journal code MULT).

If necessary, a Settlement Discount may be used in addition to the Uninsured Discount in order liquidate the outstanding receivable. The Settlement Discount is based on the account balance net after application of the Uninsured Discount. Refer to Settlement Discount policy, SVG.BO.DISC.007.

The combination of the center's Uninsured Discount and Settlement Discount, may not result in a discount offering which exceeds the Center's overall (for all payers) "net-to-gross" adjustment percentage, nor exceeds Medicare's contractual adjustment for the surgical and imaging services. The Regional CFO will be responsible for providing a center both its Uninsured Discount percentage along with the overall "net-to-gross" percentage (maximum discount) at the beginning of each calendar year. If warranted, these two percentages may be changed mid-year in order to more closely match changes to annual PPO contracts.

Items such as drugs, high cost supplies, or implants may be separately discounted as they are to be paid at the time of service and in conjunction with surgical services received. These items are calculated with a separate Uninsured Discount, provided the discount is not more than %.



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[NOTE: Facility may choose 35, 40, or 45% based on the facility's pricing methodology for these items. Facility should consult with its Regional CFO or Business Office Director to determine which of the three available percentages they will use and consistently apply that percentage for these type items. Each center will coordinate with their Regional Business Office Director and CFO the percentage of discount established for:

- a) the UNINS discount available for surgical and imaging services,
- b) the UNINS discount available for cost-based items: drugs, implants, high cost supplies prosthetics, etc., and
- c) the center's max discount.

The use of the term *patient* is also meant to include the term *guarantor and/or responsible party*.

Pre-Registration

- 1. Upon scheduling of the case, the business office performs its insurance verification and certification process.
- 2. For any patient presenting as not having insurance coverage for the scheduled procedure, an estimate of gross charges for the planned case needs to be made. An estimated Uninsured Discount is then subtracted to determine the uninsured patient's estimated net financial obligation.
- 3. Contact the patient in order to validate that no insurance is effective for the planned procedure, as well as to communicate their estimated financial obligation. All requests for payment will be based on total charges less the uninsured discount. The estimated financial obligation could change based on the actual total charges or if the services provided vary from those initially scheduled on which the estimate is based. This shall be communicated to the patient at the time the request for payment is made.
- 4. If the patient indicates he/she cannot pay his account balance in full at time of service, then a payment arrangement with the patient is to be obtained: either full payment at time of service, or a monthly payment plan not to exceed four months. The Regional CFO may authorize the center to extend or shorten its repayment time span for all accounts collectively or on a case-by-case basis. Whenever a monthly payment plan is utilized, the amount calculated for cost based items should be collected in full on the date of service and a minimum deposit of 25% on surgical procedures must be made by the patient on the day of service.
- 5. If the patient provides insurance information which then is verified with the payer, then the Uninsured Discount is not applicable. If the patient indicates he/she is unable to meet a four month repayment arrangement, evaluate the patient for charity following the ASC Charity Discount Policy for Patients, SVG.BO.DISC.005.



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Admission & Patient Notification:

- 1. Upon admission, the uninsured patient will be given an Uninsured Patient Information document which explains the center's Uninsured Discount Policy and payment options. The patient / responsible party must sign and date the document.
- 2. The original document is placed in the patient's chart to substantiate that the patient was informed, with a copy given to the patient / responsible party.
- 3. Collect the estimated full payment, or the 25% minimum deposit for monthly payment arrangements.
- 4. If the patient qualifies as charity care instead, follow the SVG Charity Discount Policy for Patients.

Billing & Collection Follow-Up:

- 1. After the case is coded and charge entry is done, recalculate the Uninsured Discount based on the final total charges. Enter this amount against the case's charges using journal code UNINS (*Adjustment Uninsured Discount*).
- 2. If applicable, use journal code **MULT** (*Adjustment- Multiple Procedure Discount*) for multiple procedure discounting logic.
- 3. Generate periodic statements to the patient as necessary.
- 4. Utilize the Collector's Desktop system to coordinate follow-up efforts and monitor the self pay account's payment activity.
- 5. If the patient later requests a copy of a claim form, then query the patient as to whether insurance is now to be considered for the services in question. If at any time it is determined that the patient is covered by a health plan or subsequently is qualified for charity care, the Uninsured Discount should be reversed on the account using journal code CORUN (Correction Uninsured Discount). NOTE: The patient's request for a claim form should be a strong indication that insurance is involved and the account should no longer qualify for an Uninsured Discount.
- 6. If a decision is made during the collection effort to utilize a Settlement Discount offer to liquidate the unpaid balance, use journal code **SD** (*Write Off Settlement*) for the agreed upon portion.

APPLICATION OF UNINSURED DISCOUNT-EXAMPLES

All requests for payment will be based on total charges less the uninsured discount. The percentages given below are for illustrative purposes only.

Example #1: \$15,000 gross charges for case; center has a 30% Uninsured Discount rate based on its PPO contracts with multiple procedure performed. The center's max discount is 60%.



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Charge Master Price	Less UNINS 30%	Less 50% MPPR	Amt Due
\$5,000	\$1,500		\$3,500
\$5,000	\$1,500	\$1,750	\$1,750
\$5,000	\$1,500	\$1,750	\$1,750
Total Charge Master	Total UNINS Discount	Total MPPR Discount	Total Pt Liability
\$15,000	-\$4,500	-\$3,500	\$7,000

\$15,000 gross charge less \$4,500 (30%) Uninsured Discount then applying the multiple procedure reductions to the second and third lines is less \$3,500 leaving \$7,000 due at time of service; the center's max discount is 60% of the total charge of \$15,000. \$15,000 less \$9,000 (60%) is \$6,000 which is less than the quoted \$7,000, so it has stayed above their max discount.

Example #2

Charge Master Price	Less UNINS 30%	Less 50% MPPR	Amt Due
\$5,000	\$1,500		\$3,500
\$5,000	\$1,500	\$1,750	\$1,750
\$5,000	\$1,500	\$1,750	\$1,750
Total Charge Master	Total UNINS Discount	Total MPPR Discount	Total Pt Liability
\$15,000	-\$4,500	-\$3,500	\$7000 \$7,500

\$15,000 gross charge ales \$4,500 (30%) Uninsured Discount, then applying multiple procedure reduction to the second and third lines is less \$3,500 leaving \$7,000 due at the time of service except the center has a max discount of 50% which limits the total adjustment amount to \$7,500 (off of the original \$15,000). The patient responsibility is adjusted to the max discount of 50%. \$15,000 less \$7,500 = \$7,500 pt. liability.

If a monthly plan is needed, the patient will pay \$1,750 on service date with \$1,312 (rounded) each of the remaining 4 months (\$1,750 is for the 1st month only).

Example #3

Charge Master Price	Less UNINS 30%	Less 50% MPPR	Amt Due
\$5,000	\$1,500		\$3,500
Implant	Less Implant UNINS 45%		
\$3,000	\$1,350		\$1,650
Total Charge Master	Total UNINS Discount	Total MPPR	Total Pt Liability
\$8,000	-\$2,850	-\$0	\$5,150



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\$5,000 gross charge on a single procedure less UNINS -\$1,500 (30%) with NO multiple procedures to reduces leaves the patient owing \$3,500 on the procedure either paid in full at the time of service or broken into 4 payments of 25% \$875 with the first payment being due at the time of service.

\$3,000 implant gross charge less UNINS for implant -\$1,350 (45%) leaves the patient owing \$1,650 due in full at the time of service.

This patient paying the estimate in full at the time of service would pay \$5,150. If paying in payment arrangements would pay \$2,525 at the time of service and \$875 for 3 months.

Insurance Denials:

If an insurance company denies a claim based upon the patient or procedure not being covered, including pre-existing conditions, or benefits have been exhausted, then the patient is considered to be uninsured and is eligible for this discount.

Insurance Coverage:

After applying the Uninsured Discount, if it is determined the patient has filed a claim with their private insurance for the services in question, than the patient is <u>ineligible</u> for this discount. The Uninsured Discount must be reversed on the account. Similarly, if the patient became retroactively eligible for health insurance coverage for the services in question, then the Uninsured Discount must be reversed also.

Patient Statements:

Statements or letters to the patient reflecting an outstanding amount should not be sent out until the Uninsured Discount has been posted to the account. Normally, the entry of this discount should occur at the time of billing (charge entry).

Effect on Professional Courtesy Discounts:

If the services are not covered by insurance and the center has a Professional Courtesy Discount Policy in place, the physician (and immediate family members) may receive the greater of the two available discounts. Use either the center's Professional Courtesy Discount or its Uninsured Discount.

LEBANON CENTER FOR OUTPATIENT SURGERY

POLICY AND PROCEDURE 2025 INFECTION CONTROL PLAN AND STANDARDS

POLICY:

It shall be the policy of the surgery center to comply with proper infection control measures according to current national and HCA standards of practice. This plan is intended to be in effect for all disciplines in the Center. All information covered by this plan for the pandemic is supported by the most up-to-date guidance as posted onto the SVG SharePoint website.

PURPOSE/GOALS:

- To maintain an ongoing Infection Control Program designed to minimize and/or prevent post op infections and the spread of communicable diseases.
- To assure there is ongoing surveillance and a method to identify, track and investigate post-op infections.
- To assure the surveillance system monitors all healthcare providers' compliance with proper infection control practices.
- To provide a functional and sanitary environment by complying with professionally acceptable standards of practice
- To ensure compliance with evidenced-based resources including, but not limited to, CDC, APIC, AAAHC, AORN, CMS, AAMI, Anesthesia Society, and OSHA, guidance for care and protection of patients and staff during a pandemic.

COMPONENTS OF THE INFECTION CONTROL PLAN

Defined Responsibility

The Governing Body is the ultimate authority for the Infection Control Program. The ongoing responsibility for the program is assigned by the Administrator to an individual who receives special training regarding Infection Control and the responsibilities of the position. The Infection Control Preventionist (ICP) designee will be a member of the Quality Improvement Committee and provide quarterly reports regarding the program's activities, findings and improvement strategies. The Infection Control Preventionist (ICP) designee works collaboratively with the Center Leaders including the Medical Director to maintain an effective Infection Control Program.

Authority

The Risk Manager and/or Nurse Manager, in collaboration with the Administrator and Medical Director, has the authority to institute any appropriate control measure if there is a reasonable risk to patients or personnel arising from suspected or confirmed infectious diseases.

Resources

Professional guidelines are referenced in the development and implementation of the Infection Control Program. These evidenced-based resources include, but are not limited to, CDC, APIC, AAAHC, AORN, CMS, AAMI and OSHA.

<u>Determining Presence of Healthcare Acquired Infections</u>

Healthcare acquired infection (HAI)/ Nosocomial infections manifests in patients in whom infection was not present or incubating at the time of admission. When the incubation period is unknown, an infection is referred to as HAI if it develops at any time following admission and is related to the surgical event. An infection present on admission can be classified as HAI, only if it is directly related to and/or the residual of a previous admission. All infections that fail to satisfy these requirements are classified as community acquired.

The term "Healthcare acquired" will include potentially preventable infections, as well as, some infections that may be regarded as inevitable.

Tracking

Letters are sent to physicians to follow up on any infection that occurred within 30 days of the procedure. Implants are tracked for 90 days. An implant as defined by CDC is a nonhuman-derived implantable foreign body (e.g., prosthetic heart valve, nonhuman vascular graft, mechanical heart, or hip prosthesis) that is permanently placed in a patient during surgery. Any infection reported is investigated using the CDC NHSN guidelines, for trends or opportunities for improvement. Reported infections that do not meet the /SSI guidelines are trended through Risk Management as complications. All are reported to the QI Committee and Governing Body.

Classification of Patient Care Equipment

Critical items confer a high risk for infection if they are contaminated with any microorganism. Thus, objects that enter sterile tissue or the vascular system must be sterile because any microbial contamination could transmit disease. This category includes surgical instruments, cardiac and urinary catheters, implants, and ultrasound probes used in sterile body cavities. Most of the items in this category should be purchased as sterile or be sterilized with steam if possible. Heat-sensitive objects can be treated with EtO, hydrogen peroxide gas plasma; or if other methods are unsuitable, by liquid chemical sterilants. Germicides categorized as chemical sterilants include ≥2.4% glutaraldehyde-based formulations, 0.95% glutaraldehyde with 1.64% phenol/phenate, 7.5% stabilized hydrogen peroxide, 7.35% hydrogen peroxide with 0.23% peracetic acid, 0.2% peracetic acid, and 0.08% peracetic acid with 1.0% hydrogen peroxide. Liquid chemical sterilants reliably produce sterility only if cleaning precedes treatment and if proper guidelines are followed regarding concentration, contact time, temperature, and pH.

Semi-critical items contact mucous membranes or nonintact skin. This category includes respiratory therapy and anesthesia equipment, some endoscopes, laryngoscope blades 24, esophageal manometry probes, cystoscopes 25, anorectal manometry catheters, and diaphragm fitting rings. These medical devices should be free from all microorganisms; however, small numbers of bacterial spores are permissible. Intact mucous membranes, such

as those of the lungs and the gastrointestinal tract, generally are resistant to infection by common bacterial spores but susceptible to other organisms, such as bacteria, mycobacteria, and viruses.

Non-Critical are items that come in contact with intact skin, but not mucous membranes. This category is divided into patient care items (blood pressure cuffs, pulse oximetry probes, wheelchairs, stretchers) and non-critical environmental surfaces frequently touched by the hand (bedrails, bedside tables). Most non-critical items may be decontaminated at the point of care with a single use disposable towel impregnated with a disinfectant.

Levels of Cleaning Equipment

All equipment should be cleaned in accordance with manufacture's recommendation (One Source or written instructions by the manufacturer)

In the ambulatory care setting it is important to choose the correct level of disinfection and/or sterilization for the type of patient care equipment.

Sterilization is a process that destroys or eliminates all forms of microbial life and is carried out by physical or chemical methods. Steam under pressure is the least expensive, safest and most efficient sterilization method for processing heat and moisture stable items. When possible, this should be used in preference to all other methods. Hydrogen peroxide gas plasma (Peracetic acid) is used for heat-sensitive items. (cameras and scopes).

Disinfection is a process that eliminates many or all pathogenic microorganisms, except bacterial spores, on inanimate objects. This is usually performed with a liquid chemical. Disinfection is not sporicidal.

High Level Disinfection is defined as complete elimination of all microorganisms in or on an instrument, except for small number of bacterial spores.

Spaulding Classification

Device Classification	Examples	Spaulding Process Classification	EPA Product Classification
Critical (enters sterile tissue or vascular system)	Implants, scalpels, needles, other surgical instruments	Sterilization-sporicidal, chemical; prolonged contact	Sterilant/disinfectant
Semi-Critical (touches mucous membranes)	Flexible endoscopes, laryngoscopes,	High level disinfection- sporicidal, chemical, short contact	Sterilant/disinfectant
Non-Critical (touches intact skin)	Stethoscopes, tabletops, pulse ox probes, B/P cuffs	Low level disinfectant	Facility disinfectant without HBV/TB label claim

DISINFECTANTS

All disinfectants should be EPA approved and be appropriate for the equipment and/or surface areas. They are used according to manufacturer's recommendations.

The center maintains a current list of all disinfectants. (Addendum 2 attach a list.)

Surveillance

Surveillance is an ongoing process to identify and analyze outcomes related to infection control, and includes but not limited to:

- Environmental surveillance to identify and correct practices found in the workplace,
- Infection control rounds
- Hand hygiene audits
- Ongoing temperature and humidity checks in critical areas as defined by policy and practice
- Preventive measures such as immunization of staff
- Observation and documentation of sterilization and disinfection practices
- Verification of education and training for staff and physicians
- Conformity with safe sharps handling and using appropriate sharps free devices where possible
- Public health reporting and monitoring of community trends
- Post-surgical surveillance through reports sent to physicians and follow up when indicated.

Patient Assessment

All patients will receive a pre-operative or pre-procedure assessment of current and past health history, including a symptom-based evaluation for current communicable diseases and outbreaks defined by CDC.

During a Pandemic, it may be necessary for patients, staff and visitors to undergo additional screening in order to assess potential exposure and treatment risks. Screenings will include recommendations and assessment as outlined in the CDC or state/local health department. All providers, staff, and patients should receive communication about screening efforts.

During a pandemic, the process for patient pre-assessment/screening may be modified to included additional monitoring criteria such as:

- Preoperative phone call inquiring as to health status and instructions on steps to mitigate risk such as mask requirements upon arrival to surgery center
- Temperature and Respiratory screening and/or OMP prescreening,
- Guidance to the appropriate entry point at the center for screening
- A reminder to contact the center prior to arrival should changes in status occur,
- Notice of current visitor guidance

Upon arrival to the center additional symptom, screening and universal masking may be required.

It is important to note that patient screening/assessment is a fluid process which may undergo many revisions or enhancements throughout the pandemic. The SVG SharePoint website will be the most accurate source of information and guidance on these processes during this time.

Control of Communicable Diseases

The center does not routinely provide care to a patient with an infectious disease. The Center may perform procedures on patients with a communicable disease that is spread via physical contact (i.e. latent MRSA). These situations will be handled on a case by case basis in accordance with the Center policy. The Center has a process in place for immediate isolation/sequestering of anyone who presents to the Center and possibly has a communicable disease. Patients found to be actively infected, or to have signs/ symptoms of active infection, at the time of arrival will have their procedure canceled and will be directed to follow up at the local emergency department or local primary care provider.

The center has available respiratory hygiene/cough etiquette measures with all patients, employees and visitors. Stations are set up during flu season.

The center has a proactive employee health program to monitor immunizations as defined by policy and annual adherence to the flu vaccination program.

Screening patients during the pre-admission process helps identify some airborne agents and decrease the risk of contagious outbreaks.

The center also has a defined TB plan that addresses screening patients and employees and providing TB testing for employees. (see TB plan)

For ectoparasites that affect humans (lice, bed bugs, scabies, etc.), follow the same process as communicable disease. If any of these are found on the patient, isolation of patient, linens and patient possessions must be bagged immediately and patient taken to a private area to prepare for discharge.

During a Pandemic, surgical cases should be postponed and/or prioritized based upon guidance from regulatory agencies such as CMS and CDC. In such a situation, documentation of medical necessity will be required. Additional information and guidance can be found on the SVG SharePoint website.

Visitor Guidelines

Visitation will be restricted during the time of a pandemic in accordance with CDC, State or local health department directives. Guidelines may include limitation of one visitor per adult patient and two visitors per pediatric patient

Staff and Provider Assessment

Staff, visitors and employees may be required to undergo additional screening, assessment and/or precautions during a pandemic. Processed for Universal Masking will be defined by corporate HR policies and the guidance posted on the ASD Atlas website. Employee and physician screening may also occur in accordance with CDC, State or Local health department guidelines.

Additional guidance on how to perform screening, screening criteria and recommendations for action based upon screening results will be available on the ASD Atlas Website. Additional recommendations or guidelines may also be released by HCA corporate HR and/or Infection Control.

It is important to note that staff, visitor and provider screening/assessment is a fluid process which may undergo many revisions or enhancements throughout the pandemic. The ASD Atlas website will be the most accurate source of information and guidance on these processes during this time.

Environment of Care

Environmental factors are monitored and reviewed as part of the Infection Control Plan include but are not limited to

- Work flow to prevent cross contamination
- Sterilization and reprocessing procedures and quality control logs
- Ventilation to include appropriate ventilation and maintenance of systems (measurement of air exchanges)
- Temperature and humidity of designated areas are defined
- Housekeeping responsibilities (terminal cleaning, disinfection of surfaces between patients, cleaning schedules, etc)
- Staff reminders to "scrub the hub" even with newly opened vials
- Staff education to always have new syringe and new needle to access medication vials

Education

Orientation and annual staff training regarding infection prevention and control will be provided and may include, but is not limited to:

- Hand hygiene
- High level disinfection/sterilization
- Waste management procedures
- Infection Control practices
- Employee health
- Exposure Control Plan
- Medication safety related to infection control practices
- Perioperative cleaning of all areas

Physicians, and eDHP will receive an annual review of IC practices

Signage displaying changes in practices and policies will be prominently displayed during times of a pandemic. Signage and communication to both staff and patients will be coordinated with the HCA communications team and this updated guidance is available on the SVG SharePoint website. Communication with staff on issues/practices related to the pandemic will occur in a variety of ways including, but not limited to staff meetings, email notifications, posted memos, HCA company website, one-on-one communication.

Improvement Strategies

- The Center conducts a minimum of quarterly infection prevention audits
- Infection prevention measures are monitored on an ongoing basis
- Surveys are sent to physicians to track post op infections. Follow up investigation is done on all confirmed post-op infections.
- All incidents of breaks in sterile techniques and confirmed post op infections are investigated and improvement strategies are put in place if identified

Policies and Procedures

The following Infection Control policies and procedures will be maintained and are an integral part of the Infection Control Plan:

- Aseptic Technique Principles P&P
- Communicable Disease Reporting
- Employee Exposure Plan & Guidelines
- Employee Health Program P&P
- Environmental cleaning in the Perioperative areas.
- Hand Hygiene P&P
- Infections/Complications Reporting Procedure post-op physician feedback
- Isolation/Transfer of Patients with Communicable Diseases
- Safe Medication Administration
- Orientation and training programs/competencies
- Pathology/Tissue Review P&P follow up for infections & positive cultures
- Product Recall P&P
- Safety Plan P&P monitoring of environment
- Sharps Prevention P&P
- Sterilization policies related to instrumentation
- High Level Disinfection (HLD)
- Surgical Scrub P&P
- Surgical attire gowning and gloving

References:- OSHA (www.osha.gov)

APIC (<u>www.apic.org</u>) CMS(<u>www.cms.hhs.gov</u>)

CDC (<u>www.cdc.gov</u>)

AAAHC (www.aaahc.org)

ANSI/AAMI

AORN (www.aorn.org)

SGNA

ASGE

Effective 2009

Revised 2011, 2014, 12/2016, 12/2018, 11/19, 11/20, 11/21, 10/2023

ADDENDUM 1

INFECTION CONTROL STANDARDS

<u>Universal Precautions:</u> Universal precautions are incorporated in all aspects of patient care as a method to reduce the spread of infection within the Center. These measures include, but are not limited to:

- Healthcare workers should routinely use appropriate barrier precautions to prevent skin and mucous membrane exposure when contact with blood and body fluids is anticipated.
- + Hands and other skin surfaces should be washed immediately & thoroughly if contaminated with blood or other body fluids. Hand hygiene should occur prior to patient contact, after glove removal and between patients.
- Healthcare workers should take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments.
- Health care workers who have exudative lesions or weeping dermatitis should refrain from direct patient care until the condition resolves.

<u>Protection Precautions:</u> The Center provides personal protective equipment (PPE) at no cost to the employee to reduce the risk of occupational exposure. PPE should be worn when there is a risk of exposure. PPE should be worn in accordance with the appropriate level of precautions needed.

PPE equipment available at the Centers includes:

- Gloves
- Gowns
- Face shield
- Masks
- Protective eye wear
- Disposable resuscitative equipment

PPE should be worn when you anticipate contact with blood or body fluids. Take caution to prevent contamination of clothing and skin during the process of removing PPE.

During a Pandemic, it may be necessary for centers to modify their normal PPE use and/or products. The center's current Infection Control and PPE Use policy will remain in effect; however, it will be supplemented by guidance in accordance with CDC recommendations and HCA directives as found on the SVG SharePoint Website.

• N95 Mask Use: Pandemic situations may result in the need for increased protection for staff and patients. It may become necessary for staff to wear N95 masks whereas these were not previously believed necessary. The surgery center will follow CDC requirements in regards to additional PPE requirements including N95 masks. Should staff be required to don N95 masks, fit testing will be provided in accordance with OSHA recommendations. Additional recommendations on mask use and PPE will be available on the SVG SharePoint website

Gloves: Clean, non-sterile gloves should be worn when touching blood, body fluids, secretions, excretions, mucous membranes, non-intact skin and contaminated items. Change gloves between tasks and procedures on the same patient after contact with material that may contain a high concentration of microorganisms. Remove gloves promptly after use and wash hands immediately. Wear sterile gloves to participate in sterile invasive procedures. Follow the Center's hand hygiene policy for further guidance on proper hand hygiene practices.

Gowns: Clean, nonsterile gown should be worn to protect skin and to prevent soiling of clothing during procedures and patient-care activities that are likely to generate splashes or sprays of blood, body fluids, secretions, or excretions. Do not reuse gowns, even for repeated contacts with the same patient. Remove a soiled gown and wash hands. Wear sterile gown while participating in sterile invasive procedure.

Mouth, nose and eye protection: Use PPE to protect the mucous membranes of the eyes, nose and mouth during procedures and patient-care activities that are likely to generate splashes or sprays. Use mask one time, discard and wash hands.

Resuscitation: Disposable-Ambu-Bag or ventilation devices are available to avoid mouth-to-mouth resuscitation.

Hand Hygiene: Hand hygiene is the single most important means of preventing the spread of infection. Protocols for proper hand hygiene and surgical hand antisepsis are an essential element of the program. Observation of hand hygiene practices will occur in order to assess the occurrence of proper hand hygiene. Observations may include:

- Visual observation of hand hygiene and surgical scrubs
- Assessment of expiration dates on hand sanitizers
- Performance compliance with manufacturer's information for use (MIFU)

Wash hands after touching blood, body fluids, secretions, excretions, and contaminated items, whether or not gloves are worn. Wash hands with disinfectant product and running water for 10-15 seconds using friction on all surfaces.

At the beginning of the day, a surgical hand scrub is required for personal operating in the sterile environment. After that, the use of an antimicrobial agent prior to performing invasive procedures in the sterile environment is acceptable.

Hand Sanitizer (antimicrobial agent) is best utilized:

- Between patients
- Upon entering and exiting patient care areas
- If hands are moving from contaminated body site to clean body site during patient care
- After contact with environmental surfaces
- After glove removal

Rub the hand sanitizer all over the hands, especially under the nails and between the fingers, until the hands are dry according to MIFU.

Avoid unnecessary touching of surfaces while in close proximity to the patient.

Fingernails should be natural (no artificial tips or nails), trimmed (normally no longer than ½" past the tip of the finger) and groomed for employees involved in direct patient care. Nail jewelry is not allowed in any clinical area. Nail polish is acceptable for all staff except those functioning in the role of the surgeon, OR technician/assistant and Central Sterile Processing personnel. The nail polish should not be chipped.

Surgical Preps

Preps

Educate staff and physicians on the appropriate surgical prep for the procedure being done. Assure the recommended drying time occurs for surgical preps prior to the start of the case.(i.e. post drying times in OR's, include in time out process)

Chlorhexidine wipes are used as part of the prep in pre-op for all orthopedic cases Patient skin and nasal antiseptic preps are performed on total joints. (

Hair Removal:

When hair must be removed to safely perform the procedure, clippers with disposable heads should be used. One exception is for the urologist who may use a razor.

Hair removal should be performed as close to the time of surgery as possible and prep done outside the OR.

Discard clipper head after single use.

<u>Antibiotics:</u> Proper timing of antimicrobial administration ensures that the optimal concentration is in the serum/tissue before the time of incision. Ensure appropriate infusion to correlate with time for antibiotic administration.,

Sterile/Aseptic Technique

Sterile technique will be used during the following

- All invasive procedures
- Postoperative dressing changes
- Endotracheal suctioning
- Pain injections use mask for catheter insertion or injection into spinal or epidural spaces

<u>Sterilization and HLD processes</u>: Refer to specific policies that are developed utilizing AAMI, SGNA, CDC and APIC standards

- Discard single use items after one use.
- Reprocessed items should be processed by an FDA approved vendor
- Keep sterile trays and items in a clean, temperature-controlled area

<u>Respiratory Hygiene/Cough Etiquette:</u> Employee education about Respiratory Hygiene/Cough Etiquette is provided at orientation and during community outbreaks of respiratory infections.

- During Flu season, symptoms are posted to remind staff to stay at home with these symptoms. Masks and hand sanitizers-are available in all areas.
- Pre-op respiratory assessments are also done in accordance to CDC directives for potential outbreaks for air borne diseases.
- No smoking allowed within the Center.

Employee Health:

Employees with open lesions or weeping dermatitis should refrain from direct patient care until condition resolved. Minor, non-exudative skin lesions must be covered with a moisture resistant dressing (e.g., Op-site) before giving direct patient care. Employees that exhibit symptoms of a respiratory infections with fever are requested to stay home.

The Center determines which immunizations are required and ensures documented proof is in the H.R. files. All employees are required to participate in the annual flu vaccination program or required to wear a mask in patient care areas during designated flu season.

The employer provides post exposure testing when indicated.

<u>Infectious Patients:</u> The Center does not perform procedures on patients with known airborne communicable diseases. If a patient presents to the Center, and it is identified the patient has an airborne communicable disease, the case will be cancelled. The patient will be isolated from the other patients until discharge.

Patients with a communicable disease spread via physical contact (i.e. latent MRSA) may receive treatment at the Center. Universal precautions are followed as well as any special precautions identified by the Medical Director, surgeon or staff. Communicable diseases are reported to the state per regulatory requirements.

Temperature and Humidity:

There is continuous temperature and humidity monitoring in the operating, procedure rooms and Central Sterile areas. Results are recorded in log books (manual or electronic).

Refrigerators and Freezers:

All medication refrigerators will have a continuous temperature monitoring system which is recorded daily. The medication refrigerator shall be kept between 36-46 degrees F. Temperature is monitored 24/7. Temperature is checked daily unless vaccines are stored, then it is checked twice a day.

Freezer temperatures are set according to manufacturer's recommendations.

Thermometers with recallable memory (continuous) will be used in refrigerators/freezers that store tissue and grafts.

Refrigerators and freezers should be plugged into emergency outlets.

Separate food and medication refrigerators must be used. No staff food may be kept in patient refrigerators.

Sharps Safety:

Needles should not be recapped, bent, broken or manipulated by hand. If it is necessary to recap, the one hand technique should be utilized. After use, engage safety device and place in designated sharps container at point of use. Sharps container fill lines should be visible to the employees. Change sharps container when three quarters (¾) full. Seal container and place in red bag or a bin in the soiled utility area for disposal.

Prior to each OR case a "safety/neutral zone" is established on the sterile field and the surgical team informed.

<u>Blood specimens:</u> All body fluids and tissue obtained for specimens are treated as if they are contaminated. Place in specimen bag provided by the lab prior to transport to the lab. Specimens should be labeled and sealed in bag/container prior to leaving the procedure area.

Red bag waste: Disposable items that are saturated with blood, or would leak blood if they became wet and compressed, must be placed in the red biohazard bag. Red-bagged waste is tied and placed in the receptacle with the biohazard sign. All biohazard waste is transported and treated by an approved, licensed vendor. Liquid secretions treated with a solidifier will go into a regular trash receptacle unless otherwise stated within the manufacturer's recommendations.

A tracking form is sent with all regulated waste containers. The biohazard waste company signs the tracking manifest form and the Centers maintain a copy.

Pharmaceutical Waste

Unused non- narcotic pharmaceutical waste is disposed of in black bins according to policy. Narcotic waste and Propofol is disposed in the Cactus system.

Safe work practices:

Employees should not drink, eat, apply make-up or handle contact lenses in an area where there could be blood or body fluids. Food and drink shall not be kept in refrigerators, freezers, shelves, cabinets or countertops where medications, tissue, blood or other potentially infectious materials are present.

<u>Blood spill:</u> All blood spills must be cleaned immediately. Small blood spills can be cleaned with the disinfectant wipes. Large blood spills will be cleaned with spill kits.

Disposing of Bloody Fluids:

Employees should wear gloves when disposing bloody fluids in the hopper. Eyewear should be worn if there is the risk of a splatter or aerosolization.

Trash removal:

All sealed biohazardous trash, regular trash and linen will be taken to the nearest dirty utility room and placed in the proper container for transport and/or disposal.

Supplies are to be removed from outside corrugated boxes before storage in clinical areas.

<u>Pest Control</u>: The Center has a contract for routine pest control. In addition, if a pest is seen in the clinical areas the company may be called for additional service.

Linen Management:

Clean linen must be kept in covered or in closed areas until used for patient care.

Soiled linen should be handled as little as possible and with a minimum of agitation to prevent gross microbial contamination of the air and of person handling the linen. Do not overfill linen bags or carry soiled linen against your uniform. All linen is placed in an impervious labeled bag and closed prior to transport.

Linen is cleaned by an outside vendor in accordance with regulatory guidelines.

Patient bay curtains are professionally cleaned at least annually or whenever visibly soiled. Curtains are replaced according to MIFU. Disposable Patient bay curtains may be utilized in accordance with MIFU.

Dress Code

Home laundered scrubs are acceptable for semi-restricted areas as defined by policy. Policy should include appropriate instructions for home laundering. If the scrubs become soiled, scrubs available for changing at the center. Clean scrubs are also available for physicians and visitors.

The OR is a restricted area. Personnel should change into laundered scrubs (commercially or home laundered) at the center prior to entering the OR restricted areas. Restricted areas include the OR suites, sterile supply room and central sterile processing. It requires use of surgical attire and hair coverings, as well as, masks in the presence of opened sterile items or scrubbed personnel. The corridors leading to the OR suites are marked with red lines on the floor to remind personnel they are in the corridor leading to the restricted areas.

Semi restricted area includes the peripheral support areas of the operating room, such as the corridors that lead to the restricted areas. These include the OR suites, scrub sink areas, procedure rooms and dictation rooms. This area requires surgical scrub attire and if within the red lines, the covering of all head and facial hair. Shoe covers are optional, but recommended for cases where a lot of fluid irrigation is done. If shoe covers are not worn in restricted areas, the shoes must be dedicated to wear only while in the Center.

Policy is established for family members accompanying child patient to OR.

Visitors are permitted in street clothes to the semi-restricted areas of pre and post op with the patient. Parents accompanying the child to the OR for induction may wear a cover gown, hat and booties.

Vendors/observers are to wear surgical attire provided by the Center or disposable coverings in the restricted areas.

Patients will wear gowns, or if procedure appropriate may wear their street clothes with a cover gown, sheet/blanket and a bouffant cap. Patient shoes should be removed or shoe covers applied over shoes. Procedure examples are dental, myringotomy with ear tube; tonsil and adenoid procedures for children. GI and Ophthalmic procedures for adults.

Patient Care Equipment and Supplies

Handle used patient-care equipment soiled with blood, body fluids, secretions, and excretions in a manner that prevents skin and mucous membrane exposures, contamination of clothing, and transfer of microorganisms to other patients and environments.

Disposable/ sterilized, single use items are not to be re-used (i.e. airways, ambu bags, suction catheters).

Oxygen nebulizers are changed per MIFU. Oxygen tubing and masks are single use items.

Surgical supplies that are reprocessed in CSP will be soaked or sprayed with a disinfectant at point of use. Then placed in a container with lidded impervious cover prior to sending to CSP. Decontamination should be done with the proper PPE in CSP.

Reusable equipment, such as pulse oximetry probes, stretchers, cribs, blood pressure cuffs should be cleaned with the approved disinfectant between patient uses.

Blood glucose and other bedside testing equipment should be cleaned between patients according to manufacturer recommendations.

Linen is changed between patients

Stretchers are cleaned between patients and end of day.

Cracks holes, and tears in OR bed mattresses, stretchers, reclining chairs and stools are reported and replaced.

The equipment and area where supplies are stored should be free of dust.

Equipment should be free of rust.

Wheel chairs are cleaned between patients

When sterile packaging has been compromised, the item cannot be used.

Supply storage

- The equipment and area where supplies are stored should be free of dust.
- Rotate items to use older materials first.
- Patient care supplies will be stored 8-10 inches off the floor, 18 inches from the ceiling and 2-4 inches from the wall in a well-lighted, dry, dust-free environment. The bottom shelf on racks must be solid to prevent mop splashes soiling supplies.(CDC recommendations)

No cardboard boxes should be brought into patient care areas. Medical supplies should not be stored in high traffic areas Sterile supplies should be stored in a humidity-controlled environment

Patient nourishment items are delivered in individual servings. Nourishment items are routinely checked for expiration dates and stored at recommended temperatures.

Environmental Cleaning

It is the goal to maintain a clean clinical environment. This process includes:

Prior to First Case

- All horizontal surfaces on movable and mounted equipment are damp dusted with an approved disinfectant.
- Visual inspection of the room by the clinical team and additional cleaning (if needed) before case supplies and instruments are brought to the room.
- A member of the surgical team must remain in the operating room once sterile case supplies and instruments are opened in the operating room.

During the Surgical Procedure:

- Scrubbed personnel shall wear sterile gloves and sterile gowns (when indicated) during
 the surgical procedure. Gowns are sterile in the front from the chest to the level of the
 sterile field. Sleeves are sterile from above the elbow to the cuff (see Center surgical
 attire policy for details)
- Masks are worn for all surgical procedures except: dental, myringotomy with ear tube, T&A, GI and litho.
- Masks are worn for catheter insertion or injection into spinal or epidural spaces.
- Sponges saturated with obvious blood are deposited into a plastic lined bucket which is sealed and discarded in a hazardous waste container after the surgical count is completed.

• Areas with contaminated blood or other organic matter are cleaned and disinfected immediately.

Between Surgical Cases

- Microfiber mops are used to clean floors. Floors are mopped between cases with a new mop head. Water is changed between cases if the mop head is re-submerged or water is soiled. Floors generally do not need to be mopped between myringotomy with tube cases, GI, Litho or ophthalmic cases unless gross contamination is noted.
- All instruments, trash and linen used during the procedure are contained and removed from the room through the proper disposal procedure.
- The scrub personnel will place all instruments, trays and basins in appropriate containers prior to removing their gown.
- Sharps, such as needles and blades, are discarded into a puncture proof container to prevent injury.
- A solidifying agent is used to congeal blood and fluids.
- All horizontal surfaces and OR table are cleaned with a germicide solution between cases.
- Kick buckets are cleaned and relined. New trash and laundry bags are provided.
- Scrub attire is changed if soiled. Masks are changed between cases.

At the End of the Day

- The OR personnel and/or contracted cleaning service will clean all furniture, stretchers, surgical lights and other permanent fixtures.
- Scrub areas including sinks are cleaned daily.
- OR suite floors, scrub areas, sub-sterile areas and corridors are wet mopped at the end
 of the day according to policy.
- Operating rooms are terminally cleaned after last procedure of the day.

Central Sterile Processing

Sterilizer loads are monitored with biological and chemical indicators for sterility. Results are logged daily.

Autoclaves, Steris and Sterrad machines are periodically cleaned and preventive maintenance provided by BioMed or contracted vendor according to manufacturer's instructions for use.

Sterilized articles should be handled as little as possible with great care and should be stored in a well ventilated area.

- All wrapped sterilized items remain untouched on the sterilizer rack or carriage until adequately cooled.
- If open shelf storage must be used, the lowest shelf is at least 8-10 inches from the floor and, highest is at least eighteen inches from the ceiling and the shelving is 2-4 inches from the wall. All shelves should be aligned not to allow sterile packages to touch the back wall surface and be accessible to clean all around the storage carts.
- The bottom shelf of the storage rack must be a solid surface to prevent dust and splashing from the mopping of the floors.
- Any sterilized package that is dropped, torn or has come in contact with wet objects, moisture or extreme pressure is considered contaminated.

All articles to be steam sterilized are positioned in the chamber to facilitate free circulation and penetration of steam, to enhance air elimination and to prevent entrapment

The Risk Manager and/or Nurse Manager may request environmental cultures of areas they feel may have consistent or cross contamination.

Supplies

Supplies expiration dates should be checked prior to opening. New supplies are rotated to the back and expiration dates should be checked monthly.

Expired supplies shall be removed from stock and returned and/or disposed of when indicated.

Patient Food/Drinks

Food will be stored on clean surfaces and/or cabinets a minimum of six inches above the floor, protected from splash overhead pipes or other contamination. Individual servings of food and drink will be provided to the patients and any unused portion will be immediately discarded. Food and drink will be check for expiration dates prior to use.

Traffic Control.

The Operating Room is a restricted area and the pre-op and PACU are semi-restricted areas. Traffic in and out of these areas should be limited to those involved in patient care unless approved by the management team.

Control traffic in/out of the O.R. and procedure rooms to minimize air turbulence during the room set up and during the procedure.

Keep OR doors closed except when entering and exiting for passage of equipment and personnel in order to maintain positive pressure differential in the OR and procedure rooms.

Visitors

Visitors who are ill with a communicable disease should be discouraged from accompanying the patient.

Books, Magazines, Plants and Toys

Articles visibly soiled should be discarded. Only toys that can be easily cleaned and disinfected will be allowed in play areas.

Live plants in the reception area are routinely checked for pests and water management by a non-clinical employee.

ANNUAL RISK ASSESMENT AND GOALS

The Center conducts an annual Infection Control risk assessment to prioritize areas of focus to continue to minimize the risk of infections and address any trends. Infection Control Goals Include but are not limited to:

- 1. Limiting unprotected exposure to pathogens
- 2. Limiting the transmission of infections associated with procedures
- 3. Limiting the transmission of infections associated with the use of medical equipment, devices, and supplies
- 4. Improving compliance with hand hygiene
- 5.Improving influenza vaccination rate

PATIENT RIGHTS

We respect the dignity and pride of each individual we serve. We comply with applicable Federal civil rights laws and do not discriminate on the basis of age, gender, disability, race, color, ancestry, citizenship, religion, pregnancy, sexual orientation, gender identity or expression, national origin, medical condition, marital status, veteran status, payment source or ability, or any other basis prohibited by federal, state, or local law. Each individual shall be informed of the patient's rights and responsibilities in advance of administering or discontinuing patient care. We adopt and affirm as policy the following rights of patients who receive services from our facility:

Considerate and Respectful Care

- To receive ethical, high-quality, safe and professional care without discrimination
- To be free from all forms of abuse and harassment
- To be treated with consideration, respect and recognition of their individuality, including the need for privacy in treatment.
 This includes the right to request the facility provide a person of one's own gender to be present during certain parts of physical examinations, treatments or procedures performed by a health professional of the opposite sex, except in emergencies, and the right not to remain undressed any longer than is required for accomplishing the medical purpose for which the patient was asked to undress

Information regarding Health Status and Care

- To be **informed of his/her health status** in terms that patient can reasonably be expected to understand, and to participate in the development and the implementation of his/her plan of care and treatment
- The right to be informed of the **names and functions** of all physicians and other health care professionals who are providing direct care to the patient
- The right to be informed about any continuing health care requirements after his/her discharge from the surgery center, and each patient will be provided with written discharge instructions and when necessary, overnight supplies. The patient shall also have the right to receive assistance from the physician and appropriate staff in arranging for required follow-up care after discharge.
- To be informed of risks, benefits and side effects of all medications and treatment procedures, particularly those considered innovative or experimental
- To be informed of all appropriate alternative treatment procedures
- To be informed of the **outcomes** of care, treatment and services
- To appropriate assessment and management of pain
- To be informed if the surgery center has authorized **other health care and/or education institutions** to participate in the patient's treatment. The patient shall also have a right to know the identity and function of these institutions, and may refuse to allow their participation in his/her treatment

Decision Making and Notification

- To choose a person to be his/her **healthcare representative and/or decision maker**. The patient may also exercise his/her right to exclude any family members from participating in his/her healthcare decisions.
- To have a family member, chosen representative and/or his or her own physician notified promptly of **admission** to the hospital
- To **request or refuse treatment**. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate
- To be included in **experimental research** only when he or she gives informed, written consent to such participation. The patient may refuse to participate in experimental research, including the investigations of new drugs and medical devices

- To formulate **advance directives** and be informed prior to receiving treatment how the surgery center will or will not comply with these directives
- To leave the surgery center against your physician's advice to the extent permitted by law

Access to Services

- To receive, as soon as possible, the free services of a translator and/or interpreter, telecommunications devices, and any
 other necessary services or devices to facilitate communication between the patient and the surgery center's health care
 personnel (e.g., qualified interpreters, written information in other languages, large print, accessible electronic formats)
- To bring a service animal into the facility, except where service animals are specifically prohibited pursuant to facility policy (e.g., operating rooms, areas where invasive procedures are performed, etc.)
- To **pastoral counseling** and to take part in **religious and/or social activities** while in the surgery center, unless your doctor thinks these activities are not medically advised
- To safe, secure and sanitary accommodation and limited refreshments prior to discharge
- To access people outside the facility by means of verbal and written communication
- To have accessibility to facility buildings and grounds. We recognize the Americans with Disabilities Act, a wide-ranging piece of legislation intended to make American society more accessible to people with disabilities. The policy is available upon request
- To a prompt and reasonable response to questions and requests for service

Access to Medical Records

- To have his/her **medical records**, including all computerized medical information, kept confidential and to access information within a reasonable time frame. The patient may decide who may receive copies of the records except as required by law
- Upon leaving the healthcare facility and in accordance with the surgery center's policies regarding records requests,
 patients have the right to obtain copies of their medical records

Ethical Decisions

- To participate prior to receiving treatment in ethical decisions that may arise in the course of care including issues of
 conflict resolution, withholding resuscitative services, foregoing or withdrawal of life sustaining treatment, and
 participation in investigational studies or clinical trials
- If the healthcare facility or its team decides that the patient's refusal of treatment prevents him/her from receiving appropriate care according to ethical and professional standards, the **relationship with the patient** may be terminated

Protective Services

- To access protective and advocacy services
- To be **free from restraints** of any form that are not medically necessary or are used as a means of coercion, discipline, convenience, or retaliation by staff
- To all **legal and civil rights** as a citizen unless otherwise prescribed by law
- To have upon request to patient's physician an impartial review of **hazardous treatments** or irreversible surgical treatments prior to implementation except in emergency procedures necessary to preserve your life
- To an impartial review of alleged violations of patient rights
- To expect emergency procedures to be carried out without unnecessary delay
- To give consent to a procedure or treatment and to access the information necessary to provide such consent
- To not be required to perform work for the facility unless the work is part of the patient's treatment and is done by choice
 of the patient

• To file a complaint with the Department of Health, Federal, State and/or Local Agencies, or other quality improvement, accreditation or other certifying bodies if he /she has a concern about **patient abuse**, neglect, about misappropriation of a patient's property in the facility or other unresolved complaint, patient safety or quality concern

Payment and Administration

- To examine and receive an explanation of the patient's **healthcare facility's bill** regardless of source of payment, and may receive upon request, information relating to the availability of known financial resources
- A patient who is eligible for **Medicare** has the right to know, upon request and in advance of treatment, whether the health care provider or health care facility accepts the Medicare assignment rate
- To receive, upon request, prior to treatment, a reasonable estimate of charges for medical care
- To be informed in writing about the **facility policies and procedures** for initiation, review and resolution of patient complaints, including the address and telephone number of where complaints may be filed

Additional Patient Rights

- Except in emergencies, the patient may be **transferred to another facility** only with a full explanation of the reason for transfer, provisions for continuing care and acceptance by the receiving institution
- To initiate their own contact with the media
- To request a change of providers, or members of the care team, should other qualified individuals be present
- To seek the opinion of another physician, including specialists, at the request and expense of the patient
- To wear appropriate personal clothing and **religious or other symbolic items**, as long a s they do not interfere with diagnostic procedures or treatment
- To request a **transfer to another area** (if medically appropriate) if another patient or a visitor in the room is unreasonably disturbing him/her

PATIENT RESPONSIBILITIES

The care a patient receives depends partially on the patient him/herself. Therefore, in addition to the above rights, a patient has certain responsibilities. These should be presented to the patient in the spirit of mutual trust and respect.

- To provide accurate and complete information concerning his/her health status, medical history, hospitalizations, medications and other matters related to his/her health
- To report perceived risks in his/her care and unexpected changes in his/her condition to the responsible practitioner
- To report comprehension of a contemplated course of action and what is expected of the patient, and to ask questions when there is a lack of understanding
- To follow the plan of care established by his/her physician, including the instructions of nurses and other health professionals as they carry out the physician's orders
- To keep appointments or notifying the facility or physician when he/she is unable to do so
- To be responsible for his/her actions should he/she refuse treatment or not follow his/her physician's orders
- To assure that the financial obligations of his/her healthcare care are fulfilled as promptly as possible
- To follow facility policies, procedures, rules and regulations
- To be considerate of the rights of other patients and facility personnel
- To be respectful of his/her personal property and that of other persons in the facility
- To help staff to assess pain, request relief promptly, discuss relief options and expectations with caregivers, work with caregivers to develop a pain management plan, tell staff when pain is not relieved, and communicate worries regarding pain medication
- To inform the facility of a violation of patient rights or any safety concerns, including perceived risk in his/her care and unexpected changes in their condition

• To provide a responsible adult who, in accordance to the surgery center's directives, will remain at the facility for the duration of his/her stay, transport him/her home from the facility and will remain with him/her as directed by the provider or as indicated on the discharge instructions

VISITATION RIGHTS

We recognize the importance of family, spouses, partners, friends and other visitors in the care process of patients. We adopt and affirm as policy the following visitation rights of patients/clients who receive services from our facility:

- To be informed of their visitation rights, including any clinical restriction or limitation of their visitation rights
- To designate visitors, including but not limited to a spouse, a domestic partner (including same sex), family members, and friends. These visitors will not be restricted or otherwise denied visitation privileges on the basis of age, race, color, national origin, religion, gender, gender identity, gender expression, sexual orientation or disability. All visitors will enjoy full and equal visitation privileges consistent with any clinically necessary or other reasonable restriction or limitation that facilities may need to place on such rights
- To receive visits from one's attorney, physician or clergyman at any reasonable time
- To speak privately with anyone he/she wishes (subject to surgery center visiting regulations) unless a doctor does not think it is medically advised
- To refuse visitors
- Media representatives and photographers must contact the Administrator/surgery center spokesperson for access to the surgery center

To report a patient rights concern, please contact any of the following:

Center Administrator:

Insert local contact info here, by name or title, address & phone number

State Reporting Agency:

Insert appropriate state agency, address, & phone number

Medicare Ombudsman:

https://www.cms.gov/center/special-topic/ombudsman/medicare-beneficiary-ombudsman-home

Accrediting Organization: Insert the ASC's accrediting organization; delete the other

OR

Accreditation Association for Ambulatory Health Care, Inc. 5250 Old Orchard Road, Suite 200

5250 Old Orchard Road, Suite 200 Skokie, IL 60077

Phone: 847-853-6060

E-Mail: info@aaahc.org

The Joint Commission
Office of Quality and Patient Safety
One Renaissance Boulevard
Oakbrook Terrace, IL 60181
By fax: 630-792-5636

Report a Patient Safety Event or Concern:

www.jointcommission.org/report_a_complaint.aspx

HCA Ethics Line:

800-455-1996

If you need access to services or to report a concern regarding discrimination in access to services, please contact:

Insert name and title of Equity Compliance Coordinator (ECC)

Insert mailing address, telephone number, fax number, TTY number and e-mail address of ECC

You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, [Name and Title of ECC] is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office of Civil Rights Complaint Portal, available at:

https://ocrportal.hhs.gov/ocr/portal/lobby.jsf, or by mail or phone at:

U.S. Department of Health and Human Services

200 Independence Avenue, SW

Room 509F, HHH Building

Washington, D.C. 20201

1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at http://www.hhs.gov/ocr/office/file/index.html.

QUALITY IMPROVEMENT, RISK MANAGEMENT, AND PATIENT SAFETY PLAN

LEBANON CENTER FOR OUTPATIENT SURGERY 2025

The mission of Lebanon Center for Outpatient Surgery is focused on delivering the highest quality, cost effective healthcare that effectively responds to the needs and safety of our patients by minimizing the possibility for injury or harm to our patients. We are committed to the care, dignity and improvement of human life to the patient populations we serve.

In keeping with the mission of the Lebanon Center for Outpatient Surgery, the community, HCA initiatives, and regulatory standards for ambulatory surgical care, this plan allows for a planned, systematic, organization-wide approach to the quality improvement process, risks, patient safety and assessing opportunities to reduce risk. This is accomplished through an effective risk and quality program, as well as, a medication and safety plans (life, utilities, laser, radiation safety) that are all targeted toward improving patient safety. The activities will be carried out in a collaborative and interdisciplinary manner. When identified, individual competency issues and process changes will be coordinated with the management team and human resources. The overall strategies of the program include

- Improving patient safety and reducing risk to patients which includes, but not limited to medication, life safety, laser and radiation safety, safe quality care and reducing risk of injury to patients and staff. This will be accomplished through true learning from errors.
- Reducing medical/healthcare system errors and hazardous conditions by creating an environment in which patients, their families, surgery center staff, and medical staff are able to identify and manage actual or potential risks to patient safety;
- Assuring that quality and performance improvement initiatives continue to focus on high priority areas of clinical care, monitoring of process and outcome indicators; redesigning processes and systems and providing education to foster improvement;
- Positioning Lebanon Center for Outpatient Surgery to achieve earning expectations and maintain effective cost-containment strategies while providing high quality of patient care, and
- Meeting the expectations of the HCA internal initiatives, as well as, the external regulatory agencies, accrediting bodies (state, CMS, (AAAHC, TJC) and collaboration with nationally recognized quality organizations (ASCQC, AHRQ) through the identification of opportunities to improve patient care, demonstration of appropriate action taken, and follow up on the effectiveness of action taken.

Strategies will be incorporated in each of the following areas to identify opportunities and set goals to achieve and sustain the desired results in striving to become a high reliability organization (HRO):

- Performance Improvement Processes
- Quality studies / Performance Improvement Activities
- Risk Management Strategies
- Patient Safety Initiatives
- Infection Control Strategies
- Medication Safety Strategies
- Radiation and Laser Safety Initiatives, if applicable
- Emergency Preparedness Plans
- Life Safety strategies

Goals

- Achieve a culture of patient safety that is a common, consistent practice as evidenced by maintenance of complications at or below the benchmark.
- Instill a sense of ownership at all levels of the organization through comparison of center performance with other HCA ambulatory surgery centers and established external quality organizations
- Commit to zero patient harm with emphasis on zero wrong site procedures, zero retained surgical items and zero patient burns
- Identification of Quality Improvement opportunities with completion of quality study(s) or performance improvement activities that result in sustained process improvement
- Improve identification of opportunities for improvement by increasing the reporting of medication errors and close calls. Analyze these reports for trends and take action which may include the completion of a quality study or performance improvement activity.

HCA Patient Safety Organization (PSO), LLC

HCA established a Patient Safety Organization, LLC in spring of 2014 in accordance with provisions of the Patient Safety and Quality Improvement Act (Public Law 109-41). The PSO is a component of its parent entity, HCA. The mission of the PSO is to conduct activities to improve patient safety and the quality of healthcare delivery. The vision is to assist participating providers in the elimination of preventable patient harm. The activities of the organization include:

- Improve patient safety and the quality of health care delivery
- Collect and analyze Patient Safety Work Product (PSWP)
- Develop and disseminate information regarding patient safety
- Utilize PSWP to encourage a culture of safety and provide assistance to effectively minimize patient risk.
- Maintain procedures to preserve confidentiality and provide appropriate security of PSWP
- Utilize qualified medical personnel
- Operate a patient safety evaluation system (PSES) and provide feedback to participants of the PSO
- Utilize the Serious Event Analysis (SEA) process to identify the root causes of serious safety events, per policy.

Lebanon Center for Outpatient Surgery is a member of the HCA Patient Safety Organization (PSO), LLC. The Administrator serves as the designated PSO Contact and oversees all activities of the PSO for the center, while the Risk/Quality Manager should serve as the Contact Designee The Center will provide patient safety work product (PSWP) documents as requested by the PSO. The center will receive information from the PSES to evaluate opportunities for improving patient safety and quality care. All information submitted will remain confidential within the PSO.

Quality Improvement Plan

The Center maintains an ongoing quality improvement program that has a broad scope to address administrative, clinical, and cost-effective performance. The program also addresses patient outcomes, patient care processes, as well as, medication, radiation and laser (as applicable) and patient safety. Elements of the program include, but are not limited to a

 Written plan that addresses the scope of health care services provided by the Center and how the quality improvement plan for these services are assessed.

- Interdisciplinary QI committee for the development, implementation, review and oversight of the program. The committee has administrative, clinical and physician participation.
- Set goals and objectives that are reviewed and updated at least annually.
- Quality improvement activities such as audits/rounding, variance trending and quality/performance improvement activities aimed at identifying opportunities for improvement with processes or patient care. These activities are outlined in further detail later in this plan.
- Measurement of data against benchmarking sources.
- Annual reviews of the effectiveness of the program.
- Submit periodic reports to Governing Body that encompass a summary of the quality improvement, risk, medication and safety activities, findings and process changes if indicated.

Risk Management and Patient Safety

Definitions of Potential Risk Issues

Event: A discrete, auditable and clearly defined occurrence (National Quality Forum).

Occurrence: The action, fact, or instance of something that happens synonymous with an event. An event, situation, or process that contributes to, or has the potential to contribute to, a patient or visitor injury, or degrade our ability to provide optimal patient care. Reportable occurrences can generally be divided into the following types based on severity: Sentinel events, patient and visitor injuries, [adverse events], near misses (close calls, good catches etc.), and safety concerns. (**National Patient Safety Foundation**)

Incident: Synonymous with occurrence or event. An occurrence or event that interrupts normal procedure and can precipitate an untoward or unplanned outcome. An unusual event that occurs at the facility, such as an injury to a patient. Involved damage that is limited to parts of a unit, whether the failure disrupts the system or not. (NPSF). A patient safety event that reached the patient, whether or not the patient was harmed (NQF).

Adverse Event: A patient safety event that resulted in harm to a patient. (The Joint Commission, 2024). An adverse event may or may not result from an error

Serious Safety Event: A largely, if not entirely, preventable adverse event (that is not primarily related to the natural course of the patient's illness or underlying condition) that reaches the patient results in Death, severe physical harm (regardless of the duration of harm), permanent physical harm (regardless of severity of harm), or permanent psychological harm. (Refer to the policy on Serious Safety Events (SSE) for further clarification of this definition)

Close Call (Near Misses/Good Catches): Events or situations that could have resulted in an adverse event (accident, injury, or illness), but did not, whether by chance or through timely intervention. Such events have also been referred to as "near miss" incidents. (Source: VA Patient Safety Program).

Serious Event Analysis (SEA): A method of problem solving that attempts to identify the root causes of a process or processes. The SEA process attempts to evaluate the underlying "whys" for the variances and solve problems by attempting to identify and correct the root causes of events, as opposed to simply addressing their symptoms. By focusing on the correction of root causes, problem recurrence can be prevented. An analysis is

done *after* an event has occurred. All staff members involved, as well as, the Risk Manager and physicians involved shall participate in the SEA analysis The SEA process is typically used as a reactive method of identifying event(s) causes, revealing problems and identifying opportunities to reduce the risk of future occurrences. The SEA action plan is reported at the quality meetings, MEC and GB meetings.

Risk Management:

The Center maintains an ongoing risk management program designed to protect the life, safety and welfare of the patients and employees. Risk management addresses strategies from the organizational, operational, human resource and liability areas of the organization. Goals of the program may include, but are not limited to:

- Improving patient safety and reducing risk to patients;
- Reducing medical/healthcare system errors and hazardous conditions by creating an environment in which patients, their families, surgery center staff, and medical staff are able to identify and manage actual or potential risks to patient safety
- Reviewing and tracking of variance reports and litigations for trends.
- Reviewing and tracking of adverse outcomes, near misses (close calls) or serious safety events to identify gaps or opportunities for improvement.
- Maintaining a strong credentialing and privileging process with current bylaws that meet community standards
- Keeping abreast of current standards for risk management and adapting practice and policies that are compliant with standards.

It is evident through the goals, activities and processes that the quality improvement and risk management programs intertwine and cross all spectrums of the organization. Quality care, as well as patient and employee safety is at the center of focus of both programs. The operational linkage between Risk management, Safety, Quality and Infection Control is accomplished through the following mechanisms:

- Issues or trends identified through chart reviews, peer reviews, safety, radiation and infection control rounds are discussed and referred to the appropriate department for evaluation and/or corrective action
- Data from variances that identified trends, adverse events or any events that impact the quality or safety
 of patient care will be reviewed and referred to appropriate risk and leadership personnel for
 investigation, analysis and corrective action
- The Risk Manager, or designee will review current issues and risk reduction strategies with appropriate personnel and coordinate a plan of action. This will be reported to leadership.
- The Quality Committee will serve as the oversight committee and/or Patient Safety Committee for Patient Safety, Risk Management, and Infection Control. Medication Safety, Laser, Radiation and Life Safety fall within a subsection of the Quality Committee and will be addressed as indicated.

These plans engage active involvement of all members of the healthcare team, as well as patients, families and physicians, addressing an environment which:

- Encourages recognition and acknowledgment of opportunities to improve quality performance and to reduce risks to patient safety,
- Initiates actions to improve processes or reduce these risks,
- Encourages internal reporting of what has been found and the actions taken;
- Focuses on processes and system,
- Minimizes individual blame or retribution for involvement in a medical/health care error; and
- Challenges leaders of the organization to be responsible for fostering a "nonpunitive" culture of continuous improvement, reducing risk and creating a safe environment for patients, employees and physicians.
- Encourage huddles and leadership rounding

Medication Safety

A designated regional pharmacist oversees the medication practices and processes at the Center. Their duties include, but are not limited to

- Conducting medication rounds and audits providing feedback on areas of opportunities. This includes validation of medication safety practices.
- Adhering to strict processes for ordering, administration and tracking of controlled substances.
- Collaborating with the Center on choice of pharmaceutical vendors and formularies
- Collaborating with the Center on policy review and development
- Participating in review of any medication error or diversion
- Assuring controlled substance ordering and monitoring is in accordance with state and federal regulations All relevant activities are reported through QI/MEC/GB.

Radiation Safety

This facility utilizes radiation emitting equipment and therefore, by direction of the Governing Body/Board, Radiation Safety will be a subgroup of representatives to be included under the QI/Safety/Risk committee to report radiation safety activities. Key activities are established by the HCA Corporate Radiation Right policies, Governance policies and Fluoroscopy policies:

- Designate an individual that is approved by MEC/GB to oversee the program
- Oversee ongoing measurement, periodic review, and improvement of key radiation safety practices and provide a quarterly report to the QI/Risk/Safety committee (Quarterly rounds)
- Periodic maintenance of equipment
- Maintaining and reviewing exposure time logs
- Communicate relevant radiation safety activities, as necessary, to the staff.
- Serve as a resource for radiation safety as it relates to staff and patient safety/regulatory issues and for the regulatory component of accrediting agencies.
- Educate staff on radiation safety practices

Infection Control

The Center conducts an annual infection control risk assessment in order to identify areas of opportunities to reduce the risk of infections (Refer to Infection Control Plan, IFC). All activities are reported through QI/MEC/GB.

<u>Peer Review</u> Peer Review is overseen by the medical staff and occurs in accordance with requirements outlined by AAAHC, CMS, and other regulatory agencies. The Ambulatory Surgery Center assists in the identification of and tracking of quality improvement and peer review on medical staff members and allied health professionals. Peer review activities including the review of medical staff related variances, trends and other data are reported up through the MEC and Governing Board as outlined in the Medical Staff Bylaws, or Medical Staff Peer Review policy. (Refer to the Medical Staff Peer Review policy)

Confidentiality

All quality improvement, peer review activities and data are considered confidential. Requests by outside sources for QI, Risk management, Peer Review or credentialing information/reports will be forwarded to the appropriate HCA administrative/corporate staff when indicated.

ORGANIZATION STRUCTURE AND PROCEDURE

Role of Leadership

Leaders play a key role in facilitating improvement and ensuring a safe environment. The Lebanon Center For Outpatient Surgery leadership includes the Governing Body, Medical Executive Committee; the facility based Medical Directors, Administrators, Risk/Quality/Safety/Radiation Safety/Infection Control designees and Clinical Managers. Leaders foster quality improvement through planning, educating, setting priorities, providing support such as time and resources, and empowering staff as appropriate.

Governing Board/Medical Executive Committee

The Board has the ultimate authority and accountability for the quality and risk programs to ensure that the quality of patient care is provided in an efficient, safe, timely and cost-effective manner. The Governing Body provides support for the improvement strategies and delegates to the Medical Executive Committee and leadership at each facility, the authority to perform assessment and improvement activities through committees and teams. Quarterly, the Governing Body shall receive a report on the activities of the quality, patient safety and risk management programs. These functions include, but are not limited to:

- Assure QI/Risk/Laser/Radiation/Medication/Patient Safety/Life Safety is an integral part of the Center's objectives, plans and management structure
- Provide resources to support the QI/Risk/Patient Safety programs.
- Assure that improvements are sustained and evaluated for effectiveness
- Review and approve policies, reports, QI/Risk/Safety/IFC data collection and analysis, the QI/Risk/Patient Safety plans and annual evaluation.

Administration

The Governing Board is ultimately responsible for all quality, risk and patient safety activities. The Governing Board has delegated the Administrator, in collaboration with the V.P. of Operations to oversee all activities and provide reports to the Governing Board. Delegated qualified personnel are assigned to support the proper functioning of quality improvement and risk management activities. Administration will participate in performance improvement activities, rounding, and in the assignment of priorities to the functions identified by performance improvement activities.

Key Priorities:

- Assure patient care is delivered safely
- Ensure the ongoing competencies of the staff
- Support an environment that promotes process improvement, quality outcomes, reduction in risk, patient and employee safety and customer satisfaction
- Oversee review and current compliance with regulatory standards (CMS,CDC, TJC, state and AAAHC)

Key Activities:

- Develop specific goals, objectives, and targets for quality improvement, patient safety, life safety, risk management, infection control, as well as, radiation/laser and medication.
- Designate responsibility to qualified individuals or an interdisciplinary committee to ensure quality and risk goals/objectives, as well as patient safety are achieved.
- Provide adequate time and training, as well as resources, for personnel to participate in quality improvement activities and to improve patient safety.
- Assure clear systems and policies/procedures for internal and external reporting of information relating to performance indicators/measures and medical/health care errors.
- Support a system that builds and reinforces a non-punitive culture for reporting and reducing errors.
 Actively encourage all staff to identify and report hazardous conditions and errors in a blame-free environment.

- Establish or support changes in processes, functions and services to sustain improved performance and to prevent recurrence and reduce risk to patients.
- Assure the effectiveness of the quality and risk management goals/objectives and contributions to improving patient safety are measured and assessed annually.

Quality Improvement/Risk/Infection Control/Radiation Safety/Medication Safety/Patient Safety Committee

Each facility has a quality improvement committee, which derives goals from the Governing Body, Medical Executive Committee, Administration, staff and other sources. Primary responsibility of this committee is to maintain a culture of patient safety throughout all patient care processes and organizational functions. This committee is interdisciplinary and includes, but not limited to the QI/Risk/IFC Manager, Facility Administrator, Medical Director and Clinical Managers. Other members such as supervising radiologist, pharmacy nurse etc will be added to the committee as indicated by the agenda. The committee is designed to provide upper management support and direction for improvement efforts. Key activities:

- Establish and oversee ongoing measurement, periodic review, and improvement of key processes, including the review of identified Quality Indicators. Oversee actions for improvement of Quality Indicators as needed
- Assist in identifying opportunities for improvement and participate in QI studies.
- Participate in Surgery Ventures Group quality, risk and patient safety initiatives including Best Practices
- Communicate relevant activities, as necessary, to the staff.
- Support a system that builds and reinforces a non-punitive culture for reporting and reducing errors
- Serve as a resource for patient safety/regulatory issues and for the regulatory component of accrediting agencies.
- Provide periodic reports on quality improvement activities to Medical Executive Committee and Governing Board.
- Educate staff on quality, risk and patient safety activities

Quality Studies or Performance Improvement Activities

Quality studies or Performance Improvement Activities will reflect the scope of services, priorities and findings from performance monitoring or other sources. Studies will address clinical, administrative, and/or cost of care issues and will be documented in the (6) step format, for those centers with AAAHC accreditation. The new six 6 step (2024) format includes:

- State the purpose of the process improvement opportunity/purpose of the study- quantify the gap and explain why it is important
- Set the goal- define what your organization is trying to achieve
- Identify the gap-identify reasons for the performance gap; explain "why" the gap exists.
- Corrective actions- Define and Do- describe the corrective action(s) and implement them.
- Remeasure to ensure improvement and/sustainment
- Communicate- share study findings with staff, and MEC/G.B.

For those centers that utilize the Joint Commission for accreditation, their Quality Improvement and/or performance improvement activities may be documented in the format outlined above or may follow the Plan-Do-Study (Check)-Act (PDSA) model. The model includes the following:

- Plan- utilize existing quality data or monitoring sources to determine processes requiring change and goals for achieving change
- Do- implement actions to accomplish change

- Study (Check)- perform additional monitoring or data collection in order to evaluate the effectiveness of the implemented actions. Evaluate the results
- Act- Stabilize the change actions if results are favorable or develop additional corrective actions. Begin
 the cycle again if necessary.



Staff Education

The staff receives an orientation on quality improvement, risk management, infection control and patient/employee safety initiatives within 30 days of employment as part of new employee orientation. At least annually, the staff have a review of the process and accomplishments will be conducted through an appropriate mechanism. Clinical leaders will receive periodic training on any updates to initiatives, new statistical reporting or other information as indicated.

The credentialed members of the Medical Staff receive education on relevant quality, risk, infection prevention and safety programs/processes as part of the initial credentialing and recredentialing process outlined by the surgery center.

Ongoing Measurement

The Quality/Risk Manager in collaboration with the Facility Administrator and Medical Director oversees ongoing measurement. These are outlined on the addendum to this plan.

Design of New Processes

When the Center is considering a new process (for example, providing a new patient service, constructing a new facility, or redesigning an existing service), a multidisciplinary team should be convened to ensure that the process considers:

The organization's mission, vision and strategic plans;

- Patient and community needs;
- Information about performance and outcomes of the process (including information from reference data bases).
- Current evidence-based practice and research
- Current regulatory standards

Periodic Assessment and Improvement

This plan provides for assessment of data against historical trends and available benchmarks whenever possible. The Quality Committee, Medical Executive Committee and Governing Board review quality measures and quality improvement activities quarterly and more frequently as needed.

More frequent assessment may be triggered for any of the following:

- By any serious safety event;
- By undesirable single events, which may include:
 - o "Near miss" events
 - o Significant injury or death
 - o Any significant untoward event during moderate sedation or anesthesia;
 - o Any serious adverse drug or medication error event; and
 - o Any significant hazardous condition.
 - Any significant infection control breech or trend
- By important undesirable patterns or trends, which may include:
 - Staffing effectiveness or clinical issues;
 - o Any quality measure that varies substantially from an expected range; and
 - When the organization's performance significantly varies below that of other ambulatory surgery settings or recognized standards.

Select quality data is trended with internal benchmarks across the company. This information is shared at the facility, division and enterprise level. Select quality data is trended with external benchmarks within the ambulatory surgery community.

In addition to ongoing measurement, the Center may at any time proactively assess its culture of patient safety as well as specific processes of care that have been identified within the healthcare industry as having the potential to harm patients. The Center may periodically assess processes using tools provided from a variety of outside sources to identify potential risks to patients and opportunities for improvement.

REFERENCED ORGANIZATIONS

AAAHC- Accreditation Association for Ambulatory Health Care, Inc., http://www.aaahc.org/

TJC- The Joint Commission, https://www.jointcommission.org/

AHRQ – Agency for Healthcare Research and Quality, https://www.ahrq.gov/

ASC QC- Ambulatory Surgery Center Quality Collaboration, https://www.ascquality.org/home

CDC- Centers for Disease Control and Prevention, https://www.cdc.gov/

CMS-Centers for Medicare and Medicaid Services, https://www.cms.gov/

FDA- Food & Drug Administration, https://www.fda.gov/

NQF- National Quality Forum, http://www.qualityforum.org/Home.aspx
NPSF-National Patient Safety Foundation, http://www.npsf.org/
SMDA-Safe Medical Device Act, https://www.fda.gov/MedicalDevices/Safety/ReportaProblem/default.htm
VA Patient Safety PROGRAM, VA National Center for Patient Safety, https://www.patientsafety.va.gov/
WHO- World Health Organization, WHO.Int

ONGOING QUALITY AND RISK MANAGEMENT PERFORMANCE MEASUREMENTS (as applicable)

Performance Measure	Data Source	Possible Calculation	Frequency	
**Patient Satisfaction	Third party vendor i.e. Press Ganey	Percent	Quarterly	
OMP Completion	OMP	Percent	Quarterly	
**Patient Grievances	Grievance Process	Raw Number	Quarterly	
Complications				
**Retained Foreign Body	Variance Reports	Raw number	Quarterly	
**Wrong site, patient, procedure	Variance Reports	Raw number	Quarterly	
**Direct Admits	Variance Reports	Rate	Quarterly	
**Indirect Hospital Admits	Variance Reports	Rate	Quarterly	
**Indirect ER Visits	Variance Reports	Rate	Quarterly	
**Post Op DVT/PE	Variance Reports	Rate	Quarterly	

Performance Measure	Data Source	Possible Calculation	Frequency
**Mortality within 7 days r/t procedure	Variance Reports	Rate	Quarterly
**Falls	Variance Reports	Rate	Quarterly
**Burns	Variance Reports	Rate	Quarterly
**Unplanned Vitrectomy	Variance Reports	Rate	Quarterly
**Loss of Vision	Variance Reports	Raw number	Quarterly
**TASS	Variance Reports	Raw number	Quarterly
**Medication Errors	Variance Reports	Rate	Quarterly
**Normothermia	Variance Reports	Percentage	Quarterly
**Close Call Events	Variance Reports	Raw number	Quarterly
Variations in expected performance	Variance Reports	Raw number	Quarterly
Infection Control			· ·
**Surgical Site Infection	Variance Reports, Post op letters	Rate	Quarterly
Physician Response	Survey	Percentage	Quarterly
**Hand Hygiene Compliance	Visual Observations	Percentage	Quarterly
**IUSS use	CSP Data Tracking	Percentage	Quarterly
**Additional Indicators as identified via the	ICRA	Variable	quarterly
ICRA			, ,
Medical Record Review			
Medical Record Delinquency	Chart Review	Percentage	Quarterly
**Medical Chart Audit Results –	Chart review	Percentage	Quarterly
components TBD based on variances			
Radiation Safety			
**Dosimetry Badge w/in Range	Radiation tracking system	Raw number	Quarterly
Radiation Time – average	Radiation tracking system	Raw number	Quarterly
Training completion per policy	Radiation tracking system	Percentage	quarterly
High Volume / High Risk Indicators			
Incomplete / Aborted colonoscopy	Chart review / Variance reports	Rate	Quarterly
Withdrawal Rate	Provation report	Time	Quarterly
Quality Indicators related to new services	Variance Reports, Audits	Raw Data	Quarterly
lines (i.e. Total joints, Robotics, PPMs etc)			
Patient Flow			
On time start and flow of surgical cases	Manual data collection	Average time	Quarterly
Turn around time	Manual data collection	Average time	Quarterly
Case Cancellations – same day	Manual data collection	Raw number	Quarterly
Pre-op Care	1		1
Pre op instructions	Manual data collection	percentage	Quarterly
DVT assessment – including use of SCE	OMP and Manual Chart	Percentage	Quarterly
when indicated	Review		
Fall Assessment – completion and	OMP and Manual Chart	Percentage	Quarterly
implementation of prevention activities	Review		
Intra-Op Care and Processes			

Performance Measure	Data Source	Possible Calculation	Frequency
Time Out/Correct Site Verification process	Visual observations and	Percentage	Quarterly
, , , , , , , , , , , , , , , , , , , ,	chart review		,
Blood Utilization	Chart Review, Lab data	Raw number	Quarterly
Resuscitation			
Code Blue – occurrence and results	Code Forms and Variance reports	Raw number	Quarterly
Malignant Hyperthermia – occurrence and results	Code Forms and Variance reports	Raw number	Quarterly
Diagnostic Results			
Pre and Post Op diagnosis agreement	Chart review	Percentage	Quarterly
Specimen results received	Lab reports, manual logs	Percentage	Quarterly
Medication Usage			
Medication Reconciliation – completion per policy	Chart review	Percentage	Quarterly
Performance of independent double checks – per policy	Visual observations	Percentage	Quarterly
Storage, Administration, Inventory, Diversion	Pharmacy Audit, Administration Record Review	Raw Data	Quarterly
Controlled substance audit results	Manual data collection	Percentage	Quarterly
Life Safety			_
**Surveillance Rounds – results	Monthly Surveillance Rounds	Percentage / raw number	Quarterly
Recalls – compliance with process	Monthly data collection	Raw number	Quarterly
**Drill – completion / results (fire, infant, provider, MH etc.)	Drill completion forms	Raw number	Quarterly

^{**} indicates that the Quality Indicator is required data collection. Quality Indicators without an asterisk are optional based on center need

LEBANON CENTER FOR OUTPATIENT SURGERY

SAFETY MANAGEMENT PROGRAM

POLICY:

It is the policy of this Ambulatory Surgery Center to provide a physical environment free of physical hazards for the patients, employees and visitors. The Governing Board has final oversight of the safety program/plan

PURPOSE:

The purpose of the safety management program is to establish, organize, implement, monitor, and evaluate an effective program designed to provide a physical environment free of hazards and to manage staff activities to reduce the risk of human injury. Safety is an ongoing process and each employee and medical staff provider should be constantly aware of providing a safe environment for themselves, patients and visitors.

GOALS AND OBJECTIVES

The objectives and goals of the safety management program are to reduce and eliminate unnecessary hazards within the facility by:

- 1. Identification of individuals who will be responsible for the overall coordination, direction, and monitoring of safety activities within the Center.
- 2. Establishing a procedure whereby any Center employee or medical staff member will be encouraged to identify and present problems, deficiencies, and ideas for review and analysis in an effort to improve overall safety at Center.
- 3. Assuring the various problems and opportunities to improve safety are objectively assessed and that performance indicators designed to achieve an optimum level of safety are monitored.
- 4. Assuring that the safety activities are properly documented to indicate findings, conclusion, actions, recommendations, and evaluation of the effectiveness of the action that was taken.
- 5. Providing a method of communication that allows for effective collection and dissemination of information relating to safety activities.
- 6. Establishing and maintaining an ongoing mechanism for monitoring the resources necessary to ensure the safety of the patients, staff, visitors, building, grounds, and internal physical systems

AUTHORITY AND RESPONSIBILITY

The Governing Body shall maintain ultimate responsibility for the oversight and effectiveness of the safety management program and shall strive to assure a safe environment for patients, staff and visitors. The Governing Body, through Administration, Risk Manager, and managers shall provide whatever administrative assistance that is reasonably necessary to support and facilitate the implementation of ongoing operation of this effort.

The Governing Body has appointed the Safety Officer. His/her role includes:

- 1. Oversight of implementation and maintenance of safety practices at the Center.
- 2. Proactive with ergonomics in the workplace.
- 3. Integration of safety as part of the Center wide Quality and Risk Plans.
- Assures investigation and follow through of any unsafe practices identified.
- 5. Work with managers to ensure ongoing education of employees through staff in-service, emergency (mock) drills, online training, and new employee orientation.
- 6. Surveillance and audits to identify areas of opportunity.

SAFETY MANAGEMENT PROGRAM – Lebanon Center for Outpatient Surgery

The Center, in conjunction with the building management if applicable, will maintain a safe building and grounds.

- 1. Routine maintenance is provided by building management.
- 2. Utilities and emergency backup systems are checked routinely.
- 3. The Center should report any unsafe conditions for the building or grounds immediately to the management.
- 4. The Center will conduct periodic safety rounds to assess for potential hazardous risks. Risks are corrected as soon as possible.

SCOPE OF SAFETY MANAGEMENT PROGRAM

The safety activities for the Center are a function of all employees, medical staff, the Medical Executive Committee (MEC), and Governing Body. The following delineates the scope of service of the safety management program.

- 1. All areas of the Center, including but not limited to:
 - a) Clinical areas
 - b) Public access areas
 - c) Employee areas
 - d) Outside sidewalks and grounds
 - e) Mechanical equipment areas
- 2. Maintenance of a safe environment
- 3. Life Safety
- 4. Equipment management
- 5. Utilities management
- 6. Hazardous Materials management
- 7. Emergency preparedness
- 8. Security management
- 9. Training and Education
- 10. Quality Improvement activities

COMPONENTS OF THE PROGRAM/PLAN

The safety management program shall contain the following components and related policies which includes but is not limited to:

1. Safety Management

- a) General safety policies
- b) Fall Risk assessment
- c) Appointment of a Safety Officer
- d) Staff Education and training
- e) QI/Risk/Safety/Infection Control Committee

2. Life Safety Management

- a) Buildings
- b) Grounds
- c) Fire warning and safety systems

3. Equipment Management

- a) Patient care equipment
- b) User errors/equipment failures
- c) Product/equipment alerts/recall
- d) Electrically powered equipment

4. Utilities Management

- a) Life support systems
- b) Infection control systems
- c) Communications systems
- d) Equipment support systems
- e) Utilities outage/failure

5. Hazardous Materials:

- a) Selection
- b) Training
- c) Inventory
- d) SDS

6. Emergency preparedness:

- a) Management of disasters, internal and external
- b) Involvement of the Center in community disaster (drills and actual)

7. Security Management

- a) Variance reporting
- b) Security risk assessment

8. Radiation Management

- a) Dosimetry monitoring
- b) Radiation audits
- c) C-arm logs to assure < 20 individual exposure time

9. Construction or Renovation

a) Infection Control Risk Assessment for Construction

MONITORING AND EVALUATION

There is ongoing monitoring of the safety program to ensure compliance with all regulatory agencies and Center policies. Results of the monitoring activities are reported to Administration, QI Committee, MEC and the Governing Body. The staff are informed through departmental meetings and staff inservices.

1. Data Resources Used for Monitoring

- a) Quality/Risk Monitors
- b) Variance reports
- c) Outside regulating agencies reports (AAAHC, TJC, CMS, State, Fire Marshal, OSHA, etc.)
- d) Preventive maintenance reports (engineering and biomed)
- e) Surveillance rounds (IFC, Safety, Radiation, etc.)
- f) Fire drill critiques
- g) Disaster drill critiques
- h) Claims data/Probable Claims Reports

2. Areas of Improvement

Data information will be evaluated to determine if there are any problems or opportunities for improvements in the delivery of care. The source of the problem will be analyzed to determine if the problem occurred related to:

- a) Insufficient knowledge
- b) Problems in the system
- c) Poor performance due to lack of conformity to policy
- d) Other

3. Corrective Action

Appropriate actions will be implemented to eliminate or alleviate the identified problems. Actions may be taken by the manager, Risk Manager, Administrator, or QI Committee. Actions may include, but are not limited to:

- a) Education/training
- b) Revision of policies and procedures or implementation of new policies
- c) Staffing adjustments
- d) Change in equipment, vendors, repair services, etc.
- e) Counseling/guidance

4. Follow-up and Evaluation

- a) Follow-up and evaluation of the corrective actions will be done through the Quality Improvement/Risk Management Committee.
- c) Based on the evaluation by the Quality Improvement/Risk Management Committee, the need for further monitoring or additional corrective action will be determined.
- d) All evaluations of monitoring will be reflected in the Quality Improvement Committee, MEC, and Governing Body meeting minutes.

5. Safety Monitoring and Evaluation Reporting

Results of monitoring, corrective actions and evaluation shall be communicated to:

- a) Center Quality Improvement/Risk Management Committee (Quarterly)
- b) Medical Executive Committee (Quarterly)
- c) Governing Body (Quarterly)
- d) Managers (monthly or as appropriate for dissemination to Center employees)

Findings and change in policies and processes are communicated to the staff through staff meetings or other desired method of communication.

POLICIES

The Center has policies and procedures that promote safety as a priority. These policies and procedures are developed in accordance with regulatory standards and current trends in healthcare. These policies include, but are not limited to:

- 1. Fall Risk Assessment
- 2. Product Recalls
- 3. Medication Administration and Control policies
- 4. Exposure Control Plan
- 5. Sharps Prevention
- 6. Infection Control Plan
- 7. Equipment inventory and maintenance policies
- 8. Variance Reporting
- Employee response grids to systems failure, noting closing the loop on corrections
- 10. Emergency Preparedness Plans- Bioterrorism, Weather, Evacuation, Fire Safety, Bomb Threats, etc.
- 11. Emergency Procedures- Respiratory Arrest, Malignant Hyperthermia. Child Abduction, Chemical Spills etc.
- 12. Procedures for Incapacitated and/or Impaired Healthcare provider

SAFETY MANAGEMENT PROGRAM APPRAISAL

The program is reviewed at least annually or as indicated by other activities or survey findings.

SAFETY MANAGEMENT PROGRAM – Lebanon Center for Outpatient Surgery

References: AAAHC, TJC, CMS, OSHA standards. HCA Life Safety program

Attachment 1N-4 STH-USPI/Ascension Opposition

TRAUGER & TUKE

221 FOURTH AVENUE NORTH, SUITE 300
NASHVILLE, TENNESSEE 37219-2111

TELEPHONE (615) 256-8585 FAX (615) 256-7444

February 9, 2021

Sent via Email and U.S. Postmaster

Mr. Logan Grant
Executive Director
TN Health Services & Development Agency
Andrew Jackson Building, 9th Floor
502 Deaderick Street
Nashville, TN 37243

Re:

Lebanon Surgicenter – Lebanon, Tennessee

CN2011-033

Dear Mr. Grant:

On behalf of my client, Saint Thomas/USP Surgery Centers, LLC, I submit this letter of opposition to the referenced Lebanon Surgicenter certificate of need application. The application does not meet the statutory criteria for a certificate of need.

Lebanon already has a multispecialty ASTC that operates at only 10% of optimum capacity.

Patients and physicians in Lebanon, Tennessee have long needed a fully-functioning multispecialty surgery center. That is why this Agency approved the Phoenix Ambulatory Surgery Center in Lebanon (CN1605-019). That is also why this Agency denied a subsequent CON application for an ASTC in Lebanon (Lebanon Surgery Center, CN1702-007) that would have prevented Phoenix from getting itself firmly established.

This need for a fully-functioning multispecialty surgery center is also why, when Phoenix could not recover successfully from operating challenges faced from the ongoing Covid-19 pandemic, two highly respected healthcare organizations stepped up. The joint venture of United Surgical Partners and Saint Thomas Health has, for many years, operated very successful ASTCs across Middle Tennessee. Indeed, Saint Thomas/USP operates two ASTCs in Wilson County itself: the Providence multi-specialty ASTC in Mt. Juliet and the Lebanon Endoscopy Center in Lebanon.

Well before HCA's CON application was filed, Saint Thomas/USP Surgery Centers were in negotiations to purchase the Phoenix center from the single physician who was managing it himself through the challenges of COVID. Those negotiations culminated in a signed purchase agreement with an expected closing next month. As a result, Phoenix, this almost brand new,

TRAUGER & TUKE

Mr. Logan Grant February 9, 2021 Page 2

fully equipped ASTC, under new ownership and management – and with a greater investment than the one HCA proposes to make – will be available to do all of the procedures proposed by the Applicant. As an open staff ASTC, Phoenix will also welcome all physicians who have yearned for a multispecialty ASTC in Lebanon.

Unfortunately, once more we are faced with an application that threatens to prevent Phoenix from fulfilling its promise.

There is significant ASTC capacity in Wilson County, so another ASTC is not needed.

Despite a clear absence of need that is documented by the application itself, HCA insists that it should duplicate services. The Phoenix ASTC is operating at just 10% of optimum capacity, and Providence is at less than 55%. The Lebanon Endoscopy Center is operating at 41% of capacity. Just on the basis of those three numbers alone, there is no need for another surgery center.

The reality is even starker. Not only is Phoenix coming under new ownership and management, but this Agency recently approved a relocation and renovation of Providence that will allow it to care for even more patients, thus further reducing the need.

Viewed from another perspective, approximately half of Wilson County residents (43%) live in the extreme western portion of the county – in the Mt. Juliet area, right next to Davidson County. That half is already served by a multispecialty ASTC that is operating at 55% of optimum capacity. The other half live in the Lebanon area, and that area is served by a multispecialty ASTC that is operating at 10% of capacity and by an endoscopy center that is operating at 41% of capacity.

Outmigration results from geography and referral patterns, and an unnecessary ASTC will not change that reality.

HCA's argument that outmigration of surgeries from Wilson County justifies another ASTC fails when one examines the facts. That outmigration for surgery is a function of established physician referral patterns, and the addition of an ASTC will not disturb those patterns. In addition, a large portion of Wilson County residents live in the western portion of the county, and for them it is more convenient to see a physician or to have surgery in eastern Davidson County facilities than in Lebanon. The addition of an unnecessary ASTC will do nothing to change that reality.

The introduction of another ASTC into a market that already has excess capacity, just when the long-sought-after surgery center in Lebanon is about to achieve what this Agency hoped it could achieve, is the antithesis of the orderly development of healthcare.

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In sum:

- 1. The application fails the NEED criterion for a CON because of gross overcapacity in existing ASTCs in Wilson County.
- 2. The application fails the NEED criterion because, as large as the existing capacity is, it will significantly increase next month with the rejuvenation of the Phoenix Center.
- 3. The application fails the ORDERLY DEVELOPMENT criterion because it would damage existing providers of quality services, many of whom have just recently made significant investments to add capacity and improve services.
- 4. The project fails the ORDERLY DEVELOPMENT criterion because it would imperil the very objective it professes to support, namely the success of a fully-functioning multispecialty surgery center. Adding an unnecessary multispecialty ASTC in Lebanon could cause them both to fail.

For all these reasons as well as others that we may discuss at the February 24, 2021 Agency hearing, we respectfully urge the Agency to deny this application.

Very truly yours,

Byron R. Trauger

BRT:kmn

Cc: Tim Evans

Attachment 1N-11 Designation of Medically Underserved Area

data.HRSA.gov

Discipline	MUA/P ID	Servi	ce Area Name	Desig	• •	Primary State Na			Index of Medical Underservice Score	Status	Rural Status	Designation Date	Update Date
Primary Care	03240	WILSO	ON SERVICE AREA	Medica	lly Underserved Area	Tennesse	ee	Wilson	54.4	Designated	Partially Rura	11/01/1978	11/01/1978
								County, TN					
Compo	Component State Name Component County		Name	Name Component Name		Component Type		c	omponent GE	OID	Component R	ural Status	
Tenness	ennessee Wilson Wilson Single Cou		e County	4	7189		Partially Rural						

Attachment 3N-1 Population Data Utilized for Service Area Demographics Table

	Populat	tion Estimat	e 2024	Population Estimate 2028		% Inc	rease	
	Total	0-17	% 0-17	Total	0-17	% 0-17	0-17	Total
Tennessee	7,125,908	1,560,304	21.9%	7,331,859	1,594,964	21.8%	2.2%	2.9%
Anderson	78,892	16,110	20.4%	79,863	16,116	20.2%	0.0%	1.2%
Bedford	52,573	12,915	24.6%	54,810	13,402	24.5%	3.8%	4.3%
Benton	16,182	3,051	18.9%	16,176	2,969	18.4%	-2.7%	0.0%
Bledsoe	15,679	2,193	14.0%	16,038	2,191	13.7%	-0.1%	2.3%
Blount	140,216	27,124	19.3%	144,983	27,809	19.2%	2.5%	3.4%
Bradley	112,767	24,194	21.5%	116,171	24,614	21.2%	1.7%	3.0%
Campbell	39,557	7,795	19.7%	39,128	7,619	19.5%	-2.2%	-1.1%
Cannon	15,208	3,128	20.6%	15,490	3,082	19.9%	-1.5%	1.9%
Carroll	27,529	6,012	21.8%	27,179	5,831	21.5%	-3.0%	-1.3%
Carter	55,890	9,508	17.0%	55,079	9,117	16.6%	-4.1%	-1.4%
Cheatham	41,865	8,633	20.6%	42,424	8,542	20.1%	-1.0%	1.3%
Chester	17,553	3,929	22.4%	17,673	3,854	21.8%	-1.9%	0.7%
Claiborne	32,436	5,883	18.1%	32,705	5,635	17.2%	-4.2%	0.8%
Clay	7,659	1,465	19.1%	7,654	1,434	18.7%	-2.1%	-0.1%
Cocke	36,691	6,930	18.9%	36,943	6,728	18.2%	-2.9%	0.7%
Coffee	59,283	13,844	23.4%	60,787	14,032	23.1%	1.4%	2.5%
Crockett	14,152	3,258	23.0%	14,095	3,228	22.9%	-0.9%	-0.4%
Cumberland	64,464	10,452	16.2%	66,753	10,563	15.8%	1.1%	3.6%
Davidson	727,642	160,372	22.0%	746,905	165,958	22.2%	3.5%	2.6%
Decatur	11,602	2,250	19.4%	11,554	2,193	19.0%	-2.5%	-0.4%
DeKalb	21,454	4,405	20.5%	21,988	4,429	20.1%	0.5%	2.5%
Dickson	56,518	12,320	21.8%	58,420	12,574	21.5%	2.1%	3.4%
Dyer	36,824	8,551	23.2%	36,862	8,548	23.2%	0.0%	0.1%
Fayette	43,558	7,721	17.7%	45,222	8,090	17.9%	4.8%	3.8%
Fentress	19,032	3,771	19.8%	19,155	3,720	19.4%	-1.3%	0.6%
Franklin	42,918	8,545	19.9%	43,226	8,501	19.7%	-0.5%	0.7%
Gibson	49,577	11,696	23.6%	49,867	11,648	23.4%	-0.4%	0.6%
Giles	29,483	6,022	20.4%	29,317	5,908	20.2%	-1.9%	-0.6%
Grainger	23,955	4,502	18.8%	24,207	4,446	18.4%	-1.2%	1.1%
Greene	70,230	13,051	18.6%	70,553	12,908	18.3%	-1.1%	0.5%
Grundy	13,215	2,615	19.8%	12,896	2,453	19.0%	-6.2%	-2.4%
Hamblen	66,354	14,977	22.6%	67,498	15,207	22.5%	1.5%	1.7%
Hamilton	383,109	80,054	20.9%	393,234	82,091	20.9%	2.5%	2.6%
Hancock	6,344	1,243	19.6%	6,193		18.8%	-6.4%	-2.4%
Hardeman	24,562	4,484	18.3%	24,247	4,290	17.7%	-4.3%	-1.3%
Hardin	25,584	4,849	19.0%	25,491	4,668	18.3%	-3.7%	-0.4%
Hawkins	56,945	10,347	18.2%	56,797	10,067	17.7%	-2.7%	-0.3%
Haywood	16,550	3,540	21.4%	16,082	3,374	21.0%	-4.7%	-2.8%
Henderson	28,387	6,181	21.8%	28,624	6,128	21.4%	-0.9%	0.8%
Henry	32,156	6,128	19.1%	32,141	5,985	18.6%	-2.3%	0.0%
Hickman	25,930	5,069	19.5%	26,348	4,988	18.9%	-1.6%	1.6%
Houston	8,388	1,728	20.6%	8,469	1,718	20.3%	-0.6%	1.0%
Humphreys	18,683	3,875	20.7%	18,739	3,816	20.4%	-1.5%	0.3%
Jackson	12,055	2,110	17.5%	12,175	2,117	17.4%	0.3%	1.0%
Jefferson	56,988	10,771	18.9%	58,374	10,841	18.6%	0.7%	2.4%
Johnson	17,752	2,811	15.8%	17,593	2,692	15.3%	-4.2%	-0.9%
Knox	493,620	104,860	21.2%	510,323	108,709	21.3%	3.7%	3.4%
Lake	6,892	933	13.5%	6,834	870	12.7%	-6.8%	-0.8%
Lauderdale	25,372	5,384	21.2%	25,234	5,264	20.9%	-2.2%	-0.5%
Lawrence	44,981	10,438	23.2%	45,341	10,036	22.1%	-3.8%	0.8%

	Populati	ion Estimat	e 2024	Popula	tion Estimat	e 2028	% Incr	ease
	Total	0-17	% 0-17	Total	0-17	% 0-17	0-17	Total
Lewis	12,400	2,566	20.7%	12,382	2,485	20.1%	-3.2%	-0.1%
Lincoln	35,066	7,259	20.7%	35,506	7,098	20.0%	-2.2%	1.3%
Loudon	57,893	10,527	18.2%	60,507	10,780	17.8%	2.4%	4.5%
McMinn	55,219	11,311	20.5%	56,034	11,365	20.3%	0.5%	1.5%
McNairy	26,010	5,342	20.5%	26,213	5,284	20.2%	-1.1%	0.8%
Macon	25,925	6,266	24.2%	26,960	6,483	24.0%	3.5%	4.0%
Madison	98,816	22,212	22.5%	99,089	22,031	22.2%	-0.8%	0.3%
Marion	28,886	5,785	20.0%	28,750	5,641	19.6%	-2.5%	-0.5%
Marshall	36,559	8,290	22.7%	37,929	8,544	22.5%	3.1%	3.7%
Maury	106,039	23,950	22.6%	112,011	25,276	22.6%	5.5%	5.6%
Meigs	12,824	2,513	19.6%	13,057	2,512	19.2%	0.0%	1.8%
Monroe	48,436	9,454	19.5%	49,391	9,298	18.8%	-1.6%	2.0%
Montgomery	231,296	62,319	26.9%	248,155	67,070	27.0%	7.6%	7.3%
Moore	6,502	1,203	18.5%	6,555	1,198	18.3%	-0.4%	0.8%
Morgan	21,727	3,943	18.1%	21,932	3,910	17.8%	-0.8%	0.9%
Obion	29,833	6,380	21.4%	29,440	6,325	21.5%	-0.9%	-1.3%
Overton	23,089	4,738	20.5%	23,508	4,770	20.3%	0.7%	1.8%
Perry	8,222	1,787	21.7%	8,327	1,775	21.3%	-0.7%	1.3%
Pickett	4,990	799	16.0%	4,910	772	15.7%	-3.4%	-1.6%
Polk	17,159	3,167	18.5%	17,410	3,152	18.1%	-0.5%	1.5%
Putnam	84,778	18,373	21.7%	88,381	19,065	21.6%	3.8%	4.3%
Rhea	34,243	7,316	21.4%	34,929	7,234	20.7%	-1.1%	2.0%
Roane	54,007	9,659	17.9%	53,893	9,488	17.6%	-1.8%	-0.2%
Robertson	75,475	17,183	22.8%	78,415	17,719	22.6%	3.1%	3.9%
Rutherford	371,864	90,458	24.3%	404,640	97,893	24.2%	8.2%	8.8%
Scott	22,151	5,006	22.6%	22,142	4,912	22.2%	-1.9%	0.0%
Sequatchie	15,754	3,109	19.7%	16,256	3,165	19.5%	1.8%	3.2%
Sevier	104,497	20,591	19.7%	109,283	21,297	19.5%	3.4%	4.6%
Shelby	943,252	232,384	24.6%	948,770	232,433	24.5%	0.0%	0.6%
Smith	20,764	4,535	21.8%	21,151	4,550	21.5%	0.3%	1.9%
Stewart	14,046	2,795	19.9%	14,177	2,734	19.3%	-2.2%	0.9%
Sullivan	160,062	29,872	18.7%	160,624	29,857	18.6%	-0.1%	0.4%
Sumner	208,192	47,098	22.6%	220,197	49,419	22.4%	4.9%	5.8%
Tipton	63,206	14,625	23.1%	64,229	14,644	22.8%	0.1%	1.6%
Trousdale	11,829	2,238	18.9%	12,140	2,226	18.3%	-0.5%	2.6%
Unicoi	17,869	3,162	17.7%	17,908	3,181	17.8%	0.6%	0.2%
Union	20,322	4,080	20.1%	20,362	3,951	19.4%	-3.2%	0.2%
Van Buren	5,903	1,128	19.1%	5,836	1,073	18.4%	-4.9%	-1.1%
Warren	41,992	9,334	22.2%	42,251	9,219	21.8%	-1.2%	0.6%
Washington	134,277	25,797	19.2%	137,598	26,377	19.2%	2.2%	2.5%
Wayne	16,325	2,508	15.4%	16,085	2,373	14.8%	-5.4%	-1.5%
Weakley	33,259	6,777	20.4%	33,227	6,720	20.2%	-0.8%	-0.1%
White	28,600	5,870	20.5%	29,381	5,878	20.0%	0.1%	2.7%
Williamson	270,313	68,142	25.2%	295,116	72,934	24.7%	7.0%	9.2%
Wilson	160,783	36,425	22.7%	172,941	38,690	22.4%	6.2%	7.6%

^{*} TN_CoPopProj_2021 UTCBER Population Projection Series.

Source: Boyd Center for Business and Economic Research, University of Tennessee, Knoxville Reassembled by the Tennessee Department of Health, Division of Population Health Assessment Note: These projections may not match Boyd Center projections precisely due to rounding.

	Popula	tion Estimat	e 2024	Population Estimate 2028		% Inc	rease	
	Total	18+	%18+	Total	18+	%18+	18+	Total
Tennessee	7,125,908	5,565,604	78.1%	7,331,859	5,736,895	78.2%	3.1%	2.9%
Anderson	78,892	62,783	79.6%	79,863	63,747	79.8%	1.5%	1.2%
Bedford	52,573	39,658	75.4%	54,810	41,409	75.5%	4.4%	4.3%
Benton	16,182	13,131	81.1%	16,176	13,207	81.6%	0.6%	0.0%
Bledsoe	15,679	13,486	86.0%	16,038	13,847	86.3%	2.7%	2.3%
Blount	140,216	113,092	80.7%	144,983	117,174	80.8%	3.6%	3.4%
Bradley	112,767	88,574	78.5%	116,171	91,557	78.8%	3.4%	3.0%
Campbell	39,557	31,763	80.3%	39,128	31,508	80.5%	-0.8%	-1.1%
Cannon	15,208	12,080	79.4%	15,490	12,408	80.1%	2.7%	1.9%
Carroll	27,529	21,517	78.2%	27,179	21,348	78.5%	-0.8%	-1.3%
Carter	55,890	46,382	83.0%	55,079	45,962	83.4%	-0.9%	-1.4%
Cheatham	41,865	33,233	79.4%	42,424	33,882	79.9%	2.0%	1.3%
Chester	17,553	13,624	77.6%	17,673	13,820	78.2%	1.4%	0.7%
Claiborne	32,436	26,553	81.9%	32,705	27,071	82.8%	1.9%	0.8%
Clay	7,659	6,195	80.9%	7,654	6,221	81.3%	0.4%	-0.1%
Cocke	36,691	29,762	81.1%	36,943	30,216	81.8%	1.5%	0.7%
Coffee	59,283	45,440	76.6%	60,787	46,755	76.9%	2.9%	2.5%
Crockett	14,152	10,894	77.0%	14,095	10,867	77.1%	-0.2%	-0.4%
Cumberland	64,464	54,012	83.8%	66,753	56,190	84.2%	4.0%	3.6%
Davidson	727,642	567,269	78.0%	746,905	580,947	77.8%	2.4%	2.6%
Decatur	11,602	9,352	80.6%	11,554	9,361	81.0%	0.1%	-0.4%
DeKalb	21,454	17,048	79.5%	21,988	17,559	79.9%	3.0%	2.5%
Dickson	56,518	44,197	78.2%	58,420	45,846	78.5%	3.7%	3.4%
Dyer	36,824	28,273	76.8%	36,862	28,313	76.8%	0.1%	0.1%
Fayette	43,558	35,837	82.3%	45,222	37,132	82.1%	3.6%	3.8%
Fentress	19,032	15,262	80.2%	19,155	15,435	80.6%	1.1%	0.6%
Franklin	42,918	34,373	80.1%	43,226	34,725	80.3%	1.0%	0.7%
Gibson	49,577	37,881	76.4%	49,867	38,220	76.6%	0.9%	0.6%
Giles	29,483	23,461	79.6%	29,317	23,409	79.8%	-0.2%	-0.6%
Grainger	23,955	19,453	81.2%	24,207	19,761	81.6%	1.6%	1.1%
Greene	70,230	57,179	81.4%	70,553	57,644	81.7%	0.8%	0.5%
Grundy	13,215	10,601	80.2%	12,896	10,443	81.0%	-1.5%	-2.4%
Hamblen	66,354	51,377	77.4%	67,498	52,292	77.5%	1.8%	1.7%
Hamilton	383,109	303,055	79.1%	393,234	311,142	79.1%	2.7%	2.6%
Hancock	6,344		80.4%	6,193		81.2%	-1.4%	-2.4%
Hardeman	24,562	20,078	81.7%	24,247	19,957	82.3%	-0.6%	-1.3%
Hardin	25,584	20,735	81.0%	25,491	20,823	81.7%	0.4%	-0.4%
Hawkins	56,945	46,599	81.8%	56,797	46,730	82.3%	0.3%	-0.3%
Haywood	16,550	13,010	78.6%	16,082	12,709	79.0%	-2.3%	-2.8%
Henderson	28,387	22,206	78.2%	28,624	22,495	78.6%	1.3%	0.8%
Henry	32,156	26,028	80.9%	32,141	26,156	81.4%	0.5%	0.0%
Hickman	25,930	20,861	80.5%	26,348	21,360	81.1%	2.4%	1.6%
Houston	8,388	6,661	79.4%	8,469	6,752	79.7%	1.4%	1.0%
Humphreys	18,683	14,808	79.3%	18,739	14,923	79.6%	0.8%	0.3%
Jackson	12,055	9,945	82.5%	12,175	10,058	82.6%	1.1%	1.0%
Jefferson	56,988	46,217	81.1%	58,374	47,533	81.4%	2.8%	2.4%
Johnson	17,752	14,942	84.2%	17,593	14,901	84.7%	-0.3%	-0.9%
Knox	493,620	388,760	78.8%	510,323	401,614	78.7%	3.3%	3.4%
Lake	6,892	5,958	86.5%	6,834	5,964	87.3%	0.1%	-0.8%
Lauderdale	25,372	19,987	78.8%	25,234	19,970	79.1%	-0.1%	-0.5%
Lawrence	44,981	34,543	76.8%	45,341	35,305	77.9%	2.2%	0.8%

	Populat	tion Estimat	e 2024	Populat	tion Estimat	e 2028	% Inc	rease
	Total	18+	%18+	Total	18+	%18+	18+	Total
Lewis	12,400	9,834	79.3%	12,382	9,897	79.9%	0.6%	-0.1%
Lincoln	35,066	27,807	79.3%	35,506	28,408	80.0%	2.2%	1.3%
Loudon	57,893	47,366	81.8%	60,507	49,727	82.2%	5.0%	4.5%
McMinn	55,219	43,908	79.5%	56,034	44,669	79.7%	1.7%	1.5%
McNairy	26,010	20,668	79.5%	26,213	20,929	79.8%	1.3%	0.8%
Macon	25,925	19,659	75.8%	26,960	20,477	76.0%	4.2%	4.0%
Madison	98,816	76,604	77.5%	99,089	77,058	77.8%	0.6%	0.3%
Marion	28,886	23,101	80.0%	28,750	23,109	80.4%	0.0%	-0.5%
Marshall	36,559	28,269	77.3%	37,929	29,385	77.5%	3.9%	3.7%
Maury	106,039	82,089	77.4%	112,011	86,734	77.4%	5.7%	5.6%
Meigs	12,824	10,310	80.4%	13,057	10,544	80.8%	2.3%	1.8%
Monroe	48,436	38,982	80.5%	49,391	40,093	81.2%	2.8%	2.0%
Montgomery	231,296	168,977	73.1%	248,155	181,085	73.0%	7.2%	7.3%
Moore	6,502	5,300	81.5%	6,555	5,357	81.7%	1.1%	0.8%
Morgan	21,727	17,784	81.9%	21,932	18,022	82.2%	1.3%	0.9%
Obion	29,833	23,452	78.6%	29,440	23,116	78.5%	-1.4%	-1.3%
Overton	23,089	18,351	79.5%	23,508	18,738	79.7%	2.1%	1.8%
Perry	8,222	6,436	78.3%	8,327	6,552	78.7%	1.8%	1.3%
Pickett	4,990	4,190	84.0%	4,910	4,138	84.3%	-1.3%	-1.6%
Polk	17,159	13,992	81.5%	17,410	14,258	81.9%	1.9%	1.5%
Putnam	84,778	66,405	78.3%	88,381	69,317	78.4%	4.4%	4.3%
Rhea	34,243	26,927	78.6%	34,929	27,695	79.3%	2.9%	2.0%
Roane	54,007	44,348	82.1%	53,893	44,405	82.4%	0.1%	-0.2%
Robertson	75,475	58,291	77.2%	78,415	60,696	77.4%	4.1%	3.9%
Rutherford	371,864	281,406	75.7%	404,640	306,747	75.8%	9.0%	8.8%
Scott	22,151	17,146	77.4%	22,142	17,230	77.8%	0.5%	0.0%
Sequatchie	15,754	12,644	80.3%	16,256	13,091	80.5%	3.5%	3.2%
Sevier	104,497	83,906	80.3%	109,283	87,986	80.5%	4.9%	4.6%
Shelby	943,252	710,868	75.4%	948,770	716,337	75.5%	0.8%	0.6%
Smith	20,764	16,229	78.2%	21,151	16,602	78.5%	2.3%	1.9%
Stewart	14,046	11,251	80.1%	14,177	11,443	80.7%	1.7%	0.9%
Sullivan	160,062	130,189	81.3%	160,624	130,767	81.4%	0.4%	0.4%
Sumner	208,192	161,094	77.4%	220,197	170,778	77.6%	6.0%	5.8%
Tipton	63,206	48,581	76.9%	64,229	49,585	77.2%	2.1%	1.6%
Trousdale	11,829	9,592	81.1%	12,140	9,914	81.7%	3.4%	2.6%
Unicoi	17,869	14,707	82.3%	17,908	14,726	82.2%	0.1%	0.2%
Union	20,322	16,242	79.9%	20,362	16,411	80.6%	1.0%	0.2%
Van Buren	5,903	4,776	80.9%	5,836	4,763	81.6%	-0.3%	-1.1%
Warren	41,992	32,658	77.8%	42,251	33,032	78.2%	1.1%	0.6%
Washington	134,277	108,480	80.8%	137,598	111,221	80.8%	2.5%	2.5%
Wayne	16,325	13,817	84.6%	16,085	13,712	85.2%	-0.8%	-1.5%
Weakley	33,259	26,482	79.6%	33,227	26,507	79.8%	0.1%	-0.1%
White	28,600	22,729	79.5%	29,381	23,503	80.0%	3.4%	2.7%
Williamson	270,313	202,171	74.8%	295,116	222,182	75.3%	9.9%	9.2%
Wilson	160,783	124,358	77.3%	172,941	134,251	77.6%	8.0%	7.6%

^{*} TN_CoPopProj_2021 UTCBER Population Projection Series.

Source: Boyd Center for Business and Economic Research, University of Tennessee, Knoxville Reassembled by the Tennessee Department of Health, Division of Population Health Assessment Note: These projections may not match Boyd Center projections precisely due to rounding.

	Popula	tion Estimat	e 2024	Population Estimate 2028		% Increase		
	Total	65+	%65+	Total	65+	%65+	65+	Total
Tennessee	7,125,908	1,324,362	18.6%	7,331,859	1,438,845	19.6%	8.6%	2.9%
Anderson	78,892	17,648	22.4%	79,863	18,785	23.5%	6.4%	1.2%
Bedford	52,573	8,855	16.8%	54,810	9,802	17.9%	10.7%	4.3%
Benton	16,182	4,277	26.4%	16,176	4,531	28.0%	5.9%	0.0%
Bledsoe	15,679	3,275	20.9%	16,038	3,593	22.4%	9.7%	2.3%
Blount	140,216	32,321	23.1%	144,983	35,388	24.4%	9.5%	3.4%
Bradley	112,767	21,740	19.3%	116,171	23,790	20.5%	9.4%	3.0%
Campbell	39,557	8,914	22.5%	39,128	9,335	23.9%	4.7%	-1.1%
Cannon	15,208	3,115	20.5%	15,490	3,444	22.2%	10.6%	1.9%
Carroll	27,529	6,162	22.4%	27,179	6,437	23.7%	4.5%	-1.3%
Carter	55,890	14,083	25.2%	55,079	14,875	27.0%	5.6%	-1.4%
Cheatham	41,865	7,620	18.2%	42,424	8,481	20.0%	11.3%	1.3%
Chester	17,553	3,408	19.4%	17,673	3,670	20.8%	7.7%	0.7%
Claiborne	32,436	7,360	22.7%	32,705	7,943	24.3%	7.9%	0.8%
Clay	7,659	2,141	28.0%	7,654	2,295	30.0%	7.2%	-0.1%
Cocke	36,691	8,933	24.3%	36,943	9,623	26.0%	7.7%	0.7%
Coffee	59,283	11,257	19.0%	60,787	12,183	20.0%	8.2%	2.5%
Crockett	14,152	2,960	20.9%	14,095	3,131	22.2%	5.8%	-0.4%
Cumberland	64,464	22,465	34.8%	66,753	24,457	36.6%	8.9%	3.6%
Davidson	727,642	100,647	13.8%	746,905	108,565	14.5%	7.9%	2.6%
Decatur	11,602	3,058	26.4%	11,554	3,231	28.0%	5.7%	-0.4%
DeKalb	21,454	4,514	21.0%	21,988	4,938	22.5%	9.4%	2.5%
Dickson	56,518	10,592	18.7%	58,420	11,719	20.1%	10.6%	3.4%
Dyer	36,824	7,225	19.6%	36,862	7,634	20.7%	5.7%	0.1%
Fayette	43,558	10,951	25.1%	45,222	12,212	27.0%	11.5%	3.8%
Fentress	19,032	4,745	24.9%	19,155	5,099	26.6%	7.5%	0.6%
Franklin	42,918	9,780	22.8%	43,226	10,397	24.1%	6.3%	0.7%
Gibson	49,577	9,757	19.7%	49,867	10,290	20.6%	5.5%	0.6%
Giles	29,483	6,787	23.0%	29,317	7,230	24.7%	6.5%	-0.6%
Grainger	23,955	5,672	23.7%	24,207	6,166	25.5%	8.7%	1.1%
Greene	70,230	17,073	24.3%	70,553	18,144	25.7%	6.3%	0.5%
Grundy	13,215	3,093	23.4%	12,896	3,260	25.3%	5.4%	-2.4%
Hamblen	66,354	13,371	20.2%	67,498	14,298	21.2%	6.9%	1.7%
Hamilton	383,109	75,214	19.6%	393,234	80,749	20.5%	7.4%	2.6%
Hancock	6,344		24.7%	6,193		26.2%	3.7%	-2.4%
Hardeman	24,562	4,955	20.2%	24,247	5,077	20.9%	2.5%	-1.3%
Hardin	25,584	6,628	25.9%	25,491	7,026	27.6%	6.0%	-0.4%
Hawkins	56,945	13,744	24.1%	56,797	14,718	25.9%	7.1%	-0.3%
Haywood	16,550	3,723	22.5%	16,082	3,900	24.2%	4.7%	-2.8%
Henderson	28,387	5,783	20.4%	28,624	6,158	21.5%	6.5%	0.8%
Henry	32,156	8,340	25.9%	32,141	8,769	27.3%	5.1%	0.0%
Hickman	25,930	5,149	19.9%	26,348	5,565	21.1%	8.1%	1.6%
Houston	8,388	1,928	23.0%	8,469	2,056	24.3%	6.6%	1.0%
Humphreys	18,683	4,175	22.3%	18,739	4,432	23.6%	6.1%	0.3%
Jackson	12,055	3,148	26.1%	12,175		28.0%	8.2%	1.0%
Jefferson	56,988	13,180	23.1%	58,374	14,588	25.0%	10.7%	2.4%
Johnson	17,752	4,558	25.7%	17,593	4,719	26.8%	3.5%	-0.9%
Knox	493,620	87,866	17.8%	510,323	95,101	18.6%	8.2%	3.4%
Lake	6,892	1,195	17.3%	6,834	1,197	17.5%	0.2%	-0.8%
Lauderdale	25,372	4,552	17.9%	25,234	4,759	18.9%	4.5%	-0.5%
Lawrence	44,981	8,994	20.0%	45,341	9,733	21.5%	8.2%	0.8%

	Populati	on Estimate	e 2024	Popula	tion Estimat	e 2028	% Incr	ease
	Total	65+	%65+	Total	65+	%65+	65+	Total
Lewis	12,400	2,945	23.7%	12,382	3,120	25.2%	6.0%	-0.1%
Lincoln	35,066	7,771	22.2%	35,506	8,366	23.6%	7.7%	1.3%
Loudon	57,893	17,232	29.8%	60,507	18,853	31.2%	9.4%	4.5%
McMinn	55,219	12,354	22.4%	56,034	13,311	23.8%	7.7%	1.5%
McNairy	26,010	5,890	22.6%	26,213	6,235	23.8%	5.9%	0.8%
Macon	25,925	4,568	17.6%	26,960	5,013	18.6%	9.7%	4.0%
Madison	98,816	19,807	20.0%	99,089	21,218	21.4%	7.1%	0.3%
Marion	28,886	6,518	22.6%	28,750	6,865	23.9%	5.3%	-0.5%
Marshall	36,559	6,646	18.2%	37,929	7,362	19.4%	10.8%	3.7%
Maury	106,039	19,815	18.7%	112,011	22,061	19.7%	11.3%	5.6%
Meigs	12,824	2,946	23.0%	13,057	3,221	24.7%	9.3%	1.8%
Monroe	48,436	11,690	24.1%	49,391	12,741	25.8%	9.0%	2.0%
Montgomery	231,296	24,920	10.8%	248,155	28,415	11.5%	14.0%	7.3%
Moore	6,502	1,592	24.5%	6,555	1,694	25.8%	6.4%	0.8%
Morgan	21,727	4,399	20.2%	21,932	4,670	21.3%	6.2%	0.9%
Obion	29,833	6,834	22.9%	29,440	7,020	23.8%	2.7%	-1.3%
Overton	23,089	5,194	22.5%	23,508	5,562	23.7%	7.1%	1.8%
Perry	8,222	1,878	22.8%	8,327	1,974	23.7%	5.1%	1.3%
Pickett	4,990	1,547	31.0%	4,910	1,619	33.0%	4.6%	-1.6%
Polk	17,159	3,983	23.2%	17,410	4,338	24.9%	8.9%	1.5%
Putnam	84,778	15,751	18.6%	88,381	17,345	19.6%	10.1%	4.3%
Rhea	34,243	7,213	21.1%	34,929	7,785	22.3%	7.9%	2.0%
Roane	54,007	13,982	25.9%	53,893	14,800	27.5%	5.9%	-0.2%
Robertson	75,475	13,137	17.4%	78,415	14,765	18.8%	12.4%	3.9%
Rutherford	371,864	46,183	12.4%	404,640	54,327	13.4%	17.6%	8.8%
Scott	22,151	4,255	19.2%	22,142	4,516	20.4%	6.2%	0.0%
Sequatchie	15,754	3,756	23.8%	16,256	4,111	25.3%	9.5%	3.2%
Sevier	104,497	23,457	22.4%	109,283	25,878	23.7%	10.3%	4.6%
Shelby	943,252	149,228	15.8%	948,770	158,419	16.7%	6.2%	0.6%
Smith	20,764	4,003	19.3%	21,151	4,418	20.9%	10.4%	1.9%
Stewart	14,046	3,209	22.8%	14,177	3,458	24.4%	7.8%	0.9%
Sullivan	160,062	38,786	24.2%	160,624	40,927	25.5%	5.5%	0.4%
Sumner	208,192	37,499	18.0%	220,197	42,046	19.1%	12.1%	5.8%
Tipton	63,206	10,910	17.3%	64,229	11,977	18.6%	9.8%	1.6%
Trousdale	11,829	1,646	13.9%	12,140	1,778	14.7%	8.1%	2.6%
Unicoi	17,869	4,691	26.3%	17,908	4,953	27.7%	5.6%	0.2%
Union	20,322	4,356	21.4%	20,362	4,793	23.5%	10.0%	0.2%
Van Buren	5,903	1,534	26.0%	5,836	1,611	27.6%	5.0%	-1.1%
Warren	41,992	8,370	19.9%	42,251	8,909	21.1%	6.4%	0.6%
Washington	134,277	27,977	20.8%	137,598	30,138	21.9%	7.7%	2.5%
Wayne	16,325	3,520	21.6%	16,085	3,671	22.8%	4.3%	-1.5%
Weakley	33,259	6,929	20.8%	33,227	7,308	22.0%	5.5%	-0.1%
White	28,600	6,476	22.6%	29,381	7,026	23.9%	8.5%	2.7%
Williamson	270,313	42,009	15.5%	295,116	49,128	16.6%	16.9%	9.2%
Wilson	160,783	28,465	17.7%	172,941	32,582	18.8%	14.5%	7.6%

^{*} TN_CoPopProj_2021 UTCBER Population Projection Series.

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	Popula	tion Estimat	e 2024	Population Estimate 2028		% Inc	rease	
	Total	15-44	%15-44	Total	15-44	%15-44	15-44	Total
Tennessee	3,654,795	1,370,581	37.5%	3,763,387	1,391,920	37.0%	1.6%	3.0%
Anderson	40,478	13,542	33.5%	40,954	13,543	33.1%	0.0%	1.2%
Bedford	26,733	9,866	36.9%	27,944	10,232	36.6%	3.7%	4.5%
Benton	8,216	2,376	28.9%	8,204	2,323	28.3%	-2.2%	-0.1%
Bledsoe	6,239	1,850	29.7%	6,269	1,782	28.4%	-3.7%	0.5%
Blount	72,214	24,041	33.3%	74,805	24,586	32.9%	2.3%	3.6%
Bradley	58,103	21,345	36.7%	59,922	21,859	36.5%	2.4%	3.1%
Campbell	20,124	6,581	32.7%	19,889	6,389	32.1%	-2.9%	-1.2%
Cannon	7,623	2,559	33.6%	7,765	2,549	32.8%	-0.4%	1.9%
Carroll	14,011	4,709	33.6%	13,837	4,622	33.4%	-1.9%	-1.2%
Carter	28,605	9,202	32.2%	28,248	8,901	31.5%	-3.3%	-1.2%
Cheatham	21,113	7,528	35.7%	21,440	7,517	35.1%	-0.2%	1.5%
Chester	9,207	3,590	39.0%	9,314	3,624	38.9%	0.9%	1.2%
Claiborne	16,589	5,791	34.9%	16,729	5,810	34.7%	0.3%	0.8%
Clay	3,902	1,115	28.6%	3,873	1,079	27.9%	-3.2%	-0.7%
Cocke	18,908	5,966	31.6%	19,096	5,940	31.1%	-0.4%	1.0%
Coffee	30,287	10,790	35.6%	31,076	11,003	35.4%	2.0%	2.6%
Crockett	7,438	2,558	34.4%	7,445	2,527	33.9%	-1.2%	0.1%
Cumberland	33,080	8,546	25.8%	34,217	8,720	25.5%	2.0%	3.4%
Davidson	376,350	168,207	44.7%	386,411	168,255	43.5%	0.0%	2.7%
Decatur	5,884	1,775	30.2%	5,868	1,730	29.5%	-2.5%	-0.3%
DeKalb	10,712	3,595	33.6%	11,003	3,639	33.1%	1.2%	2.7%
Dickson	28,833	10,260	35.6%	29,840	10,422	34.9%	1.6%	3.5%
Dyer	19,079	6,815	35.7%	19,137	6,750	35.3%	-1.0%	0.3%
Fayette	22,159	6,738	30.4%	23,023	6,821	29.6%	1.2%	3.9%
Fentress	9,671	2,887	29.9%	9,757	2,878	29.5%	-0.3%	0.9%
Franklin	22,006	7,811	35.5%	22,192	7,849	35.4%	0.5%	0.8%
Gibson	25,730	9,098	35.4%	25,870	9,036	34.9%	-0.7%	0.5%
Giles	15,250	5,072	33.3%	15,205	4,991	32.8%	-1.6%	-0.3%
Grainger	11,914	3,714	31.2%	12,033	3,681	30.6%	-0.9%	1.0%
Greene	35,756	11,505	32.2%	35,946	11,443	31.8%	-0.5%	0.5%
Grundy	6,643	2,145	32.3%	6,482	2,015	31.1%	-6.1%	-2.4%
Hamblen	33,983	11,684	34.4%	34,680	11,907	34.3%	1.9%	2.1%
Hamilton	198,486	74,942	37.8%	203,797	75,672	37.1%	1.0%	2.7%
Hancock	3,223	1,003	31.1%	3,147	979	31.1%	-2.3%	-2.3%
Hardeman	10,944	3,518	32.1%	10,681	3,368	31.5%	-4.3%	-2.4%
Hardin	13,210	4,066	30.8%	13,203	4,000	30.3%	-1.6%	-0.1%
Hawkins	28,952	9,194	31.8%	28,913	9,012	31.2%	-2.0%	-0.1%
Haywood	8,824	2,885	32.7%	8,578	2,679	31.2%	-7.1%	-2.8%
Henderson	14,508	5,027	34.7%	14,651	5,000	34.1%	-0.5%	1.0%
Henry	16,616	5,051	30.4%	16,645	5,003	30.1%	-0.9%	0.2%
Hickman	12,438	4,240	34.1%	12,658	4,278	33.8%	0.9%	1.8%
Houston	4,306	1,419	33.0%	4,371	1,415	32.4%	-0.3%	1.5%
Humphreys	9,361	3,073	32.8%	9,382	3,028	32.3%	-1.4%	0.2%
Jackson	6,015	1,795	29.8%	6,090	,	29.2%	-0.8%	1.3%
Jefferson	29,010	9,541	32.9%	29,769	9,696	32.6%	1.6%	2.6%
Johnson	8,241	2,353	28.5%	8,087	2,277	28.2%	-3.2%	-1.9%
Knox	253,990	102,372	40.3%	262,729	104,620	39.8%	2.2%	3.4%
Lake	2,442	718	29.4%	2,312	657	28.4%	-8.5%	-5.3%
Lauderdale	12,190	4,195	34.4%	12,092	4,099	33.9%	-2.3%	-0.8%
Lawrence	22,885	7,941	34.7%	23,103	7,977	34.5%	0.5%	1.0%

	Populat	ion Estimat	e 2024	Populat	tion Estimat	e 2028	% Inc	rease
	Total	15-44	%15-44	Total	15-44	%15-44	15-44	Total
Lewis	6,405	2,055	32.1%	6,417	2,031	31.6%	-1.2%	0.2%
Lincoln	17,891	5,826	32.6%	18,107	5,844	32.3%	0.3%	1.2%
Loudon	29,449	8,309	28.2%	30,801	8,707	28.3%	4.8%	4.6%
McMinn	28,310	9,541	33.7%	28,744	9,533	33.2%	-0.1%	1.5%
McNairy	13,294	4,326	32.5%	13,372	4,294	32.1%	-0.7%	0.6%
Macon	13,298	4,859	36.5%	13,882	5,035	36.3%	3.6%	4.4%
Madison	52,291	19,539	37.4%	52,621	19,437	36.9%	-0.5%	0.6%
Marion	14,763	4,804	32.5%	14,724	4,740	32.2%	-1.3%	-0.3%
Marshall	18,667	6,804	36.4%	19,396	6,967	35.9%	2.4%	3.9%
Maury	54,998	20,147	36.6%	58,262	20,894	35.9%	3.7%	5.9%
Meigs	6,476	2,033	31.4%	6,605	2,030	30.7%	-0.2%	2.0%
Monroe	24,479	7,735	31.6%	24,967	7,799	31.2%	0.8%	2.0%
Montgomery	116,301	52,345	45.0%	124,893	55,223	44.2%	5.5%	7.4%
Moore	3,277	1,039	31.7%	3,311	1,028	31.0%	-1.0%	1.1%
Morgan	9,774	3,158	32.3%	9,793	3,118	31.8%	-1.2%	0.2%
Obion	15,445	5,127	33.2%	15,280	5,004	32.7%	-2.4%	-1.1%
Overton	11,637	3,831	32.9%	11,853	3,868	32.6%	1.0%	1.9%
Perry	4,082	1,323	32.4%	4,136	1,340	32.4%	1.3%	1.3%
Pickett	2,544	669	26.3%	2,509	652	26.0%	-2.5%	-1.4%
Polk	8,722	2,747	31.5%	8,871	2,752	31.0%	0.2%	1.7%
Putnam	42,813	16,869	39.4%	44,715	17,546	39.2%	4.0%	4.4%
Rhea	17,293	6,016	34.8%	17,622	6,120	34.7%	1.7%	1.9%
Roane	27,467	8,375	30.5%	27,435	8,197	29.9%	-2.1%	-0.1%
Robertson	38,318	13,974	36.5%	39,923	14,337	35.9%	2.6%	4.2%
Rutherford	189,655	82,843	43.7%	206,426	88,375	42.8%	6.7%	8.8%
Scott	11,277	4,015	35.6%	11,303	3,950	34.9%	-1.6%	0.2%
Sequatchie	7,966	2,515	31.6%	8,246	2,564	31.1%	2.0%	3.5%
Sevier	53,096	17,687	33.3%	55,558	18,472	33.2%	4.4%	4.6%
Shelby	497,306	195,681	39.3%	500,782	194,659	38.9%	-0.5%	0.7%
Smith	10,431	3,671	35.2%	10,664	3,700	34.7%	0.8%	2.2%
Stewart	7,053	2,228	31.6%	7,114	2,229	31.3%	0.1%	0.9%
Sullivan	82,238	26,618	32.4%	82,561	26,404	32.0%	-0.8%	0.4%
Sumner	106,958	39,007	36.5%	113,234	40,714	36.0%	4.4%	5.9%
Tipton	32,234	11,903	36.9%	32,796			-0.3%	1.7%
Trousdale	4,918	1,908	38.8%	5,066	1,947	38.4%	2.1%	3.0%
Unicoi	9,063	2,754	30.4%	9,098	2,728	30.0%	-0.9%	0.4%
Union	10,286	3,414	33.2%	10,338	3,353	32.4%	-1.8%	0.5%
Van Buren	2,916	815	28.0%	2,880	790	27.4%	-3.1%	-1.2%
Warren	21,224	7,415	34.9%	21,391	7,394	34.6%	-0.3%	0.8%
Washington	68,813	26,482	38.5%	70,592	26,986	38.2%	1.9%	2.6%
Wayne	7,229	2,226	30.8%	7,089	2,116	29.9%	-4.9%	-1.9%
Weakley	17,109	6,754	39.5%	17,124	6,758	39.5%	0.1%	0.1%
White	14,632	4,828	33.0%	15,053	4,940	32.8%	2.3%	2.9%
Williamson	137,970	49,995	36.2%	150,870	53,933	35.7%	7.9%	9.4%
Wilson	81,954	29,781	36.3%	88,283	31,577	35.8%	6.0%	7.7%

^{*} TN_CoPopProj_2021 UTCBER Population Projection Series.

Source: Boyd Center for Business and Economic Research, University of Tennessee, Knoxville Reassembled by the Tennessee Department of Health, Division of Population Health Assessment Note: These projections may not match Boyd Center projections precisely due to rounding.

Attachment 3N-2 US Census Supplementary Demographic Data

	Tennessee			
Label	Estimate	Margin of Error	Percent	Percent Margin of Error
SEX AND AGE				
Total population	6,923,772	****	6,923,772	(X)
Male	3,400,979	±1,445	49.1%	±0.1
Female	3,522,793	±1,444	50.9%	±0.1
Sex ratio (males per 100 females)	96.5	±0.1	(X)	(X)
Under 5 years	402,591	±797	5.8%	±0.1
5 to 9 years	415,093	±4,983	6.0%	±0.1
10 to 14 years	443,075	±5,088	6.4%	±0.1
15 to 19 years	443,311	±1,263	6.4%	±0.1
20 to 24 years	460,990	±1,445	6.7%	±0.1
25 to 34 years	949,412	±1,789	13.7%	±0.1
35 to 44 years	871,132	±1,470	12.6%	±0.1
45 to 54 years	877,670	±1,669	12.7%	±0.1
55 to 59 years	457,404	±4,633	6.6%	±0.1
60 to 64 years	447,781	±4,393	6.5%	±0.1
65 to 74 years	697,107	±908	10.1%	±0.1
75 to 84 years	343,611	±2,627	5.0%	±0.1
85 years and over	114,595	±2,554	1.7%	±0.1
Median age (years)	38.9	±0.1	(X)	(X)

	Wilson County, Tennessee								
Label	Estimate	Margin of Error	Percent	Percent Margin of Error					
SEX AND AGE									
Total population	149,096	****	149,096	(X)					
Male	73,809	±130	49.5%	±0.1					
Female	75,287	±130	50.5%	±0.1					
Sex ratio (males per 100 females)	98.0	±0.3	(X)	(X)					
Under 5 years	8,712	±44	5.8%	±0.1					
5 to 9 years	9,147	±557	6.1%	±0.4					
10 to 14 years	10,698	±538	7.2%	±0.4					
15 to 19 years	9,584	±249	6.4%	±0.2					
20 to 24 years	8,439	±290	5.7%	±0.2					
25 to 34 years	17,455	±277	11.7%	±0.2					
35 to 44 years	21,039	±200	14.1%	±0.1					
45 to 54 years	20,652	±164	13.9%	±0.1					
55 to 59 years	10,327	±687	6.9%	±0.5					
60 to 64 years	9,527	±706	6.4%	±0.5					
65 to 74 years	14,508	±137	9.7%	±0.1					
75 to 84 years	7,100	±394	4.8%	±0.3					
85 years and over	1,908	±379	1.3%	±0.3					
Median age (years)	40.0	±0.3	(X)	(X)					

Attachment 3N-3 TennCare Enrollment Report

TennCare Enrollment Report for February 2025

MCO	Region	Total
BLUECARE	East Tennessee	211,056
BLUECARE	Middle Tennessee	174,330
BLUECARE	West Tennessee	149,384
UNITEDHEALTHCARE COMMUNITY PLAN	East Tennessee	136,081
UNITEDHEALTHCARE COMMUNITY PLAN	Middle Tennessee	168,131
UNITEDHEALTHCARE COMMUNITY PLAN	West Tennessee	114,893
TENNCARE SELECT LOW	All	7,844
TENNCARE SELECT HIGH	All	25,125
PACE		270
KBB under DIDD Program		4,532
WELLPOINT	East Tennessee	136,433
WELLPOINT	Middle Tennessee	166,739
WELLPOINT	West Tennessee	115,221
Waiting for MCO Assignment		1
Grand Total		1,410,040

County		Fe	male					Male			Grand
	0 - 18	19 - 20	21 - 64	65>	Total	0 - 18	19 - 20	21 - 64	65>	Total	Total
WILSON	6,696	351	5,020	528	12,595	7,025	247	1,734	296	9,302	21,897
GRAND TOTAL	407,834	22,886	333,148	48,692	812,560	426,672	16,785	124,917	29,106	597,480	1,410,040

Reports include some membership additions that are the result of retroactivity, however, additional retroactivity may still occur. The Other county category reflects recipients who are Tennessee residents for which their domicile is temporarily located outside of the state.

Attachment 2C Payors Contracted by Lebanon Center for Outpatient Surgery

SURGERY VENTURES GROUP - TRISTAR MANAGED CARE CONTRACT LISTING

IVIANAGED	CARE CONTRACT LISTING
Commercial Payor	Product(s)
<u> </u>	
Aetna	HMO/PPO/POS plans
Aetna	VHAN, Aetna Whole Health
Blue Cross Blue Shield TN	Network P
Blue Cross Blue Shield TN	Network S
CIGNA	PPO, HMO, OAP
CIGNA Behavioral Health	
Coventry Healthcare	
First Health/Coventry National	
HCA Employee Benefit Plan	
Health Alliance	Alliant Health Plans HMO, Health One Alliance PPO
Humana	Choice PPO; Gold Plus HMO
Magellan Heath Service (Behavioral)	
MultiPlan/PHCS	Beechstreet PPO, BestCare, Concentra, CAPP Care,
PPO Plus	
United Healthcare	All commercial (NDDO DDO Core Heritage Scient)
United Behavioral Health	All commercial (NPPO, PPO, Core, Heritage Select)
	Beacon Health Services
Value Options	Deacon Health Services
Health Insurance Exchange	Product(s)
Treatti insurance Exchange	1100001(3)
Ambetter	CORE
Blue Cross Blue Shield TN	Net S
Oscar (Nashville only)	THE CO
Oscar (Nastiville Offig)	
Managed Medicare	Product(s)
Trialiagoa Prodical c	
Aetna	
Amerigroup	Ameriadvantage
Blue Cross Blue Shield TN	HMO, PPO, POS
Coventry	
HealthSpring	
Humana	Humana Choice PPO, Gold Plus HMO
UnitedHealthcare	
WellCare	
WellPoint	
	Dura di cati(a)
Managed Medicaid	Product(s)
Blue Cross Blue Shield of TN	BlueCare
Amerigroup	
UHC Community Plan	

Attachment 7Q Additional Information for Question 7Q

- 7Q. Respond to all of the following and for such occurrences, identify, explain, and provide documentation if occurred in last five (5) years.
 - Any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant);
 - Any entity in which any person(s) or entity with more than 5% ownership (direct or indirect) in the applicant (to include any entity in the chain of ownership for applicant) has an ownership interest of more than 5%; and/or

The Applicant has made a good faith effort to respond to this question regarding the entities identified in the organizational chart for direct upstream ownership of Lebanon Surgicenter, LLC, to the best of its knowledge, information, and belief. Due to the breadth of the question and lack of definition of key terms, the Applicant cannot represent these responses as totally comprehensive, but no responsive information is intentionally being withheld.

Been subject to any of the following:

> Final Order or Judgement in a state licensure action;

The Applicant assumes for the purpose of this question that "state licensure action" refers to facility licensure. Lebanon Surgicenter, LLC has not been subjected to a Final Order or Judgement in a state licensure action. The other entities in the chain of ownership do not hold a hospital license.

> Criminal fines in cases involving a Federal or State health care offense;

None.

Civil monetary penalties in cases involving a Federal or State health care offense;

None. The Applicant is not aware that any of its entities upstream have been involved in civil litigation whereby a judgement or settlement was entered in payment of Civil Monetary Penalty.

> Administrative monetary penalties in cases involving a Federal or State health care offense:

None. The Applicant is not aware that any of its entities upstream have been involved whereby a judgment or settlement was entered into resulting in payment of Administrative Monetary Penalty.

Agreement to pay civil or administrative monetary penalties to the federal government or any state in cases involving claims related to the provision of health care items and services:

None. The Applicant is not aware that any of its upstream entities have been involved in any agreement requiring payment of an administrative or civil monetary penalty to the federal government or any state government for claims related to the provision of health

care items or services.

Suspension or termination of participation in Medicare or TennCare/Medicaid programs; and/or

None.

> Is presently subject of/to an investigation, or party in any regulatory or criminal action of which you are aware.

In light of the breadth and scope of services provided and the business conducted by the entities upstream from the Applicant, it is likely that at any given time one or more are involved, in some capacity, in some type of investigation, regulatory action or civil action. However, neither Lebanon Surgicenter, LLC nor any of its upstream entities are the subject of a criminal action.

Project Name: Lebanon Center for Outpatient Surgery

Supplemental Round Name: 1

Due Date: 5/12/2025

Certificate No.: CN2504-013 Submitted Date: 5/6/2025

1. 9A. Legal Interest in the Site

Please confirm that Hartmann SC Partners holds the deed for the project site as HCA Realty Inc. is listed as the current owner through a property search.

Response: As noted in the response to Question 9A of the main CON Application, the Applicant, LCOS, is the tenant under a sublease of the site from HCA Health Services of Tennessee, Inc.

HCA Realty, Inc. acquired the property in 2005. In 2022, HCA Realty, Inc. entered into a 99-year ground lease with Hartmann SC Partners for the lot containing the proposed ASTC. HCA Health Services of Tennessee, Inc. leases the property, which includes the building, from Hartmann SC Partners, pursuant to the lease included in <u>Attachment 9A</u> of the CON application. The Applicant is a party to the sublease from HCA Health Services of Tennessee, Inc., also included in <u>Attachment 9A</u> of the CON application. This document shows the Applicant's legal interest in the site.

2. 4E. Project Cost Chart

Please ensure that the lease costs included with the FMV of the property are prorated to be inclusive of only the land used for the project site. There appears to be portion of the parcel that will be developed for other purposes.

Also, the Total Market Appraisal for the property appears to be less than is allocated in the Project Cost Chart (\$6,428,800) vs. \$9,151,436 listed for building improvements. Please confirm that the costs estimates are accurate.

Response: The lease costs are based on the lease for the TriStar Summit HOPD, and as such, are only for the portion of the property to be used for the proposed ASTC in the same space. LCOS also confirms that the cost estimates are correct, and as requested in the CON application instructions, the higher of the amounts was used in the Project Cost Chart in Section 4E, which in this case was the building improvements costs, which are higher than the Market Appraisal or the cost of the lease over the initial term. In this instance, since the building is already constructed, LCOS was able to determine the greater amount to be the actual building improvement costs. Please reference Attachment 1E-1 for a breakdown of the FMV comparison of the lease costs and the costs for building improvements, both of which are higher than the Appraisal.

3. 8A. Name of Management/Operating Entity

Please explain the difference between and roles of Surgicare of Lebanon, LLC and Surgery Ventures in the management of the proposed facility. Please identify the role of Surgery Ventures in Attachment 7A-2.

Response:

As noted on the LOI/POI for the proposed project, the managing entity of the proposed ASTC is Surgicare of Lebanon, LLC, an entity that is also identified on the ownership structure for the proposed facility included in Attachment 7A-2. Surgery Ventures Group (Powered by HCA Healthcare) is the division name used by HCA, Inc. and its affiliates, including Medical Care America, LLC, whereby it partners with physicians to create and operate ambulatory surgery centers, including the proposed ASTC. Surgicare of Lebanon, LLC is a wholly owned subsidiary of Medical Care America, LLC operating within the Surgery Ventures Group division.

4. 1E. Overview

Please discuss the reason for operating the TriStar Summit HOPD for such a limited time frame prior to converting to an ASTC.

Will the proposed ASTC be open staffed?

Are the other ASTCs in the service area open or closed staffed?

Are the physicians identified in the letters of support, Attachment 1N-1.2 limited by inability to access facilities like Providence Surgery Center and Lebanon Surgery Center due to staffing policies of those facilities?

Response: By successfully operating TriStar Summit HOPD for nearly one year before the LCOS CON application is considered by the HFC, the viability of an ASTC in that location has been well demonstrated. In the first six (6) months of operation of TriStar Summit HOPD, the facility provided more outpatient surgeries than the only currently licensed multispecialty ASTC in Lebanon provided in the last four (4) years combined. This information confirms that a facility that provides outpatient surgery in Lebanon is viable and welcomed by patients and providers. Indeed, some providers have expressly indicated their preference for an ASTC at that location. Upon confirmation of the viability of providing outpatients surgeries at the location of the HOPD, the process was begun to convert the TriStar Summit HOPD into an ASTC to benefit patients by making the same care provided in an HOPD available at a much lower cost. Because the charges to patients, the reimbursement rates by insurers, and the amount reimbursed by Medicare/TennCare are across the board less in an ASTC setting than in an HOPD setting – discussed at length in the Standards and Criteria provided with LCOS's initial CON application – LCOS believes that converting the TriStar Summit HOPD to an ASTC will provide an overwhelming benefit to patients in need of outpatient surgical care.

LCOS will be open staffed. As none of the three existing ASTCs in Wilson County is an affiliate or entity of Surgicare of Lebanon, LLC, LCOS cannot definitively state the staffing models of those ASTCs. However, it is LCOS's understanding that both existing multispecialty ASTCs in Wilson County – Phoenix/LSC and Providence – are open staffed, while the sole single-specialty ASTC in Wilson County – Lebanon Endoscopy Center – is closed staffed, as is typical of a single specialty provider. It follows, then, that LCOS is also unaware of the specific accessibility issues faced by the physicians identified in its letters of support included in Attachment 1N.1-2, as those physicians did not disclose such issues to LCOS. However, given the incredibly low historical utilization of Phoenix/LSC, it is apparent that physicians do not have reasonable access there; conversely, given the relatively high utilization of Providence, physicians do not have sufficient access at that facility to perform the number of cases projected at LCOS. As such, LCOS believes that physician accessibility issues are clearly present in Wilson County, issues that drive the need for the proposed ASTC.

5. 2N. Service Area

The applicant's physician support letters are noted. What is the approximate percentage of the projected patients that will be residents of the Lebanon and Watertown areas (ZIP Codes 37090, 37087, 37184) vs. Mt. Juliet area (ZIP Code 37122) of Wilson County?

What does the historical utilization at TriStar Summit HOPD and affiliated ASTCs serving Wilson County residents reflect in terms of these ZIP Codes?

Response : As stated in its application, LCOS believes that 85 percent of its total patients will originate from Wilson County, which equates to 1,733 patients in Year One (2026) and 2,029 patients in Year Two (2027). As also stated in its application, LCOS believes that a significant number of its patients will originate from Lebanon and the immediate surrounding areas, given the high growth of that community and the relative lack of access to ambulatory surgical services available for those patients. However, given that the development of more accessible and cost-effective surgical care will inevitably alter the patient origin by ZIP code of Wilson County providers, LCOS does not believe that the historical patient origin of any one of the ASTCs in Wilson County or the TriStar Summit HOPD would necessarily reflect the same patient origin by ZIP code for the proposed ASTC.

To respond to the requested information, LCOS estimates its projected surgical cases by ZIP code based on the population ratios for each of the four ZIP codes in Wilson County, using ZIP code population data collected from Esri and included with LCOS's application as <u>Attachment 1N.1-3</u>. LCOS then applied these ratios to its projected patients from Wilson County in order to estimate its projected patient totals for LCOS by ZIP code for 2026 and 2027. These estimates, and the shares of patients by Wilson County ZIP code, are shown in Table R-1, below.

Table R-1
Projected Surgical Cases by Wilson County ZIP Code
LCOS

	2024 Population	Percentage of Wilson County Population	Surgical Cases, 2026	Surgical Cases, 2027
37090 (Lebanon)	23,589	15%	260	304
37087 (Lebanon)	57,403	36%	632	740
Lebanon Subtotal	80,992	51%	892	1,044
37122 (Mt. Juliet)	70,022	44%	771	902
37184 (Watertown)	6,468	4%	71	83
Sum of ZIPs	157,482*	100%	1,733	2,029

Source: Esri, accessed March 18, 2025. See Attachment 1N-1.3. Population by ZIP code is not available from the TN Department of Health.

As shown above, LCOS projects that the majority of its patients will originate from Lebanon, an share that will likely increase as LCOS continues to ramp up and serve as the only accessible multispecialty ASTC in Lebanon.

The shares of historical volume by Wilson County ZIP code for TriStar Summit HOPD – which encompasses all volume from Wilson County at that facility from its opening on June 26, 2024, through March 31, 2025 – is shown in Table R-2, below.

^{*} Please note there are additional ZIP codes with the majority of their geographic area outside of Wilson County; as such, they have not been included in the analysis above. These excluded ZIP codes account for the difference between the total population of the four ZIP codes and the total population of Wilson County shown elsewhere in LCOS's CON application.

Table R-2
Historical Surgical Cases by Wilson County ZIP Code
LCOS

	Percentage of Total
37090 (Lebanon)	54%
37087 (Lebanon)	26%
Lebanon Subtotal	80%
37122 (Mt. Juliet)	14%
37184 (Watertown)	6%
Sum of ZIPs	100%

Source: Internal data. TriStar Summit HOPD performed its first case on June 26, 2024. Data encompasses surgical cases performed on January 1, 2025, through March 31, 2025.

As shown above, <u>80 percent</u> of Wilson County patients treated at TriStar Summit HOPD since its opening in June 2024 are from Lebanon.

Lastly, the shares of historical utilization data by Wilson County ZIP code for TriStar ASTCs affiliated with the proposed ASTC is shown in Table R-3, below.

Table R-3
Historical Surgical Cases by Wilson County ZIP Code
TriStar Affiliated ASTCs*

	2022	2023	2024	Total
37090 (Lebanon)	14%	13%	15%	14%
37087 (Lebanon)	32%	33%	32%	32%
Lebanon Subtotal	46%	46%	48%	47%
37122 (Mt. Juliet)	50%	50%	48%	49%
37184 (Watertown)	4%	4%	4%	4%
Sum of ZIPs	100%	100%	100%	100%

Source: Internal data.

In short, while 80 percent of Wilson County patients at the existing TriStar Summit HOPD originated from Lebanon ZIP codes, data from other TriStar affiliated ASTCs indicate that slightly less than 50 percent of their Wilson County patients are from Lebanon ZIPs. Thus, LCOS expects that with the conversion to an ASTC, the expected shifting of cases from other TriStar affiliated facilities, and the ramp up of volume over the first two years, the patient origin by ZIP code will more closely resemble the population ratio by ZIP code, as shown in Table R-1.

6. 3N. Demographics

^{*} Includes Summit Surgery Center, Premier Orthopaedic Surgery Center, Southern Joint Surgery Center, Centennial Surgery Center, Brentwood Surgery Center, and Physicians Pavilion Surgery Center.

Please utilize the Boyd Center's website to obtain population projections for 2025 to 2029 in response to Item 3N.B. Please update the TennCare % of Total Population once the population data has been updated.

Please revise and resubmit Attachment 3N.B (labeled as Attachment 3N.BR).

Response: Please see <u>Attachment 3N.BR.</u>

7. 4N. Special Needs of Service Area

The applicant's intention to utilize existing Access to Services, Charity Discount, and Uninsured Discount policies is noted. It appears that no Charity Care was reported at any of the five affiliated surgery centers in 2024. Please discuss the reasons for this.

Did any of the TriStar Summit HOPD patients meet charity care eligibility requirements?

As of the time of the submission of LCOS's CON application, no TriStar Summit HOPD patients have met charity care eligibility requirements. Please note, however, that TriStar Summit HOPD has only been operational for less than a year, having begun operations on June 26, 2024. LCOS anticipates that some patients of its proposed ASTC will be eligible for charity care, as detailed in its application and as explained above.

8. 6N. Utilization and/or Occupancy Statistics

What was the historical utilization volume of the TriStar Summit HOPD by case type?

How many of the surgeons expressing commitment to perform surgeries at the proposed ASTC operated at the existing HOPD in Lebanon? How much of the historical volume at the TriStar Summit HOPD was from these surgeons?

What percentage of these surgeon's historical outpatient case volume is expected to remain in a hospital setting vs. being performed at the proposed ASTC?

The letter of support from Dr. Cornelius is noted which reflects the performance of over 300 surgeries at the TriStar Summit HOPD including total and partial knee replacements, total and partial hip replacements, rotator cuff repairs and carpal tunnel releases. How many TJRs does Dr. Conelius project to perform at the ASTC?

Which other surgeons have a history of performing total joint replacement procedures and how many are they each projecting that they will perform?

The additional letters of support for the project from 20 physicians are noted. However, beyond Dr. Cornelius's letter, they do not specifically indicate the number of historical or projected cases as described in the applicant's projections in response to Item 6N (Table 6N-2) or Attachment 1N (Table 1N-1.7). Please provide greater detail supporting the projected case volumes by case type included with these projections.

Response: Please see Table R-4, below, which details the historical volume of TriStar Summit HOPD by the case types included in the projections of the volume for LCOS, detailed in LCOS's submitted application.

Table R-4
TriStar Summit HOPD Cases by Specialty
2024-2025

Case Type	2024*	2025**
General Surgery	3	2
Orthopedic Surgery	112	64
Pain Management	1	-
Podiatry	1	6
Total Joint Replacement	199	109
Total	316	188

Source: Internal data.

TriStar Summit HOPD began performing cases on June 26, 2024, and as such the data in Table R-4 represent a relatively short period of time of operation. LCOS anticipates providing a wide range of surgical services at its proposed ASTC, as evidenced through the letters of support collected in <u>Attachment 1N-1.2</u>.

Additionally, please see Table R-5, below, which details the historical volume of TriStar Summit HOPD by surgeon. As shown in the letters of support collected in <u>Attachment 1N.1-2</u>, Dr. Cornelius, Dr. Mountain, Dr. Richie, and Dr. Sugalski have indicated their support for and willingness to provide care at LCOS.

^{*} TriStar Summit HOPD performed its first case on June 26, 2024.

^{**} January 1, 2025, through March 31, 2025.

Table R-5
TriStar Summit HOPD Cases by Performing Surgeon 2024-2025

Surgeon	2024*	2025**
Dr. Bushman	-	5
Dr. Cornelius	268	145
Dr. Mountain	17	8
Dr. Richie	28	30
Dr. Sugalski	3	-
Total	316	188

Source: Internal data.

LCOS does not have and did not request the full case totals for the surgeons who have historically provided care at TriStar Summit HOPD since it began operations on June 26, 2024 – including cases those surgeons performed at other facilities. As such, LCOS cannot provide an exact estimate of the percentage of these surgeons' volume that will be performed in a hospital setting versus LCOS. However, LCOS believes it is reasonable to assume that any surgical cases that are appropriate for an ASTC setting but are currently being performed in a hospital-based setting will instead be performed at the proposed ASTC, when possible and when geographically and clinically reasonable.

LCOS estimates that Dr. Cornelius will perform 371 total joint replacement procedures in 2026 (Year One) and 431 total joint replacement procedures in 2027 (Year Two). As with its projected utilization provided in its application, these volume estimates are approximations, not attestations. Additionally, of the other surgeons who have voiced support for the proposed ASTC as collected in <u>Attachment 1N-1.2</u> and who also have a history of providing total joint replacement procedures, LCOS projects that these surgeons will perform the following number of total joint procedures in Year One and Year Two of the proposed project as shown below in Table R-6. For clarity's sake, LCOS has included Dr. Cornelius's projected volume with these totals.

Table R-6
Projected LCOS TJR Cases by Performing Surgeon

Surgeon	2026	2027
Dr. Cook	47	58
Dr. Cornelius	371	431
Dr. Dube	15	17
Dr. Richie	15	17
Dr. Sugalski	26	33
Total	474	555

Note: the totals may not foot due to computer rounding.

Lastly, in order to project case volume by case type, LCOS tabulated the projected input of physicians who were supportive of the proposed project. As described in its CON application, LCOS ultimately based its projected utilization on only a portion of the historical volume of cases performed by the 20 interested surgeons and 1 interested procedural

 ^{*} TriStar Summit HOPD performed its first case on June 26, 2024.

^{**} January 1, 2025, through March 31, 2025.

group who perform outpatient cases across an array of service lines in Wilson County and the surrounding areas. These historical volumes by case type, and the corresponding values that LCOS ultimately used in its projected volumes, are shown in Table R-7, below.

Table R-7
Detail Supporting Projected Case Volume

Specialty	Physician Estimates	2026	2027		
OR Cases					
ENT Surgery	432	255	298		
General Surgery	300	177	207		
Orthopedic Spine Surgery	144	85	99		
Orthopedic Surgery	996	588	688		
Podiatry	360	212	249		
Total Joint Replacement	804	474	555		
Total OR Cases	3,036	1,791	2,097		
PR Cases					
GI/Endoscopy	300	177	207		
Pain Management	120	71	83		
Total PR Cases	420	248	290		
Total Cases	3,456	2,039	2,387		

Note: the totals may not equate due to computer rounding.

As shown above and as noted in LCOS's CON application, the volume estimated by those interested surgeons has been conservatively discounted in order for LCOS to provide a reasonable estimate of volume at its proposed ASTC.

9. 8C. Proposed Charges

It is noted that there is a Medicare Copayment Cap on some procedures (CPT 27447 & 27130) which may result in an increased "patient pays" amount for joint replacement procedures performed in the ASTC vs. HOPD setting.

Given the high projected volume of Total Joint Replacements (555 in Year 2) please discuss whether any other total joint replacement procedure types will be performed in the ASTC setting and list the associated procedure codes.

Are there any other procedure types that are expected to face the same copayment caps?

Are there any similar considerations for commercially insured patients related to TJRs in the ASTC vs. HOPD setting?

Response:

The CPT codes included in Table 1N-1.17 of LCOS's CON application are not inclusive of *all* total joint replacement procedures to be performed at LCOS. Rather, the two CPT codes classified as "Joint" procedures in that table – the previously-referenced CPT codes 27447 and 27130 – are typically the two most common procedure codes for joint cases and were presented to be indicative of the significant total cost savings that can be expected, on average, for patients receiving those procedures at an ambulatory facility versus a hospital-based facility. LCOS anticipates performing a wide variety of total joint replacement procedures. A sampling of these potential procedures by CPT code based on current codes for these procedures is listed in Table R-8, below.

Table R-8
Additional Procedures to be Performed at LCOS by CPT Code

Specialty	CPT Code	Procedure Name
Joints – Shoulder	23470	RECONSTRUCT SHOULDER JOINT
Joints – Shoulder	23472	RECONSTRUCT SHOULDER JOINT
Joints – Shoulder	23473	REVIS RECONST SHOULDER JOINT
Joints – Shoulder	23474	REVIS RECONST SHOULDER JOINT
Joints – Other	24365	RECONSTRUCT HEAD OF RADIUS
Joints – Other	24366	RECONSTRUCT HEAD OF RADIUS
Joints – Hip	27130	TOTAL HIP ARTHROPLASTY
Joints – Hip	27132	TOTAL HIP ARTHROPLASTY
Joints – Hip	27134	REVISE HIP JOINT REPLACEMENT
Joints – Knee	27429	RECONSTRUCTION KNEE
Joints – Hip	27447	TOTAL KNEE ARTHROPLASTY
Joints – Knee	27486	REVIS/REPLACE KNEE JOINT
Joints – Hip	27487	REVIS/REPLACE KNEE JOINT
Joints – Ankle	27702	RECONSTRUCT ANKLE JOINT

LCOS may perform other total joint replacement procedures not included in the list above, given the needs of the patients for whom it will provide care. Based on current reimbursement and CMS policies, LCOS believes that Medicare copayment caps may apply to the majority of total joint replacements. Nonetheless, the overall cost for these surgical cases, including the cost to Medicare, will be lower, which ultimately benefits the healthcare consumer.

The impact on commercially insured patients who will receive total joint replacement procedures at LCOS will largely depend on the commercial payor contracts negotiated at LCOS, which have not yet been finalized. However, based on the experience of its affiliated ASTCs, LCOS believes that the costs for these patients will be much lower at its proposed facility compared to the costs those same patients would incur at a hospital-based facility, which is one of the primary drivers of need for the proposed conversion of TriStar Summit HOPD to an ASTC.

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10. 4C. Accessibility to Human Resources

Is Surgery Ventures responsible for staffing the existing HOPD?

How much staffing continuity is expected in the conversion from an HOPD to an ASTC?

Will the applicant perform robotics assisted procedures at the proposed facility? Is that capacity currently available at the existing HOPD?

What specialized capacity will be added to the ASTC through the conversion? What equipment is required to support this?

Response: Surgicare of Lebanon, LLC, the manager of the proposed ASTC, is responsible for staffing the existing HOPD. The current staff of TriStar Summit HOPD will be offered the opportunity to apply to staff the proposed ASTC. Please note that HCA Healthcare, an affiliate of the proposed ASTC, has staffing policies and procedures in place to ensure that existing resources are used the efficiently staff newly established healthcare facilities, thereby emphasizing continuity of staffing.

TriStar Summit HOPD currently performs robotics assisted procedures, and as such the same capabilities will be present at LCOS upon its approval.

Lastly, please reference the previously included <u>Attachment 1E-2</u>, which lists specialized equipment that will be purchased for the proposed project that specifically has an estimated cost of over \$50,000. These items, along with other minor equipment, are expected to be needed to enable the performance of additional specialties proposed in the application beyond those currently being performed, including ENT, GI/Endoscopy, and Orthopedic Spine.

11. **5C.** License/Certification

Please describe the composition of the governing body for the proposed ASTC.

Response: As outlined in the bylaws for the proposed ASTC, the governing body of LCOS will be appointed by the governing board of LCOS's general partner, and shall be comprised of at least three (3) individuals form the following positions:

Medical Director, the chairperson of the Medical Executive Committee, LCOS's operations director, LCOS's division senior vice president or other designee, LCOS's administrator, and/or interested medical staff and community members.

LCOS's general partner may appoint and remove individuals from the governing body at its discretion.

12. 6C. Historical/Projected Data Chart

Please list revenue on the Outpatient Services line of the Projected Data Chart. It is currently listed on the Inpatient Services line.

Response: LCOS has amended its application within the HFC electronic portal accordingly.

13. 10C. Project Only Payor Mix

Please discuss the methodology used in developing the Projected Payor Mix Chart for this project as it appears the other ASTCs affiliated with the applicant in Davidson County all reported a significantly higher rate of non-governmental revenue, no TennCare (except for Brentwood Surgery Center), and no charity care.

Response: The payor mix provided in response to Question 10C was projected utilizing the existing payor mix of Summit Surgery Center, an existing, TriStar-affiliated ASTC in Hermitage in Davidson County, which is very near the border of Wilson County. Given Summit Surgery Center's proximity to Wilson County and that many of the procedures provided at this ASTC are for Wilson County patients, LCOS believes the historical payor mix for this facility reasonably approximates the expected payor mix at the proposed ASTC.

14. 4Q. TennCare MCO's

Why is Bluecare not listed in response to Item 4Q, but is listed in Attachment 2C?

Response: LCOS has amended its response to Question 4Q accordingly, a response which now lists Bluecare as an MCO to be contracted by the proposed ASTC.

15. 1N. Criteria and Standards

Attachment 1N, ASTC Criteria and Standards, Item #3, Need and Economic Efficiencies

Please confirm that the data submitted on Page 32 of Attachment 1N is correct as HFC was not able to replicate the results presented.

Response: Table 1N-3.1 on Attachment 1N contained errors that have been amended in the reattached <u>Attachment 1NR</u>, with that table being denoted as Table 1N-3.1R.

16. 1N. Criteria and Standards

Attachment 1N, ASTC Criteria and Standards, Item #4, Need and Economic Efficiencies

Table 1N-4.1 appears to contain an error in the following:

2024 - Multi-Specialty ASTCs # of Procedure Rooms and % of Optimal 1,867 Cases per PR

Table 1N-4.2 appears to contain an error in the following:

2024 - Phoenix / LSC # of Procedure Rooms

2024 - TOTAL/PERCENTAGE # of Procedure Rooms and % of Optimal 1,867 Cases per PR

Table 1N-4.8 appears to contain an error in the following:

Total - Other Counties and Total Patients

Table 1N-4.9 appears to contain an error in the following:

Total - 2022, 2023, 2024

Response: LCOS has amended its application accordingly. Please see <u>Attachment 1NR</u>, as well as Table 1N-4.1R, Table 1N-4.2R, Table 1N-4.8R, and Table 1N-4.9R within that attachment.

17. 1N. Criteria and Standards

Attachment 1N, ASTC Criteria and Standards, Item #10, Patient Safety and Quality of Care

Has the anesthesia services provider been identified?

Response: TriStar Summit HOPD currently contracts with a provider of anesthesia services. This anesthesia provider, along with other interested providers in the region, will have the opportunity to propose providing anesthesia services at LCOS upon approval of the proposed project.

Project Name: Lebanon Center for Outpatient Surgery

Supplemental Round Name : 2 Due Date : 5/14/2025

Certificate No.: CN2504-013 Submitted Date: 5/12/2025

1. 9A. Legal Interest in the Site

Please include a copy of the 99-year lease between HCA Realty, Inc. and Hartmann SC Partners.

Please resubmit Attachment 9A (labeled as Attachment 9AR.).

Response: Please see <u>Attachment 9AR</u>, which is amended with a copy of the 99-year lease between HCA Realty, Inc. and Hartmann SC Partners.

2. 1N. Criteria and Standards

Attachment 1N, ASTC Criteria and Standards, Item #3, Need and Economic Efficiencies

The revision incorporated with Table 1N-3.1R. are noted. However, they appear to contain JAR data on cosmetic and or vascular cases reported for the Wilson County ASTCs. Please confirm whether the applicant intends to provide these types of procedures. If not, please remove those case types from the historical utilization data included in Attachment 1N, Table 1N-3.1R. and provide a replacement attachment (labeled as Attachment 1NR2).

Response: There are no current plans to offer cosmetic or vascular surgical procedures. Please see <u>Attachment 1NR2</u> for revised data, included as Table 1N-3.1R2.

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