

## Checklist

### Instructions:

1. Please check each box below, as appropriate; and
  2. The completed checklist *must* be submitted as the first page of the CON application.
- X Attached is a paginated hard copy of the CON application including a completed affidavit, signed and notarized by the appropriate individuals.
- X (\*New\*). A completed supplemental application specific to the proposal type, available on OHCA's website under "[OHCA Forms](#)." A list of supplemental forms can be found on page 2.
- X Attached is the CON application filing fee in the form of a certified, cashier or business check made out to the "Treasurer State of Connecticut" in the amount of \$500.
- X Attached is evidence demonstrating that public notice has been published in a suitable newspaper that relates to the location of the proposal, 3 days in a row, at least 20 days prior to the submission of the CON application to OHCA. (*OHCA requests that the Applicant fax a courtesy copy to OHCA (860) 418-7053, at the time of the publication*)
- X Attached is a completed Financial Attachment
- X Submission includes one (1) original hardcopy in a 3-ring binder and a USB flash drive containing:
1. A scanned copy of each submission in its entirety, including all attachments in Adobe (.pdf) format.
  2. An electronic copy of the applicant's responses in MS Word (the applications) and MS Excel (the financial attachment).

---

### For OHCA Use Only:

Docket No.: 16-32122-CON Check No.: 043385  
OHCA Verified by: ICR Date: 9-9-16

September 8, 2016

Ms. Kimberly Martone  
Director of Operations  
Department of Public Health  
Office of Health Care Access  
410 Capitol Avenue,  
MS#13HCA  
P.O. Box 340308  
Hartford, CT 06106



RE: Transfer of 51% Ownership of Constitution Surgery Center East, LLC to William W. Backus Hospital

Dear Ms. Martone:

Enclosed please find the original hard copy in a three ring binder, the USB flash drive containing a scanned copy of each submission and the electronic copies in MS Word and MS excel for the Transfer of 51% Ownership of Constitution Surgery Center East, LLC to William W. Backus Hospital. Also enclosed is a check with the filing fee of \$500.00.

Please do not hesitate to contact me at 860.972.4231 if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Barbara A. Durdy'. The signature is fluid and cursive, with the first name being the most prominent.

Enclosures



**State of Connecticut  
Department of Public Health  
Office of Health Care Access**

---

**Certificate of Need Application  
Main Form**  
*Required for all CON applications*

---

**Contents:**

- Checklist
- List of Supplemental Forms
- General Information
- Affidavit
- Abbreviated Executive Summary
- Project Description
- Public Need and Access to Health Care
- Financial Information
- Utilization

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Five hundred and 00/100 Dollars

Pay to the order of

TREASURER, STATE OF CONNECTICUT  
 DEPARTMENT OF PUBLIC HEALTH  
 DIVISION OF HEALTH SYSTEMS REGULATI  
 P.O. BOX 1080  
 HARTFORD, CT 06143--108

Date

07/08/2016

Payment Amount

\*\*\*\*\*\$500.00

VOID AFTER 90 DAYS

*Richard A. Selys*

THE BACK OF THIS DOCUMENT CONTAINS LAID LINES AND AN ARTIFICIAL WATERMARK. HOLD AT AN ANGLE TO VIEW.



TREASURER, STATE OF CONNECTICUT DEPARTMENT OF PUBLIC HEALTH DIVISION OF HEALTH SYSTEMS REGULATI P.O. BOX 1080 HARTFORD, CT 06143--108	Entity	Vendor ID / Location	Check Number
	30100	1000004913	043385
HARTFORD HEALTHCARE			

Invoice Number	Invoice Date	Gross Amount	Discount Amount	Withholding Amount	Net Amount
C07011650000	07/01/2016	500.00			500.00

COPY

# PUBLISHER'S CERTIFICATE

State of Connecticut  
County of New London, ss. New London

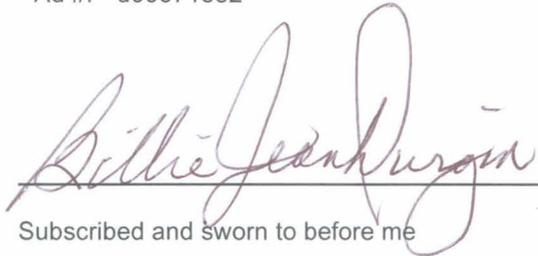
Personally appeared before the undersigned, a Notary Public within and for said County and State, Billie Jean Durgin, Legal Advertising Clerk, of The Day Publishing Company Classifieds dept, a newspaper published at New London, County of New London, state of Connecticut who being duly sworn, states on oath, that the Order of Notice in the case of

21455 Statutory Reference: Connecticut  
General Statutes §1

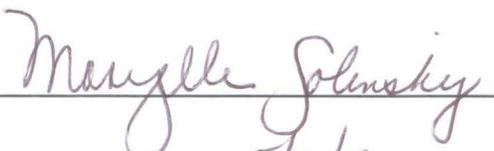
A true copy of which is hereunto annexed, was published in said newspaper in its issue(s) of

07/14/2016, 07/15/2016, 07/16/2016

Cust: WM BACKUS HOSPITAL  
Ad #: d00671832

  
Subscribed and sworn to before me

This Friday, July 22, 2016

  
Notary Public  
My commission expires 5/31/19

Statutory Reference:	Connecticut General Statutes §19a-638	21455
Applicants:	William W. Backus Hospital and Constitution Surgery Center East, LLC	
Project Address:	Currently located at 174 Cross Road Waterford, CT 06385	
Proposal:	The Applicants intend to file a Certificate of need application with the State of Connecticut Office of Health Care Access for a change in ownership of Constitution Surgery Center East, LLC.  The Applicant's are requesting permission for William W. Backus Hospital to acquire 51% of Constitution Surgery Center East, LLC	
Capital Expenditure:	\$16,712,700.	

Statutory Reference:	Connecticut General Statutes §19a-638	21455
Applicants:	William W. Backus Hospital and Constitution Surgery Center East, LLC	
Project Address:	Currently located at 174 Cross Road Waterford, CT 06385	
Proposal:	The Applicants intend to file a Certificate of need application with the State of Connecticut Office of Health Care Access for a change in ownership of Constitution Surgery Center East, LLC.  The Applicant's are requesting permission for William W. Backus Hospital to acquire 51% of Constitution Surgery Center East, LLC	
Capital Expenditure:	\$16,712,700.	

Statutory Reference:	Connecticut General Statutes §19a-638	21455
Applicants:	William W. Backus Hospital and Constitution Surgery Center East, LLC	
Project Address:	Currently located at 174 Cross Road Waterford, CT 06385	
Proposal:	The Applicants intend to file a Certificate of need application with the State of Connecticut Office of Health Care Access for a change in ownership of Constitution Surgery Center East, LLC.  The Applicant's are requesting permission for William W. Backus Hospital to acquire 51% of Constitution Surgery Center East, LLC	
Capital Expenditure:	\$16,712,700.	

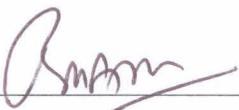
# Affidavit

Applicant: The William W. Backus Hospital

Project Title: Transfer of 51% Ownership of CONSTITUTION SURGERY CENTER EAST, LLC to William W. Backus Hospital

I, Bimal Patel, Sr. VP Hartford HealthCare ,President Hartford HealthCare East Region  
(Name) (Position – CEO or CFO)

of William W. Backus Hospital being duly sworn, depose and state that the (Facility Name) said facility complies with the appropriate and applicable criteria as set forth in the Sections 19a-630, 19a-637, 19a-638, 19a-639, 19a-486 and/or 4-181 of the Connecticut General Statutes.

 9/7/16  
Signature Date

Subscribed and sworn to before me on 9/7/2016

  
Notary Public/Commissioner of Superior Court

Juanita Vazquez  
My commission expires: June 30, 2019

## Affidavit

Applicant: **Constitution Surgery Center East LLC**

Project Title: **Transfer of 51% Ownership of CONSTITUTION SURGERY CENTER EAST, LLC to William W. Backus Hospital**

I, Michael Halperin, MD, President  
(Name) (Position – CEO or CFO)

of Constitution Surgery Center East, LLC, being duly sworn, depose and state that the (Facility Name) said facility complies with the appropriate and applicable criteria as set forth in the Sections 19a-630, 19a-637, 19a-638, 19a-639, 19a-486 and/or 4-181 of the Connecticut General Statutes.

Signature

Date

*[Handwritten Signature]* 9/6/16

Subscribed and sworn to before me on 9/6/16

*[Handwritten Signature]*

Notary Public/Commissioner of Superior Court

My commission expires: 4/30/2017



### Supplemental Forms

In addition to completing this **Main Form** and **Financial Worksheet (A, B or C)**, the applicant(s) must complete the appropriate **Supplemental Form** listed below. All CON forms can be found on the OHCA website at [OHCA Forms](#).

Conn. Gen. Stat. Section 19a-638(a)	Supplemental Form
(1)	<b>Establishment of a new health care facility (mental health and/or substance abuse) - see note below*</b>
(2)	<b>Transfer of ownership of a health care facility</b> (excludes transfer of ownership/sale of hospital – see “Other” below)
(3)	<b>Transfer of ownership of a group practice</b>
(4)	<b>Establishment of a freestanding emergency department</b>
(5) (7) (8) (15)	<b>Termination of a service:</b> <ul style="list-style-type: none"> <li>- inpatient or outpatient services offered by a hospital</li> <li>- surgical services by an outpatient surgical facility**</li> <li>- emergency department by a short-term acute care general hospital</li> <li>- inpatient or outpatient services offered by a hospital or other facility or institution operated by the state that provides services that are eligible for reimbursement under Title XVIII or XIX of the federal Social Security Act, 42 USC 301, as amended</li> </ul>
(6)	<b>Establishment of an outpatient surgical facility</b>
(9)	<b>Establishment of cardiac services</b>
(10) (11)	<b>Acquisition of equipment:</b> <ul style="list-style-type: none"> <li>- acquisition of computed tomography scanners, magnetic resonance imaging scanners, positron emission tomography scanners or positron emission tomography-computed tomography scanners</li> <li>- acquisition of nonhospital based linear accelerators</li> </ul>
(12)	<b>Increase in licensed bed capacity</b> of a health care facility
(13)	<b>Acquisition of equipment utilizing [new] technology</b> that has not previously been used in the state
(14)	<b>Increase of two or more operating rooms</b> within any three-year period by an outpatient surgical facility or short-term acute care general hospital
Other	<b>Transfer of Ownership / Sale of Hospital</b>

\*This supplemental form should be included with all applications requesting authorization for the establishment of a **mental health and/or substance abuse treatment facility**. For the establishment of other “health care facilities,” as defined by Conn. Gen. Stat § 19a-630(11) - hospitals licensed by DPH under chapter 386v, specialty hospitals, or a central service facility -

complete *the Main Form* only.

\*\*If termination is due to insufficient patient volume, or it is a subspecialty being terminated, a CON is not required.

### General Information

Name of Applicant:

Name of Co-Applicant:

<b>Constitution Surgery Center East LLC</b>	<b>The William W. Backus Hospital</b>
---	---------------------------------------

Connecticut Statute Reference:

<b>Main Site</b>	MAIN SITE	MEDICAID PROVIDER ID	TYPE OF FACILITY	MAIN SITE NAME
	<b>Waterford</b>		<b>ASC</b>	<b>Constitution Surgery Center East LLC</b>
	STREET & NUMBER			
	<b>174 Cross Road</b>			
	TOWN			ZIP CODE
	<b>Waterford</b>			<b>06385</b>

<b>Project Site</b>	PROJECT SITE	MEDICAID PROVIDER ID	TYPE OF FACILITY	PROJECT SITE NAME
	<b>Waterford</b>		<b>ASC</b>	<b>Constitution Surgery Center East LLC</b>
	STREET & NUMBER			
	<b>174 Cross Road</b>			
	TOWN			ZIP CODE
	<b>Waterford</b>			<b>06385</b>

<b>Operator</b>	OPERATING CERTIFICATE NUMBER	TYPE OF FACILITY	LEGAL ENTITY THAT WILL OPERATE OF THE FACILITY (or proposed operator)
	<b>0272</b>	<b>ASC</b>	<b>Constitution Surgery Center East LLC</b>
	STREET & NUMBER		
	<b>174 Cross Road</b>		
	TOWN		ZIP CODE
	<b>Waterford</b>		<b>06385</b>

<b>Chief Executive</b>	NAME		TITLE	
	<b>Bimal Patel</b>		<b>President, Hartford HealthCare East Region</b>	
	STREET & NUMBER			
	<b>326 Washington Street</b>			
	TOWN		STATE	ZIP CODE
	<b>Norwich</b>		<b>Connecticut</b>	<b>06360</b>
	TELEPHONE		FAX	E-MAIL ADDRESS
			<b>Bimal.Patel@hhchealth.org</b>	

Title of Attachment:

Is the applicant an existing facility? If yes, attach a copy of the resolution of partners, corporate directors, or LLC managers, as the case may be, authorizing the project.	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	<b>Exhibit 2</b>
Does the Applicant have non-profit status? If yes, attach documentation.	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	
Identify the Applicant's ownership type.	PC <input type="checkbox"/> LLC <input checked="" type="checkbox"/> Corporation <input type="checkbox"/>	Other: _____
Applicant's Fiscal Year (mm/dd)	Start: 01/01	End 12/31

**Contact:**

Identify a single person that will act as the contact between OHCA and the Applicant.

<b>Contact Information</b>	NAME		TITLE
	<b>Barbara A. Durdy</b>		<b>Director, Strategic Planning Hartford HealthCare</b>
	STREET & NUMBER		
	<b>181 Patricia M. Genova Blvd</b>		
	TOWN	STATE	ZIP CODE
	<b>Newington</b>	<b>Connecticut</b>	<b>06111</b>
	TELEPHONE	FAX	E-MAIL ADDRESS
	<b>860-972-4231</b>		<b>Barbara.durdy@hhchealth.org</b>
RELATIONSHIP TO APPLICANT	<b>Employee</b>		

Identify the person primarily responsible for preparation of the application (optional):

<b>Prepared by</b>	NAME		TITLE
	<b>Barbara A. Durdy</b>		<b>Director, Strategic Planning Hartford HealthCare</b>
	STREET & NUMBER		
	<b>181 Patricia M. Genova Blvd</b>		
	TOWN	STATE	ZIP CODE
	<b>Newington</b>	<b>Connecticut</b>	<b>06111</b>
	TELEPHONE	FAX	E-MAIL ADDRESS
	<b>860-972-4231</b>		<b>Barbara.durdy@hhchealth.org</b>
RELATIONSHIP TO APPLICANT	<b>Employee</b>		

## Executive Summary

The purpose of the Executive Summary is to give the reviewer a conceptual understanding of the proposal. In the space below, provide a succinct overview of your proposal (this may be done in bullet format). Summarize the key elements of the proposed project. Details should be provided in the appropriate sections of the application that follow.

**The William W. Backus Hospital (“Backus Hospital”) is seeking approval to acquire a 51% interest in Constitution Surgery Center East LLC, an outpatient surgical facility located in Waterford, Connecticut.**

**Constitution Surgery Center East LLC (“Constitution”) is a Connecticut Licensed and Medicare Certified Outpatient Surgery Center, with accreditation by AAAHC (Accreditation Association for Ambulatory Health Care, Inc.).**

**The Applicants propose to enter into a two-stage transaction structured as follows:**

- 1) The current owners of Constitution will transfer 100% ownership of Constitution to a new holding company called CSCE Holdings, LLC.**
- 2) Backus Hospital, or a wholly owned subsidiary of Backus Hospital designated by Backus Hospital, will purchase a 51% majority ownership interest in Constitution Surgery Center East, LLC from CSCE Holdings, LLC. Post transaction, Backus Hospital will own 51% of the membership interest in Constitution Surgery Center East, LLC.**

**Through increased alignment with Backus Hospital and Hartford HealthCare, Constitution will provide a superior patient experience as patients will be able to more seamlessly navigate between the inpatient and outpatient settings for outpatient surgical services performed at Backus Hospital and Constitution.**

**No change to the service area or services provided is expected.**

**Total capital cost = \$16,712,700**

*Pursuant to Section 19a-639 of the Connecticut General Statutes, the Office of Health Care Access is required to consider specific criteria and principles when reviewing a Certificate of Need application. Text marked with a “§” indicates it is actual text from the statute and may be helpful when responding to prompts.*

### **Project Description**

1. Provide a detailed narrative describing the proposal. Explain how the Applicant(s) determined the necessity for the proposal and discuss the benefits for each Applicant separately (if multiple Applicants). Include all key elements, including the parties involved, what the proposal will entail, the equipment/service location(s), the geographic area the proposal will serve, the implementation timeline and why the proposal is needed in the community.

**The William W. Backus Hospital (“Backus,” “Backus Hospital,” “Hospital”) is a 233 bed/bassinet acute care hospital located in Norwich, CT and is a member of Hartford HealthCare Corporation (“HHC”). Backus provides primary, secondary, and tertiary acute care services to the residents of New London and Windham County.**

**Constitution Surgery Center East, LLC (“Constitution”) is a Connecticut Licensed and Medicare Certified Outpatient Surgery Center, with accreditation by AAAHC (Accreditation Association for Ambulatory Health Care, Inc.) located in Waterford, Connecticut.**

**Backus Hospital and Constitution Surgery Center East LLC (together, “Applicants”) are requesting approval from the Office of Health Care Access (“OHCA”) to transfer 51% ownership of Constitution Surgery Center East, LLC to Backus Hospital as described in this Application.**

**At present, Constitution is owned by 21 physicians licensed in the state of Connecticut (collectively, the “Physician Owners”) who collectively own 85%, and Constitution Surgery Alliance, which owns 15%.**

**Constitution has been providing ophthalmic (eye) services since 2001. In 2011, services were expanded to include orthopedic services. All of the Physician Owners are board certified or board eligible in their respective specialty, either ophthalmology or orthopedics.**

**Constitution currently operates 2 operating rooms, 1 procedure room, 4 pre-op beds, and 5 PACU beds at 174 Cross Road in Waterford. In total, 25 physicians performed 5,832 cases at Constitution Surgery Center East over the 12 months ending December 2015.**

**Unrelated to the current proposal, CSCE has received a Determination from OHCA to relocate to a new facility on Cross Road. (See attached Determination letter dated July 24, 2015).**

**If this proposal is approved by OHCA, the transfer of ownership interests in Constitution Surgery Center East LLC will be completed as follows:**

**The Applicants propose to enter into a two-stage transaction structured as follows:**

- 1) The current owners of Constitution will transfer 100% ownership of Constitution to a new holding company called CSCE Holdings, LLC.**
- 2) Backus Hospital, or a wholly owned subsidiary of Backus Hospital designated by Backus Hospital, will purchase a 51% majority ownership interest in Constitution Surgery Center East from CSCE Holdings, LLC. Post transaction, Backus Hospital will own 51% of the membership interests in Constitution Surgery Center East, LLC.**

**Post transaction, the management of Constitution shall be vested in a Management Committee, which shall consist of six individuals (each individually referred to as a “Manager,” and collectively as the “Managers”). The Class A Member (CSCE Holdings, LLC) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class A Manager,” and collectively as the “Class A Managers”) to the Management Committee. The Class B Member (Backus Hospital) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class B Manager,” and collectively as the “Class B Managers”) to the Management Committee.**

**All of the physicians involved in this proposal have active privileges at Backus Hospital or other local hospitals and will continue to perform inpatient procedures at these institutions, as well as hospital-based outpatient procedures for patients who have significant co-morbid conditions. Through increased alignment with Backus Hospital and Hartford HealthCare, Constitution will provide a superior patient experience as patients will be able to more seamlessly navigate between the inpatient and outpatient settings for outpatient surgical services performed at Backus and Constitution.**

**Hartford HealthCare has an extensive network of outpatient facilities in Connecticut constituting Centers of Excellence in their specialties. Specifically, HHC’s Hartford Hospital Eye Surgery Center performs over 11,000 ophthalmic procedures annually, making it one of the largest eye centers in the country. Also, HHC has two similarly configured orthopedic joint ventures in Glastonbury and Southington, and will open its Bone & Joint Institute, a musculoskeletal specialty hospital, this fall. Integration with Backus Hospital and HHC will allow Constitution and its physicians greater opportunity to:**

- 1) participate on clinical quality councils and be actively engaged in hospital quality initiatives;**
- 2) share data on outcomes and best practices;**
- 3) access and evaluate new technologies;**

- 4) **investigate and potentially participate in emerging, quality-based payor initiatives; and**
- 5) **coordinate the emerging migration of joint and spine orthopedic procedures from an inpatient to an outpatient setting.**

**In addition, affiliation with Backus Hospital strengthens Constitution's physician recruitment program due to the breadth and depth of subspecialty clinical services offered by Backus Hospital and its parent corporation, Hartford HealthCare.**

**The existing population served by Constitution predominately resides in New London County; however, Constitution also serves patients from other towns in Connecticut. Constitution's service area is not expected to change as a result of this proposal. (Nor is Constitution's service area expected to change as a result of its separate proposed relocation on the same street.)**

**Please see Table 2 for detailed patient origin data.**

2. **Provide the history and timeline of the proposal (i.e., When did discussions begin internally or between Applicant(s)? What have the Applicant(s) accomplished so far?).**

**Discussions regarding a partnership between Backus Hospital and Constitution began in 2012. To date, the Applicants have negotiated a Purchase Agreement, agreed upon a Management Structure and an Operating Agreement and are in process of completing due diligence. In July of 2016, the Hartford HealthCare Board of Directors approved Backus Hospital to proceed with this proposal. In July of 2016, Constitution passed a resolution to transfer 51% ownership to Backus Hospital should the proposal be approved by OHCA. In August 2016, the Applicants signed a Membership Interest Purchase Agreement.**

**Please see Exhibit 2 for a copy of the Constitution Manager Resolution approving the proposal described in this CON Application.**

3. Provide the following information:

- a. utilizing **OHCA Table 1**, list all services to be added, terminated or modified, their physical location (street address, town and zip code), the population to be served and the existing/proposed days/hours of operation;

**Not applicable – No services will be added, terminated or modified due to this proposal. This proposal does not seek to change Constitution’s clinical services, their physical location, or the population served . The services currently provided at Constitution will continue to be provided by the same practicing physicians.**

- b. identify in **OHCA Table 2** the service area towns and the reason for their inclusion (e.g., provider availability, increased/decreased patient demand for service, market share);

**Please see Table 2 for Constitution’s service area (“Service Area”).**

4. List the health care facility license(s) that will be needed to implement the proposal;

**No new licenses will be necessary for implementation of the proposal. Constitution is currently licensed with the Department of Public Health (“DPH”) as an outpatient surgical facility and will file a change of ownership application with the Facility Licensing and Investigation Section of DPH for the new ownership. Backus Hospital is currently licensed with DPH as an acute care hospital.**

5. Submit the following information as attachments to the application:

- a. a copy of all State of Connecticut, Department of Public Health license(s) currently held by the Applicant(s);

**Please see Exhibit 3 for copies of Backus Hospital’s and Constitution’s respective DPH licenses.**

- b. a list of all key professional, administrative, clinical and direct service personnel related to the proposal and attach a copy of their Curriculum Vitae;

**Backus Hospital**

**Bimal Patel, SVP Hartford HealthCare & President Hartford HealthCare East Region**

**Dan Lohr, VP Financial Services, Hartford HealthCare East Region**

**Carolyn Trantalis, VP Operational Services, Hartford HealthCare East Region**

**Robert Sidman, MD, VP Medical Affairs, Hartford HealthCare East Region**

**Constitution Surgery Center East LLC**

**Betty Windhom, Administrator, Constitution Surgery Center East**

**Tarik Kardestuncer MD, Medical Director**

**Kendra Allen, Clinical Director**

**John Hornby MD, Director of Ophthalmology**

**Please see Exhibit 4 for copies of curriculum vitae and resumes of key clinical and administrative personnel.**

- c. copies of any scholarly articles, studies or reports that support the need to establish the proposed service, along with a brief explanation regarding the relevance of the selected articles;

**Not Applicable. No new service is being established due to this proposal.**

- d. letters of support for the proposal;

**Please see Exhibit 5 for copies of letters of support related to this proposal.**

- e. the protocols or the Standard of Practice Guidelines that will be utilized in relation to the proposal. Attach copies of relevant sections and briefly describe how the Applicant proposes to meet the protocols or guidelines.

**Constitution Surgery Center East, LLC is accredited through AAAHC and will continue to meet all the current Standard of Practice Guidelines required to maintain accreditation.**

- f. copies of agreements (e.g., memorandum of understanding, transfer agreement, operating agreement) related to the proposal. If a final signed version is not available, provide a draft with an estimated date by which the final agreement will be available.

**A copy of the draft Purchase Agreement, the draft Operating Agreement and Management Agreements between Constitution and Backus Hospital are provided in Exhibit 6.**

#### **Public Need and Access to Care**

§ *“Whether the proposed project is consistent with any applicable policies and standards adopted in regulations by the Department of Public Health;” (Conn.Gen.Stat. § 19a-639(a)(1))*

- 6. Describe how the proposed project is consistent with any applicable policies and standards in regulations adopted by the Connecticut Department of Public Health.

**The alignment of Constitution Surgery Center East and Backus Hospital enhances care coordination, and provides efficiencies that result in high quality, affordable care.**

**To the extent that the proposed project aligns with the Connecticut Department of Public Health Statewide Health Care Facilities and Services Plan, see response to Question 7 below.**

§ “The relationship of the proposed project to the statewide health care facilities and services plan;” (Conn.Gen.Stat. § 19a-639(a)(2))

7. Describe how the proposed project aligns with the Connecticut Department of Public Health Statewide Health Care Facilities and Services Plan, available on [OHCA’s website](#).

**The proposed transaction is consistent with the Statewide Health Care Facilities and Services Plan (the “Plan”) published by OHCA in October of 2012 and supplemented in 2014.**

**“The guiding principles of the Plan are intended to:**

- **Promote and support the long term viability of the state’s health care delivery system;**
- **Ensure that any regulated service will maintain overall access to quality health care;**
- **Promote equitable access to health care services (e.g., reducing financial barriers, increasing availability of physicians) and facilitate access to preventive and medically necessary health care;**
- **Encourage collaboration among health care providers to develop health care delivery networks;**
- **Support the need for a sufficient health care workforce that facilitates access to the appropriate level of care in a timely manner (e.g., optimal number of primary and specialty care providers);**
- **Maintain and improve the quality of health care services offered to the state’s residents;**
- **Promote planning that helps to contain the cost of delivering health care services to its residents;**
- **Encourage regional and local participation in discussions/collaboration on health care delivery, financing and provider supply;**
- **Promote public policy development through measuring and monitoring unmet need; and**
- **Promote planning or other mechanisms that will achieve appropriate allocation of health care resources in the state.” (Plan at p. 2).**

**As stated in the Plan, mergers, affiliations and acquisitions are part of Connecticut’s health care system as a response to changes in the way health care is delivered and financed. (Plan at pp. 7-8, Sec. 1.8.5). Becoming affiliated with Backus Hospital will result in various benefits to Constitution. Such benefits include economies of scale when purchasing supplies and services, sharing of best practices, increased ability to participate in evolving payor models, improved access to capital, and integration among Backus Hospital, Centers of Excellence in the wider Hartford HealthCare network, and Constitution.**

**The long term viability of Constitution will be improved as it will be better equipped to adapt to changes in the way health care is financed and delivered. Constitution will likely see benefits in the following areas which include, but are not limited to, gaining better access to capital, better positioning the facility for changing payor models, including risk-taking based on quality outcomes, increasing the likelihood of in-network status, and developing economies of scale.**

**Further, the proposal will maintain and expand patient access to Constitution’s ambulatory surgical services as there are no anticipated changes to the available health care services. Equitable access to Constitution’s health care services will be promoted through the proposal as Constitution will adopt Backus’s charity care policy. The proposal will encourage collaboration among the existing owners of Constitution and other Backus Hospital health care providers and will result in a more integrated and coordinated network.**

**The proposal also supports the Service Area’s need for ambulatory surgical care by ensuring continuing access in the Service Area. The proposal will also maintain the quality of health care services at Constitution by improving its long term viability and utilizing any additional quality resources of Backus. Quality will be improved as the proposal will encourage Constitution and Backus Hospital to collaborate to provide the highest quality ophthalmologic and orthopedic care. The proposal also promotes planning to contain costs by utilizing any applicable economies of scale and promoting the use of ambulatory surgical services in the Service Area as a lower cost alternative to hospital-based surgery. By introducing an alternative to hospital-based surgery within Backus’s network, this proposal will provide patients with more flexibility in selecting treatment options, and further ensures that patients receive care in the most appropriate setting.**

**The proposal also encourages enhanced care coordination in the Service Area by promoting collaboration between Constitution’s physicians and Backus. Finally, the proposal will achieve appropriate allocation of resources as Constitution will be able to utilize certain existing resources of Backus and eliminate any duplicate managerial, administrative or other resources.**

*§ “Whether there is a clear public need for the health care facility or services proposed by the applicant;” (Conn.Gen.Stat. § 19a-639(a)(3))*

8. With respect to the proposal, provide evidence and documentation to support clear public need:
  - a. identify the target patient population to be served;

**Constitution currently provides access to outpatient surgical procedures to Southeastern Connecticut residents. No changes in patient population are expected. The defined service area is detailed in Table 2.**

- b. discuss how the target patient population is currently being served;

**Please see the response to question 8a, above. Constitution currently provides ophthalmology and orthopedic services to Southeastern Connecticut residents. No change in services or patient population is anticipated due the implementation of this proposal.**

- c. document the need for the equipment and/or service in the community;

**Not applicable. No new equipment or services will be added.**

- d. explain why the location of the facility or service was chosen;

**Not applicable. The service location will not change as a result of this proposal. As noted in Question 1, Constitution has notified OHCA of its long term plan to relocate to a new facility on the same street as its current facility. This move was the subject of a Determination Letter from OHCA dated July 2015 (attached as Exhibit 1) and is unrelated to the current proposal.**

- e. provide incidence, prevalence or other demographic data that demonstrates community need;

**Not applicable. No new services are being proposed as a result of this proposal. Constitution currently serves the Service Area's need for ambulatory surgical services. See OHCA Table 5 regarding utilization.**

- f. discuss how low income persons, racial and ethnic minorities, disabled persons and other underserved groups will benefit from this proposal;

**The proposal will result in greater collaboration between Constitution and Backus which will benefit patients. Patients in Backus Hospital's service area will benefit from a greater range of surgical service sites. This benefits all patients, be they low income persons, racial and ethnic minorities, disabled persons or other underserved groups.**

- g. list any changes to the clinical services offered by the Applicant(s) and explain why the change was necessary;

**Not applicable. There will be no changes to the clinical services offered by Constitution.**

- h. explain how access to care will be affected;

**Access to care will not be disrupted or negatively affected as a result of this proposal. Access to care will remain constant as a result of this proposal.**

- i. discuss any alternative proposals that were considered.

**Not applicable. No other formal proposals were considered. Constitution had numerous discussions with other providers in its service area, but concluded that the Backus affiliation best served the needs of all constituencies.**

*§ “Whether the applicant has satisfactorily demonstrated how the proposal will improve quality, accessibility and cost effectiveness of health care delivery in the region, including, but not limited to, (A) provision of or any change in the access to services for Medicaid recipients and indigent persons; (Conn.Gen.Stat. § 19a-639(a)(5))*

- 9. Describe how the proposal will:

- a. improve the quality of health care in the region;

**The quality of health care in the region will be improved because more patients will be able to utilize Constitution’s ambulatory surgical center services as an alternative to hospital-based surgery. Further, Constitution will be able to use quality resources from Backus and HHC and will adhere to quality metrics embedded in the proposed Management Agreement and Operating Agreement. Specifically:**

- 1) **The Management Agreement calls for the development of quality performance benchmarks and the accumulation of data and information appropriate to them.**
- 2) **The Management Agreement also contains financial incentives associated with Patient Satisfaction scores.**
- 3) **The Operating Agreement compels the Facility to supply Quality data as requested by Backus.**
- 4) **The Operating Agreement contemplates integration with Backus’s electronic health record system and participation in health information exchanges.**

- b. improve accessibility of health care in the region; and

**As previously stated, if this proposal is approved, Constitution’s physicians will have greater opportunities to participate in clinical and quality improvement councils with Backus Hospital and HHC enhancing alignment and integration with the Hospital and health system.**

- c. improve the cost effectiveness of health care delivery in the region.

**The proposal encourages collaboration among the current Constitution physicians and Backus, containing costs by utilizing any applicable economies of scale and generating the wider use of ambulatory surgical services in the Service Area as a lower cost alternative to hospital-based surgery. Constitution is a low cost provider of surgical services in the New London market. Payors encourage utilization of**

**ASCs through the use of deductibles and co-pays that incent patients to seek care at Constitution Surgery Center East.**

10. How will this proposal help improve the coordination of patient care (explain in detail regardless of whether your answer is in the negative or affirmative)?

**This proposal will allow Backus Hospital and Constitution the opportunity to better align to ensure the delivery of consistent quality and service standards. With respect to orthopedics in particular, a national trend is the migration of joint replacement and increasingly complex spine procedures. While in the long-term this should be a positive trend lowering overall system cost and increasing patient satisfaction with these procedures, it is critical that this transition is managed collaboratively in the areas of patient selection, establishment of clinical protocols, reimbursement models and outcomes measurement. The current proposal will allow this coordination of care to proceed seamlessly from inpatient to outpatient setting.**

11. Describe how this proposal will impact access to care for Medicaid recipients and indigent persons.

**If this proposal is approved, Constitution will comply with Hartford HealthCare's Charity Care policy which includes the provision of services to indigent populations. In addition, please see the responses to questions 8a, f, h, above.**

12. Provide a copy of the Applicant's charity care policy and sliding fee scale applicable to the proposal.

**See Exhibit 7 for a copy of Hartford HealthCare's Charity Care policy.**

*§ "Whether an applicant, who has failed to provide or reduced access to services by Medicaid recipients or indigent persons, has demonstrated good cause for doing so, which shall not be demonstrated solely on the basis of differences in reimbursement rates between Medicaid and other health care payers;" (Conn.Gen.Stat. § 19a-639(a)(10))*

13. If the proposal fails to provide or reduces access to services by Medicaid recipients or indigent persons, provide explanation of good cause for doing so.

**The proposal does not fail to provide or reduce access to services by Medicaid recipients or indigent persons. No changes to the services are anticipated, apart from Constitution's adoption of Hartford HealthCare's Charity Care policy.**

*§ "Whether the applicant has satisfactorily demonstrated that any consolidation resulting from the proposal will not adversely affect health care costs or accessibility to care." (Conn.Gen.Stat. § 19a-639(a)(12))*

14. Will the proposal adversely affect patient health care costs in any way? Quantify and provide the rationale for any changes in price structure that will result from this proposal, including, but not limited to, the addition of any imposed facility fees.

**Patient health care costs will not be negatively affected in any way with the approval of this proposal. No additional facility fees will be imposed due to this proposal.**

## Financial Information

§ “Whether the applicant has satisfactorily demonstrated how the proposal will impact the financial strength of the health care system in the state or that the proposal is financially feasible for the applicant;”  
(Conn.Gen.Stat. § 19a-639(a)(4))

15. Describe the impact of this proposal on the financial strength of the state’s health care system or demonstrate that the proposal is financially feasible for the applicant.

**In large part due to health care reform, historically independent operations such as physician practices and hospitals are forming mutually beneficial partnerships. The shift from independent to integrated systems provides efficiencies that result in high quality, affordable care. Further, Constitution is a low cost provider of surgical services in the New London market. Payors encourage utilization of ASCs through the use of deductibles and co-pays that incent patients to seek care at Constitution Surgery Center East.**

16. Provide a final version of all capital expenditure/costs for the proposal using [OHCA Table 3](#).

**Please see OHCA Table 3.**

17. List all funding or financing sources for the proposal and the dollar amount of each. Provide applicable details such as interest rate; term; monthly payment; pledges and funds received to date; letter of interest or approval from a lending institution.

**The funding source for this proposal is Hartford HealthCare Corporation, Taxable Bonds, “Series D.”**

**Please see Exhibit 8 for summary of financing terms.**

18. Include as an attachment:

- a. audited financial statements for the most recently completed fiscal year. If audited financial statements do not exist, provide other financial documentation (e.g., unaudited balance sheet, statement of operations, tax return, or other set of books). Connecticut hospitals required to submit annual audited financial statements may reference that filing, if current;

**Please see the FY 2015 audited financial statements for Hartford HealthCare on file with the Office of Health Care Access.**

**Please see Exhibit 9 for FY 2015 internally prepared financial statements for Constitution Surgery Center East, LLC.**

- b. completed **Financial Worksheet A (non-profit entity), B (for-profit entity) or C (§19a-486a sale)**, available on OHCA's website under [OHCA Forms](#), providing a summary of revenue, expense, and volume statistics, "without the CON project," "incremental to the CON project," and "with the CON project." **Note: the actual results reported in the Financial Worksheet must match the audited financial statement that was submitted or referenced.**

**Please see Exhibit 10 for Financial Worksheet A, reflecting the impact of the proposal on Backus Hospital, and Financial Worksheet B for the financial impact on Constitution.**

19. Complete [OHCA Table 4](#) utilizing the information reported in the attached Financial Worksheet.

**Please see OHCA Table 4 for information from Financial Worksheet A and B.**

20. Explain all assumptions used in developing the financial projections reported in the Financial Worksheet.

**Case volume is derived from existing physicians  
Ophthalmology cases grow at .5% annually  
Orthopedic cases grow at 1.5% annually  
Case reimbursement rises 1% annually  
Charity care rises to 1% of net revenue after adoption of HHC's charity care policy  
Salaries and fringe benefits rise 2% annually  
Other expenses increase 1-2% per unit annually, multiplied by unit growth as appropriate  
Interest expense is driven by existing debt and rates, and replacement of existing capital equipment in 2017/18  
Income is passed through to the owners for an LLC  
Net income is distributed to the owners**

**\*Information reflects Financial Worksheet B projections**

21. Explain any projected incremental losses from operations resulting from the implementation of the CON proposal.

**No incremental losses from operations are a result of the implementation of the CON proposal. Upon approval, Constitution will adopt Hartford HealthCare's Charity Care policy. It is estimated that Charity Care will approximate 1% of net revenue going forward, resulting in an incremental loss of \$122,291 (Please see OHCA Table 4).**

22. Indicate the minimum number of units required to show an incremental gain from operations for each projected fiscal year.

**At current profit margins, it would require approximately 200 additional units to offset the loss associated with the adoption of Harford HealthCare's Charity Care policy.**

## Utilization

§ *“The applicant's past and proposed provision of health care services to relevant patient populations and payer mix, including, but not limited to, access to services by Medicaid recipients and indigent persons;”*  
(Conn.Gen.Stat. § 19a-639(a)(6))

23. Complete [OHCA Table 5](#) and [OHCA Table 6](#) for the past three fiscal years (“FY”), current fiscal year (“CFY”) and first three projected FYs of the proposal, for each of the Applicant’s existing and/or proposed services. Report the units by service, service type or service level.

**Please see OHCA Table 5 and Table 6**

24. Provide a detailed explanation of all assumptions used in the derivation/ calculation of the projected service volume; explain any increases and/or decreases in volume reported in OHCA Table 5 and 6.

**Case volume is derived from existing physicians**  
**Ophthalmology cases grow at .5% annually**  
**Orthopedic cases grow at 1.5% annually**

25. Provide the current and projected patient population mix (number and percentage of patients by payer) for the proposal using [OHCA Table 7](#) and provide all assumptions. **Note: payer mix should be calculated from patient volumes, not patient revenues.**

**Please see OHCA Table 7**

§ *“Whether the applicant has satisfactorily identified the population to be served by the proposed project and satisfactorily demonstrated that the identified population has a need for the proposed services;”*  
(Conn.Gen.Stat. § 19a-639(a)(7))

26. Describe the population (as identified in question 8(a)) by gender, age groups or persons with a specific condition or disorder and provide evidence (i.e., incidence, prevalence or other demographic data) that demonstrates a need for the proposed service or proposal. **Please note: if population estimates or other demographic data are submitted, provide only publicly available and verifiable information (e.g., U.S. Census Bureau, Department of Public Health, CT State Data Center) and document the source.**

**Not applicable. No new services are being provided.**

27. Using [OHCA Table 8](#), provide a breakdown of utilization by town for the most recently completed fiscal year. Utilization may be reported as number of persons, visits, scans or

other unit appropriate for the information being reported.

**Please see OHCA Table 8.**

§ *“The utilization of existing health care facilities and health care services in the service area of the applicant;” (Conn.Gen.Stat. § 19a-639(a)(8))*

28. Using **OHCA Table 9**, identify all existing providers in the service area and, as available, list the services provided, population served, facility ID (see table footnote), address, hours/days of operation and current utilization of the facility. Include providers in the towns served or proposed to be served by the Applicant, as well as providers in towns contiguous to the service area.

**Please see OHCA Table 9.**

29. Describe the effect of the proposal on these existing providers.

**There will be no effect on these existing providers, as the proposal is for a solely requesting a transfer of majority ownership. There is no anticipated change in the scope of practice or operation of Constitution which would impact other competing surgery centers.**

30. Describe the existing referral patterns in the area served by the proposal.

**The existing referral patterns for outpatient surgical services are primarily from providers whose patients require surgery that can be performed at an outpatient surgical center. The patients are referred from physician owners of Constitution Surgery Center East and other physicians in the Service Area.**

31. Explain how current referral patterns will be affected by the proposal.

**Current referral patterns will not be affected by the proposal.**

§ *“Whether the applicant has satisfactorily demonstrated that the proposed project shall not result in an unnecessary duplication of existing or approved health care services or facilities;” (Conn.Gen.Stat. § 19a-639(a)(9))*

32. If applicable, explain why approval of the proposal will not result in an unnecessary duplication of services.

**Approval of the proposal will not result in an unnecessary duplication of services. No new services will be offered as a result of this service. This proposal is for a transfer of ownership only.**

§ *“Whether the applicant has satisfactorily demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the geographic region;” (Conn.Gen.Stat. § 19a-639(a)(11))*

33. Explain in detail how the proposal will impact (i.e., positive, negative or no impact) the diversity of health care providers and patient choice in the geographic region.

**The diversity of health care providers in the region will not change as a result of this proposal. The proposal will continue to maintain the diversity of health care providers and patient choice in the Service Area by offering an alternative location for certain surgical procedures other than a hospital.**

**Tables**

**TABLE 1  
APPLICANT'S SERVICES AND SERVICE LOCATIONS**

<b>Service</b>	<b>Street Address, Town</b>	<b>Population Served</b>	<b>Days/Hours of Operation</b>	<b>New Service or Proposed Termination</b>
<b>Ophthalmic and Orthopedic Surgery</b>	<b>174 Cross Rd. Waterford, CT</b>	<b>New London County &amp; contiguous towns</b>	<b>6:30am-5:30pm Monday-Friday</b>	<b>N/A</b>

[\[back to question\]](#)

**TABLE 2  
SERVICE AREA TOWNS**

List the official name of town\* and provide the reason for inclusion.

Town*	Reason for Inclusion
<p>Norwich, CT Groton, CT Waterford, CT New London, CT Mystic, CT Westerly, RI Uncasville, CT Niantic, CT Ledyard, CT Griswold, CT Jewett City, CT Pawcatuck, CT Plainfield, CT Gales Ferry, CT Colchester, CT Stonington, CT Oakdale, CT Preston CT LisbonCT</p>	<p align="center"><b>Greater than 80% of patients served reside in these towns</b></p>

\* Village or place names are not acceptable.

[\[back to question\]](#)

**TABLE 3  
TOTAL PROPOSAL CAPITAL EXPENDITURE**

<b>Purchase/Lease</b>	<b>Cost</b>
Equipment (Medical, Non-medical, Imaging)	
Land/Building Purchase*	
Construction/Renovation**	
Other (specify) (acquisition price)	\$16,712,700
<b>Total Capital Expenditure (TCE)</b>	
Lease (Medical, Non-medical, Imaging)***	
<b>Total Lease Cost (TLC)</b>	
<b>Total Project Cost (TCE+TLC)</b>	<b>\$16,712,700</b>

\* If the proposal involves a land/building purchase, attach a real estate property

appraisal including the amount; the useful life of the building; and a schedule of depreciation.

\*\* If the proposal involves construction/renovations, attach a description of the proposed

building work, including the gross square feet; existing and proposed floor plans; commencement date for the construction/renovation; completion date of the construction/renovation; and commencement of operations date.

\*\*\* If the proposal involves a capital or operating equipment lease and/or purchase,

attach a vendor quote or invoice; schedule of depreciation; useful life of the equipment; and anticipated residual value at the end of the lease or loan term.

[\[back to question\]](#)

**TABLE 4**  
**PROJECTED INCREMENTAL REVENUES AND EXPENSES**

	FY 2017*	FY 2018*	FY 2019*
Revenue from Operations	\$9,080,141	\$12,434,762	\$12,768,509
Total Operating Expenses	\$7,117,260	\$9,937,786	\$10,160,022
<b>Gain/Loss from Operations</b>	\$1,962,881	\$2,496,976	\$2,608,487

\* Fill in years using those reported in the Financial Worksheet attached.

\*\*Please see Financial Worksheet A

	FY 2017*	FY 2018*	FY 2019*
Revenue from Operations	(\$122,291)	(\$125,604)	(\$128,975)
Total Operating Expenses	0	0	0
<b>Gain/Loss from Operations</b>	(\$122,291)	(\$125,604)	(\$128,975)

\* Fill in years using those reported in the Financial Worksheet attached.

\*\*Please see Financial Worksheet B

[\[back to question\]](#)

**TABLE 5  
HISTORICAL UTILIZATION BY SERVICE**

Service**	Actual Volume (Last 3 Completed FYs)			CFY Volume*
	FY 2013***	FY 2014***	FY 2015***	FY 2016***
Ophthalmology	4,067	3,823	3,913	4,016
Orthopedic Surgery	1,712	1,780	1,919	1,894
<b>Total</b>	5,779	5,603	5,832	5,910

2016 volume is actual through 6/30, projected for the remainder of the year.

\* For periods greater than 6 months, report annualized volume, identifying the number of actual months covered and the method of annualizing. For periods less than 6 months, report actual volume and identify the period covered.

\*\* Identify each service type and level adding lines as necessary. Provide the number of visits or discharges as appropriate for each service type and level listed.

\*\*\* Fill in years. If the time period reported is not *identical* to the fiscal year reported in Table 4 of the application, provide the date range using the mm/dd format as a footnote to the table.

[\[back to question\]](#)

**TABLE 6  
PROJECTED UTILIZATION BY SERVICE**

Service*	Projected Volume		
	FY 2017**	FY 2018**	FY 2019**
Ophthalmology	4,036	4,056	4,077
Orthopedics	1,927	1,961	1,995
<b>Total</b>	5,963	6,017	6,072

\* Identify each service type by location and add lines as necessary. Provide the number of visits/discharges as appropriate for each service listed.

\*\* If the first year of the proposal is only a partial year, provide the first partial year and then the first three full FYs. Add columns as necessary. If the time period reported is not *identical* to the fiscal year reported in Table 4 of the application, provide the date range using the mm/dd format as a footnote to the table.

[\[back to question\]](#)

**TABLE 7  
APPLICANT'S CURRENT & PROJECTED PAYER MIX**

Payer	Current		Projected					
	FY 2016**		FY 2017**		FY 2018**		FY 2019**	
	Discharges	%	Discharges	%	Discharges	%	Discharges	%
Medicare*	3,046	52	3,065	51	3,085	51	3,105	51
Medicaid*	216	4	217	4	218	4	220	4
CHAMPUS & TriCare	17	0	17	0	17	0	18	0
<b>Total Government</b>	<b>3,279</b>	<b>55</b>	<b>3,300</b>	<b>55</b>	<b>3,321</b>	<b>55</b>	<b>3,342</b>	<b>55</b>
Commercial Insurers	2,235	38	2,261	38	2,286	38	2,312	38
Uninsured	6	0	6	0	6	0	6	0
Workers Compensation	390	7	397	7	404	7	411	7
<b>Total Non- Government</b>	<b>2,631</b>	<b>45</b>	<b>2,664</b>	<b>45</b>	<b>2,696</b>	<b>45</b>	<b>2,729</b>	<b>45</b>
<b>Total Payer Mix</b>	<b>5,910</b>	<b>100</b>	<b>5,963</b>	<b>100</b>	<b>6,017</b>	<b>100</b>	<b>6,072</b>	<b>100</b>

\* Includes managed care activity.

\*\* Fill in years. Ensure the period covered by this table corresponds to the period covered in the projections provided. New programs may leave the "current" column blank.

[\[back to question\]](#)

**TABLE 8  
UTILIZATION BY TOWN**

Town	Utilization FY 2015**	
Norwich, CT	698	12.0%
Groton, CT	417	7.2%
Waterford, CT	318	5.5%
New London, CT	316	5.4%
Mystic, CT	281	4.8%
Westerly, RI	273	4.7%
Uncasville, CT	225	3.9%
Niantic, CT	179	3.1%
Ledyard, CT	168	2.9%
Griswold, CT	136	2.3%
Jewett City, CT	131	2.2%
Pawcatuck, CT	129	2.2%
Plainfield, CT	129	2.2%
Gales Ferry, CT	125	2.1%
Colchester, CT	124	2.1%
Stonington, CT	115	2.0%
Oakdale, CT	110	1.9%
Preston, CT	103	1.8%
Lisbon, CT	101	1.7%
Other CT	1,564	26.8%
Other RI	136	2.3%
Other State	42	0.7%
New York NY	12	0.2%
Grand Total	5,832	100.0%

\* List inpatient/outpatient/ED volumes separately, if applicable

\*\* Fill in most recently completed fiscal year.

[\[back to question\]](#)

**TABLE 9  
SERVICES AND SERVICE LOCATIONS OF EXISTING PROVIDERS**

<b>Service or Program Name</b>	<b>Population Served</b>	<b>Facility ID*</b>	<b>Facility's Provider Name, Street Address and Town</b>	<b>Hours/Days of Operation</b>	<b>Current Utilization</b>
<b>Coastal Digestive Care Center, LLC</b>	<b>New London County</b>	<b>N/A</b>	<b>234a Bank St, New London, Ct</b>	<b>M-F 8am-4pm</b>	<b>N/A</b>
<b>River Valley ASC, LLC</b>	<b>New London County</b>	<b>N/A</b>	<b>45 Salem Tpke, Norwich, CT</b>	<b>M-F 6am-530pm</b>	<b>N/A</b>
<b>Eastern Connecticut Endoscopy Center, LLC</b>	<b>New London County</b>	<b>N/A</b>	<b>79 Wawecus St Ste 107, Norwich, Ct</b>	<b>N/A</b>	<b>N/A</b>
<b>Lawrence and Memorial Hospital</b>	<b>New London County</b>	<b>N/A</b>	<b>365 Montauk Avenue New London, CT</b>	<b>N/A</b>	<b>N/A</b>

\* Provide the Medicare, Connecticut Department of Social Services (DSS), or National Provider Identifier (NPI) facility identifier and label column with the identifier used.

[\[back to question\]](#)

List of Exhibits:

- 1) Exhibit 1: Copy of the Determination Approval Letter from OHCA.
- 2) Exhibit 2: Copy of the Constitution Manager Resolution approving the proposal described in this CON.
- 3) Exhibit 3: Copies of Backus Hospital's and Constitution's respective DPH licenses.
- 4) Exhibit 4: Copies of curriculum vitae and resumes of key clinical and administrative personnel.
- 5) Exhibit 5: Copies of letters of support for this proposal.
- 6) Exhibit 6: Copy of the draft purchase agreement, the draft Operating Agreement, and Management Agreements between Constitution and Backus Hospital.
- 7) Exhibit 7: Copy of Hartford Hospital's Charity Care policy.
- 8) Exhibit 8: Copy of summary of financing terms.
- 9) Exhibit 9: Copy of FY 2015 internally prepared financial statements for Constitution Surgery Center East, LLC.
- 10) Exhibit 10: Copies of financial worksheet A and financial worksheet B.

Exhibit 1: Copy of the Determination Approval Letter from OHCA.



**STATE OF CONNECTICUT**

DEPARTMENT OF PUBLIC HEALTH

*Office of Health Care Access*

July 31, 2015

VIA FACSIMILE ONLY

Elizabeth Windhom, R.N., BSN  
Constitution Surgery Center East, LLC  
174 Cross Road  
Waterford, CT 06385

RE: Certificate of Need Determination Report Number 15-32018-DTR  
Relocation of Constitution Surgery Center East, LLC

Dear Ms. Windhom:

On July 28, 2015, the Office of Health Care Access ("OHCA") received your Certificate of Need ("CON") Determination request on behalf of Constitution Surgery Center East, LLC ("Petitioner") with respect to its relocation.

The Petitioner is an outpatient surgical facility that currently provides ophthalmic and orthopedic ambulatory surgery services at 174 Cross Road, Waterford, Connecticut. The Petitioner currently serves patients in the Town of Waterford and neighboring communities. The Petitioner's payer mix consists of the following: 52% Medicare; 4% Medicaid; 37% Commercial; and 7% Workers Compensation. The Petitioner plans to relocate to 140 Cross Road, Waterford, Connecticut. After the relocation there will be no change to the population or payer mix currently being served by the Petitioner.

Pursuant to Conn. Gen. Stat. § 19a-639c, the Petitioner has satisfactorily demonstrated that the population and payer mix currently served by the Petitioner will not substantially change as a result of the proposed relocation. Therefore, *no CON is required*.

Sincerely,

Kimberly R. Martone  
Director of Operations

C: Rose McLellan, License and Applications Supervisor, DPH, DHSR

*An Equal Opportunity Provider*

*(If you require aid/accommodation to participate fully and fairly, contact us either by phone, fax or email)*

410 Capitol Ave., MS#13HCA, P.O.Box 340308, Hartford, CT 06134-0308

Telephone: (860) 418-7001 Fax: (860) 418-7053 Email: OHCA@ct.gov

Exhibit 2: Copy of the Constitution Manager Resolution approving the proposal described in this CON.

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**UNANIMOUS CONSENT OF MANAGERS**

The undersigned, being the all of the Managers of CONSTITUTION SURGERY CENTER EAST, LLC (the "Company"), hereby consent to the actions set forth below. This Consent shall have the same force and effect as would a vote of all of the Managers in favor of such actions, taken at a meeting duly held for such purposes.

WHEREAS, the Company and its Members desire to restructure the ownership of the Company in the following manner: (i) all of the existing Members of the Company would transfer their respective Membership Interests in the Company to CSCE Holdings, LLC, a Connecticut limited liability company ("Holdings"), in exchange for Membership Interests in Holdings; and (ii) immediately thereafter, the Company would sell to William W. Backus Hospital, a Connecticut nonstock corporation (the "Hospital"), a fifty one percent (51%) Class B Membership Interest, pursuant to the terms of a certain Membership Interest Purchase Agreement (collectively, the "Transactions"); and

WHEREAS, the Transactions have been approved unanimously by the Members of the Company; and

WHEREAS, as a condition to the implementation of the Transactions, the Company will be required to apply for and obtain Certificate of Need ("CON") approval from the Connecticut Office of Health Care Access ("OHCA"),

NOW, THEREFORE BE IT

RESOLVED: That the Company enter into and implement the Transactions, conditioned upon approval of the CON by OHCA; and

RESOLVED: That any Manager of the Company is authorized and empowered to execute and deliver in the name and on behalf of the Company, the CON application and all related forms and documents, the Purchase Agreement, and any and all other documents, agreements, instruments certificates, affidavits and notices of any nature required in connection therewith, and to do and cause to be done any and all other acts and pay all expenses necessary or appropriate to effectuate and carry out the matters hereby authorized. The necessity or appropriateness of each such document or action shall be conclusively evidenced by the execution and delivery of such document or the taking of such action by such officer; and

RESOLVED: That any and all acts taken by or under the authorization of any officer or Manager of the Company prior to the date hereof, which would have been authorized hereby if taken after the date hereof are ratified, confirmed and approved.

Dated as of August 4, 2016.

*Christian Mineau*  
CHRISTIAN MINEAU, Manager

*Anthony Barri*  
ANTHONY BARRI, M.D., Manager

*Michael Halperin*  
MICHAEL HALPERIN, M.D., Manager

ANISH SHAH, M.D., Manager

*Steven Wei*  
STEVEN WEI, M.D., Manager

Exhibit 3: Copies of Backus Hospital's and Constitution's respective DPH licenses.

**STATE OF CONNECTICUT**

**Department of Public Health**

**LICENSE**

**License No. 0037**

**General Hospital**

In accordance with the provisions of the General Statutes of Connecticut Section 19a-493:

The William W. Backus Hospital of Norwich, CT d/b/a The William W. Backus Hospital is hereby licensed to maintain and operate a General Hospital.

**The William W. Backus Hospital** is located at 326 Washington Street, Norwich, CT 06360-2740.

The maximum number of beds shall not exceed at any time:

20 Bassinets

213 General Hospital Beds

This license expires **March 31, 2018** and may be revoked for cause at any time.  
Dated at Hartford, Connecticut, April 1, 2016. RENEWAL.

**Satellites:**

Backus Infectious Disease & STD Clinic, 107 Lafayette Street, Norwich, CT

Mobile Health Resource Van, 326 Washington Street, Norwich, CT

Pain Management, 112 Lafayette Street, Norwich, CT

Wound Care, 111 Salem Turnpike, Route 82, Norwich, CT

The Backus Emergency Care Center, 582 Norwich Road, Plainfield, CT



A handwritten signature in cursive script, reading "Raul Pino".

Raul Pino, MD, MPH  
Commissioner

**STATE OF CONNECTICUT**

**Department of Public Health**

**LICENSE**

**License No. 0272**

**Out-Patient Surgical Facility**

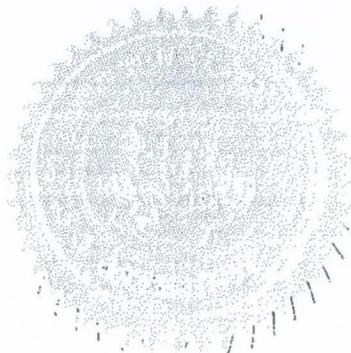
In accordance with the provisions of the General Statutes of Connecticut Section 19a-493:

Constitution Surgery Center East, LLC of Waterford, CT, d/b/a Constitution Surgery Center East, LLC is hereby licensed to maintain and operate an Out-Patient Surgical Facility.

**Constitution Surgery Center East, LLC** is located at 174 Cross Road, Waterford, CT 06385.

This license expires **September 30, 2017** and may be revoked for cause at any time.

Dated at Hartford, Connecticut, October 1, 2015. **RENEWAL**



*Jewel Mullen MD*

Jewel Mullen, MD, MPH, MPA  
Commissioner

Exhibit 4: Copies of curriculum vitae and resumes of key clinical and administrative personnel.

**Bimal Patel**

**President, East Region  
Backus and Windham Hospitals  
&  
Senior Vice President  
Hartford Healthcare**

**Organizational Description:**

**Hartford Healthcare:** Operating company holding 6 hospitals, Physicians organization, Senior Services, Clinical Ancillary services, over \$2.5B Net Revenue, 1600 acute care beds, 600 long-term care beds, and 16000+ FTEs

**Hartford Hospital:** Level 1 Trauma center - 867 Beds Acute Care Teaching Hospital, 5400 FTEs, \$1.2 B net revenue

**Mid-State Medical Center  
Hospitals of Central Connecticut**

**Backus Hospital and Windham Hospital:** Level III Trauma center – 450 beds, Medical Foundation, Free standing Emergency Services

**Post-Acute Services: Senior care, Home care, Rehab services**  
**Behavioral Health Services: Institute of Living, Natchaug Hospital and Rushford Hospital**  
**Hartford Healthcare Medical Group**

**My Personal Purpose**

Build a vibrant culture, develop leaders and help them find their best by using visionary, balanced and practical approach to deliver better quality of healthcare at affordable price point with un-matched service excellence and highest integrity.

**Experiences**

**President, East Region and SVP HHC  
Backus and Windham Hospitals** **January 2016- Present**

Executive and leadership responsibility of the East Region of HHC including Backus and Windham hospitals, Plainfield emergency and ambulatory center, various outpatient clinics and urgent care centers, Backus physician organization and Conn Care network.

HHC responsibilities include Real Estate, Master planning and Contraction projects for the system.

**Harford Healthcare, SVP Operational Integration** **Dec 2014- Dec 2015**  
**Regional VP of Operations** **August2013- Nov 2014**  
**Hartford Hospital, VP of Operations and Support** **Feb 2009 – July 2013**

Responsibilities include operational integration reporting to EVP-COO of HHC System, I lead administration and management of major healthcare system initiatives such as Hospitals integration, System consolidation for efficiency and cost benefit, Spin-off key service line to leverage capital, HHC 2020- infrastructure master plan and HHC Thrive-cost reduction.

Hartford Healthcare Thrive – cost reduction strategy, executive project leadership and Lean methodology:

- Responsible for the system Operating Margin goal via Balance Scorecard
- Reduced \$195M in three years via partnership with Huron Healthcare Consulting largely focused on administrative services
- On target with additional \$165M in one year improvement over \$2.4B cost structure via administrative and clinical transformation work
- Productivity and efficiency infrastructure deployment to help achieve 25<sup>th</sup> percentile benchmark of these resources which resulted in over 500 FTEs reduction.
- HHC real estate portfolio
- HHC Lab Strategy deployment
- HHC Radiology Strategy leader
- Key administrative leader for all physicians driven clinical councils across HHC

Lead Healthcare System via following teams:

- Clinical and support integration of hospital operations – VP OPs
- Managing outsourcing and selling of clinical and support services for the system – M&A
- Develop Bone and Joint Institute in partnership with Orthopedic Physician Group(s).
- Build key strategic partnership with GE, Stanley, Siemens, CVS, Commercial labs - Strategy
- Develop retail healthcare via pharmacy, 340b, specialty and long-term care- Growth
- Help building HHC command center - Operations

Capital budget experiences and responsibilities:

- HHC2020 and routine Capital deployment annually at \$ 100M
- \$250M Strategic capital which included parking facility, ED expansion, and planning for Special Surgical Hospital for Ortho-Neuro-Spine.
- Facilities Master plan and support system growth initiatives
- Public utility company funds to improve power plant and fuel cell deployment

Key operational integration, leverage supply chain, engagement of physician leaders across the system and partner with nursing to horizontally integrate and deploy plan to improve efficiency, safety and quality.

Physicians and Nursing leadership experiences over ten years:

- Administrative member of Medical Executive Committee
- Clinical Chiefs council member

- Administrative leader for the Departments of Cardiology, Neurology, Radiation Oncology, Nephrology, Pulmonary, Pathology and Radiology.
- Management of service line leadership agreements
- Hospital Quality board and Safety Council
- Clinical nursing leadership in clinical ancillary and procedural areas
- Leadership of cardiac, vascular and endo-vascular platform
- Lead EPIC - EMR physician advisory committee and executive sponsor for EPIC rollout, bedside bar code, pharmacy systems, nursing and respiratory documentation

Board and non-profit community experiences:

- Member of Board Quality Committee
- Board of Governors for the hospital
- Connecticut Health Council member, a consortium of payers, providers, educators, suppliers, manufacturers, and consultants.
- Achieve Hartford Board member: Hartford Public Schools
- SINA (Southside institution of neighborhood alliance of hospitals and Trinity College) board member: community board for revitalization of neighborhood

Fund Development experiences:

- Meet and educate donors in and outside hospital
- Chair various fund raising committees
- Black and Red events raised \$1M on annual basis
- Golf committee chair annual \$400k raised
- Hospital Auxiliary Executive: annually raise and give \$1.5M to hospital
- Open personal home for awareness and fund development

Community and Government experiences:

- Meet local leaders, Neighborhood Revitalization Zones, historical commission
- Interact with Mayor and administrative leadership of city including Planning & Zoning
- Interact with local senators and house representatives to build support and nurture relationship to promote organizational interests
- Attend political support functions as appropriate
- Emerging as a key executive for community connection

**Achieved Objectives**

- Hospital patient satisfaction has improved by 40 percentile points in 3 years after establishing Patient Experience Officer in a cost neutral method.
- Established productivity model for the hospital and system including position review committee structure and shift management tool.
- Became part of a team lead Hartford Hospital from \$8M loss to gain of \$53M over 4 years period from 2008 to 2012.

- Improve cost structure by \$195M in first three years for the hospital and system while working towards a goal of new \$165M over current year.
- Improved the food service program to ensure it is providing the highest level of quality, while minimizing costs. Patient Satisfaction scores went up by 70%.
- Prioritize and manage the various capital projects approximately \$350 million over past five years including \$150M Bone and Joint Institute
- Built CESI (center for education, simulation and innovation) and obtained grant of \$15M from the state
- Wrote and received NIH grant of \$3.5M construction for expanding neuro-psych research

**Robert Packer Hospital – Guthrie Health System** **March 2006 – Jan 2009**  
**Administrative Director Professional and Support Services**  
**230 Beds Acute Care Teaching Hospital**  
**Level II Trauma Center**

Professional and Support Services responsibility included the administration and management of both clinical and support service functions for the Robert Packer Hospital.

**Clinical areas** of responsibility included Cardiology, Oncology, Nephrology, Neurology, Radiology, Pathology and Critical care via oversight of Cardiac Cath lab, EP lab, Radiology, Neurology, Sleep services, Dialysis, Radiation Oncology, Respiratory Services and Pharmacy. Support services included Engineering and facilities, Environmental services, Biomedical Engineering, Laundry and Food Services, Patient Transport, Switchboard and Security.

Key achievements during three years were as follows.

- Solucient Top 100 hospital for 2 of the 3 years
- Top 100 Cardiovascular hospital for all 3 years
- Profitable operation with operating margin of 8-10 % annually for 3 years
- Employee satisfaction changed to top quintile
- Lead value analysis as a chair of the committee for the Guthrie Health System for two years with savings of 2 plus million each year above budget
- Help flatten the administrative structure with reorganization
- Stabilized the for-profit division of hospital during crisis
- Executive sponsor and successful implementation for the EPIC ® bed-side bar-coding, nursing documentation, e-MAR and pharmacy systems.

**Robert Packer Hospital – Guthrie Health System** **June 2004 – Feb 2006**  
**Administrative Director Pharmacy Services**  
**230 Beds Acute Care Teaching Hospital**  
**Level II Trauma Center**  
**200 Beds long term care facility**

Pharmacy services chief for both acute care hospital and long-term care. Total employees 40 with drug budget of 20 million.

Key achievements during two years period were as follows.

- Merge the long term care pharmacy in to retail operation during Medicare Part D and made profitable as well as compliant to regulations
- Renegotiated system contract with pharmaceutical vendors and generated additional savings of \$1.5 – 2 million annually for two year
- Stabilized the CPOE system which was failing due to pharmacy interface
- Cleaned CDM and revenue cycle processes
- Changed service orientation of pharmacy

**Good Samaritan Hospital – GHS  
Supervisor Pharmacy and Home Infusion Services  
200 Beds Acute Care Teaching Hospital  
35 Beds TCU, Rehab and Oncology Services**

**December 1999 – May 2004**

Pharmacy services supervisor of two sites. Delivered care to variety of services including acute care hospital, long-term care, rehab in-patients, home infusion and oncology outpatient infusion services.

Key achievements during four year period were as follows.

- Expanded home infusion services
- Rebuilt oncology service model
- Cleaned up inventory with 16 inventory turns and process improvements in contract compliance
- Service excellence superior status of pharmacy from customer base of nursing and patients

**For Profit Experiences as follows:**

**Owen Healthcare- Cardinal Health  
Clinical Staff Pharmacist  
On-call Special projects for north-east**

**July 1996-December 1999**

During this time period, I worked at various North-East US hospitals for different reasons including start ups, close outs, staffing needs, administrative needs, regulation preparedness, information technology roll-out and program set ups.

**Owen Healthcare- Cardinal Health  
Director in Training  
Management Fellowship**

**January 1995 - June 1996**

One and half years of both corporate and local hands on experience as well as curriculum based formal fellowship training with Owen Healthcare. A national hospital pharmacy management company with 300 plus hospital pharmacies in forty plus states. During this period learned various aspects of pharmacy services including financials, clinical, IT and technical, managements and contracts, regulatory and P&T.

**Owen Healthcare- Cardinal Health  
Staff Pharmacist**

**March 1993 – December 1994**

During this period I functioned as a staff pharmacist for acute care hospital working directly with nursing, physicians and other clinical services. This experience helped build the quintessential base needed for future growth and development.

**Education**

BS in Pharmacy, LMCP, India 1990

Management Fellowship, Owen Healthcare, 1995

Certified in Long Term Care, Penn State University, 2003

Masters in Health Administration, Penn State University, 2004

References upon request from current and past work will be available.

**DANIEL E. LOHR, CPA**

**PROFESSIONAL EXPERIENCE**

**HARTFORD HEALTHCARE, Hartford, CT** 2013-Present  
Regional Vice President, Finance

**THE WILLIAM W. BACKUS HOSPITAL, Norwich, CT** 1993-2013  
Senior Vice President & Chief Financial Officer

Management of the financial operations of a 200 bed, 1300 employee acute care hospital. Responsibilities include board and regulatory agency reporting and operating responsibility with direct oversight for management information systems, materials management, medical records, business office and patient registration. Other corporate responsibilities include investment/foundation oversight, development of for-profit joint ventures and physician practice activities.

**ERNST & YOUNG, Hartford, CT** 1974-1992  
Partner 1987-1992

Coordinated services to hospitals, healthcare systems, small entrepreneurial companies and multi-national organizations. Facilitated merger and acquisition activities, financing transactions and systems conversions.

**EDUCATION**

University of New Haven, MBA, 1999

Ohio University, BBA, summa cum laude, 1973

Ernst & Young Partners' Executive Development Program, 1991  
Northwestern University, J.L. Kellogg Graduate School of Management

# CAROLYN M. TRANTALIS, RN, MSN

## PROFILE

Enterprise thinking, strategically oriented and innovative leader who is results-focused with a strong record of change leadership and managerial courage.

## ACADEMIC PREPARATION

### University of Hartford

Hartford, Connecticut

Masters of Science Degree in Nursing Management: May 2005. Focus of study related to public policy with a graduate practicum at the Connecticut Department of Public Health's Licensing Bureau.

### Western Connecticut State University

Danbury, Connecticut

Bachelors of Science Degree in Nursing: May 1986

### Licensure

State of Connecticut E49594, July 1986

## PROFESSIONAL EXPERIENCE

### *Hartford Healthcare*

### *Windham and Backus Hospitals, East Region*

### *Willimantic and Norwich, Connecticut*

#### June 2015- Present

#### Regional Vice President of Operations and Clinical Services

Accountable for the integration of clinical services with other regional departments and system service lines to improve culture, engagement, quality, patient safety, customer experience, and High Reliability from the hospital frontlines to community-based ambulatory settings.

- Transition 130 groups from monthly to daily How Hartford Healthcare Works (H3W) performance improvement model
- Implement Windham Hospital transition to Cornerstone Services
- CareConnect: successful testing and implementation of EPIC
- Improve Length of Stay through interdisciplinary rounds and just-in-time data collection
- Improve VTE rates through interdisciplinary process change

#### August 2013-June 2015

#### Regional Vice President of Operations

Responsible for the cultural and operational integration of Backus Hospital into Hartford Healthcare.

- Integration of Backus into HHC
- HHC Thrive – reduce the cost structure
- Regional PRC and OPS Council
- MSK Affiliation (2014) – customers to clinical trials, increase standards; COC accreditation for Windham Hospital
- Regional rollout H3W work groups, H3W leadership behaviors, HRO
- Thrive – 10%
- Develop Windham Hospital transition to Cornerstone Services
- Hand washing
- Teleneurology
- Recruitment

**Windham Hospital  
Willimantic, Connecticut**

A partner in Hartford Healthcare Corporation, Windham Hospital is a 130 bed not-for-profit acute care community hospital that provides comprehensive medical services to a 19 town service area

**April 2011- August 2013**

**Vice President of Operations**

Accountable for strategic development ,maintaining a culture of excellence, and overall operations including Process Improvement, Medical Staff Support, Physician Recruitment & Relations, Imaging, Cardiopulmonary, Oncology, Pharmacy, Lab, Physical Medicine, Prenatal Clinic, School-Based Health Clinics, Food & Nutrition, Plant Operations, Safety & Security, and Environmental Services. As an Executive Team member, responsible for the strategic and long-range planning of the organization, allocation of human, material, and financial resources, service excellence, fiscal performance, and quality of clinical practice.

- Recruited primary care, cardiology, OB/GYN, and Rheumatology physicians to meet strategic market needs
- Implemented internal Hospitalist program
- Opened centers for Physical Therapy, Mammography, and Surgical Clinic
- Executed & sustained a culture of staff engagement and performance improvement
- Implemented a unified approach to cancer services obtaining NAPBC accreditation with 100% of breast cancer patients being offered navigation and 100% of new breast cancer cases being prospectively reviewed in multidisciplinary cases conferences.

**June 2007-April 2011**

**Vice President of Patient Care Services**

Responsible for strategic development, and overall operations of the Patient Care Division including Nursing, Imaging, Cardiopulmonary, Oncology, Pharmacy, Lab, Physical Medicine, School-Based Health Clinics, and Paramedic Services. As an Executive Team member, responsible for the allocation of human, material, and financial resources, service excellence, fiscal performance, and quality of clinical practice. As Chief Nurse Executive, responsible for setting evidenced-based standards of nursing practice and patient care.

- Recruited and stabilized high performing Nurse Leader Team
- Maintained low RN vacancy rates: 1.5 – 0.75%
- Successful bargaining unit negotiations for Nursing and Support Services
- Outstanding results for 2 consecutive Joint Commission surveys
- Maintained top decile performance in composite CORE Measures
- ED Door to Provider in 30 minutes at greater than 85%
- ED ranked at 99<sup>th</sup> percentile for Connecticut by Press Ganey
- 2010 no hospital acquired pressure ulcers
- 2010 no hospital acquired central line infections
- Reduced & maintained monthly labor productivity FTE variance from 33 to 13

**February 2006-June 2007**

**Director of Outpatient Services**

Accountable for planning, organizing and directing all activities for the Emergency Department, Operating Room, Post Anesthesia Care Unit, Ambulatory Care Unit, Central Processing Department, and Pain Management Clinic

- Directed the completion of the 22 bed Jeffrey P. Ossen Emergency Department
- Revised staffing plans to maintain efficient staffing levels to ensure safe continuity of care while maintaining established budgetary guidelines
- Implemented Empower electronic medical record for the ED
- Instituted OR equipment reprocessing program with significant decrease in operational costs
- Developed strategies for labor efficiencies in OR and Pain Management
- Collaborated with Finance on ED, OR, and ACU coding and charging revisions

## **Hartford Hospital, Hartford, Connecticut**

An 800 bed major teaching hospital providing tertiary care to the city of Hartford and surrounding suburbs.

**November 2001-February  
2006**

**Emergency Department Nurse Manager**

Responsible for the 24-hour operations of a 60-bed Emergency Department with greater than 80,000 patient visits per year and 200 staff.

- Maintained accreditation as a Level I Trauma, Stroke, and Chest Pain Center
- Developed and implemented Computerized Provider Order Entry and Electronic Medication Administration Record
- Implemented multi-disciplinary trauma rounds
- Obtained Magnet status: voting member of Shared Governance Operations Council, Co-chair of Shared Governance Human Resource Subgroup, and Co-chair of Nurse Manager Leadership Development Committee
- Emergency Department APC and Revenue Enhancement Taskforce: 31% improvement in department revenue generation

**July 1986 to November  
2001**

**Staff Nurse - Clinical Leader**

- Primary Nurse in an acute care medical/surgical and critical care setting
- Charge Nurse in Level I Trauma Center Emergency Department
- Team Leader for Emergency Department Redesign Project:

## **PROFESSIONAL ASSOCIATIONS**

Committee on Human Resources of the Connecticut Hospital Association Board of Trustees  
Sub-committee on Diversity and Cultural Competence- Connecticut Hospital Association  
Organization of Nurse Executives- Connecticut : Secretary January 2010 to January 2013  
American Organization of Nurse Executives  
Sigma Theta Tau, Iota Upsilon-At-Large Chapter  
Connecticut Nurses Association  
American Nurse Association  
Site Preceptor Boston University Masters of Public Health  
Site Preceptor University of Hartford Masters of Science in Nursing Management

## **ACHIEVEMENTS**

Recipient of Nightingale Award for Excellence in Nursing 2007  
Recognized as Patriotic Employer by National Committee for Employer Support of the Guard and Reserve

## **REFERENCES**

Furnished upon request

# ROBERT D SIDMAN, MD, FACEP, CPE

---

## QUALIFICATIONS

Physician executive with 20 years experience in physician management, quality, operations, information technology, systems-based improvement, high reliability, education and finance.

---

## PROFESSIONAL EXPERIENCE

### **Vice President of Medical Affairs**

Hartford HealthCare, East Region (2015- present )

Regional Vice President of Medical Affairs of the hospitals in the east region of the system.

### **Medical Director and CMO**

The William W. Backus Hospital, Norwich, CT (2013 - 2014)

Hartford HealthCare, Hartford CT

Medical Director of one of five acute care hospitals comprising Hartford HealthCare.

### **Medical Director, Physician Services**

Backus Hospital, Norwich, CT (2010 – 2014)

Medical director for the multispecialty group of the hospital.

### **Chief of Emergency Services**

The William W. Backus Hospital, Norwich, CT (2005 – 2013)

Responsible for the management of two emergency departments and 30 full time physicians and allied health providers that generates \$35 million in revenue and cares for 80K patients a year.

### **Associate Medical Director – Emergency Department**

Rhode Island Hospital, Providence, RI (2003 – 2005)

In conjunction with the medical director, provide management to 100 providers who care for 140K patients annually.

### **Residency Director – Emergency Medicine**

Brown University School of Medicine, Providence, RI (1999 – 2005)

Responsible for the operations, management and education of 48 residents within the scope of the ACGME.

**Assistant Residency Director – Emergency Medicine**

Brown University School of Medicine, Providence, RI (1995 – 1999)

Assist the program director with most aspects of operations. Specific focus on resident education, staffing, curriculum development, recruitment, mentoring and research.

**Attending Physician – University Emergency Medicine Foundation**

Rhode Island Hospital, Providence, RI (1994 – 2005)

Provide emergency care in a high volume Level I trauma center (busiest in New England).

---

---

**EDUCATION**

Undergraduate	Colby College, BA Molecular Biology (cum laude) Waterville, ME. 1986
Medical School	Albert Einstein College of Medicine, MD Bronx, NY. 1990
Residency	Emergency Medicine, University Hospital, University of Cincinnati, Cincinnati, OH. 1994
Management	Certified Physician Executive, CPE American College of Physician Executives, Tampa, FL. 2010

---

---

**PROFESSIONAL LICENSES AND BOARD CERTIFICATION**

Diplomat	American Board of Emergency Medicine 1995, 2005
Medical Licensure	Connecticut (active) Massachusetts, Rhode Island, Ohio, Kentucky

---

---

**PROFESSIONAL MEMBERSHIPS**

American College of Physician Executives (ACPE)  
American College of Health Care Executives (ACHE)  
American College of Emergency Physicians (FACEP)  
Connecticut Chapter - American College of Emergency Physicians (CCEP)  
Connecticut Hospital Association Physician Executive Group (CHA)

---

---

**PERSONAL**

Married 26 years

Three children ages 15, 19 and 21

Enjoy tennis, fitness training, guitar and anything that needs fixing

**ELIZABETH M.WINDHOM, RN, BSN, CNOR**  
**Curriculum Vitae**

Present Position: Employed by Constitution Surgery Alliance  
Vice President of Operations  
Administrator Constitution Surgery Center East

**EDUCATION:**

1969: Graduate of Waterford High School, Waterford, CT.  
1970: Graduate of Allied Health, School of Surgical Technologist, Hartford Hospital, Hartford Ct.  
1993: Associate Degree in Nursing Science with Honors. Three Rivers Community College, Norwich CT.  
2003: Bachelor of Science, Nursing. St. Joseph College, West Hartford, CT. Honors

**LICENSURE AND CERTIFICATION:**

Connecticut State License #E55573 expiration 4/2017  
Basic Life Support expiration 4/2018  
Advanced Cardiac Life Support 5/2017

**HONORS AND DISTINCTIONS:**

1991 Mohegan Community College (Three Rivers Community College): Outstanding Academic Achievement Award.  
1992 National Honor Society, Three Rivers Community College  
2001-2003 State of Connecticut Membership Chairman, AORN Connecticut Chapters  
2002 International Honor Society of Nurses, Sigma Theta Tau, Iota Upsilon Chapter at Large.

**TEACHING EXPERIENCE:**

2001-2002 Adjunct Faculty, Three Rivers Community College. Perioperative Nursing 101.

**PROFESSIONAL ORGANIZATION: AORN**

**INTEREST AND HOBBIES:**

Reading	Sewing	Golf
Hiking	Quilting	Knitting
Swimming	Traveling	Cooking

## Tarik Kardestuncer, MD

### FELLOWSHIP

**Brigham & Women's Hospital, & Massachusetts General Hospital  
Harvard Medical School** 8/05-8/06  
Hand and Upper Extremity Fellowship

### RESIDENCY

**University of Connecticut, Farmington, CT** 7/00-6/05  
Intern & Resident, Department of Orthopaedics

**Columbia Presbyterian Hospital, NY, NY** 7/99-7/00  
Intern, Department of Internal Medicine

### MEDICAL EDUCATION

**University of Connecticut School of Medicine** 7/94-7/99  
Doctor of Medicine

**Harvard Medical School and Brigham & Women's Hospital** 7/96-7/97  
Fellow, The Stanley J. Sarnoff Endowment for Cardiovascular Sciences

**Emory University School of Medicine & Public Health** 6/95-9/95  
Fellow, National Institutes of Environmental Health Sciences

### EDUCATION

**University of Connecticut** 8/86-5/92  
B.A. Political Science, Cum Laude, Honors Scholar, Dean's List

**University of Connecticut** 8/92-5/93  
Post-Baccalaureate Program

**Bosphorus University, Istanbul, Turkey** 8/89-5/90  
Dean's List

**ABC International Language Institute, Florence, Italy**

2/88-6/88

**Beijing and Hefei, Peoples Republic of China**  
One year study in Chinese public school system

7/80-6/81

## PUBLICATIONS

**Kardestuncer, T.** Bae, DS. Waters, PM. *Tendodermodesis for the Treatment of Chronic Mallet Finger Deformity in Children.* Journal of Pediatric Orthopedics (in press).

**Kardestuncer, T.** McCarthy, MB. Karageorgiou, V. Kaplan, D. Gronowicz, G. *RGD-Tethered Silk Substrate Stimulates the Differentiation of Human Tendon Cells.* CORR, 2005. .

**Kardestuncer, T.** Wu, H. Lim, A. Neer, EJ. *Cardiac Myocytes Express mRNA for Ten RGS Proteins: Changes in RGS mRNA Expression in Ventricular Myocytes and Cultured Atria.* FEBS Letters. 438(3):285-8, 1998.

**Kardestuncer, T.** Frumkin, H. *Systemic Lupus Erythematosus in Relation to Environmental Pollution: An Investigation in an African-American Community in North Georgia.* Archives of environmental Health. 52(2):85-90, 1997.

## POSTERS & PRESENTATIONS

**Kardestuncer, T.** *Current Trends in Hand Surgery.* Presented at Backus Hospital Medical Grand Rounds. Norwich, CT. February 19, 2007.

**Kardestuncer, T.** Bae, DS. Waters, PM. *Results of Tendodermodesis for Severe Chronic Mallet Finger Deformity in Children.* Presented at the American Association of Orthopaedic Surgeons, San Diego, CA. February 16, 2007.

**Kardestuncer, T.** Bae, DS. Waters, PM. *Tendodermodesis for the Treatment of Chronic Mallet Finger Deformity in Children.* Presented at the American Association of Hand Surgery, San Juan, Peurto Rico, January 11, 2007.

**Kardestuncer, T.** *Kienbock's & Preisser's Disease.* Presented at Doctors Demystify the Wrist. Brigham and Women's Hospital, Harvard Medical School. May 6, 2006.

**Kardestuncer, T.** Bae, DS. Waters, PM. *Tendodermodesis for the Treatment of Chronic Mallet Finger Deformity in Children.* Presented at the 17<sup>th</sup> Annual Smith Day, Massachusetts General Hospital, Boston, MA. May 11, 2006

**Kardestuncer, T.** McCarthy, MB. Karageorgiou, V. Kaplan, D. Gronowicz, G. *RGD-Tethered Silk Substrate Stimulates the Differentiation of Human Tendon Cells.* Poster at the 71<sup>st</sup> Annual American Academy of Orthopaedic Surgeons-Orthopaedic Research Society, March 2004. San Francisco, CA

**Kardestuncer, T.** Caputo, AE. *Modified Volar Capsulodesis For Hyperextension Deformities of the Thumb Metacarpophalangeal Joint.* Presented at the 31<sup>st</sup> Annual Meeting of New England Hand Society, December 5, 2003.

**Kardestuncer, T.** Newport, ML. *Ulnar Collateral Ligament Injuries of the Thumb as a Result of Automobile Airbag deployment.* Presented at the 31<sup>st</sup> Annual Meeting of New England Hand Society, December 5, 2003.

**Kardestuncer, T.** *Proximal Humerus Fractures.* Orthopaedic Grand Rounds, St. Francis Hospital, Hartford, Connecticut. October, 2003.

**Kardestuncer, T.** Banta, J. Thompson, H. *The Use of Wound VAC in the Treatment of Complex Post-operative Spine Wound Infections.* Presented at the 51<sup>st</sup> Annual Connecticut Children's Medical Center Research day, September 2003.

**Kardestuncer, T.** Neer, EJ. *Isoform-Specific Changes in mRNA Levels for RGS Proteins in Cardiac Myocytes.* Presented at the 71<sup>st</sup> Annual American Heart Association (AHA) meeting in Dallas, Texas, November 8-11, 1998. Abstract Published in, *Circulation*, October 1998.

## RESEARCH

**Harvard Medical School and Brigham & Women's Hospital**  
Fellow, The Stanley J. Sarnoff endowment for Cardiovascular Sciences  
Researched the molecular mechanisms of G-protein mediated signaling in the cardiomyocyte and the role of RGS proteins in this pathway.

**Emory University School of Medicine & Public Health**  
Fellow, National Institutes of Environmental Health Sciences  
Designed and conducted a retrospective study on the relationship between environmental pollution and Lupus in an African-American community in Georgia.

**General Clinical Research Center, University of Connecticut**  
Studied the effects of hormone replacement therapy on osteoporosis. Developed a computer system for specimen inventory in the core lab.

## HONORS & AWARDS

Honors Scholar, Sigma Xi, the Scientific Research Society

The Sarnoff Endowment for Cardiovascular Sciences, Inc.  
National Fellowship Recipient

The National Institutes of Environmental Health Sciences  
National Fellowship Recipient

## EMPLOYMENT

British Broadcasting Corporation (BBC), 1996 Summer Olympics  
Atlanta, Georgia. Assistant to journalist crew.

## INTERESTS

Sailing, Swimming, Skiing and Travel  
Turkish (fluent), Italian and French (knowledge)0.

## PERSONAL

Wife: Gita Safaian, DMD. Children: Mitra & Kian.

## Kendra Allen, RN, BSN

### Curriculum Vitae

#### **Present Position:**

Employed by Constitution Surgery Center East, LLC  
Clinical Director

#### **Previous Employment:**

1997-2008: Hartford Hospital, Hartford, CT.  
2008-2012: Shoreline Allergy & Asthma, Mystic, CT.  
2012-2015: CONNCare Backus Health Centers, Norwich, CT.

#### **Education:**

1992: Graduate of Conard High School, West Hartford, CT.  
1996: Bachelor of Science Degree in Nursing, St. Anselm College, Manchester, NH.

#### **Licensure and Certification:**

Connecticut State License #E59343, expiration 7/2017  
Advanced Cardiac Life Support 6/2017  
Basic Cardiac Life Support 4/2018

## CURRICULUM VITAE

John Brian Hornby

<u>Education</u>	<u>Dates</u>
St. Francis College Brooklyn, NY	1970-73 B. A.
Dartmouth College Hanover NH	1973-75 A. M.
Boston University Boston, MA	1975-76
Georgetown University Washington D.C.	1977-81 M. D.
Hospital of St. Raphael New Haven, CT	1981-82 Flexible Internship
Storm Eye Institute Medical University of South Carolina Charleston, SC	1982-85 Residency - Ophthalmology
Private Practice Old Saybrook, CT	1985-Present

Membership / Honors: AAO, Dartmouth Fellow, B. A. Cum Laude

Current Hospital Privileges: Middlesex Hospital, Middletown, CT

Publications: Responses of caudal brain stem neurons to vaginal and somatosensory stimulation in the rat and evidence of genital- nociceptive interactions - Hornby, John B. and Rose, James D. - Experimental Neurology, 51, pp. 363-376 (1976)

Exhibit 5: Copies of letters of support for this proposal.



## ***West Side Medical Center, LLC***

606 West Main Street • Norwich, Connecticut 06360  
(860) 889-1400 • FAX (860) 889-3163

---

August 2016

Office of Health Care Access

Re: Letter of Support for Backus Hospital's proposed membership interests in the Constitution Surgery Center LLC at 174 Cross Rd, Waterford, CT.

Dear Deputy Commissioner J. Brankafort,

I am writing this letter in support of Backus Hospital's proposed membership interests in the Constitution Surgery Center LLC at 174 Cross Rd, Waterford, CT.

As an internist who has worked in private practice in southeastern Connecticut for nearly 17 years, I have had very a close working relationship and successful affiliation with Backus Hospital. Backus continues to provide high quality care in a community setting that is comfortable, convenient and familiar for my patients. Backus consistently demonstrates its commitment to quality and safety, and offers the best trained and most highly qualified staff and medical staff in the region.

With more and more surgical procedures being performed in ambulatory surgery centers, it is comforting to know that the same standard of excellence of quality and safety at Backus would apply should the hospital be granted ownership interest in the Constitution Surgery Center. In addition, Backus' affiliation with the surgery center would mean better coordination of care for surgical patients and a superior patient experience as they transition between inpatient and outpatient settings.

Simply put, Backus' alignment with the surgery center will mean an even safer and more convenient alternative for our patients. I fully support this application and ask for your approval.

If you have any questions, please feel free to reach out to me at 860.423.6733.

Sincerely,

Dr. Kartik Viswanathan FACP.  
West Side Medical Center  
606 West Main Street  
Norwich, CT 06360

August 2016

Office of Health Care Access

Re: Letter of Support for Backus Hospital's proposed membership interests in the Constitution Surgery Center LLC at 174 Cross Rd, Waterford, CT.

Dear Deputy Commissioner J. Brankafort,

My name is Regina Busca. I am a lifelong resident of Waterford, CT writing to you to express my support for Backus' proposed purchase of the Constitution Surgery Center LLC at 174 Cross Rd in Waterford.

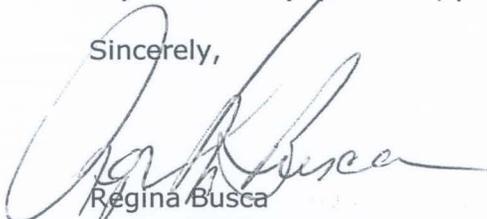
My family, friends and I are very familiar with the outstanding reputation of Backus Hospital and its wonderful staff and dedicated team of physicians. It is comforting to know that we have such a great healthcare resource in southeastern Connecticut. Whether it's the joy of a newborn baby or a lifesaving surgical procedure, it's reassuring to know that Backus is right around the corner.

That's why I was very pleased to learn that the hospital is applying for an interest in the Constitution Surgery Center in my town. In my experience, having the Backus' name on a facility always means top-notch care, a talented and compassionate staff and the highest quality care. For those in my community who may face transportation issues or other barriers to their care having a facility nearby will give them the peace of mind of knowing that a world class surgery center affiliated with Backus Hospital is located right in their neighborhood.

It is for those reasons, that I wholeheartedly support Backus' proposed membership interests in the Constitution Surgery Center LLC. I urge you to support their application.

If you have any questions, please feel free to contact me at (860) 443-5879.

Sincerely,



Regina Busca  
11 Deerfield Road  
Waterford, CT 06385-3301

Exhibit 6: Copy of the draft purchase agreement, the draft Operating Agreement, and Management Agreements between Constitution and Backus Hospital.

## PURCHASE AGREEMENT

### **(Limited Liability Company Membership Interest)**

**THIS PURCHASE AGREEMENT** (hereinafter this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of August, 2016 (“**Execution Date**”), by and among The William W. Backus Hospital, a Connecticut nonstock corporation (hereinafter “**Buyer**”), Constitution Surgery Center East, LLC, a Connecticut limited liability company (the “**Company**”), CSCE Holdings, LLC, a Connecticut limited liability company (“**Seller**”), and the physician equityholders of Seller that are receiving any portion of the Purchase Price, each of whom is set forth on the signature pages of this Agreement (“**Physicians**”). The Company, Buyer, and Seller may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”).

### **RECITALS**

1. The Physicians and Constitution Surgery Alliance, LLC (“**CSA**” and, together with the Physicians, the “**Owners**”) are currently the sole members of the Company, which operates an outpatient surgery center commonly known as Constitution Surgery Center East, located at 174 Cross Road, Waterford, Connecticut 06385 (“**Facility**”).

2. The business and affairs of the Company are governed by an Operating Agreement dated October 1, 2015, made between the members of the Company (“**Operating Agreement**”).

3. Prior to the Closing (as defined below), the Physicians and CSA will transfer their membership interests in the Company to Seller (“**Physician/CSA Membership Interest Transfer**”).

4. Upon the Physician/CSA Membership Interest Transfer, Seller will be the sole member of the Company.

5. Seller desires to sell and Buyer desires to purchase an aggregate fifty-one (51%) percent of the membership interests in the Company in accordance with the terms of this Agreement.

In consideration of the mutual promises, representations, warranties, and covenants contained in this Agreement, the Parties agree as follows:

### **ARTICLE I**

#### **PURCHASE OF MEMBERSHIP INTEREST**

**Section 1.1 Sale and Purchase of Membership Interest.** Subject to the terms and conditions set forth in this Agreement, the Seller agrees to sell, and the Buyer agrees to purchase, fifty-one (51%) percent of the membership interests in the Company (the “**Purchased Membership Interest**”), free and clear of all liens, encumbrances, liabilities, and other

restrictions of any kind, other than Permitted Liens. “**Permitted Liens**” means the liens set forth on Schedule 1.1.

**Section 1.2** **Consideration.** The total consideration for the Purchased Membership Interest shall be Sixteen Million Seven Hundred Twelve Thousand Seven Hundred and 00/100 Dollars (\$16,712,700.00) (the “**Purchase Price**”). The Purchase Price shall be paid as follows:

1.2-1 Cash Payment. Fifteen Million Eight Hundred Seventy-Seven Thousand Sixty-Five and 00/100 Dollars (\$15,877,065.00) shall be paid to Seller by Buyer by wire transfer on the Closing Date (as defined below).

1.2-2 Escrow Reserve. On the Closing Date, Eight Hundred Thirty-Five Thousand Six Hundred Thirty-Five and 00/100 Dollars (\$835,635.00) shall be withheld from the Purchase Price and deposited into an escrow account (“**Escrow Reserve**”) at Bank of America, N.A. (the “**Escrow Agent**”). The Escrow Reserve shall be deposited with the Escrow Agent and not disbursed to Seller for a period of twelve (12) months following the Closing Date (the “**Escrow Period**”), and not disbursed to Seller at Closing, in order to secure the obligations of Seller pursuant to Article VII hereunder. Any amounts remaining in the Escrow Reserve (including interest thereon) at the end of the Escrow Period after satisfaction of the obligations hereof shall be disbursed to Seller in accordance with and subject to the terms and conditions of the Escrow Agreement. The disposition of the Escrow Reserve shall be governed by an Escrow Agreement dated as of the Closing Date among Buyer, Seller, and the Escrow Agent in substantially the form attached hereto as Exhibit 1.2-2 (the “**Escrow Agreement**”).

**Section 1.3** **Time and Place of Closing.** The consummation of the transactions contemplated by this Agreement upon completion, among other things, of all contingencies set forth in Articles V and VI below (the “**Closing**”) shall take place at 12:01 a.m. local time on January 1, 2017 (whether in person or through the delivery on or prior to the Closing of originally executed documents), or such other date, time, and place determined by the Parties (the “**Closing Date**”).

**Section 1.4** **Closing Deliveries.** On or prior to the Closing:

1.4-1 Deliveries by Seller. Seller shall deliver to Buyer:

- (i) An assignment of the Purchased Membership Interest;
  - (ii) The documents referred to in Article V below to be delivered by Seller;
- and
- (iii) An executed counterpart of the Escrow Agreement referred to in Section 1.2-2 above.

1.4-2 Deliveries by Buyer. Buyer shall deliver:

- (i) To Seller, the documents referred to in Article VI below to be delivered by

Buyer;

- (ii) To Seller, the Purchase Price specified in Section 1.2-1 above;
- (iii) To Escrow Agent, that portion of the Purchase Price specified in Section 1.2-2 above; and
- (iv) To Seller, an executed counterpart of the Escrow Agreement referred to in Section 1.2-2 above.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES OF SELLER

For purposes of this Article II, the phrases “to Seller’s knowledge” and “to the Company’s knowledge” means the knowledge after due inquiry of Kristian M. Mineau, Elizabeth Windhom, Bill Bitterli, Michael Halperin, M.D., Stephen Wei, M.D., Anish Shah, M.D., or Anthony Barri, M.D., or the actual knowledge of any other Physician. By execution of this Agreement, Seller and the Company, as applicable, represent and warrant to Buyer as follows, subject to the disclosures contained in the schedules attached hereto which shall contain references to the representations and warranties to which the disclosures contained therein relate.

#### Section 2.1 Seller Transactional Representations and Warranties.

2.1-1 *Organization, Authority and Capacity.* Each of the Company and Seller is a Connecticut limited liability company, duly organized, validly existing and in good standing under the laws of the State of Connecticut. Each of the Company and Seller has the full power and authority necessary to (i) execute, deliver and perform its obligations under this Agreement to be executed and delivered by it; and (ii) carry on its business as it has been and is now being conducted and to own and lease the properties and assets which it now owns or leases.

2.1-2 *Authorization of Transaction.* This Agreement constitutes the valid and legally binding obligation of each of the Company and Seller, enforceable in accordance with its terms and conditions. Each of the Company and Seller has obtained all approvals necessary from the Company, Seller, and the Physicians, as applicable, to perform its obligations hereunder. Neither the Company nor Seller is required to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement, other than as set forth in Schedule 2.1-2. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby have been duly authorized by the Company, Seller, and the Physicians.

2.1-3 *Non-contravention.* Except as set forth on Schedule 2.1-3, neither the execution and the delivery of this Agreement nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Company, Seller, or a Physician is subject to, (ii) conflict with, result in a breach of,

constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Company, Seller, or a Physician is a party or by which it is bound or to which any of its assets is subject to, or (iii) result in the imposition or creation of a lien upon or with respect to the Purchased Membership Interest.

2.1-4 *Brokers' Fees.* Neither the Company, Seller, Physicians, nor anyone acting on behalf of any of them has done anything to cause or incur any liability or obligation to pay any party for any brokers' or finders' fees or commissions to any broker, finder, or agent with this Agreement or any transaction contemplated hereby.

2.1-5 *Purchased Membership Interest.* Immediately prior to the Closing, Seller will hold and own one hundred (100%) percent of the membership interest in the Company, free and clear of any restrictions on transfer or assignment, taxes, liens, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands other than Permitted Liens. Seller has not pledged all or any portion of the Purchased Membership Interest to any third party or pledged it to be used as security on any transaction and is not a party to any option, warrant, purchase right, or other contract or commitment that would require Seller to sell, transfer, assign, or otherwise dispose of any membership interest in the Company (other than this Agreement). Seller is not a party to any voting trust, proxy, or other agreement or understanding with respect to the voting rights attached to the Purchased Membership Interest as described in the Operating Agreement. The Physicians and CSA are all of the owners of Seller who will receive any portion of the Purchase Price from Seller.

**Section 2.2** **Absence of Conflicting Agreements or Required Consents.** The Company and Seller represent and warrant to Buyer that the execution, delivery and performance of this Agreement: (i) does not require the consent of or notice to any governmental or regulatory authority or any other third party other than (a) Certificate of Need approval from the Office of Health Care Access (“OHCA”), and (b) approval from the Accreditation Association for Ambulatory Health Care, Inc. (“AAAHC”) (which approval Seller shall obtain prior to Closing); (ii) will not conflict with any provision in the Company's or Seller's Operating Agreement or Articles of Organization; (iii) will not, in any material respect, conflict with or result in a violation of any law, ordinance, regulation, ruling, judgment, order or injunction of any court or governmental instrumentality to which the Company or Seller is subject or by which the Company, Seller, or any of their assets are bound; (iv) will not, in any material respect, conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, require any notice under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which the Company or Seller is a party or by which the Company, Seller, or any of their assets are bound; and (v) will not create any lien, encumbrance or restriction upon any of the assets or properties of the Company or Seller.

**Section 2.3** **Third Party Payors.** The Company and Seller represent and warrant to Buyer that:

2.3-1 The Company is certified for participation and reimbursement under Titles XVIII

and XIX of the Social Security Act (“**Medicare and Medicaid Programs**”) (Medicare and Medicaid Programs and such other similar federal, state or local reimbursement or governmental programs are hereinafter referred to collectively as the “**Government Programs**”) and has current and effective provider agreements for such Government Programs and with such private nongovernmental programs, including other private insurance programs, under which Company directly or indirectly is presently receiving payments (such nongovernmental programs herein referred to as “**Private Programs**”).

2.3-2 (i) The Company is not in material violation, default, order or deficiency with respect to any of the items or matters referenced in this Section 2.3; (ii) the Company has not received any notice of any action pending or recommended to revoke, withdraw, suspend, or terminate participation in any Government Programs or Private Programs; and (iii) no event has occurred which, with the giving of notice, the passage of time, or both, would constitute grounds for a material violation with respect to any Government Programs or Private Programs.

2.3-3 Except as set forth on Schedule 2.3-3, to Seller’s knowledge, during the past three (3) years, the Company has not been the subject of any inspection, investigation, survey, audit, monitoring or other form of review regarding any Government Programs or Private Programs and Seller has not received any notice that a Government Program or Private Program intends to, or is contemplating to, undertake any inspection, investigation, survey, audit, monitoring or other form of review of the Company.

2.3-4 To Seller’s knowledge, (i) all billing practices of Company with respect to Government Programs and Private Programs have been in material compliance with all applicable laws, regulations, and policies of such Government and Private Programs in all material respects, and (ii) the Company has not billed or received any material payment or reimbursement in excess of amounts allowed by law or such policy.

#### **Section 2.4   No Violation of Law.**

2.4-1 Each of the Company and Seller is currently in compliance in all material respects with all applicable local, state, and federal laws, ordinances, regulations, orders, injunctions, and decrees, and any other requirements of any governmental body, agency, or authority or court binding on it, or relating to its property or business or its advertising, sales, or pricing practices.

2.4-2 Neither the Company nor Seller is subject to any material fine, penalty, liability or disability as the result of a failure to comply with any requirement of federal, state or local law or regulation nor has it received any notice of such noncompliance as a result of operation of the Company.

**Section 2.5   Insurance Policies.** The Company maintains general and professional, property loss and workers’ compensation insurance with respect to its operation in such amounts, of such kinds and with such insurance carriers as generally deemed appropriate and sufficient for businesses of a similar size and activity. A summary of the Company’s insurance policies are attached as Schedule 2.5 and the Company shall maintain all such insurance policies with their current coverage limits through the Closing.

**Section 2.6 Licenses, Authorizations and Provider Programs.** The Company has complied in all material respects with all laws, regulations, orders, and standards relating to the operation of the Company and the Facility. The Company and, to the Seller's knowledge, the Company's employees hold all licenses, permits, registrations, approvals, certificates, contracts, consents, accreditations, approvals, and franchises, including any necessary licenses or permits for all activities conducted by the Company and the Facility (collectively, the "**Licenses and Permits**") required to be held by it or them to conduct and operate the Company and the Facility in compliance in all material respects with all applicable laws and regulations and for participation in the Government Programs and Private Programs in which the Company and the Facility participate, including, without limitation, all Licenses and Permits required by the State of Connecticut. Without limiting the generality of the foregoing, to Seller's knowledge, the Company has not received any notice that the facilities, equipment and operations of the Company or the Facility fail to satisfy all applicable licensing requirements of the State of Connecticut or the requirements for participation in the Government and Private Programs, and, to the knowledge of Seller, no event has occurred with respect to the Company or the Facility that would be a required reportable event under Connecticut law and regulations or to any agency accrediting the Facility. No notice from any authority in respect to the modification, revocation, termination, suspension, or limitation of any License or Permit has been received by the Company and, to the Seller's knowledge, no such notice has been issued, given, proposed, or threatened. Except as provided in Schedule 2.6, none of the Licenses or Permits requires notice to, or the consent or approval of, any governmental agency or third party to any of the transactions contemplated hereby.

**Section 2.7 Inspections and Investigations.** To Seller's knowledge, (i) the right of the Company to receive reimbursements pursuant to any Government Programs or Private Programs has not been terminated or otherwise adversely affected as a result of any investigation or action whether by any federal or state governmental regulatory authority or other third party; (ii) during the past three (3) years, neither the Company nor Seller has been the subject of any inspection, investigation, survey, audit, monitoring or other form of review by any governmental regulatory entity, trade association, professional review organization, accrediting organization or certifying agency based upon any alleged improper activity on the part of the Company or the Facility, nor has the Company received any notice of deficiency from any such organization during the past three (3) years in connection with its operations; (iii) as of the Closing there will be any no outstanding deficiencies or work orders of any governmental authority having jurisdiction over the Company requiring conformity to any applicable agreement, statute, regulation, ordinance or bylaw, including but not limited to, the Government Programs and Private Programs; and (iv) no notice has been received by the Company of any claim, requirement or demand of any licensing or certifying agency or other third party supervising or having authority over the Company or its operations to rework or redesign any part thereof or to provide additional furniture, fixtures, equipment, appliances or inventory so as to conform to or comply with any existing law, code, rule, regulation or standard.

**Section 2.8 Financial Statements.** Attached hereto as Schedule 2.8 are the financial statements of the Company for the years ended December 31, 2013, December 31, 2014, and December 31, 2015, which reflect the results of operations and financial condition of the

Company for such periods and at such dates (“**Financial Statements**”). To Seller’s knowledge, the Financial Statements present fairly in all material respects the financial position of the Company as of the dates indicated and the results of the operations of the Company for the periods then ended, and are in accordance with the books and records of the Company, which have been properly maintained and are complete and correct in all material respects.

Except as set forth on Schedule 2.8, to Seller’s knowledge, since December 31, 2015:

- (i) There has been no material adverse change in the working capital, financial condition, assets, liabilities (whether absolute, accrued, contingent, or otherwise), reserves, business, or operations of the Company;
- (ii) The Company has not suffered any material casualty loss (whether or not such loss or damage shall have been covered by insurance) or waiver by the Company of extraordinary rights of value that affects the ability of the Company to conduct its business;
- (iii) The Company has not incurred any material liability or obligation of any nature (whether absolute, accrued, contingent, or otherwise), except in the ordinary and regular course of Company’s business;
- (iv) The Company has not paid any amount to any federal, state, or local government or authority or any other third party for any claim, obligation, liability, loss, damage, or expenses, of whatever kind or nature, incurred or imposed or based upon any provision of federal, state, or local law or regulations or common law pertaining to environmental protection;
- (v) There has not been any material transaction by the Company relating to the Facility or its business outside the ordinary course of the Company’s business;
- (vi) There has not been any material default under any indebtedness of the Company, or any event which, with the lapse of time, giving of notice, or both, could constitute such a default;
- (vii) There has not been a change in the Company’s method of accounting; and
- (viii) There has not been an agreement by the Company to do any of the foregoing.

**Section 2.9 No Undisclosed Liabilities.** Except as listed on Schedule 2.9, to Seller’s knowledge, the Company has no material liabilities or obligations, whether accrued, absolute, contingent or otherwise, except for liabilities and obligations incurred in the ordinary course of its business, including trade payables.

**Section 2.10 Litigation, Etc.** Except as listed on Schedule 2.10 hereto, the Company has no claims, lawsuits, actions, arbitrations, administrative or other proceedings pending against it and, except as listed on Schedule 2.10, to Seller’s knowledge, (i) no such matter described in the previous sentence is threatened and there is no basis for any such action; and (ii) there are no

governmental or administrative investigations or inquiries pending that involve the Company. Except as listed on Schedule 2.10, there are no current judgments against or consent decrees binding on the Company, its assets, or, to Seller's knowledge, any licensed professionals of the Company.

**Section 2.11 Personal Property.**

2.11-1 The Company (i) has good and valid title to all of the personal and mixed, tangible and intangible property, rights and assets which it purports to own, including all the personal property and assets reflected in the Financial Statements; and (ii) owns such rights, assets and personal property free and clear of all liens, encumbrances or restrictions of any nature whatsoever (except for Permitted Liens). All of the assets of the Company, whether owned or leased, are in the possession and control of the Company and are located at the Company's current operating location.

2.11-2 The Company's assets (including all buildings and improvements in connection therewith) are in good operating condition and repair, ordinary wear and tear excepted, and such assets include all rights, properties, interests in properties, and assets necessary to continue operation of the Company after the Closing as presently conducted.

**Section 2.12 Employment and Labor Matters.**

2.12-1 To Seller's knowledge, the Company is in compliance in all material respects with all applicable laws respecting employment and employment practices, terms and conditions of employment, wages and hours, occupational safety and health, including laws concerning unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, and the employment of non-resident aliens under the Immigration Reform and Control Act of 1986.

2.12-2 Except as disclosed on Schedule 2.12-2, to Seller's knowledge,

- (i) There are no charges, governmental audits, investigations, administrative proceedings or complaints concerning the Company's employment practices pending or threatened before any federal, state or local agency or court that could reasonably be expected to have a material adverse effect on the operation of the Company, financial or otherwise, and, to the knowledge of Seller, no basis for any such matter exists;
- (ii) There are no inquiries, investigations or monitoring of activities of any licensed, registered, or certified professional personnel employed by, credentialed or privileged by, or otherwise affiliated with the Company pending or threatened by any state professional board or agency charged with regulating the professional activities of health care practitioners;
- (iii) The Company is not a party to any union or collective bargaining agreement, and no union attempts to organize the employees of the Company has been made, nor are any such attempts now threatened; and

- (iv) The Company has not experienced any organized slowdown, work interruption, strike, or work stoppage by its employees.

2.12-3 To Seller's knowledge, the Company has complied with any and all applicable federal and state employment tax obligations and other fees, if any, and the Company has paid all unemployment taxes and any interest due thereunder.

**Section 2.13 Employee Benefit Matters.**

2.13-1 The Company maintains no employee pension benefit plans.

2.13-2 The Company maintains no employee welfare benefit plans.

2.13-3 The Company maintains no compensation programs and/or employment arrangements (including but not limited to, any written or unwritten incentive compensation, fringe benefit, payroll or employment practice, bonus, severance, sick pay, salary continuation, deferred compensation, supplemental executive compensation plans, employment agreements and consulting agreements for the benefit of their officers, directors, employees, former employees, or independent contractors).

2.13-4 Neither the Company nor any ERISA Affiliate contributes or has contributed within the last five (5) years to any multi-employer plan, as defined by Section 3(37) of ERISA. "ERISA Affiliate" means, with respect to the Company, any other person that, together with the Company, would be treated as a single employer under Internal Revenue Service Code Section 414.

**Section 2.14 Taxes.**

2.14-1 The Company has timely filed all tax returns that it was required to file. All such tax returns were correct and complete in all material respects. All taxes owed by the Company (whether or not shown or required to be shown on any tax return) have been paid. The Company currently is not the beneficiary of any extension of time within which to file any tax return. No claim has ever been made by an authority in a jurisdiction where the Company does not file tax returns that it is or may be subject to taxation by that jurisdiction. There are no liens on any of the Assets that arose in connection with any failure (or alleged failure) to pay any tax.

2.14-2 The Company has withheld and paid all taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, member, or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

2.14-3 The Company does not expect, and no members, managers, or officers (or employee responsible for tax matters) of the Company expect, any authority to assess any additional taxes for any period for which tax returns have been filed. To the Company's knowledge, there is no dispute or claim concerning any tax liability of the Company either (A)

claimed or raised by any authority in writing or (B) as to which any Physician, Seller, and the manager or officers, if any (and employees responsible for tax matters), of the Company has knowledge based upon personal contact with any agent of such authority. No tax returns of the Company are currently the subject of audit.

**Section 2.15 Statements True and Correct.** No representation or warranty made herein by the Company or Seller, nor in any statement, certificate or instrument to be furnished to Buyer pursuant to this Agreement, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make these statements contained herein and therein not misleading.

### ARTICLE III

#### **REPRESENTATIONS AND WARRANTIES OF BUYER**

For purposes of this Article III, the phrase “to Buyer’s knowledge” means the knowledge of Janette Edwards after due inquiry. Buyer hereby represents and warrants to Seller as follows:

**Section 3.1 Organization, Authority and Capacity.** Buyer is a Connecticut nonstock corporation, duly organized, validly existing and in good standing under the laws of the State of Connecticut. Buyer has the full power and authority necessary to (i) execute, deliver and perform its obligations under this Agreement to be executed and delivered by them; and (ii) carry on its business as it has been and is now being conducted and to own and lease the properties and assets which it now owns or leases.

**Section 3.2 Authorization and Validity.** The execution, delivery and performance of this Agreement and the agreements and transactions contemplated hereby have been duly authorized by all necessary actions by Buyer. This Agreement constitutes the legal, valid and binding obligations of Buyer, enforceable in accordance with its respective terms.

**Section 3.3 Absence of Conflicting Agreements or Required Consents.** The execution, delivery and performance by Buyer of this Agreement: (i) does not require the consent of or notice to any governmental or regulatory authority or any other third party; (ii) will not conflict with any provision of Buyer’s governing documents; (iii) will not, in any material respect, conflict with or result in a violation of any law, ordinance, regulation, ruling, judgment, order or injunction of any court or governmental instrumentality to which Buyer is a party or by which Buyer is bound; (iv) will not, in any material respect, conflict with, constitute grounds for termination of, result in a breach of, constitute a default under, require any notice under, or accelerate or permit the acceleration of any performance required by the terms of any agreement, instrument, license or permit to which Buyer is a party; and (v) will not create any lien, encumbrance or restriction upon any of the assets of Buyer.

**Section 3.4 Litigation and Claims.** There are no claims, lawsuits, actions, arbitrations, administrative or other proceedings, governmental investigations or inquiries pending or, to the knowledge of Buyer, threatened against Buyer which could (i) affect the performance by Buyer of its obligations under this Agreement; or (ii) materially and adversely

affect the condition of Buyer (financially or otherwise), and, to the knowledge of Buyer, there is no basis for any such action or any state of facts or occurrence of any event which might give rise to the foregoing.

**Section 3.5 Compliance with Legal Requirements.** Buyer is currently in compliance in all material respects with all applicable legal requirements. Buyer has not received any notice or any communication from any governmental authority regarding any actual or possible violation of, or failure to comply with, any legal requirement.

**Section 3.6 Brokers' and Finders' Fees.** Neither Buyer nor anyone acting on behalf of Buyer has done anything to cause or incur any liability to any party for any brokers' or finders' fees or the like in connection with this Agreement or any transaction contemplated hereby.

**Section 3.7 Statements True and Correct.** No representation or warranty made herein by Buyer, nor in any statement, certificate or instrument to be furnished to Seller pursuant to this Agreement, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make these statements contained herein and therein not misleading.

## ARTICLE IV

### OTHER AGREEMENTS

**Section 4.1 Pre-Closing.** The Parties agree as follows with respect to the period between (i) the execution of this Agreement and (ii) the earlier of the Closing or the termination of this Agreement.

4.1-1 *General.* Each of the Parties will use its commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Articles V and VI below).

4.1-2 *Notices and Consents.* The Company will give any required notices to third parties and use commercially reasonable efforts to obtain any necessary third party consents. Buyer will use commercially reasonable efforts to obtain a Certificate of Need to acquire the Purchased Membership Interest by July 1, 2017. Each of the Parties will give any notices to, make any filings with, and use its commercially reasonable efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies required to consummate this transaction. Seller will, and will cause the Company to, cooperate with Buyer regarding Certificate of Need or licensure filings with the State of Connecticut.

4.1-3 *Operation of Business.* Seller will not cause or permit the Company to engage in any practice, take any action, or enter into any transaction outside the ordinary course of business except as otherwise approved by the Buyer in writing (which approval will not be unreasonably withhold, conditioned or delayed). Without limiting the generality of the foregoing, Seller will not cause or permit the Company to sell, assign, or transfer any of its membership interests from

the Execution Date of this Agreement through Closing or merge or consolidate or agree to merge or consolidate with or into any other entity; provided, however, that the admission of other individuals or entities as members of the Company shall be subject to the prior written consent of Buyer, which consent will not be unreasonably withheld, conditioned or delayed.

4.1-4 *Preservation of Business.* Seller will use its commercially reasonable efforts to cause the Company to keep its business and properties substantially intact, including its present operations, physical facilities, working conditions, insurance policies, and relationships with lessors, licensors, suppliers, customers, and employees.

4.1-5 *Distributions.* Other than in the ordinary course of business or as provided in Section 4.2-3, the Company will not make any cash distributions to the Seller which would result in the aggregate cash of the Company as of Closing in its various bank or depository accounts being less than Two Hundred Ninety-One Thousand Two Hundred Thirty-One and 00/100 Dollars (\$291,231.00).

4.1-6 *Full Access.* Seller will permit, and Seller will cause the Company to permit, representatives of Buyer (including legal counsel and accountants) to have access at reasonable times and in a manner so as not to interfere with the normal business operations of the Company, each as approved by Seller in advance, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to the Company. For any meetings with personnel or clients, Seller shall organize such meetings and a representative of Seller shall be present for such meetings.

4.1-7 *Notice of Developments.* Each Party will give prompt written notice to the others of any material adverse development causing a breach of any of his, her, or its representations and warranties in Article II or III above. No disclosure by any Party pursuant to this Section 4.1-7, however, shall be deemed to amend or supplement any schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant unless the other Parties to this Agreement agree to such amendment or supplement or waive such breach in writing.

4.1-8 *Exclusivity.* Seller will not, and will not cause or permit the Company to: (i) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to the acquisition of any membership interest, or any substantial portion of the assets, of the Company (including any acquisition structured as a merger, or consolidation), with the exception of the purchase of minority membership interests in the Company by Sepehr Sajjad, M.D.; or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any person to do or seek any of the foregoing. Seller will not vote in favor of any such acquisition. Seller will notify Buyer immediately if any person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

4.1-9 *Tax Matters.* Without the prior written consent of Buyer, the Company shall not make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended tax return, enter into any closing agreement, settle any tax claim or assessment relating to the Company, surrender any right to claim a refund of taxes,

consent to any extension or waiver of the limitation period applicable to any tax claim or assessment relating to the Company, or take any other similar action relating to the filing of any tax return or the payment of any tax, if such election, adoption, change, amendment, agreement, settlement, surrender, consent or other action would have the effect of increasing the tax liability of the Company for any period ending after the Closing or decreasing any tax attribute of the Company existing on the Closing.

#### **Section 4.2   Pre and Post-Closing Agreements.**

4.2-1 *General.* In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under Article VII below).

4.2-2 *Litigation Support.* In the event and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing involving the Company, each of the other Parties will cooperate with him, her, or it and his, her, or its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under Article VII below).

4.2-3 *Net Cash Payment and Accounts Receivable/Payable.* Immediately prior to the Closing, the Company shall distribute to Seller an aggregate amount equal to Seller's good faith estimate of the excess (if any) of (i) the aggregate cash of the Company as of the Closing in its various bank or depository accounts *in excess of* (ii) Two Hundred Ninety-One Thousand Two Hundred Thirty-One and 00/100 Dollars (\$291,231.00) in cash in the Company's various bank or depository accounts for the purpose of the continuous operation of the Company. The Parties agree that all (i) accounts receivable of the Company for services rendered prior to the Closing, but which may not yet be collected, and (ii) current trade payables (i.e., those payables which arose in the normal course of business prior to the Closing Date, and would not have been paid in the normal course of business consistent with the Company's historical practices prior to the Effective Date), shall be retained by the Company as part of the continuous operation of the business; provided, however, the Parties acknowledge and agree that the Company retains all of its liabilities as of the Closing and this section is not intended to transfer such liabilities to the Seller and the Seller is not assuming any of those Company liabilities.

4.2-4 *Non-Competition.* As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, neither Seller, the Physicians, nor any Affiliate of Seller will, for a period of five (5) years following the Closing Date, without the prior written consent of Buyer (such consent will be in Buyer's sole and absolute discretion), directly or indirectly, construct, invest in, have a financial interest in, own, manage, operate, control or

participate in the ownership, management, operation or control of, any “Competing Business” within the “Seller Business Service Area”. For the purposes of this Section 4.2-4, “Affiliate” means any Person directly or indirectly controlled by Seller, CSA, and their Affiliates. A “Person” shall mean any natural person, partnership, corporation, limited liability company, association, trust or other legal entity. For purposes of this Agreement, the term “Competing Business” means the ownership of an ambulatory surgery center and the term “Seller Business Service Area” shall mean the area within a fifteen (15) mile radius of the Facility.

Seller acknowledges that the restrictive covenants contained herein have unique value to Buyer, the breach of which cannot be adequately compensated in an action of law. Seller further agrees that: (i) the restrictive covenants contained Section 4.2-4 herein are enforceable by Buyer, and (ii) in the event of the breach of the restrictive covenants contained herein, Buyer shall be entitled to seek to obtain appropriate equitable relief, including, without limitation, a permanent injunction or similar court order enjoining Seller from violating any of such provisions, and that pending the hearing and the decision on the application for permanent equitable relief, Buyer shall be entitled to seek a temporary restraining order and a preliminary injunction. The prevailing party shall be entitled to reimbursement from the other party of its reasonable costs and expenses (including attorneys’ fees and disbursements) of, or related to, such action or proceeding. No such remedy shall be construed to be the exclusive remedy of Buyer and any and all such remedies shall be held and construed to be cumulative and not exclusive of any rights or remedies, whether at law or in equity, otherwise available under the terms of this Agreement, at common law, or under federal, state or local statutes, rules and regulations.

In addition, Seller agrees to obtain an agreement (each a “**Seller Members Non-Compete Agreement**”) from each Person who, as of the Closing, is a stockholder or a member of Seller with a right to receive distributions from the profit of the Seller (“**Person Subject to the Noncompetition Provision**”), including, without limitation, the Physicians, to be bound by the provisions of this Section 4.2-4 and that the Buyer shall be a third party beneficiary to such Seller Members Non-Compete Agreements with independent rights to enforce the non-compete provisions contained in the Seller Members Non-Compete Agreements. A Seller Members Non-Compete Agreement for each Person Subject to the Noncompetition Provision as of Closing shall be delivered to Buyer at Closing. In addition, if Seller adds any new Person Subject to the Noncompetition Provision, then the Seller shall obtain and deliver to Buyer a Seller Members Non-Compete Agreement as of the date each new Person Subject to the Noncompetition Provision obtains its ownership in Seller.

## ARTICLE V

### CONDITIONS TO OBLIGATIONS OF BUYER

The obligation of Buyer to consummate the transaction contemplated herein is subject to the satisfaction at or before Closing of each of the following conditions (or waiver of such condition by Buyer in writing):

- (i) The representations and warranties set forth in Article II above shall be true and

correct in all material respects at and as of the Closing, except to the extent that such representations and warranties are qualified by terms such as "material" and "material adverse effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing;

(ii) Seller shall have performed and complied with all of the covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by terms such as "material" and "material adverse effect," in which case Seller shall have performed and complied with all of such covenants in all respects through the Closing;

(iii) No action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect adversely the right of Buyer to own the Purchased Membership Interest, or (D) affect adversely the right of the Company to own its assets and to operate its business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(iv) Seller shall have delivered to Buyer a certificate to the effect that each of the conditions specified above in Article V(i)-(iii) is satisfied in all respects;

(v) Buyer shall have received approval from the Office of Health Care Access for the Certificate of Need to acquire an ownership interest in the Facility and the Company shall have received approval from AAAHC related to the acquisition of the ownership interest in the Facility by Buyer;

(vi) Buyer shall have completed its ninety (90) day due diligence with respect to the purchase of the Purchased Membership Interest in the Company without terminating this Agreement pursuant to Section 8.1-2;

(vii) All actions to be taken by the Seller in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby shall be reasonably satisfactory in form and substance to Buyer;

(viii) Seller shall have delivered to Buyer a copy of the Amended and Restated Operating Agreement executed by Seller and Owners substantially in the form attached hereto as Exhibit 5(viii) ("**Amended and Restated Operating Agreement**");

(ix) Seller shall have delivered to Buyer a certificate of an officer or member of the Company and Seller, respectively, dated as of the Closing, in form and substance reasonably satisfactory to Buyer, as to any resolutions of the members or other authorizing body of the Company and Seller relating to this Agreement and transactions contemplated hereby;

(x) Between the date of this Agreement and the Closing there shall not have occurred any damage, destruction, or loss, whether or not covered by insurance, which has had or would reasonably be expected to have a material adverse effect on the business of the Facility, nor shall there have occurred any other event or condition which has had or which reasonably would be expected to have a material adverse effect on the results of operations, condition (financial or otherwise), or business of the Company, including, but not limited to the occurrence of a “reportable event” as described above in Section 2.6. Seller shall promptly reveal to Buyer any such events, incidents, or situations of which it has actual knowledge prior to Closing;

(xi) As of the Closing, the Company will have at least Two Hundred Ninety-One Thousand Two Hundred Thirty-One and 00/100 Dollars (\$291,231.00) in cash reserves;

(xii) Seller shall have delivered to Buyer a copy of each required Seller Members Non-Compete Agreement as attached as Exhibit 5(xii);

(xiii) Buyer shall have obtained the approval of the applicable Board of Trustees or their designee with respect to the transactions contemplated by this Agreement; provided, however, that Buyer shall be obligated to seek such approval within forty-five (45) days of completing its due diligence;

(xiv) To the extent required by the Company’s loan documents with Dime Bank, Dime Bank shall have approved Buyer as a majority owner and proportional guarantor of that certain loan in the principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) by Dime Bank to the Company; and

(xv) Seller shall have delivered to Buyer a copy of the Management Services Agreement executed by CSA substantially in the form attached hereto as Exhibit 5(xv) (“**Management Services Agreement**”);

Each Exhibit and Schedule to this Agreement shall be considered a part hereof as if set forth herein in full. Each Exhibit and Schedule hereto shall be updated by Seller or Buyer and such updated shall be subject to reasonable approval by Buyer as of Closing. Notwithstanding any other provision herein to the contrary, all Exhibit and Schedules or other instruments provided for herein and not delivered at the time of execution of this Agreement or that are incomplete at the time of execution of this Agreement shall be delivered or completed as soon as practicable, in any event on or prior to the Closing; and it shall be deemed a condition precedent to Closing hereunder that each such updated or completed Exhibit, Schedule, or other instrument shall meet with the approval of Buyer (which approval shall not be unreasonably denied), provided that once an Exhibit, Schedule, or other instrument is approved by Buyer, Buyer shall not thereafter be allowed to disapprove such Exhibit or Schedule.

## ARTICLE VI

### CONDITIONS TO OBLIGATIONS OF SELLER

The obligation of Seller to consummate the transaction contemplated herein is subject to satisfaction at or before the Closing of the following conditions (or waiver of such conditions by Seller in writing):

(i) The representations and warranties set forth in Article III above shall be true and correct in all material respects at and as of the Closing, except to the extent that such representations and warranties are qualified by terms such as "material" and "material adverse effect," in which case such representations and warranties shall be true and correct in all respects at and as of the Closing;

(ii) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing, except to the extent that such covenants are qualified by terms such as "material," in which case Buyer shall have performed and complied with all of such covenants in all respects through the Closing;

(iii) No action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement or (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

(iv) Buyer shall have delivered to Seller a certificate to the effect that each of the conditions specified above in Article VI(i)-(iii) is satisfied in all respects;

(v) All actions to be taken by Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Seller;

(vi) Buyer shall have received approval from the Office of Health Care Access for the Certificate of Need to acquire an ownership interest in the Facility and the Company shall have received approval from AAAHC related to the acquisition of the ownership interest in the Facility by Buyer;

(vii) Buyer shall have delivered an executed copy of the Amended and Restated Operating Agreement signed by the Buyer;

(viii) To the extent required by the Company's loan documents with Dime Bank, Dime Bank shall have approved Buyer as a majority owner and proportional guarantor of that certain loan in the principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) by Dime Bank to the Company; and

(ix) Buyer shall have delivered an executed copy of the Management Services Agreement signed by the Company.

## ARTICLE VII

### INDEMNIFICATION

**Section 7.1 Survival of Representations and Warranties.** All of the representations and warranties of the Parties contained in this Agreement shall survive the Closing hereunder and continue in full force and effect for twelve (12) months thereafter (subject to any shorter applicable statutes of limitations) except for the representations and warranties set forth in Sections 2.1-1, 2.1-2, 2.1-5, 3.1 and 3.2 which representations and warranties shall survive forever.

**Section 7.2 Indemnification Provisions for Buyer's Benefit.** Seller shall indemnify, defend, and hold harmless Buyer, its members, directors, officers, agents, successors, and assigns ("**Buyer Indemnitees**"), against any and all loss, injury, diminution in value, liability, claim, damage, or expense (including, without limitation, reasonable attorney fees), interest, court costs, and amounts paid in settlement of claims by third parties ("**Losses**") suffered or incurred by any Buyer Indemnitee resulting from, arising out of, or relating to: (i) subject to Section 7.1, any material breach of its obligations, covenants, representations, or warranties contained herein; (ii) any lawsuit, claim, proceeding, or liability of any nature relating to the Company or its business, or the Facility, arising out of an action, transaction, event, or the like occurring prior to the Closing; or (iii) the intentional or willful misrepresentations of material facts that constitute common law fraud under applicable law or criminal actions. In the event any Buyer Indemnitee has a right to indemnification against Seller under this Section 7.2, and there are insufficient funds remaining of the Escrow Reserve, then the Owners, severally and not jointly, will be responsible for any such indemnification; provided, however, that (a) with respect to any particular claim for indemnification, the liability of any individual Owner may never exceed such Owner's pro rata share (based on such Owner's ownership percentage in Seller as of the Closing Date) of the total Losses subject to such claim, and (b) except for Losses related to fraud, criminal actions, or intentional misrepresentations, in which case the liability of Seller shall be unlimited, no individual Owner's liability may exceed in the aggregate such Owner's pro rata share of the Purchase Price (based on such Owner's ownership percentage in Seller as of the Closing Date).

**Section 7.3 Indemnification Provisions for Seller's Benefit.** Buyer shall indemnify, defend, and hold harmless Seller, its members, directors, agents, successors, and assigns ("**Seller Indemnitees**"), against any and all Losses suffered or incurred by any Seller Indemnitee resulting from or arising out of any material breach of any of its obligations, covenants, representations, or warranties contained herein. Except for Losses related to fraud, criminal actions, or intentional misrepresentations, in which case the liability of Buyer shall be unlimited, Buyer's aggregate liability for indemnification of Losses under this Section 7.3 may not exceed the aggregate purchase price set forth in Section 1.2.

**Section 7.4 Indemnification Provisions as Sole and Exclusive Remedy.** The sole remedy of each Party hereunder for any and all claims for monetary damages (other than claims arising from fraud or intentional misrepresentation on the part of a Party hereto in connection

with the transactions contemplated by this Agreement) with respect to the transactions contemplated by this Agreement shall be the indemnity set forth in Section 7.2 and 7.3 above, and neither Buyer nor Seller will have any other entitlement, remedy, or recourse, whether in contract, tort, or otherwise, against the other Parties with respect to the transactions contemplated by this Agreement, all of such remedies, entitlements, and recourse being expressly waived by the Parties hereto to the fullest extent permitted by law. Notwithstanding the foregoing, nothing in this Section 7.4 shall limit any Party's right to seek and obtain any equitable relief to which any Party shall be entitled (including, without limitation, obtaining payment for reasonable attorney fees associated with the enforcement of this Agreement). Furthermore, nothing in this Section 7.4 shall limit the allocation of Seller's future profit to Buyer pursuant to the terms and conditions of Section 9.06(d) of the Amended and Restated Operating Agreement. Seller, on behalf of itself and its members, hereby agrees that it and its members will not make any claim for indemnification against the Company by reason of the fact that it was a director, officer, employee, or agent of any such entity or was serving at the request of such entity as a partner, trustee, director, officer, employee, or agent of another entity (whether such claim is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses, or otherwise and whether such claim is pursuant to any statute, charter document, bylaw, agreement, or otherwise) with respect to any action, suit, proceeding, complaint, claim, or demand brought by Buyer against Seller or its members (whether such action, suit, proceeding, complaint, claim, or demand is pursuant to this Agreement, applicable law, or otherwise). Buyer acknowledges that it has had the opportunity to conduct due diligence and investigation with respect to the Company, and in no event shall Seller have any liability to Buyer with respect to a breach of representation, warranty, covenant, or obligation under this Agreement to the extent that Buyer knew of such breach as of the completion of its due diligence period.

**Section 7.5 Survival.** Except as set forth in Section 7.1, this Article VII will survive the Closing without limitation.

## ARTICLE VIII

### TERMINATION

**Section 8-1 Termination of Agreement.** The Parties may terminate this Agreement as provided below:

8.1-1 Buyer and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing;

8.1-2 Buyer may terminate this Agreement by giving written notice to Seller on or before the ninetieth (90th) day following the Execution Date of this Agreement if Buyer, in its sole discretion, is not satisfied with the results of its business, legal, accounting, and any other due diligence regarding the Company, Facility, or Seller;

8.1-3 Buyer may terminate this Agreement by giving written notice to Seller if Buyer is unable to obtain Certificate of Need approval from the Office of Health Care Access from the State of Connecticut;

8.1-4 Buyer may terminate this Agreement by giving written notice to Seller at any time prior to the Closing (A) in the event Seller has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Buyer has notified Seller of the breach, and the breach has continued without cure for a period of thirty (30) days after the notice of breach; (B) in the event any update to the Schedules or instruments pursuant to Article V is deemed unacceptable by Buyer in its reasonable discretion; or (C) if the Closing shall not have occurred on or before July 1, 2017, by reason of the failure of any condition precedent under Article V hereof (unless the failure results primarily from Buyer itself breaching any representation, warranty, or covenant contained in this Agreement);

8.1-5 Seller may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing (A) in the event Buyer has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, Seller has notified Buyer of the breach, and the breach has continued without cure for a period of thirty (30) days after the notice of breach or (B) if the Closing shall not have occurred on or before July 1, 2017, by reason of the failure of any condition precedent under Article VI hereof (unless the failure results primarily from Seller breaching any representation, warranty, or covenant contained in this Agreement); and

8.1-6 Either Buyer or Seller may terminate this Agreement if the Closing has not occurred by July 1, 2017 by providing written notice to the other Party.

If any Party terminates this Agreement pursuant to Section 8.1 above, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any liability of any Party then in breach and any liabilities and obligations that expressly survive the Closing pursuant to this Agreement).

**Section 8.2** **Default and Remedy.** In the event that either Party fails to perform such Party's respective obligations set forth herein (except as excused by the other's default), the Party claiming default shall make written demand for performance. If the Seller fails to comply with such written demand within thirty (30) days after receipt thereof, the Buyer will have the option to waive such default, demand and sue for specific performance, sue for damages, or to terminate this Agreement. If the Buyer fails to comply with such written demand within thirty (30) days after receipt thereof, the Seller will have the option to waive such default, demand and sue for specific performance, sue for damages, or terminate this Agreement.

## ARTICLE IX

### **MISCELLANEOUS PROVISIONS**

**Section 9.1** **Notices.** Any notice sent in accordance with the provisions of this Section 9.1 shall be deemed to have been received (even if delivery is refused or unclaimed) on the date which is (i) three (3) days after the date of proper posting, if sent by certified U.S. mail or by Express U.S. mail or private overnight courier; or (ii) the date on which sent, if sent by facsimile transmission, with confirmation and with the original to be sent by certified U.S. mail, addressed

as follows:

**If to Seller:**

CSCE Holdings, LLC  
c/o Constitution Surgery Center East, LLC  
174 Cross Road  
Waterford, Connecticut 06385  
Attention: Kristian M. Mineau, Manager

**If to Buyer:**

The William W. Backus Hospital  
c/o Hartford HealthCare  
1 State Street, Suite 19  
Hartford, Connecticut 06103  
Attention: Janette Edwards, Vice President Operational Integration

with a copy to:

The William W. Backus Hospital  
c/o Hartford HealthCare  
1 State Street, Suite 19  
Hartford, Connecticut 06103  
Attn: Margaret Marchak, Senior Vice President and Chief Legal Officer

Any Party hereto may change its address specified for notices herein by designating a new address by notice in accordance with Section 9.1.

**Section 9.2 Expenses.** Each of the Parties hereto shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder.

**Section 9.3 Further Assurances.** Each Party covenants that at any time, and from time to time, after the Closing, it will execute such additional instruments and take such actions as may be reasonably requested by the other Parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

**Section 9.4 Waiver.** Any failure on the part of any Party to comply with any of its obligations, agreements or conditions hereunder may be waived by any other Party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

**Section 9.5 Assignment.** This Agreement shall not be assignable by any of the Parties hereto without the written consent of all other Parties; provided, however, that Buyer may assign

its rights and obligations under this Agreement without the consent of Seller to any direct or indirect subsidiary or affiliate of Buyer. No such assignment shall relieve Buyer of its obligations hereunder.

**Section 9.6 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns. This Agreement shall survive the Closing and not be merged therein.

**Section 9.7 Headings.** The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement.

**Section 9.8 Entire Agreement.** All Schedules and Exhibits attached to this Agreement are by reference made a part hereof. This Agreement and the Exhibits, Schedules, certificates and other documents delivered pursuant hereto or incorporated herein by reference, contain and constitute the entire agreement among the Parties and supersede and cancel any prior agreements, representations, warranties, or communications, whether oral or written, among the Parties relating to the transactions contemplated by this Agreement. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the Party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

**Section 9.9 Governing Law, Severability.** This Agreement shall be governed by and construed in accordance with the Laws of the State of Connecticut. The provisions of this Agreement are severable and the invalidity of one or more of the provisions herein shall not have any effect upon the validity or enforceability of any other provision.

**Section 9.10 Counterparts.** 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 instrument.

[Signatures on next page]

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed on its behalf as of the day and year first above written.

**SELLER**

CSCE HOLDINGS, LLC

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

**OWNERS**

CONSTITUTION SURGERY ALLIANCE, LLC

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

By: \_\_\_\_\_  
Name: Ammar Anbari, M.D.

By: \_\_\_\_\_  
Name: Anthony Barri, M.D.

By: \_\_\_\_\_  
Name: William Cambridge, M.D.

By: \_\_\_\_\_  
Name: Steven Carlow, M.D.

By: \_\_\_\_\_  
Name: Kevin Cranmer, M.D.

By: \_\_\_\_\_  
Name: Francis Falck, M.D.

By: \_\_\_\_\_  
Name: Daniel Gaccione, M.D.

By: \_\_\_\_\_  
Name: John Giacchetto, M.D.

By: \_\_\_\_\_  
Name: Michael Halperin, M.D.

By: \_\_\_\_\_  
Name: Jeffrey Hertz, M.D.

By: \_\_\_\_\_  
Name: Lior Hiam, M.D.

By: \_\_\_\_\_  
Name: John Hornby, M.D.

By: \_\_\_\_\_  
Name: Christopher Hutchins, M.D.

By: \_\_\_\_\_  
Name: Tarik Kardestuncer, M.D.

By: \_\_\_\_\_  
Name: Peter McKay, M.D.

By: \_\_\_\_\_  
Name: Jeffrey Miller, M.D.

By: \_\_\_\_\_  
Name: Prior Parker, M.D.

By: \_\_\_\_\_  
Name: Anish Shah, M.D.

By: \_\_\_\_\_  
Name: Ronald Slocumb, M.D.

By: \_\_\_\_\_  
Name: Stephen Wei, M.D.

**BUYER**

THE WILLIAM W. BACKUS HOSPITAL

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

**COMPANY**

CONSTITUTION SURGERY CENTER EAST, LLC

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

**EXHIBIT 1.2-2**

**ESCROW AGREEMENT**

**EXHIBIT 5(viii)**

**AMENDED AND RESTATED OPERATING AGREEMENT**

**EXHIBIT 5(xii)**

**SELLER MEMBERS NON COMPETE AGREEMENT**

**EXHIBIT 5(xv)**

**MANAGEMENT SERVICES AGREEMENT**

**AMENDED AND RESTATED OPERATING AGREEMENT  
CONSTITUTION SURGERY CENTER EAST, LLC**

**A CONNECTICUT LIMITED LIABILITY COMPANY DATED AS OF**

**[ \_\_\_\_\_ ] [ ], 201[ ]**

**Amended and Restated Operating Agreement of Constitution Surgery Center East, LLC**

**Table of Contents**

ARTICLE I	ORGANIZATION OF THE COMPANY .....	1
1.01	Organization.....	1
1.02	Name of the Company .....	2
1.03	Principal Place of Business.....	2
1.04	Statutory Agent .....	2
1.05	Term.....	2
1.06	Purposes .....	2
1.07	Tax-Exempt Organization Limitations .....	3
1.08	Independent Medical Judgment .....	3
ARTICLE II	MEMBERS AND MEMBER REPRESENTATIVES .....	4
2.01	Members .....	4
2.02	Member Representations .....	4
2.03	Member Representatives.....	6
ARTICLE III	CONTRIBUTIONS AND CAPITAL ACCOUNTS .....	6
3.01	Initial Capital Contributions .....	6
3.02	Additional Capital Contributions.....	6
3.03	Capital Contribution Defaults .....	7
3.04	Interest on and Return of Capital Contributions.....	7
3.05	Form of Return of Capital Contributions.....	7
3.06	Capital Accounts.....	7
3.07	Loans to the Company .....	7
ARTICLE IV	MEMBER MEETINGS .....	8
4.01	Meetings.....	8
4.02	Place of Meetings.....	8
4.03	Notice of Meetings.....	8
4.04	Meeting of All Members.....	8
4.05	Record Date .....	8
4.06	Manner of Acting.....	8
4.07	Proxies.....	9
4.08	Action by Members Without a Meeting .....	9
4.09	Waiver of Notice.....	9
ARTICLE V	RIGHTS, DUTIES AND OBLIGATIONS OF MEMBERS.....	9
5.01	Limitation of Liability.....	9
5.02	Liability for Company Debt.....	9
5.03	Member Duties.....	10
5.04	Limitation on Authority of Members.....	10

5.05	Transactions with Members.....	10
5.06	Restrictive Covenants .....	10
ARTICLE VI RIGHTS AND DUTIES OF MANAGEMENT COMMITTEE .....		13
6.01	Management Committee.....	13
6.02	Powers of Management Committee.....	14
6.03	Management of Outpatient Surgery Center .....	15
6.04	Extraordinary Transactions.....	16
6.05	Term of Managers.....	17
6.06	Resignation of Manager.....	17
6.07	Removal of Manager.....	17
6.08	Vacancies .....	17
6.09	Manner of Acting.....	18
6.10	Duties of Managers .....	19
6.11	Liability of Managers.....	19
6.12	Indemnity of Managers.....	19
6.13	Reliance upon Third Parties.....	19
6.14	Compensation .....	19
ARTICLE VII OFFICERS OF THE COMPANY .....		20
7.01	General.....	20
7.02	Authority and Duties.....	20
7.03	Election and Term of Office .....	20
7.04	Removal .....	20
7.05	Resignations.....	20
7.06	Vacancies .....	21
7.07	Medical Director .....	21
7.08	Chairman.....	21
7.09	President.....	21
7.10	Vice President .....	21
7.11	Treasurer .....	21
7.12	Secretary .....	22
7.13	Other Assistants and Acting Officers .....	22
ARTICLE VIII MEDICAL STAFF .....		22
8.01	Medical Staff.....	22
8.02	Medical Staff Bylaws.....	22
8.03	Staff Status; Privileges; Corrective Action.....	23
8.04	Management Committee Exclusive Appointing Authority .....	23
ARTICLE IX ALLOCATION OF PROFIT AND LOSS AND DISTRIBUTIONS.....		23
9.01	Distributions.....	23
9.02	Allocation of Profit and Loss.....	24
9.03	Regulatory Allocations .....	25

9.04	Contributed Property and Book-ups .....	27
9.05	General .....	27
9.06	Certain Special Allocations.....	28
ARTICLE X	BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS .....	29
10.01	Bank Accounts .....	29
10.02	Books and Records .....	29
10.03	Annual Accounting Period.....	31
10.04	Accounting.....	31
10.05	Returns and Other Elections .....	31
10.06	Tax Matters Partner.....	31
10.07	Title to Company Property.....	32
ARTICLE XI	ASSIGNMENTS.....	32
11.01	Transfers .....	32
11.02	Transfers to Affiliates .....	32
11.03	Transfers to Third Parties.....	32
11.04	Right of First Offer .....	33
11.05	Tag-Along Rights.....	35
11.06	Reasonableness of Restrictions.....	36
ARTICLE XII	RIGHT TO BUY OR SELL .....	36
12.01	Shotgun Rights.....	36
12.02	Shotgun Notice.....	37
12.03	Response .....	37
12.04	Shotgun Value.....	37
12.05	Deposit .....	38
12.06	Escrow Agreement.....	38
12.07	Closing Date.....	40
12.08	Default.....	41
12.09	One Percent Buy-Back.....	41
ARTICLE XIII	ADDITIONAL MEMBERS .....	42
13.01	Additional Members .....	42
13.02	Additional Owners of the Class A Member.....	43
ARTICLE XIV	WITHDRAWALS OF MEMBERS.....	43
14.01	Voluntary Withdrawal .....	43
14.02	Involuntary Withdrawal .....	44
14.03	Right to Buy Interest.....	44
14.04	Appraised Value.....	45
ARTICLE XV	DISSOLUTION AND TERMINATION.....	46
15.01	Dissolution.....	46

15.02	Winding Up and Liquidation .....	46
15.03	Distributions.....	46
15.04	Negative Capital Accounts .....	46
ARTICLE XVI DEFINITIONS.....		47
ARTICLE XVII MISCELLANEOUS PROVISIONS.....		58
17.01	Obligations of the Company .....	58
17.02	Power of Attorney.....	59
17.03	Notices .....	59
17.04	Application of Connecticut Law .....	60
17.05	Jurisdiction and Venue.....	60
17.06	Amendments .....	60
17.07	Execution of Additional Instruments.....	60
17.08	Construction.....	60
17.09	Headings .....	60
17.10	Waivers .....	61
17.11	Rights and Remedies Cumulative.....	61
17.12	Severability .....	61
17.13	Specific Performance.....	61
17.14	Successors and Assigns.....	61
17.15	Creditors.....	61
17.16	Dispute Resolution.....	61
17.17	Indemnification .....	63
17.18	Counterparts.....	64

**Exhibits**

Exhibit A Members and Percentage Interest

Exhibit B Member Representatives and Management Committee Members

**AMENDED AND RESTATED OPERATING AGREEMENT OF  
CONSTITUTION SURGERY CENTER EAST, LLC**

This Amended and Restated Operating Agreement (this "Agreement") is entered into as of this [ ] day of [ ], 201[ ] ("Effective Date"), by and among the signatories hereto.

**EXPLANATORY STATEMENT**

**WHEREAS**, the Company's most recent Third Amended and Restated Operating Agreement was adopted as of October 1, 2015; and

**WHEREAS**, the Class B Member has acquired a fifty-one (51%) percent ownership interest in the Company pursuant to a Membership Interest Purchase Agreement dated August [ ], 2016, and the Class B Member's addition to the Company would require extensive amendments to the Operating Agreement. Accordingly, the Members have determined it is in their best interest to restate the Agreement as set forth herein, with the existing Members of the Company exchanging their Membership interests in the Company in exchange for membership interests in the Class A Member; and

**WHEREAS**, the parties wish to operate the Company's facility for the provision of outpatient orthopedic and ophthalmologic surgery and related care services as contemplated by the vision of the Members, including, without limitation, creating a facility focused on providing services which are high quality, cost efficient, coordinated and collaborative, and patient centric, and as and to the extent compatible with and in furtherance of the charitable purposes of the Class B Member; and

**WHEREAS**, the Members have agreed to operate the Company consistent with the requirements of Internal Revenue Service Revenue Ruling 2004-51, 2004-22 C.B. 974, in such a manner as not to jeopardize the status of the Class B Member as an organization exempt from federal income taxation pursuant to Code Section 501(a) as an organization described in Code Section 501(c)(3) nor generate any "unrelated business taxable income" for the Class B Member as such term is used in Code Section 512(a) as a result of distributions to the Class B Member from the Company.

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties, intending legally to be bound, agree as follows:

**ARTICLE I  
ORGANIZATION OF THE COMPANY**

**1.01 Organization.**

On December 22, 1999, the Company was organized as a Connecticut limited liability company by the acceptance for filing of the Articles of Organization by the Connecticut Secretary of the State in accordance with and pursuant to the Act.

### **1.02 Name of the Company.**

The name of the Company shall be "Constitution Surgery Center East, LLC". The Company may do business under that name and under any other name or names that the Management Committee may select. If the Company does business under a name other than that set forth in its Articles of Organization, then the Company shall amend its Articles of Organization or file a trade name certificate as required by Applicable Law.

### **1.03 Principal Place of Business.**

The principal place of business and the office of the Company shall be located at and the Company's business shall be conducted from 174 Cross Road, Waterford, Connecticut 06385, until such time as Company moves to 140 Cross Road, Waterford, Connecticut 06385 and/or such other place or places as the Management Committee and the Members may determine in accordance with Section 6.04(j).

### **1.04 Statutory Agent.**

The name of the statutory agent of the Company for service of process on the Company in the State of Connecticut shall be Reid & Riege, P.C. whose address is One Financial Plaza, Suite 2100, Hartford, Connecticut 06103. The Company may change its statutory agent if it is deemed advisable by the Management Committee. If the Company changes its statutory agent, the Company shall file the name and address of the new statutory agent with the Connecticut Secretary of State as required by the Act.

### **1.05 Term.**

The existence of the Company shall be perpetual and shall continue unless and until the Company is dissolved, wound up and terminated in accordance with this Agreement.

### **1.06 Purposes.**

The purposes to be promoted or carried out by the Company shall be to engage in the following:

(a) To operate a fully licensed, certified and accredited outpatient surgical center specializing primarily in ophthalmologic and orthopedic procedures, applying best practice principles, envisioned by the Members, all in furtherance of the charitable purposes of the Class B Member by promoting health for a broad section of the community as further described in Section 1.07 and including, without limitation, a facility focused on providing services which are high quality, cost efficient, coordinated and collaborative, and patient centric; and

(b) The Members understand that the Company's and the Center's operations are subject to various state and federal laws regulating permissible relationships between the Members and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the "Fraud and Abuse Statute"), and 42 U.S.C. § 1395nn (the "Stark Act"). It is the intent of the parties that the Company operates in a manner consistent with the foregoing statutes. The Members also

acknowledge that the Stark Act, the regulations promulgated thereunder and similar Connecticut laws and regulations may restrict the Center (as presently formed) from providing “designated health services” (as defined by the Stark Act) or other services to patients referred by the Members or physician with a direct or indirect ownership or financial arrangement with the Company. The Center shall not provide “designated health services”. If, in the future, any of the services that the Center provides are deemed to be “designated health services”, such services shall be provided by the Center only if such services may be provided in compliance with one or more exceptions to the ban on self-referrals set forth in the Stark Act, the regulations promulgated thereunder, or any successor statutes and/or regulations thereto. The Company shall adopt appropriate billing policies regarding “designated health services” and shall allow any Member to audit the Company’s billing and collection activities to assure compliance with this Section 1.06(b).

(c) To engage in any other lawful act or activity for which limited liability companies may be formed under the Act consistent with the foregoing.

### **1.07 Tax-Exempt Organization Limitations.**

Notwithstanding any other provision of this Agreement:

(a) So long as The William W. Backus Hospital (or an entity owned by Hartford HealthCare Corporation which is exempt from taxation pursuant to Section 501(c)(3) of the Code) remains a Member of the Company, all acts, activities, and business carried on by the Company shall be consistent with, and in furtherance of, the charitable health care and community benefit missions and tax-exempt status under Section 501(c)(3) of the Code, of The William W. Backus Hospital, or its tax-exempt successor (the “Charitable Purposes”). The Members hereby agree and acknowledge that the foregoing duty of the Company to operate consistent with, and in furtherance of, the Charitable Purposes shall override any duty that the Company or its Member(s) may have to operate the Company for the financial benefit of any individual or for-profit Member. Accordingly, in the event of a conflict between the operation of the Company in furtherance of the Charitable Purposes, on the one hand, and any duty to maximize the Company’s profits, on the other hand, the Company, its Members and the Management Committee shall conduct the Company’s affairs in furtherance of the Charitable Purposes without regard to the consequences for maximizing the Company’s profitability.

(b) The Company shall not carry on propaganda or attempt to influence legislation, and shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of (or in opposition to) a candidate for public office.

### **1.08 Independent Medical Judgment.**

No provision of this Agreement shall limit the independent medical judgment of any participating physician with Medical Staff privileges at the Center with regard to the providing of patient care.

## ARTICLE II MEMBERS AND MEMBER REPRESENTATIVES

### 2.01 Members.

The name, present mailing address, Class of Membership Interest and Percentage Interest of each Member are set forth on Exhibit A, attached hereto, as such Exhibit A may be amended from time to time. There shall initially be three (3) authorized classes of Members of the Company: the Class A Member, Class B Member, and Class C Members. Except as otherwise specifically provided in this Agreement, all Members shall have (based on Percentage Interest held) the same economic rights. Except in the case of an action taken by the Class B Member in accordance with Sections 4.06(b), 6.09(b) and 17.06(b) of this Agreement, the Members, acting as Members, shall have no right to act for or bind the Company. Additional Members may be admitted to the Company only upon the satisfaction of the provisions of Section 13.01 herein.

### 2.02 Member Representations.

(a) Each Member represents and warrants that neither it, he or she, nor any owners of the Member: (i) has received loans for the purpose of investing in the Company from the Company, a Member or their Affiliates, or from any direct or indirect investor in the Company; (ii) has offered (and will not offer) terms for investment in the Member based upon previous, actual or expected referrals, services furnished or the amount of business otherwise generated from that owner to the Center; (iii) has or will make payment to an owner in return for the owner's investment in the Member that is not directly proportional to the owner's capital investment in the Member; and (iv) has made (and will not make) any other payments, direct or indirect, to an owner that are based, in any manner, upon the volume or value of referrals the owner has made or directed to the Center (or is expected to refer to the Center).

(b) No Person shall be eligible to become a physician owner, directly or indirectly, of the Class A Member (or remain an owner, directly or indirectly, of a Class A Member) or a Class C Member (or remain an owner, directly or indirectly, of a Class C Member) (collectively, the "Physician Member") unless the following eligibility requirements are satisfied: (i) each Physician Member shall be a physician, licensed and registered, in good standing, to practice medicine in the State of Connecticut; (ii) each Physician Member has not been barred or suspended from participation in any governmental program, including, but not limited to, the Medicare and/or Medicaid programs; (iii) each Physician Member shall derive at least one-third (1/3) of his or her medical practice income from all sources for the previous fiscal year or previous twelve (12)-month period from his or her own performance of procedures that are ambulatory surgical procedures (or surgical procedures that are required to be provided in an inpatient or outpatient hospital operating room), and, those Physician Members who provide services in the Center shall directly perform not less than one-third (1/3) of such procedures at the Center; (iv) each Physician Member shall fully inform each patient, prior to referring patients to the Center, of his or her investment interest in the Center; (v) each Physician Member shall treat patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner at the Center; (vi) if the Physician Member refers patients to the Center, such Physician Member shall maintain active privileges at the Center (and any physician subject to a Board of Managers action under the Medical Staff Bylaws that results in probation or

suspended privileges may be deemed, at the Board of Managers sole discretion, ineligible to remain a Physician Member); and (vii) under Applicable Law, such Physician Member's ownership shall not disqualify (and, without further action, would not disqualify) the Company or the Center from engaging in operations as a Medicare-certified ambulatory surgery center for any reason, or from having such Physician Member perform cases at the Center. A Physician Member who meets such requirements may be referred to herein as an "Eligible Physician Investor".

(c) Any entity which is an owner of the Class A Member or a Class C Member and has physician owners shall either be: (i) a "group practice" as defined 42 CFR 1001.952(r)(5) comprised of Eligible Physician Investors; or (ii) an entity established for the sole purposes of investing in the Class A Member or Class C Member and all physician owners shall be an Eligible Physician Investor as defined Section 2.02(b), above. Such Class A Member or Class C Member owners shall also comply with Section 2.02(a).

(d) The Class A Member represents, warrants, and covenants that, except as otherwise approved by the Class B Member, the only permitted owners of the Class A Member are and at all times shall be: (i) Eligible Physician Investors; (ii) entities satisfying the requirements of Section 2.02(c); (iii) Constitution Surgery Alliance, LLC or an Affiliate thereof ("Constitution"); or (iv) a permitted third-party transferee of Constitution in accordance with Section 2.02(e).

(e) The Class A Member represents, warrants, and covenants that, except as otherwise approved by the Class B Member, Constitution may not and will not transfer any portion of its ownership interests in the Class A Member to any person that is not an Eligible Physician Investor or an entity that satisfies the requirements of Section 2.02(c), except that Constitution may transfer all (but not less than all) of its ownership interests in the Class A Member to a third party if: (i) Constitution has provided the Eligible Physician Investor owners of the Class A Member a option to purchase Constitution's ownership interests in the Class A Member; (ii) in the event that the Eligible Physician Investor owners of the Class A Member do not exercise the option described in the preceding clause (i), Constitution and the Class A Member have provided the Class B Member an option to acquire from the Class A Member that percentage of the Class A Member's Membership Interests in the Company that is equal to the percentage of ownership interests in the Class A Member owned by Constitution, in conjunction with a simultaneous redemption by the Class A Member of Constitution's ownership interests in the Class A Member; and (iii) neither the Eligible Physician Investor owners of the Class A Member nor the Class B Member have exercised the options described in the preceding clauses (i) or (ii). With respect to the option described in the preceding clause (ii), the provision of transfer notice by Constitution and the Class A Member to the Class B Member, the manner of election by the Class B Member, the transfer closing date, the purchase price, the payment terms, and the closing shall proceed in a manner consistent with the provision and exercise of the Purchase Option described in Section 11.04, except that only the Class B Member (and not the Company or any other Member) shall have the right to exercise such option.

(f) The Class B Member represents and warrants that it: (i) will not require or inappropriately encourage employed or affiliated physicians to refer patients to the Center or any Physician Member (or physician on staff at the Center); (ii) will not track referrals made by its

employed or affiliated physicians to the Center, directly or indirectly, for inappropriate purposes, including, without limitation, determination of compensation; (iii) any compensation paid to employed or affiliated physicians will be at fair market value and will not take into account, in any manner, the volume or value of referrals to the Center or physicians on staff at the Center; (iv) will annually inform its employed and affiliated physicians of these requirements; (v) will treat patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner; and (vi) will not include any payment or cost associated with the Center on its cost report unless such costs are required to be included by a Federal health care program.

### **2.03 Member Representatives.**

Each Member of the Company, which is not an individual, shall designate in writing one Member Representative who shall be entitled to exercise all of the rights of such Member, including voting rights, set forth in this Agreement. Such Member Representative shall have the authority to act on behalf of such Member until such time that the Management Committee receives written notice from the applicable Member of the replacement of such Member Representative. Each Member Representative may also be a member of the Management Committee. The initial Member Representative of each Member is set forth in Exhibit B hereto. A Member Representative may be removed or replaced at any time, with or without cause or notice, by the Member which designated such Member Representative.

## **ARTICLE III CONTRIBUTIONS AND CAPITAL ACCOUNTS**

### **3.01 Initial Capital Contributions.**

At the time of admission of any new Member to the Company, the new Member shall be required to make a Capital Contribution to the Company in an amount determined by the Members.

### **3.02 Additional Capital Contributions.**

(a) If the Management Committee at any time, or from time to time, determines by unanimous written consent that the Company requires additional Capital, then the Management Committee shall give written notice to each Member of (i) the aggregate amount of additional Capital Contribution required, (ii) the reason the additional Capital Contribution is required, (iii) each Member's proportionate share of the aggregate additional Capital Contribution (determined in accordance with this Section), and (iv) the date each Member's additional Capital Contribution is due and payable, which date shall be no sooner than thirty (30) days after the notice has been given. A Member's proportionate share of the total additional Capital Contribution shall be equal to the product obtained by multiplying the Member's Percentage Interest and the aggregate additional Capital Contribution required. A Member's proportionate share shall be payable in cash, by certified check or by wire transfer.

(b) Except as provided in this Article III, no Member shall be required to contribute any additional capital to the Company, and no Member shall have any personal liability for any obligation of the Company.

### **3.03 Capital Contribution Defaults.**

(a) If a Member (the “Defaulting Member”) does not make a Capital Contribution required pursuant to Section 3.01 or Section 3.02(a) on or before the date such Capital Contribution is due, such failure shall be a material breach of this Agreement and if not cured within thirty (30) days after notice from the disinterested members of the Management Committee, the disinterested members of the Management Committee may remove the Defaulting Member in accordance with the terms of Section 14.02 as an Involuntary Withdrawal by the Defaulting Member. If the Management Committee does not assert its right to remove the Defaulting Member through an Involuntary Withdrawal as described above, (i) the Defaulting Member’s Membership Interest shall be converted to an Economic Interest until such time (the “Cure Date”) that the Defaulting Member has made the delinquent Capital Contribution, plus interest, at a variable annual rate equal to the Prime Rate as in effect from time to time plus two percent (2%), from the date such Capital Contribution was due to the date of payment, (ii) the Defaulting Member shall automatically forfeit until the Cure Date its voting rights hereunder, if any, and its right to designate a Member Representative or any representative on the Management Committee, if any, (iii) the Managers designated by the Defaulting Member to the Management Committee, if any, shall automatically be removed from the Management Committee, and (iv) the Company shall be entitled to set off against any Cash Flow or other amounts due to such Defaulting Member hereunder any amounts due to the Company attributable to such Capital Contribution and the interest thereon.

(b) As used in Section 3.03(a), “Prime Rate” means the Prime Rate as published from time to time in the “Money Rates” section of The Wall Street Journal or any successor publication, or in the event that such rate is no longer published in The Wall Street Journal or such successor journal, a comparable index or reference as may be selected by a majority of the Class A and B Members which are not at such time Defaulting Members.

### **3.04 Interest on and Return of Capital Contributions.**

No Member shall be entitled to interest on such Member’s Capital Contribution or to a return of such Member’s Capital Contribution, unless otherwise provided herein.

### **3.05 Form of Return of Capital Contributions.**

If a Member is entitled to receive a return of a Capital Contribution, the Member shall not have the right to receive anything but cash in return of the Member’s Capital Contribution.

### **3.06 Capital Accounts.**

A separate Capital Account shall be maintained for each Member and Economic Interest Owner.

### **3.07 Loans to the Company.**

Any Member may at any time, with the consent of the Management Committee, make or cause a loan to be made to the Company in any amount and on those terms upon which (i) the

Company and the Member agree and (ii) are in compliance with all Applicable Laws, including but not limited to, the Fraud and Abuse Statute and Stark Act.

## **ARTICLE IV MEMBER MEETINGS**

### **4.01 Meetings.**

Meetings of the Members, for any valid purpose or purposes, may be called by the Management Committee or by any Member.

### **4.02 Place of Meetings.**

The Members may designate any place, either within or outside the State of Connecticut, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal place of business of the Company. One or more Members may participate in a meeting of the Members by use of a conference telephone or similar communications equipment that allows all persons participating in the meeting to communicate with one another.

### **4.03 Notice of Meetings.**

Written notice, delivered in hard copy or electronically, stating the place, day and hour of a meeting of the Members and the purpose or purposes for which the meeting is called shall be delivered not less than five (5) nor more than thirty (30) days before the date of the meeting either personally or by mail, by or at the direction of the Management Committee or Member calling the meeting, to each Member (and to each Member Representative designated in Section 2.03) entitled to vote at such meeting.

### **4.04 Meeting of All Members.**

If all of the Members shall meet at any time and place either within or outside of the State of Connecticut, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice and at such meeting lawful action may be taken.

### **4.05 Record Date.**

For the purpose of determining the Members entitled to notice of or to vote at any meeting of the Members or any adjournment thereof, the date on which notice of the meeting is mailed shall be the record date for such determination. When a determination of the Member entitled to vote at any meeting of the Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

### **4.06 Manner of Acting.**

(a) The unanimous vote of the Class A and Class B Member Representatives shall be required to take or approve any matter coming before the Members, unless the vote of a lesser or greater proportion or number is otherwise required by the Act, by the Articles of

Organization, or by this Agreement. Except as otherwise required by the Act, by the Articles of Organization, or by this Agreement, the Class C Members shall not have any voting rights.

(b) Notwithstanding the foregoing or Section 5.05, only the exclusive vote of the Member Representative selected by the Class B Member shall be required to take or approve any Exempt Status Matter coming before the Members. In the exercise of its special powers hereunder, the Member Representative selected by the Class B Member shall act reasonably and on the written advice of counsel, who shall seek input from counsel to the Class A Member, and shall give not less than ten (10) days' prior notice to, and shall, during such ten (10) day period, seek the advice and input of, the other Members.

**4.07 Proxies.**

At all meetings of the Members, a Member may vote in person (or through its Member Representative) or by proxy executed in writing by the Member or Member Representative or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

**4.08 Action by Members Without a Meeting.**

Any action required by this Agreement or the Act to be taken at a meeting of the Members, or any other action that may be taken at a meeting of the Members, may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by at least the minimum number of Members (or Member Representatives) who could approve such action pursuant to Section 4.06.

**4.09 Waiver of Notice.**

When any notice is required to be given to any Member, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**ARTICLE V  
RIGHTS, DUTIES AND OBLIGATIONS OF MEMBERS**

**5.01 Limitation of Liability.**

Each Member's liability shall be limited as set forth in this Agreement, the Act and other Applicable Law.

**5.02 Liability for Company Debt.**

A Member shall not be personally liable for the debts or losses of the Company except as otherwise required by Applicable Law.

### **5.03 Member Duties.**

No Member shall be required to perform services for the Company solely by virtue of being a Member. Unless approved by the Management Committee, no Member shall perform services for the Company or be entitled to compensation for services performed for the Company.

### **5.04 Limitation on Authority of Members.**

Except as set forth herein, the Members shall have no right to take any part in, or interfere in any manner with, the conduct, control or management of the Company's business and shall have no right or authority to act for or bind the Company, said powers being vested solely and exclusively in the Management Committee. Except as otherwise expressly provided herein, the Members shall have only those rights granted exclusively to members pursuant to the Act or under this Agreement. Any Member who takes any action or binds the Company in violation of this Agreement shall be solely responsible for any loss and expense incurred by the Company as a result of the unauthorized action and shall indemnify and hold the Company harmless with respect to the loss or expense.

### **5.05 Transactions with Members.**

Each Member understands and acknowledges that the conduct of the Company's business may involve business dealings and undertakings with Members and their Affiliates. Any business dealings and undertakings between the Company and a Member or one or more of its Affiliates shall be at arm's length, at fair market value and on commercially reasonable terms and approved solely by the disinterested Management Committee members. In addition, any decision to amend, renew or terminate (including, without limitation, asserting without cause termination rights or rights to terminate for breach) such business dealings (or to enforce contracts relating to such business dealings) and undertakings between the Company and a Member or one or more of its Affiliates shall reside solely with the disinterested Management Committee members except as otherwise set forth in Section 4.06(b) or 6.09(b). For purposes of this Section 5.05, a Class A Manager who is affiliated with Constitution is not a disinterested Management Committee member on matters related to any agreement, including any management or other administrative services agreement, between the Company and Constitution or any of its Affiliates.

### **5.06 Restrictive Covenants.**

#### **(a) Non-Competition.**

(i) Each Class A Member and Class C Member, and each person who is a direct or indirect owner of a beneficial interest in, or a direct or indirect stockholder of, a Class A Member, agrees that while it is a Member or Economic Interest Owner and for a period of two (2) years thereafter, it and its Competition Affiliates shall not directly or indirectly develop, manage, provide administrative services to, consult with (other than infrequent patient medical consultations), finance or invest in any ambulatory surgery center offering orthopedic and/or ophthalmologic surgical services similar to those provided by the Company, including but not limited to the River Valley Ambulatory Surgery Center in Norwich, CT (the "Competing

Activity”), within a fifteen (15) mile radius of the Center. This restrictive covenant does not prohibit referrals to, or the use of, any other ambulatory surgery center by Members, Economic Interest Owners, or Competition Affiliates.

(ii) The Class B Member agrees that while it is a Member or Economic Interest Owner and for a period of two (2) years thereafter, it and its Competition Affiliates shall not directly or indirectly develop, manage, consult with (other than infrequent patient medical consultations), finance or invest in any Competing Activity within a fifteen (15) mile radius of the Center except for any Competing Activity in Norwich, Connecticut (other than the River Valley Ambulatory Surgery Center). This restrictive covenant does not prohibit referrals to, or the use of, any other ambulatory surgery center by Members, Economic Interest Owners or Competition Affiliates. Anything to the contrary notwithstanding, the following actions and/or activities by the Class B Member shall not be in violation of this Section 5.06(a)(ii): (i) any surgical services provided by an entity wholly owned by Hartford HealthCare in a licensed hospital inpatient or outpatient department or any Hartford HealthCare surgical joint venture whose revenues from orthopedic and ophthalmologic services, in each case with less than ten (10%) of total revenues in any given year, or (ii) any ambulatory surgery center acquired as part of a merger or acquisition of a hospital or health system by Hartford HealthCare.

(b) **Confidentiality.**

(i) Each Member hereby acknowledges that any disclosure of the Company’s or another Member’s Confidential Information, as defined below, even inadvertent disclosure, would cause irreparable and material damage to the Company or to the other Member. Each Member hereby agrees that it and each of its Competition Affiliates shall (A) maintain as confidential all of the Company’s and the other Members’ Confidential Information made known to it; (B) protect the confidentiality thereof in the same manner in which it protects the confidentiality of similar Confidential Information of its own, at all times exercising at least a reasonable degree of care in the protection of the Confidential Information; and (C) not disclose such Confidential Information to any third party without the express written consent of the owner of the Confidential Information. Each Member agrees to transfer to the Company and the other Members, as applicable, upon the termination of its Membership Interest, the Confidential Information made known to it as a result of it being a Member and in its possession upon the termination and to continue to maintain the confidentiality of the Confidential Information as provided herein. The obligations of each Member under this Section shall survive the termination of the Member’s Membership Interest and the termination of this Agreement.

(ii) “Confidential Information” includes, but is not limited to, all: (A) financial information; (B) products, and services and product and service information, including but not limited to product and service costs, prices, profits and sales; (C) new business ideas; (D) business strategies; (E) product and service plans; (F) marketing plans and studies; (G) forecasts and models; (H) all intellectual property, including but not limited to property or information, (1) that is protected by copyright or is copyrightable, (2) that is protected by patent or that is patentable, or (3) that is valuable and not generally known in the trade, including trade secrets, financial data, business plans, and data, and any developments relating to foregoing, whether or not patentable or copyrightable; (I) databases (and the documentation and information contained therein); (J) research projects and all information connected with research and development

efforts; (K) records (including the records of the Company and the medical records of patients); (L) business relationships, methods and recommendations; (M) patient lists (including the identities of patients and prospective patients; (P) competitive analyses; (Q) all information relating to the operation of the Company's business; and (R) other confidential, proprietary or trade secret information that has not been made lawfully available to the general public by the Company's management.

(c) **Limitation of Covenants.** The restrictions in this Section 5.06:

(i) shall not prohibit any Member or its Competition Affiliates from taking any action on behalf of the Company;

(ii) shall not apply to the activities of a Member, a former Member or its Competition Affiliates if the Members unanimously consent to allow the Member or Former Member to undertake the prohibited activity after full disclosure of all the relevant facts;

(iii) shall not prohibit any Member and its Competition Affiliates from owning individually or collectively, directly or indirectly securities of any Person traded in a public market provided that the Member and its Competition Affiliates do not own more than two percent (2%) of any class of securities of such Person and have no relationship with such Person other than as a stockholder; and

(iv) shall not prohibit any Member or its Competition Affiliates from using for its own benefit or the benefit of others or to disclose or publish any information that (A) was rightfully in its possession prior to the date of this Agreement, (B) was rightfully obtained from others without violation of its obligations to the Company or the other Members, (C) was independently developed by the Member without the use of the Company's or the other Members' Confidential Information or (D) is or becomes within the public domain without breach of this Agreement.

(d) **Injunctive Relief.** Each Member acknowledges that any violation of any provision of Section 5.06 will cause irreparable harm to the Company and/or the other Member(s), that damages for such harm will be incapable of precise measurement and that, as a result, the Company and/or the other Member(s) will not have an adequate remedy at law to redress the harm caused by such violation. Therefore, in the event of such a violation, the parties agree that, in addition to other remedies, the aggrieved party or parties shall be entitled, without the necessity of either proof of actual damage or the posting of a bond, to injunctive relief, including but not limited to an immediate temporary injunction, temporary restraining order and/or preliminary or permanent injunction to restrain or enjoin any such violation, and to reimbursement of any reasonable attorneys' fees and expenses incurred to enforce the provisions of this Section 5.06. Nothing in this Agreement shall be construed to prohibit the Company and/or an aggrieved Member from pursuing any other remedy, the parties having agreed that all remedies are cumulative and that a Member is liable for any and all acts or omissions of such Member and/or any of its Competition Affiliates that violate any provision of this Section 5.06. In addition, the Class A Member and the Class C Member each agrees to cause each Person who is a direct or indirect owner of a beneficial interest in or a direct or indirect stockholder of, the Class A or C Member to sign a non-competition agreement, in a form reasonably acceptable to

the Class B Member, binding such person to the provisions of this Section 5.06. Further, the Company and the Class B Member shall be third party beneficiaries to such non-competition agreement with independent rights to enforce the non-compete provisions contained in that agreement.

(e) **Acknowledgment**. Each Member hereby acknowledges the reasonableness of the restrictions contained in this Section 5.06 in view of the purposes of the Company and the relationship of the Members. Each Member acknowledges that the restrictions contained in this Section 5.06 represent mandatory conditions precedent to the execution of this Agreement, and that in the absence of such restrictions, neither Member would have consented to, or entered into, this Agreement.

## **ARTICLE VI RIGHTS AND DUTIES OF MANAGEMENT COMMITTEE**

### **6.01 Management Committee**

(a) The management of the Company shall be vested in a Management Committee, which shall consist of six individuals (each individually referred to as a “Manager”, and collectively as the “Managers”). The Class A Member shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class A Manager”, and collectively as the “Class A Managers”) to the Management Committee. The Class B Member shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class B Manager”, and collectively as the “Class B Managers”) to the Management Committee. No Class C Member shall be appointed as a Manager, nor shall the Class C Members have the right to designate a Manager. The initial Managers designated by each Member are set forth on Exhibit B hereto.

(b) The annual meeting of the Management Committee shall be held in September of each year, or at such other time as is selected by the Management Committee. Regular meetings of the Management Committee may be held at such times and places as may be determined by the Management Committee, and once such determination has been made and notice given to each Manager, regular meetings may be held without any further notice. Special meetings of the Management Committee may be called by the Chairman, a Member, a Member Representative, or by two or more Managers upon at least forty-eight (48) hours’ notice. Attendance at a meeting of the Management Committee, in person or as otherwise permitted under this Agreement or the Act, by a majority of the Class B Managers and a majority of the Class A Managers shall constitute a quorum.

(c) Action may be taken by the Management Committee without a meeting by consent, in writing, setting forth the action to be taken, signed by the number of Managers entitled to vote on such action as would be required to approve such action at a meeting at which all the Managers entitled to vote thereon were present. Such consent shall be filed with the records of the meetings of the Management Committee and shall be treated for all purposes as the act of the Management Committee.

(d) Managers may participate in a Management Committee meeting by means of conference telephone or similar communications equipment that enables all persons participating in the meeting to hear each other.

(e) The Management Committee may, from time to time, designate by resolution one or more subcommittees with such powers and authority as may be prescribed in such resolution to serve at the request of the Management Committee. Each subcommittee shall be comprised of an equal number of the Class A Member and Class B Member representatives (and such non-voting Class C Members (or Class C Member representatives) as designated by the Management Committee), may determine the procedural rules for its meetings and conducting its business, and shall act in accordance therewith. Adequate provision shall be made for notice to subcommittee members of all meetings; a majority of the subcommittee members shall constitute a quorum; and all matters shall be determined by the vote of a majority of the subcommittee members present at a meeting at which a quorum is present.

#### **6.02 Powers of Management Committee.**

The Management Committee shall have full exclusive, and complete discretion, power, and authority (subject in all cases to Section 6.03, Section 6.04, Section 6.09, the other provisions of this Agreement and the requirements of Applicable Law), to manage, control, administer, and operate the business and affairs of the Company so as to further the purpose of the Company as set forth in Sections 1.06 and 1.07, and to make all decisions affecting such business and affairs (subject to Section 5.05 regarding transactions with a Member or an Affiliate of a Member), including without limitation, for Company purposes, the power to:

(a) acquire by purchase, lease, or otherwise any real property or any personal property, tangible or intangible;

(b) construct, operate, maintain, finance, and improve any real property or any personal property;

(c) sell, convey, assign, or lease any real property or any personal property;

(d) open and use bank accounts in the Company's name and to withdraw funds or issue checks, drafts or orders for the payment of money from such accounts;

(e) enter into agreements and contracts and to give receipts, releases and discharges;

(f) appoint, employ or otherwise contract with any Person to perform services for or on behalf of the Company, and to grant to any such Person such authority to act on behalf of the Company as the Management Committee may from time to time deem appropriate;

(g) purchase liability and other insurance to protect the Company's assets and business;

(h) execute any and all other instruments and documents that may be necessary or in the opinion of the Management Committee desirable to carry out the intent and purpose of this Agreement;

(i) approve a budget for the Company and make any and all budgeted or unbudgeted expenditures that the Management Committee, in its sole discretion, deems necessary or appropriate in connection with the management of the affairs of the Company and the carrying out of its obligations and responsibilities under this Agreement, including, without limitation, all legal, accounting, and other related expenses incurred in connection with the organization, financing, and operation of the Company;

(j) invest and reinvest Company reserves in short-term instruments or money market funds;

(k) adopt and amend Medical Staff Bylaws and Medical Staff Rules and Regulations for the organization and operation of the Center (as provided further in Section 8.02 below);

(l) appoint and credential members of the Medical Staff and delineate their privileges at the Center, and otherwise discharge its responsibilities under the Medical Staff By-Laws and Medical Staff Rules and Regulations in effect from time to time;

(m) oversee quality assurance, quality improvement, and best practices medicine;

(n) arrange for managed care contracting;

(o) control the proper and efficient use of operating room time;

(p) oversee the review peers using the Company's Center pursuant to procedures adopted by the Management Committee from time to time;

(q) take and approve all actions and matters required of a governing authority of an ambulatory orthopedic/ophthalmologic surgical center under Applicable Law;

(r) enter into any activity necessary to, in connection with, or incidental to, the accomplishment of the purposes of the Company;

(s) hire or fire key personnel; and

(t) make technical amendments to this Agreement or the Articles of Organization.

### **6.03 Management of Outpatient Surgery Center.**

The Management Committee shall arrange for the management and administration of the business affairs of the Company's Center. Such management activities shall be undertaken pursuant to or consistent with the term of the Management Services Agreement between the

Company and CSC of even date herewith during the term of said Management Services Agreement. Subject to the foregoing, the Management Committee may undertake activities pursuant to this Section 6.03 either through the employment or engagement of individuals with the necessary credentials to perform various tasks and functions (subject to Section 5.05 if a Member or an Affiliate of a Member is engaged). The Members and the Management Committee hereby adopt and agree to comply with the Charity Care Policy and Financial Assistance Program available at [www.harthosp.org](http://www.harthosp.org) (as in effect from time to time, the "Charity Care Policy"). The Class B Member may amend the Charity Care Policy from time to time, and the Members agree to abide by and enforce the Charity Care Policy in a manner to ensure the compliance of the Company and the Center with the Charity Care Policy and Applicable Law.

#### **6.04 Extraordinary Transactions.**

Notwithstanding anything herein to the contrary, excepting actions taken pursuant to Section 4.06(b) or Section 6.09(b), the Management Committee may not take action with regards to any of the following matters without the unanimous vote of the Class A and B Members (subject to Section 5.05 regarding transactions with a Member or an Affiliate of a Member):

- (a) sell all or substantially all of the assets of the Company;
- (b) merge, consolidate, or similarly combine the Company with any other Person;
- (c) acquire all or substantially all the assets of, or ownership interests in, another Person;
- (d) borrow money or incur any debt for, or on behalf of, the Company in excess of \$250,000, other than in the ordinary course of business;
- (e) execute for or on behalf of the Company any mortgage or deed of trust or prepay, in whole or in part, refinance, amend, modify, or extend any mortgage or deeds of trust for or on behalf of the Company securing a debt in excess of \$250,000;
- (f) create a security interest in or cause a lien securing a debt in excess of \$250,000 to be placed on any real property of the Company or, other than in the ordinary course of business, any personal property of the Company;
- (g) sell, lease, purchase, or otherwise acquire or transfer any real property;
- (h) admit additional Members to the Company, provided that additional members of the Class A Member may be admitted from time to time meeting the requirements of Section 2.02 hereof by action of the Class A Member with notice to the Class B Member;
- (i) enter into, renew, amend, or terminate any management agreement or any contract or series of related contracts that require aggregate expenditures by the Company, or will result in aggregate gross payments to the Company, in excess of \$100,000;

(j) open additional locations for the Center or change the location of the Center other than the current activities being undertaken as to the relocation of the Facility at Cross Road, Waterford, Connecticut;

(k) recapitalize, reclassify, reorganize, split or other similar event affecting the Membership Interests of the Company;

(l) effect any Bankruptcy, dissolution or liquidation event with regard to the Company;

(m) except for technical amendments that may be made by the Management Committee pursuant to Section 6.02, amend this Agreement, or the Articles of Organization;

(n) require additional Capital Contributions in any amount or require a Member to provide debt guarantees of the Company; and

(o) waive any Member obligations (the Member requesting the waiver shall not be entitled to vote).

#### **6.05 Term of Managers.**

Each Manager shall hold office until his or her death, resignation, incapacitation or removal as provided herein.

#### **6.06 Resignation of Manager**

Any Manager of the Company may resign at any time by giving written notice to the Company and to the Member who designated such Manager. The resignation of any Manager shall take effect upon receipt by the Member and the Company of the notice thereof or at such later date specified in such notice, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### **6.07 Removal of Manager.**

A Manager may be removed at any time, with or without cause or notice, by the Member that originally designated such Manager or as described in Section 3.03(a)(iii); provided, however, any Manager committing fraud against the Company, commission of a felony, or any other action in violation of his/her fiduciary duty to the Company shall be removed upon the request of a Member.

#### **6.08 Vacancies.**

Manager vacancies shall be filled by the Member who originally designated such Manager within ten (10) days after such vacancy arises.

## 6.09 Manner of Acting.

(a) **In General.** The affirmative vote of a majority of the Class A Managers and the affirmative vote of a majority of the Class B Managers shall be required to take or approve any action by the Management Committee.

(b) **Special Powers of Class B Managers.** Notwithstanding anything contained herein to the contrary, in the event that the Management Committee acts or fails to act with respect to any of the following, the Class B Managers shall have the unilateral and exclusive right to: (i) take any action, or approve any action by the Management Committee, with respect to any Exempt Status Matter, provided, however, that approval of such action may also be given by the Member Representative selected by the Class B Member pursuant to Section 4.06(b); or (ii) take any action on, or approve any and all actions on, matters of financial policy, including, without limitation, approval of the Company's annual capital and operating budgets and any material modifications to such budgets, any borrowings or other financings, distribution policies and decisions, capital calls, cash management decisions, creation of financial reserves and investment policies. In the exercise of their special powers under clause (i) above, the Class B Managers and the Class B Member Representative shall act reasonably and on the written advice of counsel, with such counsel seeking input from counsel of the Class A Member, and the Class B Member further shall give not less than ten (10) days' prior written notice to, and shall, during such ten (10) day period, seek the advice and input of, the Class A Managers. Actions taken pursuant to this Section 6.09(b) shall not be subject to Section 5.05. In the exercise of their special powers under clause (ii) above, the Class B Managers and the Class B Member Representative shall act reasonably and on the written advice of auditors or counsel, with such auditors or counsel seeking input from auditors or counsel of the Class A Member, and the Class B Member further shall give not less than ten (10) days' prior written notice to, and shall, during such ten (10) day period, seek the advice and input of, the Class A Managers.

Notwithstanding the foregoing, the authority under this Agreement relating to an Exempt Status Matter, including but not limited to the authority described in this Section 6.09(b), given to the Class B Member, the Class B Manager or the Member Representative selected by the Class B Member, shall not be used to: (i) cause the Company to provide a greater percentage of charitable and Medicaid care for outpatient surgical services than the Class B Member provides (except where the Company has adopted a charity care policy substantially identical to that of the Class B Member's charity care policy and, notwithstanding such substantially identical charity care policies, the Company provides a greater percentage of charitable and Medicaid care for outpatient surgical services than the Class B Member provides); (ii) amend this Agreement (except in accordance with the provisions hereof); (iii) provide payment of any sort to the Class B Member or an Affiliate or provide competitive advantage to the Class B Member or an Affiliate; (iv) change the proportion of ownership in the Company; (v) require additional Capital Contributions; (vi) require personal guarantees; or (vii) take any other action that would specifically change the allocation of the profits and losses outlined in this Agreement.

(c) **Compliance Plan and Conflict of Interest Policy.** The Management Committee shall adopt, and the Company shall operate consistently with, a compliance plan and a conflict of interest policy that is complimentary to the corporate compliance plan of the Class B Member in existence as of the Effective Date.

#### **6.10 Duties of Managers.**

Each Manager shall devote such time to the business and affairs of the Company as is necessary to carry out the duties set forth in this Agreement. The Management Committee shall manage the Company so as to further the purpose of the Company as set forth in Sections 1.06 and 1.07 including, without limitation, furthering the Class B Member's Charitable Purposes without regard to maximizing profitability.

#### **6.11 Liability of Managers.**

In no event will any Manager be personally liable to the Company, the Members or any other Manager for the debts, obligations, or liabilities of the Company whether arising in contract, tort or otherwise, in acting on behalf of the Company or in his or her capacity as a Manager, except as otherwise required by Applicable Law, provided that his or her actions or omissions did not constitute fraud, bad faith, gross negligence, or willful misconduct. No Manager shall be personally liable for failure to perform in accordance with, or to comply with the terms and conditions of, this Agreement or for any other reason unless such failure to conform or to comply or such other reason constitutes fraud, bad faith, gross negligence, or willful misconduct by such Manager.

#### **6.12 Indemnity of Managers.**

The Company shall indemnify and hold harmless each Manager against any and all liability, loss, expense, or damage incurred or sustained by reason of any act or omission in the conduct of the business of the Company, except if such Manager shall have been guilty of fraud, bad faith, gross negligence or willful misconduct. Such indemnification shall include the reasonable expenses (including reasonable attorneys' fees and costs) incurred by a Manager in connection with the defense of any action to which he or she may be made a party by reason of his or her interest in or activities on behalf of the Company. Any indemnity under this Section shall be provided out of and to the extent of Company assets only and no Member shall have any personal liability on account thereof.

#### **6.13 Reliance upon Third Parties.**

The Management Committee and each Manager shall be fully protected in relying in good faith upon information, opinions, reports, or statements furnished by any Person as to matters the Management Committee or Manager reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care.

#### **6.14 Compensation**

The salary and/or other compensation of the Managers, if any, shall be fixed from time to time by the unanimous vote of the Class A and B Members.

## ARTICLE VII OFFICERS OF THE COMPANY

### 7.01 General.

The Management Committee annually at its annual meeting shall appoint a Medical Director and a Chairman, and may elect such other officers of the Company, which may include a President, a Vice President, a Treasurer, a Secretary and other officers and assistant officers, as the Management Committee may deem necessary or advisable for the efficient operation of the Company's affairs. Any two or more offices may be held by the same person. The Medical Director shall be nominated by the Class A Member, subject to the approval of the Management Committee, and must at all times be on the active medical staff of the Class B Member. The Chairman shall be one of the six Managers and such position shall be held for alternating one-year terms by a Class A Manager and a Class B Manager, such that the Chairman shall be designated by the Class A Managers during the annual meeting of the Management Committee held during an even-numbered year, and shall be designated by the Class B Managers during the annual meeting of the Management Committee held during an odd-numbered year.

### 7.02 Authority and Duties.

Officers of the Company, if any, shall have such authority and perform such duties in the management of the Company as may be provided in this Agreement or, to the extent not so provided by resolution of the Management Committee.

### 7.03 Election and Term of Office.

Officers of the Company, if any, shall be elected annually by the Management Committee at the annual meeting of the Management Committee. Each officer shall hold office until his or her successor shall have been duly elected or until his or her prior death, resignation or removal.

### 7.04 Removal.

Any officer of the Company may be removed by the Management Committee whenever in its judgment the best interest of the Company would be served thereby; provided, however, (a) except as permitted under Section 6.09(b), the removal of a Chairman can only be by vote of the Managers who designated such Chairman; and (b) the removal of any officer shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create contract rights.

### 7.05 Resignations.

Any officer of the Company may resign his or her office at any time by giving written notice thereof to the Chairman of the Company, if any, or to the Management Committee. Such resignation shall take effect at the time specified therein, or if no time is specified therein, at the time of the receipt thereof, and the acceptance thereof shall not be necessary to make it effective.

**7.06 Vacancies.**

A vacancy in any office shall be filled by the Management Committee for the unexpired portion of the term; provided, however, that any vacancy in the position of Chairman shall be filled by the Managers who designated the Chairman at the immediately preceding annual meeting of the Management Committee.

**7.07 Medical Director.**

The Medical Director shall be the chief operating officer of the Company's Center, with such powers and duties, including without limitation responsibility for the day-to-day operations of the Center, as may be contemplated by Applicable Law, or as may be established by the Management Committee. The Medical Director shall be responsible for the implementation of the Company's Charity Care Policy. The Medical Director shall be invited to attend all meetings of the Management Committee, except as otherwise directed by the Management Committee, provided, however that (a) the Medical Director's presence shall not be required to conduct a meeting of the Management Committee; and (b) the Medical Director shall recuse himself or herself from any deliberations or votes of the Management Committee concerning the evaluation and/or compensation of the Medical Director.

**7.08 Chairman.**

The Chairman shall preside at all meetings of the Management Committee and the Members, and shall have such powers and duties as may from time to time be delegated or assigned to the Chairman by the Management Committee. The Chairman shall be required to place on the agenda for a meeting of the Management Committee any agenda item proposed by a Manager at least two (2) business days before such meeting.

**7.09 President.**

The President, if any, shall be the chief executive officer of the Company. He or she shall see that all orders and resolutions of the Management Committee are carried into effect. In general, the President shall perform all duties incident to the office of President and such other duties as may from time to time be assigned to the President by the Management Committee.

**7.10 Vice President.**

The Vice President, if any, shall have such general responsibility as may be assigned to him or her from time to time by the Management Committee or the President. At the request of the President, or in case of the President's absence or inability to act, any Vice President designated by the Management Committee or by the President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President.

**7.11 Treasurer.**

The Treasurer, if any, shall have charge and custody of and be responsible for all the funds and securities of the Company; he or she shall keep full and accurate accounts of assets,

liabilities, receipts and disbursements and other transactions of the Company in books belonging to the Company; and he or she shall deposit all moneys and other valuable effects of the Company in the name of and to the credit of the Company in such banks or other depositories as may be designated by the Management Committee. The Treasurer shall disburse or oversee the disbursement of the funds of the Company as may be ordered by the Management Committee, taking proper vouchers for disbursements, and shall render to the President and to the Managers at the meetings of the Management Committee, or whenever they may require it, a statement of all his or her transactions as Treasurer and an account of the financial condition of the Company. In general, he or she shall perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to the Treasurer by the Management Committee or by the President.

#### **7.12 Secretary.**

The Secretary, if any, shall keep the minutes of the meetings of the Members and the Management Committee in one or more books provided for that purpose. In general he or she shall perform all the duties incident to the office of Secretary and such other duties as may from time to time be assigned to the Secretary by the Management Committee or by the President.

#### **7.13 Other Assistants and Acting Officers.**

The Management Committee may from time to time appoint such other officers as the Management Committee may deem necessary or advisable, each of whom shall hold office for such period, have such authority and perform such duties as the Management Committee may from time to time determine.

### **ARTICLE VIII MEDICAL STAFF**

#### **8.01 Medical Staff.**

The Management Committee shall cause to be created and shall continue to provide for a medical staff organization known as the “Medical Staff of the Constitution Surgery Center East Ambulatory Surgery Center”, which shall include all physicians, dentists and members of allied professions who are granted by the Management Committee the privilege of caring for or contributing to the care of patients at the Center (the “Medical Staff”). Membership on the Medical Staff shall be a prerequisite to the exercise of clinical privileges at the Center, except as otherwise may be provided in the Medical Staff Bylaws.

#### **8.02 Medical Staff Bylaws.**

The Management Committee has adopted, and may amend from time to time, subject to Section 6.04, the Medical Staff Bylaws and the Medical Staff Rules and Regulations to govern the organization, appointment and removal of the Medical Staff. The Medical Staff Bylaws shall provide that it shall be the responsibility of any member of the Medical Staff to assist the Company to comply with the Charity Care Policy as established pursuant to this Agreement, amended from time to time and enforced by the Management Committee.

### **8.03 Staff Status; Privileges; Corrective Action.**

The Medical Staff Bylaws shall provide for the procedure to be followed in matters relating to Medical Staff membership status, clinical privileges, and corrective action. Final action on all such matters shall be taken by the Management Committee. The terms and conditions of membership status on the Medical Staff, and of the exercise of clinical privileges, shall be as specified in the Medical Staff Bylaws, the Medical Staff Rules and Regulations, or as more specifically defined in the notice of individual appointment to the Medical Staff.

### **8.04 Management Committee Exclusive Appointing Authority.**

Anything to the contrary herein notwithstanding, subject to Section 6.04, the Management Committee shall have the exclusive authority and responsibility to make appointments or reappointments to the Medical Staff, after considering the recommendations and reports of the Medical Staff.

## **ARTICLE IX ALLOCATION OF PROFIT AND LOSS AND DISTRIBUTIONS**

### **9.01 Distributions.**

(a) **General.** Except as otherwise provided in Section 9.01(b), distributions of cash or other assets of the Company shall be made in accordance with Section 9.01(a)(i) and at such times and in such amounts as the Management Committee may determine. Distributions, other than tax distributions made in accordance with Section 9.01(b), special allocations made in accordance with Section 9.06, and liquidating distributions that shall be made in accordance with Section 15.03, shall be made to the Members and Economic Interest Owners in proportion to their Percentage Interests in the Company. Except with respect to liquidating distributions made in accordance with Section 15.03, distributions shall generally be made in the following order of priority: tax distributions made in accordance with Section 9.01(b); special allocations made in accordance with Section 9.06; and Free Cash Flow distributions made in accordance with Section 9.01(a)(i).

(i) **Free Cash Flow Distributions.** The Management Committee shall cause a calculation of Free Cash Flow to be made for each calendar quarter by the thirtieth (30) day after the end of each quarter. To the extent reasonably practicable in accordance with generally accepted commercial standards, the Management Committee shall cause a distribution of Free Cash Flow to be made to each Member, based on such calculation and on each Member's Percentage Interest, within thirty (30) days after the quarterly calculation of Free Cash Flow. The Management Committee may reserve as much of such quarterly distribution as may be reasonably required for working capital; to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business; for the replacement or restoration of Company assets; and for other contingencies or emergencies.

(b) **Tax Distributions.** With respect to each fiscal year of the Company, or part thereof, the Company shall distribute (the "Tax Distribution"), to the extent that it has cash or other liquid investments, to each Member and Economic Interest Owner (who is a Member or Economic Interest Owner as of the date of the distribution) an amount of cash equal to forty

percent (40%) of the net amount of Profit and Loss allocated to such Member or Economic Interest Owner for such year under this Article IX, less any “Net Distributions” to such Member or Economic Interest Owner. In the event that the Company does not have cash or other liquid assets available to make such distribution the Company is authorized to borrow the necessary funds to make such distribution. The Tax Distribution required under this Section 9.01(b) shall be made on or before the April 1st following the close of each fiscal year of the Company. “Net Distributions” shall mean any distribution of cash or property to a Member or Economic Interest Owner with respect to its Membership Interest or Economic Interest (i) made during the first quarter of the subject fiscal year (but only if the Management Committee designates that such distribution is allocable to that fiscal year) or (ii) made during the twelve month period ending on April 1 after the close of the fiscal year (to the extent not designated for another fiscal year), but shall not include any payment for services, any guaranteed monthly payment, any reimbursement for expenses incurred by a Member on the Company’s behalf, and any payment in redemption of a Member’s or Economic Interest Owner’s Membership Interest or Economic Interest. The Tax Distributions shall be made without regard to the taxable or tax-exempt status of the Member or Economic Interest Owner.

(c) **Authority to Withhold; Treatment of Withheld Tax.** Notwithstanding any other provision of this Agreement, each Member and Economic Interest Owner hereby authorizes the Company to withhold and to pay over or otherwise, to pay any withholding or other taxes payable by the Company (pursuant to the Code or any provision of United States federal, state or local or foreign law) with respect to such Member or Economic Interest Owner or as a result of such Member’s or Economic Interest Owner’s participation in the Company; and if and to the extent that the Company shall be required to withhold or pay any such withholding or other taxes, such Member or Economic Interest Owner shall be deemed for all purposes of this Agreement to have received a payment from the Company as of the time such withholding or other tax is required to be paid, which payment shall be deemed to be a distribution with respect to such Member’s or Economic Interest Owner’s Interest in the Company. To the extent that the aggregate amount of such payments to a Member or Economic Interest Owner for any fiscal year exceeds the amount of distributions that such Member or Economic Interest Owner would have received for such fiscal year, the Company shall notify such Member or Economic Interest Owner as to the amount of such excess and such Member or Economic Interest Owner shall make a prompt payment to the Company of such amount by wire transfer. The Company shall promptly notify each Member or Economic Interest Owner of any withholding or other taxes payable by the Company with respect to such Member or Economic Interest Owner and, upon the request of such Member or Economic Interest Owner, shall use reasonable efforts to assist such Member or Economic Interest Owner to secure any available tax refunds, credits or exemptions (including exemptions from withholding) with respect to such withholding taxes.

## **9.02 Allocation of Profit and Loss.**

After giving effect to the special allocations set forth in Section 9.03, for any taxable year of the Company, Profit or Loss shall be allocated to the Members and the Economic Interest Owners in proportion to their Percentage Interests, subject to any special allocation required by Section 9.06.

### 9.03 Regulatory Allocations.

(a) **Qualified Income Offset.** No Member or Economic Interest Owner shall be allocated Loss or deductions if the allocation causes the Member or the Economic Interest Owner to have an Adjusted Capital Account Deficit, after the allocation of all Profit and gains. If a Member or an Economic Interest Owner receives (i) an allocation of Loss or deduction (or item thereof) or (ii) any distribution, that causes the Member or the Economic Interest Owner to have an Adjusted Capital Account Deficit at the end of any taxable year, then all items of income and gain of the Company (consisting of a *pro rata* portion of each item of Company income, including gross income and gain) for that taxable year shall be allocated to that Member or Economic Interest Owner, before any other allocation is made of Company items for that taxable year, in the amount and in proportions required to eliminate the excess as quickly as possible. This Section 9.03(a) is intended to comply with, and shall be interpreted consistently with the “qualified income offset” provisions of the Regulations promulgated under Code Section 704(b). Any special allocations of items of Profit or Loss pursuant to this Section 9.03(a) shall be taken into account in computing subsequent allocations of Profit and Loss pursuant to this Agreement, so that the net amount of any items so allocated and the Profit, Loss, and other items allocated to each Member and Economic Interest Owner shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member or Economic Interest Owner pursuant to this Agreement if such special allocation had not occurred.

(b) **Minimum Gain Chargeback.** Except as set forth in Regulation Sections 1.704-2(f)(2), (3) and (4), if during any taxable year, there is a net decrease in Minimum Gain, each Member and Economic Interest Owner, prior to any other allocation pursuant to this Article IX, shall be specially allocated items of gross income and gain for such taxable year (and if necessary, subsequent taxable years) in an amount equal to that Member’s or Economic Interest Owner’s share of the net decrease of Minimum Gain, computed in accordance with Regulation Section 1.704-2(g). Allocations of gross income and gain pursuant to this Section shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of the Regulations promulgated under Code Section 752), to the extent of the Minimum Gain attributable to those assets, and thereafter, from a *pro rata* portion of the Company’s other items of income and gain for the taxable year. It is the intent of the parties hereto that any allocation pursuant to this Section 9.03(b) shall constitute a “minimum gain chargeback” under Regulation Section 1.704-2(f).

(c) **Member Nonrecourse Debt Minimum Gain.** Except as set forth in Regulation Section 1.704-2(i)(4), if during any taxable year, there is a net decrease in Member Nonrecourse Debt Minimum Gain, each Member and Economic Interest Owner, prior to any other allocation pursuant to this Article IX, shall be specially allocated items of gross income and gain for such taxable year (and if necessary, subsequent taxable years) in an amount equal to that Member’s or Economic Interest Owner’s share of the net decrease of Member Nonrecourse Debt Minimum Gain, computed in accordance with Regulation Section 1.704-2(i)(5). Allocations of gross income and gain pursuant to this Section shall be made first from gain recognized from the disposition of Company assets subject to nonrecourse liabilities (within the meaning of Regulation Section 1.704-2(b)(4)), to the extent of the Member Nonrecourse Debt Minimum Gain attributable to those assets, and thereafter, from a *pro rata* portion of the Company’s other items of income and gain for the taxable year. It is the intent of the parties hereto that any

allocation pursuant to this Section 9.03(c) shall constitute a “chargeback of partner nonrecourse debt minimum gain” under Regulation Section 1.704-2(i)(4).

(d) **Code Section 754 Adjustments.** To the extent an adjustment to the tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of the adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases basis), and the gain or loss shall be specially allocated to the Members and the Economic Interest Owners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to that Section of the Regulations.

(e) **Nonrecourse Deductions.** Nonrecourse Deductions for a taxable year or other period shall be specially allocated among the Members and the Economic Interest Owners in proportion to their Percentage Interests.

(f) **Member Nonrecourse Deductions.** Any Member Nonrecourse Deduction for any taxable year or other period shall be specially allocated to the Member or the Economic Interest Owner who bears the risk of loss with respect to the loan to which the Member Nonrecourse Deduction is attributable in accordance with Regulation Section 1.704-2(i).

(g) **Fractions Rule Adjustment.** Notwithstanding anything to the contrary in this Agreement, the Company shall (i) make allocations of Profit (or any item thereof) to the Class B Member only to the extent that the Class B Member has actually received a distribution under Section 9.01 attributable to such Profit, and (ii) make such special, curative, and/or offsetting allocations of Profit or Net Loss (or any item thereof) to the extent necessary to cause the allocations of Company income, gain, loss, and deduction to meet the requirements of Code Section 514(c)(9)(E) and the Treasury Regulations thereunder; provided, however, in the event any such allocation made under this subsection (g) would reduce the amounts distributable to any Member under this Agreement, the parties shall in good faith negotiate an amendment to the allocation provisions of this Agreement such that no such reduction occurs (unless the Class B Member waives such right with respect to a reduction in any amount distributable to it).

(h) **UBTI Limitation.** Notwithstanding anything to the contrary in this Agreement, the Company shall make such special, curative, and/or offsetting allocations of Profit or Loss (or any item thereof) to the extent necessary and to the extent supported by advice of tax counsel, to cause any amounts otherwise allocable to the Class B Member that would constitute unrelated business taxable income (as reasonably determined by the auditor of the Class B Member) to instead be allocated to the other Members; provided, however, in the event any such allocation made under this subsection (h) would reduce the amounts distributable to any Member under this Agreement, the parties shall in good faith negotiate an amendment to the allocation provisions of this Agreement such that no such reduction occurs (unless the Class B Member waives such right with respect to a reduction in any amount distributable to it).

#### **9.04 Contributed Property and Book-ups.**

In accordance with Code Section 704(c) and the Regulations thereunder, as well as Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members and the Economic Interest Owners so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value at the date of contribution (or deemed contribution). If the adjusted book value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall take account of any variation between the adjusted basis of the asset for federal income tax purposes and its adjusted book value in the manner required under Code Section 704(c) and the Regulations thereunder. Any elections or decisions relating to such allocations shall be made by the Management Committee in a manner that reasonably reflects the intent of this Agreement. Allocations pursuant to this Section 9.04 are solely for tax purposes and shall not affect any Member's or any Economic Interest Owner's Capital Account.

#### **9.05 General.**

(a) **Distributions of Property.** If any assets of the Company are distributed in kind to any Member or Economic Interest Owner, those assets shall be valued on the basis of their Agreed Value, and any Member or any Economic Interest Owner entitled to any interest in those assets shall receive that interest as a tenant-in-common with all other Members and Economic Interest Owners so entitled. The Profit or Loss for each distributed asset shall be determined as if the asset had been sold at its Agreed Value, and the Profit or Loss shall be allocated as provided in Section 9.02 and shall be properly credited or charged to the Capital Accounts of the Members and the Economic Interest Owners prior to the distribution of the assets.

(b) **Members of Record for Allocations.** All Profit and Loss shall be allocated to the Persons shown on the records of the Company to have been Members or Economic Interest Owners during the year, as of the last day of the taxable year for which the allocation is to be made. Notwithstanding the foregoing, unless the Company elects to separate its taxable year into segments, if there is a Transfer or an Involuntary or Voluntary Withdrawal during the taxable year, the Profit and Loss shall be allocated between the original Member or Economic Interest Owner and his or her successor or, in the case of a Transfer to the Company or a Voluntary Withdrawal, among the remaining Members and Economic Interest Owners, on the basis of the number of days each was a Member or an Economic Interest Owner during the taxable year. However, the Company's taxable year shall be segregated into two or more segments in order to account for Profit, Loss, or proceeds attributable to any extraordinary non-recurring items of the Company.

(c) **Members of Record for Distributions.** All *pro rata* distributions shall be made to the Persons shown on the records of the Company to be Members or Economic Interest Owners as of the day of the distribution.

(d) **Guaranteed Payments.** To the extent any compensation for goods or services, that is paid to a Member or an Economic Interest Owner by the Company, is determined by the Internal Revenue Service not to be a guaranteed payment under Code Section 707(c) or is not paid to the Member or the Economic Interest Owner other than in the Person's capacity as a Member or an Economic Interest Owner within the meaning of Code Section 707(a), the Member or the Economic Interest Owner shall be specially allocated gross income of the Company in an amount equal to the amount of that compensation, and the Member or the Economic Interest Owner's Capital Account shall be adjusted to reflect the payment of that compensation.

(e) **Amendment of Regulatory Allocations.** The Management Committee is hereby authorized, upon the advice of the Company's tax counsel, to amend this Article IX to comply with the Code and the Regulations promulgated under Code Section 704(b). However, no amendment shall materially affect distributions to a Member or an Economic Interest Owner without the Member's or Economic Interest Owner's prior written consent.

**9.06 Certain Special Allocations.** Notwithstanding the other provisions of this Article IX, the Management Committee will make special allocations of certain items of gross income and expenses to one or more Members as set forth in this Section 9.06.

(a) The Members acknowledge and agree that as of the Effective Date, the Company shall convert from cash basis accounting to accrual basis accounting. In the event that the Company converts from a cash basis taxpayer to an accrual method taxpayer, and such conversion would result in the Class A Member realizing significant additional taxable income, the Member agree that the Company will make a one-time distribution to the Class A Member that is commensurate to such additional tax liability. Upon payment of this distribution, the Class A Member's Capital Account shall be adjusted in accordance with this Agreement.

(b) Except with respect to the pro rata guarantee of certain debt of the Company described on Schedule 9.06(d), all risk of loss, and all revenue, income and profit (including collections from accounts receivable for services rendered prior to the Effective Date in such amounts), and all debts, liabilities and obligations of the Company incurred prior to the Effective Date, and all expense, federal, state, and local sales, use, excise, and other taxes, properly accrued and allocable to the operation of the Company's business prior to Effective Date, shall be allocated, paid or distributed to or by, as applicable, the Class A Member. For example, if after the Effective Date, there is a Medicare audit of a period prior to the Effective Date that results in \$100,000 being due to Medicare, the entire \$100,000 would be the responsibility of the Class A Member, and the Class B Member and Class C Members would bear none of the costs associated with the audit or the results of the audit. If the audit resulted in \$100,000 payment to the Company for a period prior to the Effective Date, the entire audit results (and the cost associated with the audit) would be allocated to the Class A Member for determination of profits and losses and neither would be included in the determination of the profits and losses allocated to the Class B Member and Class C Members pursuant to this Agreement.

(c) For any revenues or expenses incurred after the Effective Date which arose from a period of time encompassing the operation of the Company's business prior to and

after the Effective Date which cannot otherwise be directly allocated to either prior to or after the Effective Date periods, such revenues and expenses shall be allocated between the two time periods (i.e., the prior to and after Effective Date time periods) on a pro rata basis (e.g., if the applicable time period encompasses three months prior to and three months after the Effective Date, the revenues and/or expenses will be allocated fifty percent (50%) to each time period).

(d) Notwithstanding the foregoing, the Class B Member's and Class C Members' profit or loss from the operation of the Company shall not be affected by debts, liabilities, expenses or other obligations of the Company that are paid after the Effective Date, but which debts, liabilities, expenses or other obligations arose out of the operation of the Company prior the Effective Date and such debts, liabilities, expenses or other obligations shall be accrued and allocable solely to the Class A Member in accordance with this Article IX; except, however, that the Members acknowledge and agree that each Member has provided a pro rata guarantee of certain debt of the Company as described on Schedule 9.06(d). In furtherance of the foregoing, to the extent the Company is unable to make distributions of all or a portion of the profit of the Company allocated to the Class B Member and Class C Members as a result of losses related to operations prior to the Effective Date, such shortfall (the "Shortfall") will be paid by the Class A Member to the Class B Member out of the Escrow Reserve (as defined in the Membership Interest Purchase Agreement dated \_\_\_\_\_, 2016 between the Class A Member and Class B Member) or, if the Escrow Reserve is insufficient to cover such Shortfall, the Escrow Reserve no longer exists, or with respect to Shortfall payments by the Class A Member to the Class C Members, out of future profits allocated to the Class A Member until the Class A Member's Shortfall is fully paid, and the Class A Member's Capital Account shall be reduced by the amount thereof.

## **ARTICLE X BOOKS, RECORDS, ACCOUNTING AND TAX ELECTIONS**

### **10.01 Bank Accounts.**

All funds of the Company shall be deposited in a bank account or accounts maintained in the Company's name. The Management Committee shall determine the institution or institutions at which the accounts will be opened and maintained, the types of accounts, and the Persons who will have authority with respect to the accounts and the funds therein.

### **10.02 Books and Records.**

(a) The Management Committee shall keep or cause to be kept complete and accurate books and records of the Company and supporting documentation of the transactions with respect to the conduct of the Company's business. At a minimum, the Company shall keep the following records:

- (i) A current list of
  - (1) the full name and last known address of each Member and Economic Interest Owner, Member Representative and Manager;

Owner has contributed;

(2) the amount of cash each Member and Economic Interest

(3) a description and statement of the Agreed Value of the other property each Member and Economic Interest Owner has contributed or has agreed to contribute in the future; and

(4) the date on which each became a Member and Economic Interest Owner.

(ii) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(iii) Copies of the Company's federal, state, and local income tax returns and reports (including information returns), if any, for the three most recent years;

(iv) Copies of the Company's currently effective Operating Agreement;

(v) Copies of the Company's financial statements for the three most recent years;

(vi) Minutes of every meeting of the Members;

(vii) Any written consents obtained from the Members for actions taken by the Members without a meeting;

(viii) A copy of the Company's Charity Care Policy; and

(ix) Copies of the quarterly reports of charity care provided by the Company and the charitable initiatives implemented or to be implemented by the Company (subject to any reasonable record retention policy adopted by the Management Committee).

(b) The books and records shall be maintained in accordance with sound accounting practices and shall be available at the Company's principal office for examination by any Member, or any former Member (but only those books and records pertaining to the period in which he or she was a Member), or the Member's duly authorized representative at any and all reasonable times during normal business hours.

(c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection or copying of the Company's books and records.

(d) At the request of any Member, and at the requesting Member's expense, the Management Committee shall cause an audit of the Company's books and records to be prepared by independent accountants for the period requested by that Member.

### **10.03 Annual Accounting Period.**

The annual accounting period and the fiscal year of the Company shall be its taxable year. The Company's taxable year shall be the annual period ending on December 31.

### **10.04 Accounting.**

The Company shall be an accrual basis taxpayer.

### **10.05 Returns and Other Elections.**

The Management Committee shall: (a) cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business; (b) shall send a copy of Schedule K-1 or any successor or replacement form thereof to each Member and Economic Interest Owner as soon as the same is filed; and (c) shall cause the Company to file any other documents from time to time as may be required by any state or any subdivision thereof. All tax elections may be made by the Management Committee in its sole discretion, provided that the Management Committee shall make any tax election authorized by a unanimous vote of all of the Class A and Class B Members. However, the Management Committee may not make an election for the Company (i) to be excluded from the provisions of Subchapter K of the Code or (ii) to be treated as a corporation for federal income tax purposes, without the unanimous written consent of the Class A and B Members. The determination by the Management Committee with respect to the treatment of any item or its allocation for Federal, state or local tax purposes shall be binding so long as such determination will not be inconsistent with any provision of this Agreement.

### **10.06 Tax Matters Partner**

The Class B Member shall be and is designated the "Tax Matters Partner" (as defined in Code Section 6231) and is authorized and required (a) to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings; (b) to expend Company funds for professional services and costs associated therewith; and (c) to keep all Members informed of all notices from government taxing authorities that may come to the attention of the Tax Matters Partner; provided, however, that: (i) upon written request by the Class A Member, the Class A Member and/or its representative may attend any particular examination or administrative or judicial proceeding; and (ii) the Class B Member shall not settle any tax examination or administrative or judicial proceeding without the prior written consent of the Class A Member if such settlement will be likely to have an adverse economic impact on the Class A Member. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings. The Company shall indemnify and save harmless the Tax Matters Partner from and against any loss, damage, liability or expense incurred or sustained by it by reason of any act performed by it, or any failure by it to act, as the Tax Matters Partner, provided that any such act or failure to act shall not result from its willful misconduct, gross negligence or fraud.

### **10.07 Title to Company Property.**

Except as provided in this Section, all real and personal property acquired by the Company shall be acquired and held by the Company in its name. The Management Committee may direct that legal title to all or any portion of the Company's property be acquired or held in a name other than the Company's name. Without limiting the foregoing, the Management Committee may cause title to be acquired and held in the names of trustees, nominees, or straw parties for the Company. It is expressly understood and agreed that the manner of holding title to the Company's property (or any part thereof) is solely for the convenience of the Company and all property shall be treated as Company property.

## **ARTICLE XI ASSIGNMENTS**

### **11.01 Transfers.**

Except as otherwise provided in this Agreement, no Member may Transfer all, or any portion of, or any interest or rights in, its Membership Interest or Economic Interest, and no Economic Interest Owner may Transfer all, or any portion of, or any interest or rights in, its Economic Interest, including the assignment of the right to receive distributions. An Involuntary Withdrawal shall be governed by Article XIV of this Agreement.

### **11.02 Transfers to Affiliates.**

Notwithstanding Section 11.01, either the Class A Member or the Class B Member may Transfer, without recourse, all of its Membership Interest to an Affiliate of the transferor provided such Affiliate otherwise can comply with the terms of this Agreement, such transfer does not affect any of the terms of this Agreement, and such transfer does not affect the Company's status as a controlled affiliate of the Hospital or equivalent under the payor contracts of the Hospital. If the Class A Member or Class B Member transfers its Membership Interest hereunder in accordance with the foregoing, the transferee shall be admitted as an additional or substitute Member upon such Affiliate's written acceptance and adoption of all of the terms and provisions of this Agreement.

### **11.03 Transfers to Third Parties.**

(a) Notwithstanding Section 11.01, after the expiration of five (5) years from the Effective Date, a Member or Economic Interest Owner (the "Transferor") may Transfer to a transferee (the "Transferee") a portion (but not all) of its Membership Interest or Economic Interest (the "Transferred Interest") in the Company upon receiving from the Transferor a bona fide, written, all-cash offer, if the following conditions are, or have been, satisfied:

(i) The Transferee delivers to the Company a written instrument, in a form reasonably satisfactory to Company's counsel, agreeing to be bound by the terms of this Agreement;

(ii) The Transfer will not result in the termination of the Company pursuant to Code Section 708;

(iii) The Transfer will not require registration of the Transferred Interest under any federal or state securities laws;

(iv) The Transferor or the Transferee delivers the following information to the Company: (A) the Transferee's taxpayer identification number and (B) the Transferee's initial tax basis in the Transferred Interest;

(v) The Transferor complies with the provisions set forth in Section 11.04 (relating to the Right of First Offer) and in Section 11.05 (relating to Tag-Along Rights); and

(vi) In the case of a Transfer by the Class A Member, the Transfer would not trigger an Involuntary Withdrawal of the Class A Member, and Qualified Physician Members will collectively hold an aggregate 25% interest in the Company.

(b) If a Member transfers only its Economic Interest hereunder, the Transferee shall succeed to the Transferor's rights in the Transferred Interest, including the right to receive distributions, except that the Transferee shall not become a Member, and shall not be entitled to vote on any matter coming before the Members, unless the Class A and B Members unanimously approve the admission of the Transferee as a substitute Member.

#### **11.04 Right of First Offer.**

Except with respect to any Transfer completed in accordance with Section 11.02, if Transferor desires to Transfer any portion of the Transferor's Membership Interest or Economic Interest (the "Interest to be Transferred") to a bona fide third party Transferee, the Transferor shall notify the Company and each Member of that desire (the "Transfer Notice"). The Transfer Notice shall describe the Interest to be Transferred, the proposed Transferee, the cash to be paid for the Interest to be Transferred, and all other material terms of the Transfer. The Company and the non-transferring Members shall have the option (the "Purchase Option") to purchase the Interest to be Transferred for the Purchase Price and on the Payment Terms as set forth herein. Upon the delivery of the first Transfer Notice, the Transferor shall be and remain obligated to sell the Interest to be Transferred under this Section 11.04 until the end of the Member Transfer Period as described herein.

(a) **Purchaser.** The Interest to be Transferred shall be purchased by the Company, if the Class A and B Members, other than the Transferor, unanimously consent to the purchase of the Interest to be Transferred by the Company. Otherwise, the Members, other than the Transferor, shall have the right to purchase the Interest to be Transferred. In the event that more than one Member elects to purchase the Interest to be Transferred, each Member shall have the right to purchase the Interest to be Transferred in the same proportion as that Member's Percentage Interest bears to the total Percentage Interest of all Members who have elected to purchase the Interest to be Transferred; provided, however, that if any Member declines to purchase a portion of the Interest to be Transferred, the remaining Members may purchase such portion.

(b) **Manner of Election.** The Company may elect to exercise the Purchase Option at any time prior to the thirtieth (30th) calendar day following its receipt of the Transfer

Notice (the “Company Transfer Period”), by giving written notice of its election to the Transferor. If the Company does not elect to exercise the Purchase Option within the Company Transfer Period, the Transferor shall provide written notice to each non-transferring Member of such failure. The non-transferring Members shall then have the right to elect to exercise the Purchase Option by giving written notice of such election to the Transferor, at any time prior to the thirtieth (30th) calendar day following the day the last notice of the Company's failure to exercise the Purchase Option was given to a non-transferring Member hereunder (the “Member Transfer Period”). The Company or the Members may elect to purchase all but not less than all of the Interest to be Transferred.

(c) **Transfer Closing Date.** If the Company or a Member elects to exercise the Purchase Option, the Company’s or the Member’s notice of its election shall fix a closing date (the “Transfer Closing Date”) for the purchase, which shall not be earlier than five (5) calendar days, nor more than thirty (30) calendar days, after the expiration of the Company Transfer Period or the Member Transfer Period, as the case may be. The Transferor shall be obligated to transfer on the Transfer Closing Date the Interest to be Transferred by the Company or the Member.

(d) **Purchase Price.** The Company and the Members shall have the right to purchase the Interest to be Transferred at the price set forth in the Transfer Notice.

(e) **Payment Terms.** In the event that the Company or a Member (the “Purchaser”) exercises its right to purchase the Interest to be Transferred, the Purchaser may elect to pay the purchase price on the Transfer Closing Date (i) in cash; (ii) in five equal annual installments, with the first to be paid on the Transfer Closing Date, together with interest calculated at a minimum rate per annum at which no interest will be imputed for federal income tax purposes; or (iii) on any other terms mutually agreed to by the Transferor and the Purchaser.

(f) **Closing.** On the Transfer Closing Date, the Transferor shall convey and assign to the Purchaser, by assignment with warranty of title, free and clear of all liens, claims, and encumbrances arising through the assignor, the Interest to be Transferred (or if there is more than one Purchaser, the portion purchased by that Purchaser) and shall execute and deliver to the Purchaser all documents that are reasonably required by the Purchaser to give effect to the sale and acquisition of the Interest to be Transferred, provided that the Transferor may retain a security interest in the Interest to be Transferred if the Purchaser elects to pay the Purchase Price as set forth in Section 11.04(e)(ii) above. The Transferor and the Purchaser shall take such other actions and execute such other documents as may be necessary or appropriate to give effect to any transaction contemplated by this Section.

(g) **No Election.** If the Company or the Members fail to exercise the Purchase Option, the Transferor shall be permitted to transfer the Interest to be Transferred to the proposed Transferee at the price and on the other terms set forth in the Transfer Notice for a period of ninety (90) days (the “Free Transfer Period”) after the expiration of the Member Transfer Period. If the Transferor does not Transfer the Interest to be Transferred within the Free Transfer Period, the Transferor’s right to Transfer the Interest to be Transferred pursuant to this Section shall cease and terminate. Any Transfer of the Interest to be Transferred made after the last day of the Free Transfer Period without strict compliance with the terms, provisions, and conditions of this

Section 11.04 and the other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

#### **11.05 Tag-Along Rights.**

(a) Except with respect to any Transfer completed in accordance with Section 11.02 or Section 11.04, each Member agrees that it shall not Transfer its Membership Interest or Economic Interest (the “Interest to be Transferred”) unless the terms and conditions of such Transfer shall include an offer by the proposed transferee (the “Third Party”) to purchase the Membership Interest or Economic Interest, as applicable, of each other Member (“Tag-Along Member”), at such Tag-Along Member’s option and at the same price and on the same terms and conditions as apply to the selling Member (for purposes of this Section 11.05, the “Selling Member”).

(b) The Selling Member shall notify the Company and each Tag-Along Member of any proposed Transfer to which the provisions of this Section 11.05 apply. Each such notice shall set forth: (i) the name of the Third Party; (ii) the address of the Third Party; (iii) the proposed amount and form of consideration and terms and conditions of payment offered by the Third Party, and any other material terms pertaining to the Transfer (the “Third Party Terms”); and (iv) that the Third Party has been informed of the “Tag-Along Rights” provided for in this Section 11.05 and has agreed to purchase the Tag-Along Member’s Membership Interest or Economic Interest in accordance with the terms hereof.

(c) The Tag-Along Rights set forth above in this Section 11.05 may be exercised by each Tag-Along Member by delivery of a written notice to the Company and the Selling Member (the “Tag-Along Notice”) within ten (10) business days following receipt of the notice specified in the preceding paragraph. The Tag-Along Notice shall state that the Tag-Along Member wishes to be included in the Transfer to the Third Party.

(d) Upon the giving of a Tag-Along Notice, the Tag-Along Member shall be entitled and obligated to sell its Membership Interest or Economic Interest, as applicable, to the Third Party on the Third Party Terms. After expiration of the ten (10) business day period referred to in Section 11.05(c) above, if the provisions of this Section have been complied with in all material respects, the Selling Member shall have the right for a one hundred twenty (120) day period (the “Tag-Along Free Period”) to Transfer its Interest to be Transferred to the Third Party on the Third Party Terms (or on other terms no more favorable to the Selling Member) without further notice to any Tag-Along Member who has not given a Tag-Along Notice, but after such Tag-Along Free Period no such Transfer may be made without again giving notice to all Tag-Along Members of the proposed Transfer and complying with the requirements of this Section 11.05. Any Transfer of the Interest to be Transferred made after the last day of the Tag-Along Free Period without strict compliance with the terms, provisions, and conditions of this Section 11.05 and the other terms, provisions, and conditions of this Agreement, shall be null, void, and of no force or effect.

(e) At the closing of the Transfer to any Third Party (of which the Selling Member shall give each Tag-Along Member who has elected to exercise the Tag-Along Right provided by this Section 11.05 at least ten (10) Business Days’ prior written notice), the Third

Party shall remit to each Member the consideration for the total sales price of the Membership Interest or Economic Interest of such Member sold pursuant thereto, upon compliance by such Member with any conditions to closing generally applicable to the Selling Member and the Tag-Along Member selling its Membership Interest or Economic Interest in the transaction.

#### **11.06 Reasonableness of Restrictions.**

Each Member hereby acknowledges the reasonableness of the restrictions contained in this Article in view of the purposes of the Company, the tax-exempt status of the Class B Member and the relationship of the Members. The Transfer of any Membership Interest or Economic Interest in violation of the restrictions contained in this Article shall be deemed invalid, null and void, and of no force or effect. Any Person to whom a Membership Interest or Economic Interest, or any portion thereof, is attempted to be transferred in violation of this Article shall not be entitled to vote on matters coming before the Members, participate in the management of the Company, act as an agent of the Company, receive distributions from the Company or have any other rights in or with respect to the Membership Interest or Economic Interest, or portion thereof.

### **ARTICLE XII RIGHT TO BUY OR SELL**

#### **12.01 Shotgun Rights.**

Within ninety (90) days of the occurrence of a Shotgun Event, (i) the Class B Member (the "Purchasing Member") may offer to buy all, but not less than all, of the Class A Membership Interest of the Class A Member (the "Selling Member"), and (ii) the Class A Member (also, the "Purchasing Member") may offer to buy all, but not less than all, of the Class B Membership Interests of the Class B Member (also, the "Selling Member"). The Purchasing Member, in either event, shall exercise its rights hereunder by giving the Shotgun Notice (defined below), which shall set forth the terms and conditions of such purchase.

Upon receipt of the Shotgun Notice, the Selling Member shall be obligated to (i) sell its Membership Interest to the Purchasing Member for the Shotgun Value (as determined pursuant to Section 12.04 below) or (ii) elect to buy the Purchasing Member's Membership Interest for the Shotgun Value (as determined pursuant to Section 12.04 below). If the Selling Member elects to buy the Purchasing Member's Membership Interest, the Purchasing Member shall be obligated to sell its Membership Interest to the Selling Member for the Shotgun Value (as determined pursuant to Section 12.04 below), and on the terms and conditions set forth in the Shotgun Notice. Notwithstanding the foregoing, other than with respect to a Change in Control, the right to sell or buy a Member's Membership Interest as set forth in this Section shall not be exercisable until (i) the one year anniversary date of the Effective Date; and (ii) ninety (90) days after the Purchasing Member has provided notice to the Selling Member of its intention to exercise its rights hereunder, during which time the Purchasing Member and the Selling Member shall make a reasonable best effort to come to an amicable settlement of their differences or the amicable sale of either or both parties' Membership Interest.

## **12.02 Shotgun Notice.**

The Shotgun Notice shall: (i) be in writing signed by the Purchasing Member; (ii) include the closing date (“Closing Date”) for such sale, which Closing Date shall be no fewer than ninety (90) calendar days after the date of the Selling Member’s receipt of the Shotgun Notice; (iii) include the Deposit required pursuant to Section 12.05 below; (iv) include the terms and conditions of the offer (other than the purchase price, which shall be the Shotgun Value determined pursuant to Section 12.04 below); and (v) include the adjustments to be made to the purchase price on the Closing Date, if any.

## **12.03 Response.**

The Selling Member shall have a period of forty-five (45) days after receipt of the Shotgun Notice (the “Response Period”) within which to notify the Purchasing Member in writing (the “Answer”) whether the Selling Member elects to sell its Membership Interest, or to buy the Purchasing Member’s Membership Interest, together with the Deposit required pursuant to Section 12.05 hereof. If the Selling Member does not deliver the Answer within the foregoing forty-five (45) day period, then the Selling Member shall be deemed to have conclusively elected to sell its Membership Interest to the Purchasing Member for the Shotgun Value. In the event the Selling Member elects to purchase the Purchasing Member’s Membership Interest as set forth in the Answer, then the “Purchasing Member” shall thereafter be deemed the “Selling Member” and the “Selling Member” shall thereafter be deemed the “Purchasing Member” for purposes of Sections 12.04, 12.06, and 12.07 of this Agreement. The Membership Interest to be sold and purchased shall be referred to as the “Shotgun Membership Interest.” Notwithstanding any provision in this Section 12.03 to the contrary, the Purchasing Member and the Selling Member (if the Selling Member had elected to purchase the Purchasing Member’s Membership Interest) may, within ten (10) days of the final determination of the Shotgun Value pursuant to Section 12.04, elect to rescind its offer to purchase the Membership Interest of the other without liability to the other (except the payment of its portion of the costs of a third appraiser, if any, as provided in Section 12.04) and any deposit paid by such rescinding Member pursuant to Section 12.05 shall be returned to that Member; provided, however, that if the Selling Member timely rescinds its election to purchase the Purchasing Member’s Membership Interest, and the Purchasing Member does not timely rescind its Shotgun Notice, the Purchasing Member shall make the deposit required by Section 12.05) and the parties shall proceed with the purchase by the Purchasing Member of the Selling Member’s Membership Interest as contemplated by, and in accordance with, this Article XII.

## **12.04 Shotgun Value.**

The term “Shotgun Value” means the appraised fair market value of the Shotgun Membership Interest in the Company as hereinafter provided. The Purchasing Member and the Selling Member, under Section 12.03, shall each appoint, by written notice to the other within ten days after the end of the Response Period, an appraiser to determine the fair market value of the Shotgun Membership Interest (without any discount or premium for voting rights, marketability or control) being sold as of the last day of the month immediately preceding the month in which the Shotgun Notice was delivered. If the two appraisers agree upon the value of the Shotgun Membership Interest, they shall jointly render a single written report stating that

value. If the two appraisers cannot agree upon the value of the Shotgun Membership Interest, they shall each render a separate written report and shall appoint a third appraiser within thirty (30) days of their appointment. The third appraiser shall determine the value of the Shotgun Membership Interest being sold (without any discount or premium for voting rights, marketability or control) and shall render a written report of his or her opinion thereon. The value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Shotgun Value. However, if the value of the Shotgun Membership Interest contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall be the Shotgun Value and if the value of the Shotgun Membership Interest contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall be the Shotgun Value. If either party fails to timely appoint an appraiser, or either appraiser fails to timely render a report, the value contained in the timely-rendered report of the timely-appointed appraiser shall be the Shotgun Value and there shall be no need to appoint a third appraiser. Each party shall pay the fees and costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

#### **12.05 Deposit.**

The Shotgun Notice shall be accompanied by a deposit in the amount of one hundred thousand dollars (\$100,000) (the "Deposit"), in the form of a certified or cashier's check made payable to a nationally recognized title insurance company, as escrow agent (the "Escrow Agent"). The Selling Member shall hold the check in trust for the benefit of the Purchasing Member, and shall not deposit the check with the national office (not an agent) of the Escrow Agent located within Connecticut until the earlier to occur of (a) the expiration of the Response Period, (b) the giving of a written waiver of the Response Period by the Selling Member, or (c) the Selling Member's transmittal of its Answer electing to sell its Membership Interest. If the Selling Member elects to purchase the Purchasing Member's Membership Interest, then the Selling Member shall return the Purchasing Member's Deposit with its Answer and shall promptly deposit a certified or cashier's check made payable to, or send a wire transfer of immediately available federal funds to, the Escrow Agent in an amount equal to one hundred thousand dollars (\$100,000) (also, the "Deposit") with the national office (not an agent) of the Escrow Agent located within Connecticut. Concurrently with depositing a check or making the wire transfer, the applicable Member shall provide to the Escrow Agent a duly-completed IRS Form W-9 with the Member's employer identification number for the Escrow Agent's use in depositing the check or federal funds in an interest-bearing account. The costs for the services of the Escrow Agent shall be paid at Closing, one-half by the Selling Member and one-half by the Purchasing Member.

#### **12.06 Escrow Agreement.**

By execution of this Agreement, the Members agree that the Escrow Agent shall hold the Deposit and any and all interest accrued thereon (collectively, also the "Deposit") in escrow and shall dispose of the Deposit only in accordance with the following provisions:

(a) The Escrow Agent shall deliver the Deposit, or such portion thereof as is required to be delivered hereunder, to the Selling Member or to the Purchasing Member, as the case may be, as follows:

(i) to the Selling Member, or otherwise at the direction of the Selling Member, upon completion of the Closing Date, in which case the Deposit shall be applied toward the Shotgun Value; or

(ii) to the Selling Member, after receipt of the Selling Member's demand in which the Selling Member certifies that the Purchasing Member has defaulted under this Article, and the Selling Member is thereby entitled to receive the Deposit; but the Escrow Agent shall not honor the Selling Member's demand until more than ten (10) days after the Escrow Agent has transmitted a copy of the Selling Member's demand to the Purchasing Member, nor thereafter if the Escrow Agent receives a Notice of Objection (hereinafter defined) from the Purchasing Member within such ten (10) day period; or

(iii) to the Purchasing Member, after receipt of the Purchasing Member's demand in which the Purchasing Member certifies that the Selling Member has defaulted under this Article, and the Purchasing Member is thereby entitled to receive the Deposit; but the Escrow Agent shall not honor the Purchasing Member's demand until more than ten (10) days after the Escrow Agent has transmitted a copy of the Purchasing Member's demand to the Selling Member, nor thereafter if Escrow Agent receives a Notice of Objection (hereinafter defined) from the Selling Member within such ten (10) day period; or

(iv) to any party, at the direction of both the Selling Member and the Purchasing Member.

Upon delivery of the Deposit in accordance with the terms and conditions herein, the Escrow Agent shall be relieved of all liability hereunder and with respect to the Deposit. The Escrow Agent shall deliver the Deposit, at the election of the party or parties entitled to receive the same, by (i) a good, unendorsed certified check or checks of the Escrow Agent payable to the order of such party or parties, (ii) an unendorsed official bank or cashier's check or checks payable to the order of such party or parties, or (iii) a bank wire transfer or transfers of immediately available funds to an account designated by such party or parties.

(b) Upon receipt of a written demand under Subsection 12.06(a)(ii) or under Section 12.06(a)(iii) above, the Escrow Agent shall promptly transmit a copy of such demand to the other Member. Within ten (10) days after the date of transmitting the same, but not thereafter, the other Member may object to the delivery of the Deposit to the Member requesting the Deposit by transmitting a notice of objection (a "Notice of Objection") to the Escrow Agent. After receiving a Notice of Objection, the Escrow Agent shall promptly transmit a copy of such Notice of Objection to the Member requesting the Deposit; and thereafter, the Escrow Agent shall continue to hold the Deposit until the Escrow Agent receives a written agreement of the Selling Member and the Purchasing Member directing the disbursement of the Deposit, in which event the Escrow Agent shall disburse the applicable Deposit in accordance with such agreement. In the event of any litigation between the Selling Member and the Purchasing Member relating to the Deposit, the Escrow Agent will deposit the Deposit with the clerk of the

court in which such litigation is pending. In the event the Deposit is deposited in court by the Escrow Agent pursuant to the foregoing sentence, the Escrow Agent shall be entitled to rely upon the judgment of such court.

(c) The Escrow Agent may rely on the foregoing provisions in lieu of an escrow agreement with the Members. Notwithstanding the foregoing, in the event that the Escrow Agent requests a commercially reasonable written agreement embodying the foregoing provisions, each Member shall promptly execute such an agreement. If either Member shall fail to execute such agreement within five (5) days after transmittal thereof, or if the agreement materially differs from the terms hereof, upon such determination of either Member, then either Member may direct the Escrow Agent to transfer the check to another Escrow Agent who will not require a separate written escrow agreement.

(d) When the Deposit check is deposited with the Escrow Agent, the Escrow Agent shall be instructed in writing that the Escrow Agent's acceptance of the check as a Deposit will constitute acceptance by the Escrow Agent of the terms and conditions set forth herein, and the Escrow Agent shall be provided with a copy of this Article with such Deposit.

#### **12.07 Closing Date.**

(a) The sale and acquisition of the Shotgun Membership Interest (the "Closing") shall occur on the Closing Date through the offices of the Escrow Agent, in escrow. At such Closing, the Selling Member shall convey and assign to the Purchasing Member by assignment with warranty of title, free and clear of all liens, claims, and encumbrances arising through the assignor, the Shotgun Membership Interest of the Selling Member and shall execute and deliver to the Purchasing Member all documents that are reasonably required to give effect to the sale and acquisition of such Shotgun Membership Interest. The Selling Member's obligation to transfer its Shotgun Membership Interest shall be conditioned upon the Purchasing Member's payment of the Shotgun Value. The Members shall take such other actions and execute such other documents as may be necessary or appropriate to give effect to any transaction contemplated by this Article.

(b) All loans made or deemed made by or to the Selling Member shall be repaid in full (including all accrued but unpaid interest thereon) at the Closing. No transaction pursuant to this Section shall relieve the Selling Member from any duty or obligation owed to the Company or to the other Members to the extent such obligation accrued and is properly attributable to the period prior to the Closing Date, nor shall it constitute a waiver or release of claims with respect thereto. The Purchasing Member shall defend, indemnify and hold harmless the Selling Member from all obligations and liabilities arising from the Shotgun Membership Interest accruing and properly attributable to the period beginning on the Closing Date, and the Selling Member shall defend, indemnify and hold harmless the Purchasing Member from all obligations and liabilities arising from the Shotgun Membership Interest accruing and properly attributable to the period prior to the Closing Date. The foregoing sentence shall survive the Closing and shall not require further documentation to take effect, but, if requested by either Member, both Members will execute a reasonable confirming document that is consistent with the foregoing provisions.

(c) If at the Closing Date, the Selling Member or such Member's Affiliates or related entities, shall have any guarantees, collateral or covenants lodged with third parties to secure any indebtedness, liability or obligation of the Company, including any liability under nonrecourse carveouts, or shall have outstanding any commitment to give such guarantees, collateral or covenants ("Personal Liability"), the Purchasing Member shall deliver or cause to be delivered to the Selling Member, no later than the Closing Date, a cancellation of such Personal Liability. As an alternative to the foregoing, the Selling Member, at its election, may accept the Purchasing Member's indemnity for all manner of loss, claims and damages that could arise as a result of any Personal Liability, so long as (i) such indemnity is supported by an irrevocable clean letter of credit in an amount equal to the maximum potential Personal Liability (as reasonably determined by the Selling Member) and (ii) such letter of credit is payable at sight, renewable annually, issued by a nationally recognized United States banking institution and is otherwise reasonably acceptable to the Selling Member. The foregoing letter of credit shall remain in full force and effect until the Personal Liability is released.

(d) In the event that the Selling Member shall be prohibited under the terms of any debt or other obligation of the Company from selling its Membership Interest to the Purchasing Member without the consent of or payment to a third party, or otherwise is prohibited from consummating this transaction without the consent of or payment to a third party to whom a debt or other obligation of the Company is owed, then in such event, such debt or other obligation of the Company giving rise to such prohibition, as the case may be, shall be fully discharged by the Purchasing Member on the Closing Date and any prepayment fee, premium or cost shall be paid by the Purchasing Member, unless the appropriate mortgagee or other creditor or obligee shall permit such transfer to be made, in which case the Purchasing Member shall pay all costs and fees related to obtaining such consent to the transfer.

#### **12.08 Default.**

(a) In the event of a default by any Member under this Article (the "Defaulting Member"), the Member that is ready, willing and able to close the transaction (the "Non-defaulting Member") shall have the right to purchase the Defaulting Member's Interest at a price equal to 75% of the purchase price that would have been payable on the Closing Date.

(b) Because a Membership Interest in the Company is a unique asset, the Non-defaulting Member shall have all remedies available at law and equity with respect to any failure by a Defaulting Member to perform, including, without limitation the right to specific performance and to recover attorneys' fees and litigation costs. In lieu of the foregoing and all other remedies, at the election of the Non-defaulting Member, if the Defaulting Member fails to close on the purchase of the Membership Interest in accordance with the terms of this Article, then the Non-defaulting Member shall retain the Deposit, as complete and liquidated damages and not as a penalty.

#### **12.09 One Percent Buy-Back.**

(a) Within ninety (90) days of the occurrence of a Buy-Back Event, the Class A Member shall have the right, subject to Section 12.09(b) below, to purchase one percent (1%) of the Company from the Class B Member. The Class A Member shall exercise its rights

hereunder by giving written notice to the Class B Member (the “Buy-Back Notice), including the closing date (“Closing Date”) for such sale, which Closing Date shall be no fewer than ninety (90) calendar days after the date the Class B Members receives the Buy-Back Notice. The existence of a Buy-Back Event shall be an Arbitrable Issue.

(b) Upon receipt of the Buy-Back Notice, the Class B Member shall have a sixty (60) day period in which to rescind the action taken pursuant to Section 6.09(b)(ii) that gave rise to the Buy-Back Event (or to amend the action so that it no longer constitutes a Buy-Back Event), in which case the Class A Member shall have no further rights under this Section 12.09. The fact as to whether the Class B member has rescinded the action or amended the action as set forth in the prior sentence shall be an Arbitrable Issue. If the Class B Member does not rescind the action taken pursuant to Section 6.09(b)(ii) that gave rise to the Buy-Back Event (or amend the action so that it no longer constitutes a Buy-Back Event), the Class B Member shall be obligated to sell one percent (1%) of the Company to the Class A Member for the Appraised Value as defined in Section 14.04, without any discount for lack of voting rights, marketability or control. Upon the closing of such sale the Operating Agreement of the Company will be automatically amended to remove the Class B Manager special power under Section 6.09(b)(ii).

## **ARTICLE XIII ADDITIONAL MEMBERS**

### **13.01 Additional Members.**

The Company may admit additional Members, subject to Section 6.04, upon such terms and conditions, at such time or times, and for such contributions as shall be determined by the Company, and in connection with any such admission, the Management Committee shall have the right to make technical amendments to Exhibit A to reflect the name, address, contribution, taxpayer identification number and Percentage Interest of the admitted Member. The admission of any Person as a substitute or additional Member shall be conditioned upon such Person’s written acceptance and adoption of all the terms and provisions of this Agreement.

A Class C Member may be added upon the approval of the Management Committee or, if the Management Committee does not approve the proposed Class C Member, the Class B Managers may approve such Class C Member subject to the terms of this Section 13.01; provided, however, the Class B Managers, acting unilaterally, may not approve more than a total of four (4) Class C Members. In all cases of any Class C Member, whether appointed by the Class B Member or approved by the Management Committee, -except as otherwise approved and agreed to by the Management Committee as to such specific Class C Member, a Class C Member shall not be employed by the Class B Member or an Affiliate thereof. Further, in all cases, except as otherwise approved by the Management Committee, a Class C Member shall only be eligible for Membership in the Company as a Class C Member only after the Class A Member first makes an offer of membership in the Class A Member to said Class C Member (which offer should be made within thirty (30) days of notification to the Class A Member of the proposed Class C Member) or elects not to make an offer of membership in the Class A Member to said Class C Member. Further, in addition to the provisions of Section 2.02 above and all other terms, conditions and eligibility requirements applicable to Physician Members hereunder,

a Class C Member, prior to membership in the Company, shall have been on the full-time active medical staff of the Center continuously for a period of no less than two (2) years (so long as active medical staff privileges do not require any minimum volume of procedures be performed at the Center to obtain or maintain active medical staff privileges). Except as otherwise approved by the Management Committee as to any Class C Member, the Percentage Interest owned by an individual Class C Member shall not be greater than fifty percent (50%) of the total of the Percentage Interests held indirectly in the Company by the Physician Members of the Class A Member, divided by the total number of Physician Members in the Class A Member. All Class C Members shall hold interests individually in the Company.

Within a reasonable time period following the addition of a new Member(s) (including a Class C Member), the Class B Member shall make such capital contributions as necessary, to maintain its Percentage Interest at fifty-one (51%) percent. The Members otherwise specifically waive any preemptive rights.

### **13.02 Additional Owners of the Class A Member.**

Prior to adding a new owner to the Class A Member, directly or indirectly, the Class A Member shall provide at least thirty (30) days' prior written notice to the Class B Member with a description of the of proposed new owner in the Class A Member and the Class B Member shall identify any issues or concerns as to the proposed new Member's eligibility and satisfaction of the terms for Membership in the Company; provided, however, the Class B Member shall not unreasonably object to or attempt to condition or delay said New Member's admission to the Company. Provided, further, that the notice and review requirements of this Section 13.02 shall not apply to any new owner (direct or indirect) of the Class A Member who is also providing substantially all of his/her/its professional services through a practice entity with current owners in the Class A Member (e.g., an associate of a PC with owners who are owners in the Class A or C Member would not require notice to, and review by, the Class B Member to become an owner in the Class A Member, or, if a PC is merged into a PLLC that currently has owners in the Class A Member, the members of PC could become owners in the Class A Member without notice and review by the Class B Member); in all cases, however, the Class A Member will still provide notice to the Class B Member of the introduction of all new owners in the Class A Member even if such new owner does not require Class B Member approval.

## **ARTICLE XIV WITHDRAWALS OF MEMBERS**

### **14.01 Voluntary Withdrawal.**

No Member or Economic Interest Owner shall have the right or power to Voluntarily Withdraw from the Company, except as otherwise provided by this Agreement. If a Member withdraws or resigns as a Member in violation of this Section 14.01, such Member hereby agrees that such withdrawal or resignation will constitute a breach of this Agreement and an Involuntary Withdrawal. The Company may offset any damages due to such a breach against any amounts otherwise distributable to such Member in addition to any remedies otherwise available to the Company. No assessment of damages shall account for or be based on the volume or value of business generated by such Member.

#### **14.02 Involuntary Withdrawal.**

Immediately upon the occurrence of an Involuntary Withdrawal, the successor of the withdrawn Member or Economic Interest Owner shall thereupon become an Economic Interest Owner but shall not become a Member without the unanimous vote of the remaining Members (excluding the Class C Members). The successor Economic Interest Owner shall have all the rights of an Economic Interest Owner, subject to the provisions of this Agreement, including the obligation to sell its Economic Interest under Section 14.03. However, neither the withdrawn Member or Economic Interest Owner nor the successor Economic Interest Owner shall be entitled to receive, in liquidation of the withdrawn Member's Membership Interest or Economic Interest Owner's Economic Interest, the fair market value of the withdrawn Member's Membership Interest or Economic Interest Owner's Economic Interest as of the date the Member or Economic Interest Owner Involuntarily Withdrew from the Company, except as otherwise provided by this Agreement.

#### **14.03 Right to Buy Interest.**

Upon the Involuntary Withdrawal of a Member or an Economic Interest Owner, the Company and the Members (the "Purchasing Members"), other than the Withdrawn Member (as defined below), shall have the right to purchase all, but not less than all, of a Withdrawn Member's Economic Interest, who shall be obligated to sell, upon the receipt of an Election Notice and for the Purchase Price and on the Payment Terms as set forth herein.

(a) **Withdrawn Member** means a Member or an Economic Interest Owner who has suffered an Involuntary Withdrawal and its successors or assigns.

(b) **Transfer Period**. Upon the occurrence of the Involuntary Withdrawal, the Withdrawn Member shall be and remain obligated to sell its Economic Interest for a period (the "Transfer Period") ending at 11:59 p.m. local time at the Company's principal office on the sixtieth (60th) day following the day the Members, other than the Withdrawn Member, receive actual written notice of the Involuntary Withdrawal.

(c) **Purchaser**. The Withdrawn Member's Economic Interest shall be purchased by the Company if the Management Committee consents to the purchase of the Economic Interest by the Company. Otherwise, the Purchasing Members shall have the right to purchase the Withdrawn Member's Economic Interest. In the event that more than one Member elects to purchase the Withdrawn Member's Economic Interest, each Member shall have the right to purchase the Withdrawn Member's Economic Interest in the same proportion as that Member's Percentage Interest bears to the total Percentage Interest of all Members who have elected to purchase the Withdrawn Member's Economic Interest.

(d) **Manner of Election**. At any time during the Transfer Period, the Company or a Member may elect to purchase the Withdrawn Member's Economic Interest by giving written notice of its election to the Withdrawn Member (the "Election Notice"). If such election is not made within the Transfer Period, any right to purchase the Withdrawn Member's Economic Interest shall be waived except as otherwise provided in this Agreement.

(e) **Transfer Closing Date.** If the Company or a Member elects to purchase the Withdrawn Member's Economic Interest, the Company's or the Member's notice shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the expiration of the Transfer Period, nor more than sixty (60) days after the expiration of the Transfer Period.

(f) **Purchase Price.** The Purchase Price for the Withdrawn Member's Economic Interest shall be 75% of the Appraised Value of the Withdrawn Member's Economic Interest, as determined under Section 14.04; provided, however, that, with respect to a Class C Member, the Purchase Price for the Withdrawn Member's Economic Interest shall be 100% of the Appraised Value in the event of an Involuntary Withdrawal event set forth in Sections (f)(iii), (v), and (vii) of the definition of "Involuntary Withdrawal".

(g) **Payments Terms.** In the event that a Member or the Company (the "Purchaser") exercises its right to purchase the Withdrawn Member's Economic Interest, the Purchaser may elect to pay the purchase price on the Transfer Closing Date (i) in cash, (ii) in five equal annual installments, with the first installment to be paid on the Transfer Closing Date, together with interest calculated at a minimum rate per annum at which no interest will be imputed for federal income tax purposes, or (iii) on any other terms mutually agreed to by the Withdrawn Member and the Purchaser.

(h) **Closing.** The sale and acquisition of the Withdrawn Member's Economic Interest (the "Closing") shall occur on the Transfer Closing Date. At such Closing, the Withdrawn Member shall convey and assign to the Purchaser by assignment with warranty of title, free and clear of all liens, claims, and encumbrances arising through the assignor, the Economic Interest of the Withdrawn Member and shall execute and deliver to the Purchaser all documents that are reasonably required to give effect to the sale and acquisition of such Economic Interest, provided that the Withdrawn Member may retain a security interest in the Economic Interest if the Purchaser elects to pay the Purchase Price in five equal annual installments as set forth in Section 14.03(g)(ii). The Withdrawn Member and the Purchaser shall take such other actions and execute such other documents as may be necessary or appropriate to give effect to any transaction contemplated by this Section.

#### **14.04 Appraised Value.**

The term "Appraised Value" means the appraised fair market value of an Economic Interest in the Company as hereinafter provided. The Company and the Withdrawn Member, under Section 14.03, shall each appoint, by written notice to the other within ten days of the date of the Election Notice, an appraiser to determine the fair market value of the Economic Interest (without any discount or premium for voting rights, marketability or control) being sold as of the date of the Involuntary Withdrawal. If the two appraisers agree upon the value of the Economic Interest, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the value of the Economic Interest, they shall each render a separate written report and shall appoint a third appraiser within thirty (30) days of their appointment. The third appraiser shall determine the value of the Economic Interest being sold and shall render a written report of his or her opinion thereon. The value contained in the aforesaid joint written report or written report of the third appraiser, as the case may be, shall be the Appraised Value. However,

if the value of the Economic Interest contained in the appraisal report of the third appraiser is more than the higher of the first two appraisals, the higher of the first two appraisals shall be the Appraised Value and if the value of the Economic Interest contained in the appraisal report of the third appraiser is less than the lower of the first two appraisals, the lower of the first two appraisals shall be the Appraised Value. If either party fails to timely appoint an appraiser, or either appraiser fails to timely render a report, the value contained in the timely-rendered report of the timely-appointed appraiser shall be the Appraised Value and there shall be no need to appoint a third appraiser. Each party shall pay the fees and costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

## **ARTICLE XV DISSOLUTION AND TERMINATION**

### **15.01 Dissolution.**

The Company shall be dissolved and subsequently terminated upon:

- (a) the unanimous vote or written consent of the Class A and B Members to dissolve the Company, or as set forth in Section 14.04; or
- (b) the Company has been sanctioned or excluded from participation in any federal health care program.

### **15.02 Winding Up and Liquidation.**

When the Company is dissolved, the business and property of the Company shall be wound up and liquidated by the Management Committee or a liquidator designated by the Members (the "Liquidating Trustee"). The Management Committee or the Liquidating Trustee shall use his or her or its best efforts to reduce to cash and cash equivalent items, such assets of the Company as the Management Committee or the Liquidating Trustee shall deem it advisable to sell, with consideration to obtaining fair value for such assets, and any tax or other legal considerations.

### **15.03 Distributions.**

On winding up of the Company, the assets of the Company shall be distributed, first to creditors of the Company, including Members and Economic Interest Owners who are creditors, in satisfaction of the liabilities of the Company, and then to the Members and Economic Interest Owners in accordance with the balances in their respective Capital Accounts, after taking into account all contributions, distributions, and allocations for all periods.

### **15.04 Negative Capital Accounts.**

Except as otherwise provided in this Agreement, no Member or Economic Interest Owner shall be obligated to restore a Negative Capital Account to the Company, and such deficit shall not be considered a debt owed to the Company or any other person for any purpose whatsoever.

## **ARTICLE XVI DEFINITIONS**

The following capitalized terms shall have the meanings specified in this Article XVI. Other terms are defined in the text of this Agreement, and throughout this Agreement, those terms shall have the meanings respectively ascribed to them.

### **Act.**

“Act” shall mean the Connecticut Limited Liability Company Act, as amended from time to time.

### **Adjusted Capital Account Deficit.**

“Adjusted Capital Account Deficit” means, with respect to any Member or Economic Interest Owner, the deficit balance, if any, in the Member’s or Economic Interest Owner’s Capital Account as of the end of the relevant taxable year, after giving effect to the following adjustments:

(i) the Member’s or Economic Interest Owner’s Capital Account shall be increased by the amount that the Member or the Economic Interest Owner is obligated to restore, or is deemed obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c) and the penultimate sentences of Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) the Member’s or Economic Interest Owner’s Capital Account shall be decreased by the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5), and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

### **Affiliate.**

“Affiliate” shall mean, with respect to a Member, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Member. Notwithstanding any other provision of this Agreement to the contrary: (i) for purposes of Article XI only, “Affiliate”, in the case of a Class A or C Member, shall mean exclusively a Person owned exclusively by the physician owners of the Class A or C Member immediately prior to the subject Transfer; and (ii) for purposes of Section 5.06(a) only, “Affiliate” shall not include Constitution Billing and Financial Services, LLC with respect to the provision of billing, collection, and revenue cycle management services only, but would include Constitution Billing and Financial Services, LLC with respect to any other Competitive Activities, including, without limitation, other management or administrative services.

### **Agreed Value.**

“Agreed Value” shall mean the fair market value of an asset as of the date of valuation, which shall be determined by the unanimous agreement of the Class A and B Members or, if they cannot so agree, by an independent appraiser selected by the Management Committee.

### **Applicable Law.**

“Applicable Law” shall mean each and every applicable federal, state or local law, statute, charter, ordinance, rule, regulation, order, license certification and accreditation standard of any governmental, regulatory or administrative agency or authority or court or other tribunal, including but not limited to the Connecticut Public Health Code and any decision issued by the Connecticut Office of Health Care Access with regard to the application for a certificate of need to be filed with respect to the Center.

### **Arbitrable Issue.**

“Arbitrable Issue” shall mean any one or more of the following: (i) an alleged breach of this Agreement; (ii) a dispute regarding the interpretation or implementation of this Agreement, including without limitation the Company’s Charity Care Policy; (iii) whether an Exempt Status Matter Action has a Material Adverse Effect; or (iv) the existence of a Buy-Back Event, including whether the Class B Member has rescinded the action that gave rise to the Buy-Back Event (or amended the action so that it no longer constitutes a Buy-Back Event).

### **Articles of Organization.**

“Articles of Organization” shall mean the Articles of Organization of the Company as filed with the Connecticut Secretary of the State, as amended from time to time.

### **Buy-Back Event.**

“Buy-Back Event” shall mean a change caused by an action of the Class B Managers pursuant to Section 6.09(b)(ii) that is (or will be) materially adverse to the financial condition of the Company; provided that, the impact of any of the following shall not be considered in determining whether there has been (or will be) a materially adverse impact on the financial condition of the Company: (a) changes in the economy of the United States or the State of Connecticut; (b) changes generally affecting the industry in which the Sellers operate, including changes in any government or private payor programs generally applicable to operators of health care facilities in the United States and/or Connecticut; (c) changes in GAAP or any interpretation thereof; and (d) acts of God, calamities or national political or social conditions (including the engagement by any country in hostilities).

### **Capital Account.**

“Capital Account” shall mean the account maintained by the Company for each Member and Economic Interest Owner in accordance with the following provisions:

(i) a Member’s or Economic Interest Owner’s Capital Account shall be credited with the Member’s or Economic Interest Owner’s Capital Contributions, the amount of any Company liabilities assumed by the Member or the Economic Interest Owner (or that are secured by Company property distributed to the Member or the Economic Interest Owner), the Member’s or Economic Interest Owner’s distributive share of Profit, and any item in the nature of income or gain specially allocated to such Member or Economic Interest Owner pursuant to the provisions of Article IX (other than Section 9.04); and

(ii) a Member's or Economic Interest Owner's Capital Account shall be debited with the amount of money and the fair market value of any Company property distributed to the Member or the Economic Interest Owner, the amount of any liabilities of the Member or the Economic Interest Owner assumed by the Company (or that are secured by property contributed by the Member or the Economic Interest Owner to the Company), the Member's or Economic Interest Owner's distributive share of Loss, and any item in the nature of expenses or loss specially allocated to the Member or the Economic Interest Owner pursuant to the provisions of Article IX (other than Section 9.04).

If any Economic Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Economic Interest. If the book value of Company property is adjusted pursuant to Section 9.03(d), the Capital Account of each Member and Economic Interest Owner shall be adjusted to reflect the aggregate adjustment in the same manner as if the Company had recognized gain or loss equal to the amount of such aggregate adjustment.

In connection with a Capital Contribution of money or other property (other than a *de minimis* amount) by a new or existing Member or Economic Interest Owner as consideration for an Economic Interest or Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a *de minimis* amount) by the Company to a retiring Member or Economic Interest Owner (as consideration for an Economic Interest or Membership Interest), the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) to its Agreed Value in accordance with Regulation Section 1.704-1(b)(2)(iv)(f). Any differences in the adjusted tax basis of Company property and the Agreed Value hereunder shall be accounted for under the principles set forth in Section 9.04.

It is intended that the Capital Accounts of all Members and Economic Interest Owners shall be maintained in compliance with the provisions of Regulation Section 1.704-1(b), and all provisions of this Agreement relating to the maintenance of Capital Accounts shall be interpreted and applied in a manner consistent with that Regulation.

**Capital Contribution.**

"Capital Contribution" shall mean any contribution to the capital of the Company in cash or property by a Member or Economic Interest Owner whenever made.

**Center.**

"Center" shall mean the outpatient orthopedic and ophthalmologic surgical center to be operated by the Company in Waterford, Connecticut.

**Change in Control.**

"Change in Control" means, with respect to the Class B Member, within one year after a merger or other reorganization involving Persons other than Affiliates of the Class B Member, more than fifty percent (50%) of the Persons electing the Board of Directors of the Class B

Member are different than the Persons electing the Board of Directors of Class B Member immediately prior to such reorganization.

**Charity Care Policy.**

“Charity Care Policy” shall have the meaning set forth in Section 6.03 hereof.

**Claim.**

“Claim” shall mean any action, suit, audit, proceeding, hearing, investigation, litigation, charge, complaint, claim, assessment or demand.

**Class A Managers.**

“Class A Managers” shall mean the individual Managers designated by the Class A Member pursuant to Section 6.01(a) hereof.

**Class B Managers.**

“Class A Managers” shall mean the individual Managers designated by the Class B Member pursuant to Section 6.01(a) hereof.

**Class A Member.**

“Class A Member” shall mean either (a) physicians who meet the requirements set forth in Section 2.02(b) hereof and who are admitted as Class A Members or (b) an entity owned entirely by physicians who meet the requirements set forth in Section 2.02(b) and Constitution Surgery Alliance, LLC.

**Class B Member.**

“Class B Member” shall mean The William W. Backus Hospital or any Affiliate of The William W. Backus Hospital to which The William W. Backus Hospital has assigned its Membership Interest pursuant to Section 11.02 hereof. Any Membership Interests held at any time by the Class B Member shall be deemed Class B Membership Interests.

**Class C Member.**

“Class C Member” shall mean either (a) physicians who meet the requirements set forth in Section 2.02(b) hereof or (b) an entity owned entirely by physicians who meet the requirements set forth in Section 2.02(b) and who are admitted as owners of the Class C Member consistent with the terms hereof.

**Code.**

“Code” shall mean the Internal Revenue Code of 1986, as amended, or the corresponding provisions of subsequent and superseding federal revenue laws.

**Company.**

“Company” shall mean Constitution Surgery Center East, LLC.

**Competition Affiliate.**

“Competition Affiliate” shall mean, with respect to a Member or Economic Interest Owner, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Member or Economic Interest Owner. “Competition Affiliate” shall additionally mean, with respect to the Class A Member: Barri Eye Care; Thames Eye Group, P.C.; Falck Eye Centers, LLC; Norwich Ophthalmology Group, PC; Eye M.D., LLC; Norwich Orthopedic Group, d/b/a Orthopedic Partners; Seacoast Orthopedic Surgery and Sportsmedicine LLC; New London County Orthopedic Surgery P.C.; John Giacchetto, MD; Soundview Orthopaedic Associates, LLP; Shoreline Eye Group, P.C.; Shaws Cove Orthopaedics, LLC; and any Person who is the direct or indirect owner of a beneficial interest in, or a direct or indirect stockholder of, a Class A Member or any of the foregoing.

**Costs.**

“Costs” shall mean any and all liabilities, losses, damages, Claims, sanctions, exclusions, taxes, interest, penalties, fines, costs and expenses (including without limitation, reasonable expenses of investigation and court costs, reasonable attorneys’ fees and disbursements and the reasonable fees and disbursements of other professionals).

**Economic Interest.**

“Economic Interest” shall mean a Member’s or Economic Interest Owner’s share of the Profit and Loss of and the right to receive distributions from the Company pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision of the Members.

**Economic Interest Owner.**

“Economic Interest Owner” shall mean the owner of an Economic Interest who is not a Member. By way of clarification, an individual or entity shall not be an Economic Interest Owner by virtue of being an owner of a Member.

**Exempt Status Matter.**

“Exempt Status Matter” is any matter, subject to the second paragraph of Section 6.09(b), that the Class B Member, acting through its Member Representatives, or the Class B Managers, in its sole, but reasonable, discretion, based on the written advice of counsel, believes involves one or more of the following areas:

- (i) amendments to the Charity Care Policy, which policy has been adopted by the Company in furtherance of the Class B Member’s charitable purposes, including, but not limited to, promoting health for a broad section of the community, which amendments are in

furtherance of the Class B Member's status as a tax-exempt charitable organization under the Code;

(ii) the initiation and implementation of charitable initiatives in furtherance of the Class B Member's charitable purposes (in addition to that provided for in the Charity Care Policy) including, but not limited to, promoting health for a broad section of the community in furtherance of the Class B Member's status as a tax-exempt charitable organization under the Code;

(iii) actions to ensure that the Company's policies and/or operations do not jeopardize the tax-exempt status of the Class B Member nor generate any "unrelated business taxable income" for the Class B Member, as reasonably determined by the auditor of the Class B Member, as such term is used in Code section 512(a);

(iv) ensuring that the Company satisfies its obligation to act in furtherance of the Class B Member's charitable purpose of promoting health for a broad section of the community;

(v) ensuring that any Person contracted with, employed or retained to manage any part of the activities or operations of the Company is legally obligated, in performing its duties to the Company, to further the Class B Member's charitable purposes, including but not limited to, requiring the preparation and submission to the Management Committee of quarterly reports on the charity care provided, and charitable care initiatives implemented or to be implemented, by the Company;

(vi) the termination of any management or other arrangement entered into with any Person to manage any part of the activities or operations of the Company if the Class B Managers determine, in their sole, but reasonable, discretion, that such Person is not acting to further (or is acting contrary to) the Class B Member's charitable purposes in breach of the management agreement; and

(vii) the removal of any officer of the Company if the Class B Managers determine, in their sole, but reasonable, discretion that such officer has failed to act or address issues as reasonably requested so as to further (or is acting contrary to) the Class B Member's charitable purposes, but such removal be without prejudice to the contract rights, if any, of the person so removed.

#### **Exempt Status Matter Action.**

"Exempt Status Matter Action" shall mean that the Class B Member, or its Member Representatives or the Class B Managers, have exercised its or their rights, based on the written advice of counsel, under Section 4.06(b), Section 6.09(b) or Section 17.06(b) unilaterally to cause the Company to take action, without the consent of the Class A Member or the Class A Managers; provided however, that an Exempt Status Matter Action shall not include any action to enforce Applicable Law or this Agreement or the Company's Charity Care Policy.

### **Free Cash Flow.**

“Free Cash Flow” shall mean:

- (a) the Profit or Loss for each year;
- (b) plus non-cash charges and expenses deducted in determining Profit or Loss;
- (c) plus the excess proceeds of any refinancing of Company debt and any other cash receipts which were not included in the computation of Profit or Loss;
- (d) plus the portion of any proceeds from the sale or other disposition of Company property not included in Profit or Loss;
- (e) minus the sum of
  - (i) principal payments against Company debt;
  - (ii) non-cash items of income included in the computation of Profit or Loss; and
  - (iii) any other cash expenditures of Company’s earnings which were not deducted in the computation of Profit or Loss, including, but not limited to the replacement or restoration of Company assets and provisions for adequate reserves for reasonably anticipated cash expenses and contingencies as determined by the Management Committee.

### **Involuntary Withdrawal.**

“Involuntary Withdrawal” means:

- (a) With respect to any Member or Economic Interest Owner, the bankruptcy or dissolution of the Member or Economic Interest Owner or any other event of disassociation as provided in Section 34-180(4)-(10) of the Act;
- (b) The conviction of any felony by a Member;
- (c) Any material breach of this Agreement by a Member which is not cured within thirty (30) days of notice of such breach from a non-breaching Member;
- (d) The exclusion, suspension or debarment from participation in any governmental program, including, but not limited to, the Medicare or Medicaid programs, of a Member or any Affiliate of a Member;
- (e) With respect to the Class A Member: (i) the Class A Member has fewer than eleven (11) Qualified Physician Members (as herein defined) for a continuous period of more than one hundred and twenty (120) days; (ii) the Class A Member and/or any one of its Competition Affiliates breaches any of the representations, warranties or covenants contained in Section 5.06(b) hereof and the Class B Member gives notice of such breach to the Class A

Member; or (iii) less than fifty-one percent (51%) of the ownership interests in the Class A Member are owned by fully-licensed surgeons specializing in either orthopedics, ophthalmology, or neurosurgery who are then on the active medical staff of the Class B Member; provided, with respect to (ii) and (iii), that the event cannot be resolved, or is not resolved within thirty (30) days following notice by the Class B Member to the Class A Member, by the removal of a Qualified Physician Member of the Class A Member. For purposes of this subsection (e), a "Qualified Physician Member" will be a physician who either (i) is an owner of the Class A Member or (ii) is an owner (directly or indirectly) in any entity which is an owner of the Class A Member and such physician meets the requirements set forth in Section 2.02 above; or

(f) With respect to a Class C Member: (i) the failure of a Class C Member to meet or continue to meet any of the requirements set forth in Section 2.02 hereof; (ii) revocation or suspension of a license to practice medicine or any other license required by any health care licensing authority in the State of Connecticut; (iii) retirement; (iv) the failure to maintain active, unrestricted staff privileges at the Center; (v) death or disability at any time; (vi) adjudication of incompetence at any time; of (vii) completely and fully terminating the practice of medicine within a forty (40) mile radius of the Center.

**Majority in Interest.**

"Majority in Interest" means the Members holding a majority of the Percentage Interests then held by the Members.

**Manager.**

"Manager" shall mean the Person or Persons designated to manage the business and affairs of the Company pursuant to Article VI hereof.

**Management Committee.**

"Management Committee" shall mean the Managers designated to manage the business and affairs of the Company pursuant to Article VI hereof.

**Material Adverse Effect.**

"Material Adverse Effect" shall mean, when referring to the impact of an Exempt Status Matter Action, an Exempt Status Matter Action that materially and adversely affects the business or prospects of the Company or the Class A and C Members' investment in the Company.

**Medical Staff.**

"Medical Staff" shall have the meaning set forth in Section 8.01 hereof.

**Member.**

"Member" shall mean each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become a Member in accordance with the terms hereof If a Person is a Member immediately prior to the purchase or other acquisition

by such Person of a Membership Interest or an Economic Interest, such Person shall have all the rights of a Member with respect to such purchased or otherwise acquired Membership Interest or Economic Interest, as the case may be. A Member shall cease to be a Member upon the sale or other transfer of his or her entire Economic Interest in the Company and shall not be deemed a Member with respect to any Percentage Interest in which he or she has sold or otherwise transferred his or her entire Economic Interest.

**Member Nonrecourse Debt Minimum Gain.**

“Member Nonrecourse Debt Minimum Gain” has the meaning set forth in Regulation Section 1.704-2(i)(3). Member Nonrecourse Debt Minimum Gain shall be computed separately for each Member and Economic Interest Owner in a manner consistent with the Regulations under Code Section 704(b).

**Member Nonrecourse Deductions.**

“Member Nonrecourse Deductions” means any Company deductions that would be Nonrecourse Deductions, if they were not attributable to a loan made or guaranteed by a Member or Economic Interest Owner within the meaning of Regulation Section 1.704-2(b)(4).

**Member Representatives.**

“Member Representatives” shall mean those individuals designated by the Members pursuant to Article II hereof.

**Membership Interest.**

“Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and the right to participate in the management of the business and affairs of the Company, including the right to vote on, consent to, or otherwise participate in any decision or action of or by the Members granted pursuant to this Agreement and the Act.

**Minimum Gain.**

“Minimum Gain” has the meaning set forth in Regulation Sections 1.704-2(b)(2) and 1.704-2(d). Minimum Gain shall be computed separately for each Member and Economic Interest Owner in a manner consistent with the Regulations under Code Section 704(b).

**Negative Capital Account.**

“Negative Capital Account” means a Capital Account with a balance of less than zero.

**Nonrecourse Deductions.**

“Nonrecourse Deductions” has the meaning set forth in Regulation Section 1.704-2(b)(1).

The amount of Nonrecourse Deductions for a taxable year of the Company equals the net increase, if any, in the amount of Minimum Gain during that taxable year, determined according to the provisions of Regulation Section 1.704-2(c).

**Nonrecourse Liability.**

“Nonrecourse Liability” means any liability of the Company with respect to which no Member or Economic Interest Owner has personal liability determined in accordance with Section 1.752-1(a)(2) of the Regulations.

**Percentage Interest.**

“Percentage Interest” shall mean, as to a Member, the percentage set forth after the Member’s name on Exhibit A, as amended from time to time, and as to an Economic Interest Owner who is not a Member, the Percentage Interest of the Member whose Economic Interest has been acquired by such Economic Interest Owner, to the extent the Economic Interest Owner has succeeded to that Member’s Economic Interest.

**Person.**

“Person” shall mean any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, foreign trust or foreign business organization and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

**Profit and Loss.**

“Profit” and “Loss” shall mean, for each taxable year of the Company (or other period for which Profit or Loss must be computed) the Company’s taxable income or loss determined in accordance with Code Section 703(a), with the following adjustments:

- (i) all items of income, gain, loss, deduction, or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;
- (ii) any tax-exempt income of the Company, not otherwise taken into account in computing taxable income or loss, shall be included in computing Profit or Loss;
- (iii) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing taxable income or loss, shall be subtracted from Profit or Loss;
- (iv) gain or loss resulting from any taxable disposition of Company property shall be computed by reference to the adjusted book value of the property disposed of, notwithstanding the fact that the adjusted book value differs from the adjusted basis of the property for federal income tax purposes; and

(v) in lieu of the depreciation, amortization, or cost recovery deductions allowable in computing taxable income or Loss, there shall be taken into account the depreciation computed based upon the adjusted book value of the asset.

**Regulations.**

“Regulations” shall mean the income tax regulations promulgated under the Code by the United States Department of the Treasury, including proposed, temporary and final regulations.

**Shortfall.**

“Shortfall” shall have the meaning set forth in Section 9.06(d) hereof.

**Shotgun Event.**

“Shotgun Event” shall mean any of the following: (a) (i) it has been determined that an Exempt Status Matter Action has had and/or shall have a Material Adverse Effect either by mutual written agreement of the Class A Member and the Class B Member, or by a written finding made reasonably and in good faith by the Class A Member, based upon the written advice of the professional advisors of the Class A Member (and after having sought the advice and input of the Class B Member Representative), and (ii) within forty-five (45) days of such mutual written agreement, or receipt of such written finding from the Class A Member, the Class B Member has not either (A) revoked such Exempt Status Matter Action or (B) assigned its Membership Interest to a for-profit Affiliate of the Class B Member, revoked such Exempt Status Matter Action, and agreed in writing to amend this Agreement to delete Sections 4.06(b), 6.09(b) and 17.06(b) hereof; (b) the Class A Member learns or receives written notification that the Class B Member has experienced a Change in Control, such Change in Control has actually occurred, and the Class A Member desires to exercise shotgun rights pursuant to Article XII in connection with such Change in Control; or (c) there exists a bona fide dispute between the Class A Member and the Class B Member regarding one or more of the matters below, that has not been resolved after a good faith attempt by the Class A Member and the Class B Member to resolve such dispute pursuant to the dispute resolution procedures described in Section 17.15(a) of this Agreement: (i) a proposed capital expenditure, or series of capital expenditures over a continuous three-year period in the aggregate, of \$1,000,000 or more; (ii) the proposed merger or consolidation of the Company with or into another Person; (iii) the proposed sale of all or substantially all of the assets of the Company; (iv) the proposed borrowing of money, or incurring a debt, for or on behalf of the Company in excess of \$750,000; and (v) the proposed dissolution of the Company.

**The William W. Backus Hospital.**

“The William W. Backus Hospital” shall mean The William W. Backus Hospital, a Connecticut nonstock corporation.

**Transfer.**

“Transfer” means, when used as a noun, any sale, hypothecation, pledge, assignment, attachment, gift, bequest, exchange, conveyance, encumbrance or any other form of disposition,

whether voluntary or involuntary, by direct or indirect means, or by merger, consolidation or otherwise, and, when used as a verb, means, to sell, hypothecate, pledge, assign, gift, bequeath, exchange, convey, encumber or otherwise dispose of, whether voluntary or involuntary, by direct or indirect means, or by merger, consolidation or otherwise; provided, however, that "Transfer" shall not include a Transfer by the Class B Member or the Class A Member to an Affiliate of the transferor.

### **Voluntary Withdrawal.**

"Voluntary Withdrawal" means the disassociation of a Member or an Economic Interest Owner from the Company by means other than by a Transfer or an Involuntary Withdrawal.

## **ARTICLE XVII MISCELLANEOUS PROVISIONS**

### **17.01 Obligations of the Company**

In addition to the other Obligations set forth herein with respect to the Company, the following obligations shall apply to the Company.

- (a) The Company must ensure that the Center is accredited by one (1) of the three (3) national organizations accrediting ambulatory surgery centers.
- (b) The Company must provide the Class B Member, upon its request with quality data relating to the Center.
- (c) The Company must report all adverse events occurring at the Center to the Class B Member.
- (d) The Company must integrate with the Class B Member's electronic health record system to the extent required for physicians and other medical professionals at the Center to provide operative notes.
- (e) The Company must evaluate and participate in an external health information exchange participated in by the Class B Member when such exchange becomes available.
- (f) All contracts between the Center and the physicians must be approved by the governing board of the Class B Member.
- (g) The Center must participate in Integrated Care Partners to the extent required by the Class B Member.
- (h) The Company must obtain medical malpractice insurance coverage for the Center through the Class B Member's insurance captive or in the alternative, allow the Class B Member to conduct an annual regulatory and risk assessment.

(i) The Company must ensure that all physicians providing services to patients at the Center have admitting privileges at one or more Connecticut hospitals.

#### **17.02 Power of Attorney.**

(a) Each Member constitutes and appoints each Manager as the Member's true and lawful attorney-in-fact ("Attorney-In-Fact"), and in the Member's name, place and stead, to make, execute, sign, acknowledge, and file or cause to be made, executed, signed, acknowledged and filed:

(i) all documents (including amendments to the Articles of Organization) that the Attorney-In-Fact deems appropriate to reflect any amendment, change, or modification of this Agreement;

(ii) any and all other certificates or other instruments required to be filed by the Company under the laws of the State of Connecticut or of any other state or jurisdiction, including, without limitation, any certificate or other instruments necessary in order for the Company to continue to qualify as a limited liability company under the laws of the State of Connecticut;

(iii) one or more applications to use an assumed name; and

(iv) all documents that may be required to dissolve and terminate the Company and to cancel its Articles of Organization.

(b) The foregoing power of attorney is irrevocable and is coupled with an interest, and to the extent permitted by Applicable Law, shall survive the death, disability or dissolution of a Member. It also shall survive the transfer of a Membership Interest or an Economic Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge, and file any documents needed to effectuate the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses that may be available to contest, negate, or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

#### **17.03 Notices.**

Any notice, demand, consent, approval, communication or other document required or permitted to be given hereunder shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, or a nationally recognized overnight delivery service (receipt requested), to the Member's or the Company's address, as appropriate, which is set forth in this Agreement, or to such other address for the party as shall be specified by notice. Any notice that is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party. Any notice that is addressed and mailed or delivered overnight in the manner herein provided shall be duly given when received by the addressee.

#### **17.04 Application of Connecticut Law.**

This Agreement and its interpretation shall be governed exclusively by its terms and by the laws of the State of Connecticut (without regard to principles of conflicts of law), and specifically the Act.

#### **17.05 Jurisdiction and Venue.**

Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the District of Connecticut or any Connecticut State Court having jurisdiction over the subject matter of the dispute or matter. All Members and Economic Interest Owners hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

#### **17.06 Amendments.**

(a) This Agreement and the Articles of Organization may be amended upon a unanimous vote of the Class A and B Members or by a written consent signed by all of the Class A and B Members.

(b) This Agreement and the Articles of Organization may be amended upon unanimous vote of the Class B Managers, provided that the Class B Managers have reasonably determined, based on the written advice of counsel, that such amendment or amendments are necessary to prevent the Class B Member from losing its status as a tax-exempt organization under Code Section 501(a) as an organization described in Code Section 501(c)(3).

#### **17.07 Execution of Additional Instruments.**

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any Applicable Laws, rules or regulations.

#### **17.08 Construction.**

When required by the context, the singular number whenever used in this Agreement shall include the plural and vice-versa, and the masculine gender whenever used in this Agreement shall include the feminine and neuter genders and vice-versa.

#### **17.09 Headings.**

The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

#### **17.10 Waivers.**

The failure of any party to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, that would have originally constituted a default, from having the effect of an original default.

#### **17.11 Rights and Remedies Cumulative.**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any other remedy. The rights and remedies provided by this Agreement are given in addition to any other legal rights the parties may have.

#### **17.12 Severability.**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

#### **17.13 Specific Performance.**

The parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any party who may be injured (in addition to any other remedies that may be available to that party) shall be entitled to one or more preliminary or permanent orders (i) restraining and enjoining any act that would constitute a breach or (ii) compelling the performance of any obligation that, if not performed, would constitute a breach.

#### **17.14 Successors and Assigns.**

The covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and to the extent permitted by this Agreement, their respective successors and assigns.

#### **17.15 Creditors.**

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

#### **17.16 Dispute Resolution.**

(a) Except for actions taken pursuant to Section 4.06(b) or 6.09(a), all disputes, claims, controversies and differences arising out of or relating to this Agreement, or the termination, invalidity or breach hereof, including without limitation any deadlock in a vote of the Members or in a vote of the Managers on the Management Committee, any party may refer the matter by written notice to, and for resolution by, the chief executive officers of the Class A

Member and the Class B Member and, only in the event of a dispute unrelated to any deadlock in a vote of the Members or in a vote of the Managers on the Management Committee, one representative designated collectively by the Class C Members. Such individuals shall meet at the principal office of the Company, or at such other location as they may agree, within fourteen (14) days of the notice from the party to negotiate in good faith a resolution of the matter. If within twenty-one (21) days of the written notice from the party the matter still has not been resolved, and such matter involves an Arbitrable Issue, the party may submit the dispute to arbitration pursuant to Section 17.16(b) of this Agreement.

(b)

(i) If an Arbitrable Issue has not been resolved pursuant to the procedures provided for in Section 17.16(a), a party may, by written notice to the other Members, submit the Arbitrable Issue to be determined by arbitration in the County of New London, Connecticut, in accordance with the Commercial Arbitration Rules of the American Arbitration Association (except as otherwise specified in this Section 17.16). The dispute shall be determined by one (1) arbitrator acceptable to both parties who shall be selected within fourteen (14) days of receipt of notice of intention to arbitrate by the party receiving that notice. If the receiving party fails to respond to said notice in writing within said fourteen (14) days, then the party providing said notice shall select the arbitrator and the arbitrator selected by the party providing said notice shall be deemed to have been selected by the receiving party. If, by the end of said fourteen (14) day period the parties have not agreed upon one (1) arbitrator as acceptable, then the dispute shall be determined by a panel of three (3) arbitrators selected as follows: Within an additional seven (7) days, each party will appoint one (1) arbitrator. These two (2) arbitrators will then, within an additional seven (7) days, name a third arbitrator. If the two (2) arbitrators are unable to agree upon the choice of a third arbitrator within seven (7) days, either party may request the person or entity administering the arbitration, or, if none, the American Arbitration Association or any other arbitration administering person or entity, to appoint the necessary arbitrator pursuant to the Commercial Arbitration Rules.

(ii) As soon as the arbitrator has been chosen or if three are utilized, the panel has been convened, a hearing date shall be set within thirty (30) days thereafter. Such hearing date shall be subject to the mutual agreement of the parties and the arbitrator(s), but if such agreement cannot be reached, the arbitrator(s) shall have authority to establish such times for hearings as he, she or they deem appropriate. Written submissions shall be presented and exchanged by both parties fifteen (15) days before the hearing date, including reports prepared by any expert upon whom either party intends to rely. At such time the parties shall also exchange copies of all documentary evidence upon which they will rely at the arbitration hearing and a list of the witnesses whom they intend to call to testify at the hearing. Each party shall also make its respective experts available for deposition by the other party prior to the hearing date. The arbitrator(s) shall make his or her award as promptly as practicable after conclusion of the hearing. Arbitrators shall be compensated for their services at the standard hourly rate charged in their private professional activities.

(iii) The parties acknowledge that the United States District Court for the District of Connecticut has jurisdiction over the parties for the purpose of enforcing this Section 17.16. Connecticut rules of civil procedure and evidence shall apply with respect to any

arbitration hereunder, including all rules pertaining to discovery and inspection. The award may be made solely on the default of a party. The arbitrator(s) shall follow substantive rules of law. The arbitrator(s) shall make the award in strict conformity with this Agreement and shall have no power to depart from or change any of the provisions hereof. If three arbitrators are used, a decision of any two of them shall be binding. At the request of either party at the start of the arbitration, the award of the arbitrator(s) shall be accompanied by findings of fact and a written statement of reasons for the decision. The arbitrator(s) shall have the discretion to award the costs of arbitration, arbitrators' fees and the respective attorneys' fees of each party between the parties as they see fit. All parties agree to be bound by the results of this arbitration; judgment upon the award so rendered may be entered and enforced in any court of competent jurisdiction, including the power to require specific performance. To the extent reasonably practicable, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved. All matters relating to any arbitration hereunder shall be maintained in confidence.

(iv) Nothing contained in this Section 17.16 shall prohibit either party from seeking equitable relief without first resorting to arbitration under such circumstances as that party's interests hereunder and in its property will be otherwise compromised.

#### **17.17 Indemnification.**

(a) Each Member and Economic Interest Owner (each, an "Indemnitor") shall indemnify, hold harmless and defend the Company and each other Member, Economic Interest Owner and their respective directors, officers, employees, representatives and agents (each an "Indemnitee" and collectively, the "Indemnitees") from and against any Costs incurred by the Indemnitees that arise from or are related to: (i) a violation of the anti-kickback provisions of Applicable Law by the Indemnitor or any of its directors, officers, owners, employees, representatives, or agents acting with authority (but not mere independent contractors) relating to the Company and/or the Center, and such violation of Applicable Law is not cured by the Indemnitor at its sole cost and expense within one hundred eighty (180) days of the notice provided for in the first sentence of Section Error! Reference source not found.; and/or (ii) the enforcement of this indemnity.

(b) To the greatest extent not inconsistent with the laws of Connecticut, the Company shall indemnify any Member made a party to any proceeding because such individual is a Member, against all liability incurred by the Member provided that: (a) the Member acted in good faith; (b) the Member reasonably believed its conduct was not contrary to the Company's best interest; and (c) the Member's conduct was not willful misconduct or knowingly unlawful. A determination of indemnification shall be made by the Board of Managers and indemnification shall include the payment of all damages and reasonable attorney fees incurred in the action. Any Member entitled to indemnification under this Section 17.17 shall be referred to as an "Indemnitee" and the Company shall be an "Indemnitor".

(c) If there occurs an event which a party asserts is an indemnifiable event pursuant to this Section 17.17, the parties seeking indemnification shall promptly notify in writing the other parties obligated to provide indemnification (collectively, the "Indemnifying Party"). If such event involves (i) any Claim or (ii) the commencement of any action, suit or

proceeding by a third person, the party seeking indemnification will give such Indemnifying Party prompt written notice of such Claim or the commencement of such action, suit or proceeding, provided, however, that the failure to provide prompt notice as provided herein will relieve the Indemnifying Party of its obligations hereunder only to the extent that such failure prejudices the Indemnifying Party hereunder. In case any such action, suit or proceeding shall be brought against any party seeking indemnification and it shall notify the Indemnifying Party of the commencement thereof, the Indemnifying Party shall be entitled to participate therein and, to the extent that it desires to do so, to assume the defense thereof, with counsel reasonably satisfactory to such party seeking indemnification and, after notice from the Indemnifying Party to such party seeking indemnification of such election so to assume the defense thereof, the Indemnifying Party shall not be liable to the party seeking indemnification hereunder for any attorneys' fees or any other expenses, in each case subsequently incurred by such party, in connection with the defense of such action, suit or proceeding. The party seeking indemnification agrees to cooperate fully with the Indemnifying Party and its counsel in the defense against any such action, suit or proceeding. In any event, the party seeking indemnification shall have the right to participate at its own expense in the defense of such action, suit or proceeding. In no event shall an Indemnifying Party be liable for any settlement or compromise effected without its prior consent. If, however, the party seeking indemnification refuses its consent to a bona fide offer of settlement which the Indemnifying Party wishes to accept (which must include the unconditional release of the parties seeking indemnification from all liability with respect to the Claim at issue), the party seeking indemnification may continue to pursue such matter, free of any participation by the Indemnifying Party, at the sole expense of the party seeking indemnification. In such event, the obligation of the Indemnifying Party to the party seeking indemnification shall be equal to the lesser of (i) the amount of the offer or settlement which the party seeking indemnification refused to accept plus the costs and expenses of such party prior to the date the Indemnifying Party notifies the party seeking indemnification of the offer of settlement and (ii) the actual out-of-pocket amount the party seeking indemnification is obligated to pay as a result of such party's continuing to pursue such matter.

(d) The amount which an Indemnifying Party is required to pay to, for or on behalf of any other party (hereinafter referred to as an "Indemnitee") pursuant to this Section 17.17 shall be adjusted (including, without limitation, retroactively) by any insurance proceeds actually recovered by or on behalf of such Indemnities in reduction of the related indemnifiable loss (the "Indemnifiable Loss"). Amounts required to be paid, as so reduced, are hereafter sometimes called an "Indemnity Payment." If an Indemnitee shall have received or shall have had paid on its behalf an Indemnity Payment in respect of an Indemnifiable Loss and shall subsequently receive insurance proceeds in respect of such Indemnifiable Loss, then the Indemnitee shall pay to the Indemnifying Party the amount of such insurance proceeds or, if less, the amount of the Indemnity Payment.

### **17.18 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

[The rest of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused their signatures, or the signatures of their duly authorized representatives, to be set forth below on the day and year first above written.

**MEMBERS:**

**CSCE Holdings, LLC (Class A Member)**

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

**The William W. Backus Hospital (Class B Member)**

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

**MANAGERS:**

**CSCE Holdings, LLC (Class A) Managers**

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

**The William W. Backus Hospital (Class B) Managers**

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

As to Section 5.06(a)(i) only, in consideration of the mutual restrictive covenants contained in Section 5.6:

By: \_\_\_\_\_  
Name: Ammar Anbari, M.D.

By: \_\_\_\_\_  
Name: Anthony Barri, M.D.

By: \_\_\_\_\_  
Name: William Cambridge, M.D.

By: \_\_\_\_\_  
Name: Steven Carlow, M.D.

By: \_\_\_\_\_  
Name: Kevin Cranmer, M.D.

By: \_\_\_\_\_  
Name: Francis Falck, M.D.

By: \_\_\_\_\_  
Name: Daniel Gaccione, M.D.

By: \_\_\_\_\_  
Name: John Giacchetto, M.D.

By: \_\_\_\_\_  
Name: Michael Halperin, M.D.

By: \_\_\_\_\_  
Name: Jeffrey Hertz, M.D.

By: \_\_\_\_\_  
Name: Lior Hiam, M.D.

By: \_\_\_\_\_  
Name: John Hornby, M.D.

By: \_\_\_\_\_  
Name: Christopher Hutchins, M.D.

By: \_\_\_\_\_  
Name: Tarik Kardestuncer, M.D.

By: \_\_\_\_\_  
Name: Peter McKay, M.D.

By: \_\_\_\_\_  
Name: Jeffrey Miller, M.D.

By: \_\_\_\_\_  
Name: Prior Parker, M.D.

By: \_\_\_\_\_  
Name: Anish Shah, M.D.

By: \_\_\_\_\_  
Name: Ronald Slocumb, M.D.

By: \_\_\_\_\_  
Name: Stephen Wei, M.D.

**Schedule 9.06(d)**

**Pro Rata Guarantee of Debt**

The Class B Member is a proportional guarantor of that certain loan in the principal amount of Three Million Five Hundred Thousand and 00/100 Dollars (\$3,500,000.00) by Dime Bank to the Company.

**EXHIBIT A**  
**MEMBERS AND PERCENTAGE INTEREST**

NAMES AND ADDRESSES OF MEMBERS	TOTAL CAPITAL CONTRIBUTION	NUMBER OF MEMBERSHIP INTERESTS AND CURRENT PERCENTAGE MEMBERSHIP
<u>Class A Member</u>		
CSCE Holdings, LLC	\$ [16,057,300]	[49/49%]
<u>Class A Total:</u>		
	\$ [16,057,300]	[49/49%]
<u>Class B Member</u>		
The William W. Backus Hospital		[51/51%]
<u>Class B Total:</u>		
	\$ [16,712,700]	[51/51.0000%]
<u>Total:</u>		
	\$ [32,770,000]	[100/100%]

**EXHIBIT B**

**MEMBER REPRESENTATIVES AND  
MANAGEMENT COMMITTEE MEMBERS**

**CLASS A MEMBER REPRESENTATIVE:** [ \_\_\_\_\_ ]

**CLASS B MEMBER REPRESENTATIVE:** [ \_\_\_\_\_ ]

**CLASS A MANAGERS:**  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

**CLASS B MANAGERS:**  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]

## CONSTITUTION SURGERY CENTER EAST, LLC

### MANAGEMENT SERVICES AGREEMENT

**THIS MANAGEMENT SERVICES AGREEMENT** (the "Agreement") is made and entered into as of this [ ] day of [ ], 201[ ], to be effective as provided herein, by and between **CONSTITUTION SURGERY ALLIANCE, LLC**, a Connecticut limited liability company ("CSC") and **CONSTITUTION SURGERY CENTER EAST, LLC**, a Connecticut limited liability company ("LLC"), and, as to Section 9 of this Agreement only, **THE WILLIAM W. BACKUS HOSPITAL**, a Connecticut nonstock corporation ("Hospital").

#### RECITALS

A. The William W. Backus Hospital ("Hospital"), and certain surgeons, either directly or indirectly through an investment company in part surgeon-owned, (CSC shall also be an investor in such surgeon owned investment company), (collectively, the "Members") own and operate an ambulatory surgery facility located at 174 Cross Road, Waterford, Connecticut 06385 (the "Facility").

B. CSC has been involved in the development, operation and management of the Facility since its inception and in general has acquired certain training, technical skills and experience with respect to the management of ambulatory surgery facilities, and the LLC desires to contract as set forth herein to allow for CSC's ongoing provision of its program of services with respect to the management of the Facility.

C. CSC is willing to continue to render its program of management services as described in this Agreement in accordance with the terms and conditions hereinafter set forth.

#### 1. TERM.

The initial term of this Agreement ("Initial Term") shall commence on [ ] [ ], 201[ ] (the "Effective Date"), and shall continue for a period of five (5) years, unless sooner terminated as provided herein. Following the Initial Term, this Agreement, unless otherwise earlier terminated in accordance with the terms hereof, shall automatically renew for one (1) additional three (3) year period (the "First Renewal Term"). After the Initial Term and the First Renewal Term, this Agreement shall be renewed only by the mutual written agreement of CSC and the LLC. The Initial Term and the First Renewal Term are collectively referred to in this Agreement as the "Term."

#### 2. RETENTION OF AUTHORITY.

Throughout the Term, the LLC shall retain all authority and control over the business, policies, operations and assets of the Facility, except as specifically provided herein, and the LLC, acting through its Board of Managers (the "Board"), shall retain the final authority and responsibility for all matters pertaining to the operations, accreditation and licensure of the Facility. The LLC does not delegate to CSC any of the powers, duties and responsibilities required to be retained by the LLC under law and shall be the owner and holder of all certificates and licenses issued under authority of law for operation of the Facility by the LLC. The LLC shall be the owner and holder of all accreditation certificates and contracts entered into by or on behalf of the LLC. CSC shall perform the Management Services (as defined below) in accordance with the policies, bylaws and directives of the LLC. The LLC shall communicate all relevant policies and

directives to CSC in writing. CSC shall be entitled to rely on and assume the validity of communications from, and shall report to, the Board, or its designee, or, at the discretion of the Board, a duly constituted subdivision thereof. All medical and professional matters shall be the LLC's sole responsibility. The relationship between the parties hereto is not one of partners or joint venturers, but rather, CSC is acting as an independent contractor in discharging its duties hereunder and as agent for the LLC in the purchase of any services or tangible personal property to be incorporated into or consumed in the operation of the Facility.

### **3. MANAGEMENT SERVICES.**

From the Effective Date and thereafter throughout the Term, CSC shall provide the following services to the Facility (the "Management Services"):

(a) **General.** Subject to the limitations and conditions set forth in this Agreement (including without limitation CSC's obligations under Section 3(j)), CSC, as manager of the Facility, shall have the authority and responsibility to conduct, supervise, and manage the day-to-day operations of the Facility subject to the ultimate oversight and control of the Board, which shall continue to have final authority in all matters relating to the Facility's operations. CSC shall be expected to exercise its best judgment in its management activities. CSC shall have responsibility and commensurate authority, subject to the written policies of the LLC, for all activities described in this Section 3 and for those activities described in Exhibit A to this Agreement. Although the LLC is delegating the management of the Facility to CSC in accordance with the terms of this Agreement, all major decisions with respect to the business and operations of the Facility are subject to approval by the LLC's Board as provided herein.

(b) **Major Decisions.** In conjunction with the performance of its duties as described in this Agreement, CSC either shall undertake specific actions consistent with budgets and policies established by the Board for the Facility or shall obtain prior approval from the LLC's Board prior to undertaking any major decisions ("Major Decisions"). Major Decisions shall be defined as, but not be limited to, the following: (i) Purchase or sale of assets out of the ordinary course of business; (ii) Incurrence of any debt on behalf of the Facility; (iii) Incurrence of lease obligations by the Facility not in the ordinary course of business; (iv) Entering into professional service provider contracts for services to be provided at the Facility or in conjunction with services provided at the Facility to patients (e.g. Pathology, Anesthesia); (v) Establishment of, or change to, the Facility's fee schedule; (vi) Entering into or final termination of any managed care or other third party payer contract; (vii) Approval of annual Facility operating and capital budgets; (viii) Undertaking any capital expenditure in any one fiscal year in excess of \$50,000 and that is not included in the Facility's Board-approved budget; (ix) Adjustments to the Facility's wage/salary/benefit program for employees; (x) Any action as to distributions to the LLC's Members other than distributions made in the ordinary course of the Facility's operations consistent with established Board-approved Facility distribution policies; (xi) Establishment of or change in the Facility's credentialing policies, procedures or protocols; (xii) Establishment of or change in the Facility's Quality Assurance Plan, policies, procedures or protocols; (xiii) Taking any action or implementation of any policy that CSC believes could significantly involve a new analysis or interpretation of any State or Federal laws, rules or regulations dealing with fraud and abuse or other similar matters and that impacts the operations of the Facility; (xiv) Entering into any new or renewal contract or agreement on behalf of the Facility that is not addressed in the Facility's budget or subject to termination without cause on thirty (30) days or less prior notice and that involves either the expenditure of or receipt of more than \$50,000

by the LLC; (xv) Establishment of or change in any Facility policy, procedure or protocol dealing with payor mix or the provision of charity care to, or access to the Facility by, all patients or the conduct of any charitable activities pursuant to the Facility's Charity Care Policy; or (xvi) Entering into any new or renewal agreement or contract on behalf of the Facility with any entity affiliated with the Facility through direct or indirect ownership or by existing contract or agreement. CSC may seek written Board approval before taking any action in addition to one of the Major Decisions which is related to the management of the Facility. If there is any reasonable doubt as to whether an action would be considered to be a Major Decision, CSC will seek guidance from the Board.

(c) **Account Executive Team.** CSC shall provide to the Facility a designated account executive team. CSC shall have the right to replace members of this team, and any other employees or contractors performing services hereunder, at any time during the Agreement. The executive team shall be comprised of the following persons as designated by CSC from time to time consistent with the terms hereof:

(i) **CSC's Principal.** A CSC executive, meaning a senior vice president or higher level individual within CSC, who is reasonably acceptable to the LLC, will have overall accountability for the quality and value of CSC's services to Facility, and will have overall responsibility for coordination of key initiatives pursued through this Agreement and for CSC's performance of its duties under this Agreement ("CSC Principal"). The CSC Principal, or his/her designee, shall attend the regularly-scheduled meetings of the Board. The CSC Principal, or his/her designee, shall attend such other meetings as may be reasonably necessary to effect the intent of this Agreement, and the Board shall be entitled to a special meeting with a representative of CSC upon reasonable notice. Beginning on the Effective Date, and prior to the beginning of every calendar year hereafter, the LLC shall provide CSC with a calendar containing the dates of all regularly-scheduled Board meetings. Should the LLC become dissatisfied with the CSC Principal, the LLC shall provide CSC with notification of the reasonable basis of its dissatisfaction, and CSC shall cause the CSC Principal to immediately address the LLC's concerns to the reasonable satisfaction of the LLC. In the event the CSC Principal fails to resolve the LLC's concerns to the reasonable satisfaction of the LLC within thirty (30) days of receipt of notice of the LLC's concerns, then the LLC may notify CSC of its continuing dissatisfaction and request that the CSC Principal cease providing services under this Agreement. CSC agrees that, within ten (10) days of such notification, CSC will remove the CSC Principal and provide the LLC with another CSC Principal reasonably satisfactory to the LLC.

(ii) **Administrator.** CSC shall select, employ, supervise and train a Facility administrator who is reasonably acceptable to the LLC (the "Administrator") to oversee, on a regular, substantially full-time basis, the execution and performance of the administrative functions of the Facility. The parties acknowledge and agree that neither the Administrator nor CSC shall be ultimately responsible for any medical or professional matters relating to the Facility. The Administrator and CSC may consult with the LLC and make recommendations concerning such matters from time to time; however, the LLC shall be solely responsible for all final decisions and actions taken with respect to medical and professional matters. Should the LLC become dissatisfied with the Administrator, the LLC shall provide CSC with notification of the reasonable basis of its dissatisfaction, and CSC shall cause the Administrator to immediately address the LLC's concerns to the reasonable satisfaction of the LLC. In the event the

Administrator fails to resolve the LLC's concerns to the reasonable satisfaction of the LLC within thirty (30) days of receipt of notice of the LLC's concerns, then the LLC may notify CSC of its continuing dissatisfaction and request that the Administrator cease providing services under this Agreement. CSC agrees that, within ten (10) days of such notification, CSC will remove the Administrator and provide the LLC with another Administrator reasonably satisfactory to the LLC. If the salary or hourly wage to be paid to the Administrator is not within the approved annual budget, such salary or hourly wage shall be approved in writing and in advance by the LLC which approval will not be unreasonably withheld. CSC agrees to obtain LLC's prior written approval of any increase in the Administrator's salary or hourly wage and any bonus payments if not otherwise within the approved annual budget which approval shall not be unreasonably withheld.

(iii) Responsibility for Employer Obligations. CSC shall be responsible for the payment of compensation, fringe benefits, insurance, licensing fees and employer-paid taxes of all personnel employed by CSC, including without limitation, the CSC Principal and the Administrator, as well as for the maintenance of workers' compensation coverage and occupational health and safety programs to the extent required by applicable law. CSC shall pay all taxes related to its employees, including without limitation, the CSC Principal and the Administrator, (i.e. FICA, FUTA, workers' compensation, state unemployment, etc.). CSC shall comply with all applicable provisions of the Consolidated Omnibus Budget Reconciliation Act ("COBRA") as they pertain to such employees, as well as with any and all other obligations under applicable federal, state and local laws relating to an employer's obligations toward its employees. Notwithstanding the foregoing, if the LLC determines, or is advised, that it is required by law to compensate or pay applicable taxes for, or provide employee benefits of any kind (including contributions to government-mandated, employment-related insurance and similar programs) to or on behalf of, CSC or any person employed or retained by or on behalf of CSC, CSC shall reimburse LLC for any such expenditures within thirty (30) days after being notified of such expenditure.

(d) Management Plan and Reports. CSC, consistent with its established practices at the Facility, shall annually prepare and submit to the Board for its review and approval an annual management plan (the "Management Plan") consisting of financial reports and information as to the Facility's operations, along with such information as requested by the Board in writing from time to time to address and implement the goals and objectives for the Facility. Upon acceptance of the final Management Plan as revised and approved by the Board, the Board will use reasonable commercial efforts to take or cooperate with the actions recommended. Initial proposed Management Plan information shall be delivered to the Board within sixty (60) days of the Effective Date, and any subsequent proposed plans shall be delivered to the Board no later than sixty (60) days after the completion of the most-recently completed fiscal year of the LLC. CSC shall deliver to the Board such further written reports on the status of the goals and objectives set forth in the Management Plan approved by the Board as set forth in Section 3(e)(ii).

(e) Other Plans and Reports. CSC agrees to provide to the LLC, for its review and approval, the following plans and reports as may be reasonably requested by the Board from time to time:

(i) Consulting Reports. CSC will cause copies of all consulting reports specifically requested by the Board and prepared pursuant to this Agreement to be delivered to the Board.

(ii) Monthly Executive Summaries. CSC, consistent with the Board's practices and with assistance from the LLC's personnel, will provide the Board with a monthly executive summary, "The CSC Report". Such summaries will contain financial information as to the Facility's operations, along with specific information in response to requests from the Board as to the following matters from time to time: (1) the overall progress of the LLC in implementing the Management Plan; (2) the performance of all the LLC's management and administrative personnel and their effectiveness in implementing the Management Plan approved by the Board; (3) a consideration of the status of relationships between the LLC and its customers, chiefly surgeons and patients utilizing the Facility; (4) such other information which CSC considers appropriate for Board discussion; and (5) such other matters pertaining to CSC's management functions as the Board shall reasonably request from time to time.

(f) Advisory Services. CSC and/or its affiliates, including, without limitation, Constitution Billing and Financial Services, LLC, will provide consulting support and recommendations in response to reasonable requests from the LLC's management and the Board regarding the following (references hereinafter in this Subsection (f) to CSC shall include the aforementioned CSC affiliates):

(i) Financial Statements. CSC, working with the LLC's personnel or others, will prepare and deliver to the Board standard monthly financial packages and monthly financial reports in a timely manner containing such specific information as reasonably requested by the Board from time to time as follows: (1) reports on both the month and year to date basis, (2) balance sheet, (3) statement of income and expenses including explanation of budget variances, (4) cash flow statements, (5) accounts receivable analysis, (6) investment schedules, (7) key financial statistics, and (8) key operating performance statistics. CSC shall not provide audit services, nor perform the functions of a certified public accounting firm, and any fees charged by the LLC's independent auditors shall be the sole responsibility of the LLC.

(ii) Budgets. CSC, with assistance from the LLC's personnel, will prepare and submit to the Board for its approval the yearly budgets for the Facility. CSC shall assist the LLC's management in developing the following budgets each year for review, approval, disapproval or modification by the Board (including such member approvals as required by the LLC's Operating Agreement):

(1) A capital expenditure budget (if appropriate and as requested) outlining a program of capital expenditures for the next fiscal year.

(2) An operating budget setting forth an estimate of operating revenues and expenses for the coming fiscal year, together with an explanation of anticipated changes in facility utilization and services offered to patients, charges to patients, payroll rates and positions, non-wage cost increases, and other factors differing significantly from the then-current year.

(3) Annual cash flow projections based upon the proposed operating and capital budgets, together with recommendations as to the use of projected cash flow in

excess of short-term operating requirements and, if necessary, recommendations as to the sources and amounts of additional cash flow that may be required to meet operating and capital requirements.

(iii) Corporate Compliance. CSC agrees to assist in the development and implementation of and will comply with the requirements of the LLC's compliance program in carrying out its duties under this Agreement, to bring items of potential noncompliance to the attention of the LLC when discovered by CSC and, at the direction of the Board, to take corrective action prescribed by the Board once any item of noncompliance is identified; provided that the costs (including, without limitation, legal and consulting fees and expenses incurred in undertaking any corrective action) required to develop, implement, update and maintain the compliance program shall be the sole responsibility of the LLC. In providing management and consulting services to Facility and performing its obligations hereunder, CSC shall act in accordance with all applicable federal, state and local statutes, including without limitation the applicable Medicare conditions of participation, and shall act in good faith.

(iv) Contract Review. CSC will negotiate proposed contracts for services by medical, paramedical and other persons and organizations, and for the services concerning the maintenance and repair of the physical plant of the Facility and report to the Board for approval as to the terms and execution of such contracts. All such consulting support and recommendations by CSC shall be provided from a business perspective and shall not involve any legal analysis of such contracts. CSC will not assume responsibility to independently negotiate managed care contracts for the Facility, but will assist the Facility and its representatives as requested in this regard.

(v) New Procedures. CSC shall evaluate opportunities to provide new clinical procedures presented to it by the Facility, and shall perform a feasibility analysis of each such proposed procedure with the advice and assistance of legal counsel and consultants, to the extent reasonably necessary, and provide guidance through the process of implementing new services, provided that CSC will not provide medical or clinical advice as part of its services.

(vi) Financial Consultation. CSC will respond to questions and make recommendations as to earnings distribution practices, evaluate debt financing alternatives, analyze capital equipment purchases and evaluate appropriate levels of general and medical liability insurance coverage, all as requested by the Facility.

(vii) Performance Measurement. CSC will advise as to the measurement of financial performance, productivity and expense management as follows: CSC shall provide recommendations as to appropriate benchmarks for all the Facility's operating and financial performance indicators and shall report to the Board as to agreed-upon indicators. CSC further shall furnish such reports comparing the Facility's performance to the benchmark targets, and recommendations on ways to meet or exceed such targets as requested by the Board. Without limitation as to the foregoing, CSC shall, at the direction of the Board, conduct surgeon satisfaction surveys and shall summarize and report the results of such survey to the Board for consideration and appropriate action.

(vii) Quality Measurement. CSC will advise as to the measurement of quality and safety as follows: CSC shall provide recommendations and reports as to appropriate quality performance benchmarks as requested by the Board from time to time and advise the LLC's management on the appropriate accumulation of data and information and will provide such reports comparing the Facility's quality performance to such benchmarks as requested by the Board for the Board's consideration and action. Such reports shall be provided not more frequently than on a quarterly basis.

(ix) Audit Assistance. CSC shall work with the LLC's audit firm to promote the timely completion of the annual financial audit of the Facility.

(x) Accreditation. If requested by the Board, approximately six (6) months before a scheduled accreditation survey, CSC shall perform a mock survey of the Facility and shall report its findings, along with a corrective action plan, to the Board.

(g) Facility Personnel. The LLC shall be the employer of all non-professional Facility personnel, other than the Administrator and other personnel employed by CSC or its Affiliates who are performing Management Services for the Facility, all of whom shall nevertheless be subject to the supervision of CSC. CSC shall design and implement training programs for all managerial and administrative personnel at the Facility and shall ensure that such personnel are properly qualified and trained and satisfy, at a minimum, all educational and competency requirements established by federal and state regulatory agencies and accrediting bodies. CSC shall cooperate with the LLC in addressing employee issues, including without limitation, enforcing the LLC's policies and procedures, participating in employment-related investigations, providing training to all Facility personnel regarding employment issues (e.g., anti-harassment, diversity, etc.), assisting in resolving employee complaints and in the defense of employment-related claims, and taking responsibility for workplace safety and other related issues. The LLC shall retain ultimate authority over the hiring, disciplining and termination of all management and administrative personnel working at the Facility. CSC shall be responsible for preparing an annual evaluation of the Administrator and preparing recommended evaluations for all LLC employees working at the Facility. If CSC is reasonably dissatisfied with any of the LLC's employees working at the Facility, upon request of CSC, the LLC will remove such employee and appoint another employee reasonably acceptable to CSC in accordance with LLC's policies and procedures.

(h) Notices to LLC. CSC shall promptly notify the LLC of the following and all relevant facts related thereto:

(i) Any occurrence, event or condition known to CSC that could materially impair the health or safety of any patients of the Facility or the ability of CSC to perform its obligations under this Agreement;

(ii) Any defective or inoperative equipment at the Facility;

(iii) The existence and basis of any charges, suit, investigation, audit disciplinary action or other proceeding against CSC or any member of the Facility's Medical Staff or LLC employee or any subcontractor or service contractor to the Facility or any Affiliate of CSC and any claim by any plaintiff, governmental agency, health care facility, peer review organization or

professional society which involves any allegation of incompetence or professional misconduct by CSC or any employees or service providers of the Facility; and

(iv) Any issues relating to the Facility's Medical Staff or any Facility personnel, including without limitation, complaints, allegations, threats or incidents of actual or alleged misconduct, and workplace safety violations; work-related injuries and accidents; changes in job functions and duties; any misclassifications regarding workers' compensation; union organizing activities; claims of harassment or unfair or abusive treatment.

(i) **Standards of Conduct.** CSC shall perform its duties and obligations under this Agreement in a competent, professional and ethical manner in compliance with all rules of professional conduct, applicable federal and state laws and regulations and standards of applicable accreditation organizations, including the standards of the Joint Commission ("Joint Commission") or the Accreditation Association for Ambulatory Health Care (AAAHC).

(j) **Community Benefit Objectives.** The parties hereto acknowledge that the purpose and business of the LLC shall be to operate the Facility to promote health and provide services in a non-discriminatory manner to individuals without regard to race, creed, national origin, gender, payor source or the ability to pay for services, to provide health care services in a manner that furthers the charitable purposes of Hospital by promoting health for a broad cross-section of the community, and to generally engage in such other business and activities and to do any and all other acts and things in furtherance of the purposes of the LLC as set forth in its Operating Agreement and the Charity Care Policy, each as amended from time to time. The Facility shall be operated and managed in a manner that will not cause Hospital to act other than in furtherance of its tax-exempt purpose, adversely affect its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, or generate income for Hospital which is subject to federal taxation. The duty of the LLC to operate in a manner that furthers the charitable purposes of Hospital as described above overrides any duty of the LLC to operate for the financial benefit of its members. At the request of CSC, the individuals serving on the Board shall provide timely guidance and assistance to CSC in accomplishing said purposes, including but not limited to those set forth in the preceding sentence. CSC, with the support and guidance of the Board shall: (i) implement the Charity Care Policy and, (ii) provide the Board with quarterly reports regarding the LLC's compliance with the Charity Care Policy.

#### 4. **RESTRICTIVE COVENANT.**

(a) **Covenant Not to Hire.** During the Term, and for a period of at least one (1) year following the termination or expiration of this Agreement, no party will, directly or indirectly, through an Affiliate or separate employee leasing or staffing company or otherwise, employ or solicit for employment any employee of another party hereto, unless the other party gives its written consent thereto. Each party recognizes and agrees that monetary damages are not an adequate remedy for a breach of this covenant not-to-hire. Each party agrees that irreparable damage will result to the impacted other party and its business from a breach of this covenant, and that, in the event of a breach or a threatened breach of this covenant, in addition to monetary damages, the other party shall be entitled to an injunction enjoining such party from violating this covenant.

(b) **Covenant Against Conflicting Engagements.** During the Term, CSC will not, directly or indirectly, through an Affiliate or otherwise, establish, own, operate, provide management services for

or invest or otherwise participate in any hospital-based or ambulatory orthopedic surgery center not affiliated with Hospital or an affiliate of Hospital within those cities set forth on Exhibit B, except for management agreements of CSC and any renewals thereof as set forth on Exhibit C. Furthermore, these provisions shall not extend to or cover any undertakings at any time to provide billing and related financial support services by Constitution Billing and Financial Services, LLC, an entity related to CSC, but not constituting an Affiliate of CSC. CSC recognizes and agrees that monetary damages are not an adequate remedy for a breach of this restrictive covenant. CSC agrees that irreparable damage will result to the LLC and its business from a breach of this covenant, and that, in the event of a breach or a threatened breach of this covenant, in addition to monetary damages, the LLC shall be entitled to an injunction enjoining CSC from violating this covenant.

## 5. **FEES.**

(a) **Management Services Fee.** In consideration for the Management Services to be provided to the LLC by CSC during the Term of this Agreement, the LLC shall pay CSC beginning on the Effective Date a monthly fee (the "Fee") equal to the greater of (i) \$12,500 per month or (ii) five percent (5%) of the Facility's monthly Net Revenues until such time as the Facility's annual Net Revenues exceed Fifteen Million Dollars (\$15,000,000); four and one-half percent (4.5%) on annual Net Revenues between Fifteen Million Dollars (\$15,000,000) and Twenty Million Dollars (\$20,000,000); and four percent (4%) on annual Net Revenues in excess of Twenty Million Dollars (\$20,000,000). The Fee shall be payable monthly and shall be prorated based upon any partial calendar month for which payment is due. The term "Net Revenues" shall mean the Facility's gross patient revenues, less contractual allowances, and reasonable reserves for bad debt and charity care determined in accordance with generally acceptable accounting practices, consistently applied. CSC will provide an invoice for the Fee, specifying the monthly Net Revenues and Fee amount. All fees are in addition to, and not in lieu of, all other payments and reimbursements to be made by the LLC to CSC under the terms of this Agreement. Upon execution of this Agreement, the LLC shall take all necessary steps to initiate and authorize payment of the Fee through wire transfer to CSC's account. Such transfer shall occur on or before the 5th business day of each month for services rendered during the immediately preceding month.

(b) **Reimbursement of Costs Relating to the Administrator.** The LLC further acknowledges that the Administrator shall be paid a salary or hourly wage by CSC, and, in addition thereto, shall receive benefits from CSC in accordance with CSC's then standard policies (such as health insurance, disability insurance, life insurance and retirement plans). The LLC agrees to pay CSC through wire transfer to CSC's account, on or before the 5th day of the month, before CSC's payroll date, an amount equal to the sum of (i) the salary or hourly wage of the Administrator plus (ii) the actual cost of direct benefits and administrative costs related to CSC's provision of the Administrator plus (iii) CSC's actual costs for statutory benefits related to the provision of the Administrator, such as worker's compensation, FICA, state unemployment and federal unemployment payroll taxes. In addition thereto, the LLC agrees to reimburse CSC for the following reasonable and necessary expenses incurred by CSC with respect to the Administrator: business expenses, relocation and recruitment expenses, interim living expenses, and severance expenses, subject to the LLC's approved budget; provided, however, that CSC shall have obtained the LLC's written consent prior to incurring any business expenses, relocation and recruitment expenses or interim living expenses in excess of \$2,500 in any calendar month. CSC shall provide a separate invoice detailing such additional costs and expenses each month to the LLC with such invoice being due and payable within thirty (30) days from the date thereof. It is specifically understood

and agreed that all such amounts shall be considered payroll obligations of the LLC for purposes of setting priorities for payment of the LLC's obligations.

**6. DUTY TO COOPERATE.**

The parties acknowledge that the parties' mutual cooperation is critical to the ability of CSC to perform its duties hereunder successfully and efficiently. Accordingly, each party agrees to cooperate with the other fully in formulating and implementing goals and objectives which are in the Facility's best interest. For the entire Term of this Agreement, the Board shall name an individual Board member as the formal representative of the LLC to CSC. Other than as limited by the notice provisions in Section 13, this Board representative shall receive and accept all formal communications from CSC and shall be responsible for transmitting all formal communications on behalf of the LLC to CSC. The LLC may change the Board representative at any time upon providing prior notice to CSC. The LLC shall provide CSC with the following: (i) Work space during on-site visits to include phone, FAX and online internet access; (ii) Reasonable access to the LLC Board at agreed-upon or scheduled times; and (iii) Timely, accurate and complete responses to reasonable CSC requests for data and information pertaining to Facility operations.

**7. PROPRIETARY INFORMATION.**

(a) **CSC Systems.** CSC retains all ownership and other rights in all systems, manuals, computer software, materials and other information, in whatever form, provided by or developed by CSC in the performance of its obligations hereunder including, without limitation, any systems developed by CSC or licensed to CSC from third parties and used to assist the Facility in performing operational activities in areas such as reimbursement, charge master reviews, and productivity analysis (hereinafter collectively referred to as "CSC Systems"); and nothing contained in this Agreement shall be construed as a license or transfer of such CSC Systems or any portion thereof, either during the Term of this Agreement or thereafter. Upon the termination or expiration of this Agreement, CSC shall have the right to retain all such CSC Systems, and the LLC shall upon request deliver to CSC all such CSC Systems in its possession. Notwithstanding the foregoing, CSC hereby grants to the LLC, and its successors and assigns, a perpetual, royalty-free, fully-paid, non-exclusive right and license to use at the Facility's current location any materials specifically developed for or tailored or designed for the Facility, and all materials, policies, procedures and information delivered through CSC for use at the Facility, including the rights to copy, modify and create derivative works from such CSC materials specifically developed for use in the Facility without the express written consent of CSC, but not for any other purpose, after the termination or expiration of this Agreement for any reason. Furthermore, CSC agrees that it will not affix a copyright legend to any written materials specifically prepared for the Facility.

(b) **Proprietary Information.** Each party recognizes that due to the nature of this Agreement, it will have access to information of a proprietary nature owned by the other party and its Affiliates, including, without limitation, business plans, financial analyses, fee schedules, managed care contracts, computer programs (whether or not completed or in use), operating manuals and similar materials, forms, contracts, policies, procedures and other information used or employed by them for the operation of their facilities and medical offices. Each party acknowledges and agrees that all such information constitutes confidential and proprietary information of the other party and agrees to keep such information and the terms and conditions of this Agreement in strictest confidence. Each party hereby

waives any and all right, title and interest in and to such proprietary information of another party and agrees to return all copies of such confidential and proprietary information to the applicable party, at the expense of the returning party, upon the expiration or termination of this Agreement.

(c) **Confidentiality.** Each party acknowledges and agrees that the other party and its respective Affiliates are entitled to prevent their competitors from obtaining and utilizing their respective proprietary information. Therefore, each of the parties agrees to hold the proprietary information of the other party and its respective Affiliates in the strictest confidence and not to disclose it or allow it to be disclosed, directly or indirectly, to any person or entity other than as expressly provided herein without such other party's prior written consent. Each party shall disclose proprietary information of the other party only to (i) its employees or consultants who have a need to know such information in connection with the performance of its obligations under this Agreement and who are legally bound to protect the confidentiality of such information to the same extent as provided herein or (ii) to those persons or entities who are employed by or affiliated with the party owning such proprietary information. Each party shall protect the other party's proprietary information by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination, publication of or access to the other party's proprietary information as it uses to protect its own proprietary information.

## 8. **FACILITIES AND RECORDS.**

(a) **Access to Records.** During the Term, the LLC shall give CSC full access to such portions of Facility, its premises, and its records as CSC may reasonably require in order to discharge its duties hereunder.

(b) **Medical Records.** The medical records of the Facility's patients are the property of the LLC and shall remain on the Facility's premises or other facilities under the supervision and control of the LLC. During the Term of this Agreement, subject to all applicable federal and state confidentiality laws (and corresponding regulations), CSC shall at all times be provided free and complete access to such medical records and may copy all or any part of the same for such purposes as are consistent with its duties and responsibilities under this Agreement. CSC shall maintain the confidentiality of patient records, except to the extent that disclosure is required by law or legal process.

(c) **Other Records.** All other records generated at the Facility or by the LLC or by CSC relating to the provision of Management Services for the Facility are the property of the LLC. CSC shall maintain the confidentiality of Facility's records and other information regarding Facility, except to the extent that disclosure is required by law or legal process.

(d) **CSC Systems-Confidentiality.** The LLC acknowledges that CSC has invested a significant amount of its resources in developing and maintaining the CSC Systems and that the value to CSC of these CSC Systems may be diminished or destroyed if the LLC discloses information concerning the CSC Systems or any portion thereof to a third-party. Accordingly, the LLC shall maintain the confidentiality of the CSC Systems. The LLC shall not knowingly duplicate or knowingly permit the duplication of any portion of the CSC Systems and shall not permit access to the CSC Systems by its personnel or any third party other than on a strict "need-to-know" basis and in the ordinary course of business. The LLC shall not loan, lease, or otherwise permit the use of any of the CSC Systems by any other person or entity, regardless of its relationship to the LLC. The LLC shall notify CSC of any

suspected or actual breach of these confidentiality requirements. The provisions of this section shall survive any termination or expiration of this Agreement.

(e) **Access.** Upon the written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, CSC will make available those contracts, books, documents and records necessary to certify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available up to four (4) years after the rendering of such services. If CSC carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization, CSC agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of Public Law 96-499, Sec. 952, and the regulations promulgated thereunder.

## 9. **BREACH.**

In the event of a material breach of any obligation or covenant under this Agreement, the nonbreaching party may give the breaching party written notice of the specifics of the breach, and if it does not involve a breach of an obligation to pay money, the breaching party shall have thirty (30) days from the date of the receipt of the notice in which to cure the breach or, if it involves the breach of an obligation to pay money, the breaching party shall have five (5) business days from the date of the receipt of the notice in which to cure the breach (in either case, the "Cure Period"). Only if the breach is not cured within said Cure Period shall the non-breaching party be entitled to pursue any remedies it may have by reason of the breach, including, but not limited to, the termination of this Agreement pursuant to Section 11(a). A waiver of any breach of this Agreement shall not constitute a waiver of any future breaches of this Agreement, whether of a similar or dissimilar nature. For purposes of CSC's compliance with Section 3(j), Hospital shall have the unilateral right to assert breach of Section 3(j) on behalf of the LLC under this Section 9 (including termination pursuant to Section 11(a) of this Agreement) should the Hospital identify a matter involving an uncured breach, which shall be subject to the notice and cure opportunities set forth above in this Section 9, by CSC (arising from an act or omission of CSC not taken pursuant to the direction or oversight of the Board) of Section 3(j) and should the Board fail to take action on such matter within ten (10) days of such notice.

## 10. **INDEMNIFICATION AND INSURANCE.**

(a) **Indemnification by the LLC.** The LLC shall indemnify, defend and hold harmless CSC, its shareholders, members, directors, officers, employees and agents (each, an "LLC-Indemnified Party") from and against any and all judgments, losses, claims, damages, liabilities, sanctions, penalties, fines, costs and expenses (including reasonable attorneys' fees and expenses paid or incurred by an LLC-Indemnified Party) which may be asserted against or incurred by any LLC-Indemnified Party arising out of any act or omission of the LLC or its directors, officers, managers, trustees, employees or agents that constitutes negligence, intentional misconduct or breach of the terms of this Agreement.

(b) **Indemnification by CSC.** CSC shall indemnify, defend and hold harmless the LLC and its respective directors, officers, managers, trustees, employees and agents (each, a "CSC-Indemnified Party") from and against all judgments, losses, claims, damages, liabilities, sanctions, penalties, fines, costs and expenses (including reasonable attorneys' fees and expenses paid or incurred by a CSC-Indemnified Party) which may be asserted against or incurred by any CSC-Indemnified Party arising out

of any act or omission of CSC or its directors, officers, managers, trustees, employees or agents that constitutes negligence, intentional misconduct or breach of the terms of this Agreement.

**(c) Conditions on Indemnification.** The obligations of an indemnifying party (the “Indemnitor”), as set forth in Sections 10(a) and 10(b) above, are conditioned upon: (i) the indemnified party (“the “Indemnitee”) promptly notify the Indemnitor in writing of the commencement or threatened commencement of any action or proceeding involving a claim of indemnification under this Agreement; (ii) with respect to all such claims, the cooperation of the Indemnitee, at the Indemnitor’s expense with the investigation and defense of such claims as reasonably requested by the Indemnitor. The Indemnitor shall keep the Indemnitee reasonably apprised of the continuing status of the claim, including any proceedings resulting from it. When a claim is resolved by the Indemnitor’s payment of money, the Indemnitor shall have final authority regarding defense and settlement. When a claim resolution required equitable relief against the Indemnitee or the Indemnitor has not or will not pay the money required for resolution, the parties shall cooperate regarding defense and settlement.

**(d) The LLC’s Insurance.** The LLC shall secure and maintain, during the Term of this Agreement, at its own cost and expense, the following minimum insurance coverage:

Workers Comp	Bodily Injury by Accident: \$500,000 each accident Bodily Injury by Disease: \$500,000 policy limit Bodily Injury by Disease: \$500,000 each employee
General Liability	\$2,000,000 incident/\$4,000,000 aggregate \$2,000,000 Personal & Advertising Injury \$4,000,000 Products-Completed Operations
Healthcare Facility Professional Liability	\$1,000,000 per claim/\$3,000,000 aggregate
Umbrella	\$3,000,000-Extends to Healthcare Facility Professional Liability and Worker’s Compensation
Employment Practices Liability	\$1,000,000

Property insurance shall insure against loss or direct physical damage to the Facility’s buildings, furnishings, equipment and machinery under standard all-risk coverage (including, but not limited to, fire, smoke, lightning, windstorm, explosion, aircraft or vehicle damage, riot, civil commotion, vandalism, and malicious mischief) and shall also include damage due to flood and earthquake. The LLC shall use reasonable commercial efforts to cause CSC to be named as an additional insured, with respect to this Agreement, under the comprehensive general and professional liability / errors & omissions policies. CSC’s Administrator shall be named in the LLC Directors and Officers (D&O) policy; provided LLC shall not be obligated to incur additional expense to add CSC as an additional insured. CSC’s rights to invoke the protection of such policies shall be severable from and independent of the LLC’s rights and the LLC shall use its best faith efforts to provide at least thirty (30) days prior written notice to CSC of the termination or non-renewal of any insurance policy. If such coverage is written on a claims-made form, following termination or expiration of this Agreement, the LLC shall (i) continue such coverage to

survive with CSC as an additional insured for the period of the applicable statute of limitations or (ii) shall provide an extended reporting endorsement (tail coverage) covering CSC for claims arising during the Term but not reported until after the termination or expiration of this Agreement. Should the LLC change insurance companies during the Term, the LLC shall maintain coverage which includes claims incurred but not reported under the prior coverage (prior acts coverage). No later than thirty (30) days following the Effective Date and thirty (30) days following the end of each policy year, the LLC shall give to CSC a copy of the endorsements naming CSC as an additional insured (if permitted by the insurer). It is the intention of the parties, subject to the approval of the insurer, that such insurance shall protect the LLC and CSC and will be the primary insurance for such parties for any and all losses covered thereby, notwithstanding any insurance which may be maintained by CSC or its Affiliates covering any such loss. If permitted by their respective insurers, the LLC and CSC agree to waive any right of contribution from the other party with respect to a loss covered under such policies (or their deduction).

(e) **CSC Insurance.** CSC shall secure and maintain, during the Term of this Agreement, at its own cost and expense, the following insurance coverages, unless otherwise agreed to by the parties hereto:

Worker’s Compensation	\$500,000/\$500,000/\$500,000
Comprehensive General Liability	\$2,000,000/\$4,000,000, with \$1,000,000 umbrella. Includes hired/non-owned automobiles of \$2,000,000
Professional Liability / Errors & Omissions	Professional Liability - \$1,000,000/\$3,000,000 with \$1,000,000 umbrella Errors and Omissions - \$1,000,000 Cyber/Data Breach - \$5,000,000
Directors and Officers (D & O)	\$1,000,000
Employment Practices Liability (EPL)	\$1,000,000 (shared limit in D&O policy)

CSC shall be required to provide professional liability / errors & omissions insurance covering all CSC employees and agents who render services at the Facility or to or for the benefit of the LLC under this Agreement. CSC shall use reasonable commercial efforts to cause the LLC to be named as an additional insured under the comprehensive general liability and the professional liability / errors & omissions policies; provided CSC shall not be obligated to incur additional expense to add LLC as an additional insured. The LLC’s rights to invoke the protection of such policies shall be severable from and independent of CSC’s rights, and CSC shall use its best faith efforts to provide at least thirty (30) days prior written notice to LLC of the termination or non-renewal of any insurance policy. If such coverage is written on a claims-made form, following termination or expiration of this Agreement, CSC shall (i) continue such coverage to survive with the LLC as an additional insured for the period of the applicable statute of limitations or (ii) shall provide an extended reporting endorsement (tail coverage) covering the LLC for claims arising during the Term but not reported until after the termination or expiration of this Agreement. Should CSC change insurance companies during the Term, CSC shall maintain coverage

which includes claims incurred but not reported under the prior coverage (prior acts coverage). No later than thirty (30) days following the Effective Date and thirty (30) days following the end of each policy year, CSC shall give to the LLC a copy of the endorsements naming the LLC as an additional insured (if permitted by the insurer).

#### **11. TERMINATION OF AGREEMENT.**

This Agreement may be terminated prior to the expiration of the Term only as follows, and any such termination shall not affect any rights or obligations arising prior to the effective date of termination.

(a) **Breach.** In the event of a material breach of this Agreement which is not cured within the Cure Period set forth in Section 9, "Breach," or in the event of a breach as to which no Cure Period is provided by this Agreement, the non-breaching party may terminate this Agreement immediately upon written notice; provided that notice of termination for Breach must be given no later than thirty (30) days after the expiration of the Cure Period if one is applicable. This remedy shall be in addition to any other remedy available at law or in equity. Failure to terminate this Agreement shall not waive any breach of this Agreement.

(b) **Casualty.** In the event that the physical plant housing the Facility is destroyed or is so damaged that the Facility cannot continue operations and it is determined by the Facility's Board of Managers and Members that the Facility will not resume operations, and that the LLC will instead wind up its affairs and dissolve as a legal entity, then either party may terminate this Agreement upon no less than thirty (30) days' notice without further liability to the other party, provided, however, that this Agreement shall be enforceable as to its terms by CSC and shall govern the management by CSC of any successor entity to the Facility established to provide ambulatory or outpatient ophthalmological or orthopedic surgical services within the geographic area described in Exhibit B and established within two (2) years of the casualty event to the Facility.

(c) **Sale or Cessation of Operation.** If the LLC decides to permanently cease operations of the Facility, then either party may terminate this Agreement upon no less than thirty (30) days' notice without further liability to the other party.

(d) **Bankruptcy.** Either party may terminate this Agreement immediately or upon such notice as it may select following the bankruptcy of the other party; provided that notice of termination must be given no later than thirty (30) days after the date the terminating party acquires reasonably reliable knowledge of the bankruptcy. For the purpose of this section, "bankruptcy" shall mean (i) the filing of a voluntary or involuntary petition for bankruptcy or similar relief from creditors, (ii) insolvency, (iii) the appointment of a trustee or receiver, or (iv) any similar occurrence reasonably indicating an imminent inability to perform substantially all of such party's duties under this Agreement.

(e) **Change of Ownership.** If Hospital becomes the sole member of the LLC through agreement of all the members of the LLC, the Parties hereto may terminate this Agreement by substituting a replacement agreement defining CSC's management duties, and the compensation therefor, pertaining to the Facility's operation as a hospital outpatient department.

(f) **Regulatory Matters.** Either party may terminate this Agreement upon one hundred and twenty (120) days prior written notice to the other party in the event that any agency or bureau of any

federal, state or local government issues an order, decree or ruling or takes any other action which materially and adversely affects the ability of any party to perform its obligations under this Agreement or otherwise prohibits or restricts the performance of any party obligations hereunder, including commencement of a legal proceeding or threat to commence such a proceeding on the basis of any party's participation in the ownership or operation of the Facility, or if any change in federal, state or local law or regulation or any interpretation thereof by any governmental agency or judicial body after the Effective Date would subject either party to civil or criminal prosecution or other adverse proceeding on the basis of any person's participation in the ownership or operation of the Facility in the reasonable opinion of legal counsel selected by the parties who is experienced in health law matters, provided that the parties have negotiated in good faith to modify this Agreement to resolve any adverse effects created by such action and have failed to reach agreement as to an acceptable modification of terms within such one hundred and twenty (120) day period or have determined that compliance with such law or regulation is impossible or impractical.

**(g) Performance Standards and Reporting.** The parties have established performance and reporting objectives in the areas of quality, financial performance, patient satisfaction, and accreditation. These performance objectives are designed as measures to assess CSC's performance. While the LLC does not hold CSC responsible for the conduct of the physicians who will be using the Facility, it does expect CSC to conduct its own operations at the Facility at a level that will promote quality services and cost-effective performance at the Facility.

The performance and reporting objectives for this Agreement are as follows:

(i) Quality. CSC shall identify quality metrics for the clinical operations of the Facility and shall report to the Board as to the same, along with recommendations as to strategies for clinicians at the Facility with respect to maintenance or improvements in quality of said clinicians' services rendered at the Facility.

(ii) Financial. Commencing on the Effective Date of this Agreement, the Facility shall maintain an annual level of earnings before adjustments for interest, taxes, depreciation and amortization ("EBITDA"), calculated consistent with generally accepted accounting principles, of at least One Million Dollars (\$1,000,000). This amount shall hereinafter be referred to as the "EBITDA Standard". The EBITDA for the Facility shall be calculated annually for purposes of measuring CSC's achievement of the EBITDA Standard (the parties shall rely solely on the regularly prepared financial statements of the LLC as verified by the LLC's accountant for determining the Facility's EBITDA). Should the results of any fiscal year's operation for the Facility result in the EBITDA Standard not being met, CSC shall have a period of ninety (90) days from the end of that most recent fiscal year to achieve the EBITDA Standard for that ninety (90) day period, which when annualized, satisfies the EBITDA Standard. If CSC achieves the EBITDA Standard for that ninety (90) day period, the Financial Performance Objective shall be deemed satisfied; provided, however, the Financial Performance Objective shall be met or exceeded for each subsequent ninety (90) day period for the remainder of that current fiscal year. Should CSC fail to satisfy the EBITDA Standard within the initial ninety (90) day period or any subsequent ninety (90) day period during that same fiscal year, then the Financial Performance Objective shall be deemed not to have been satisfied and the LLC may terminate this Agreement upon thirty (30) days' prior written notice to CSC.

(iii) Patient Satisfaction. CSC shall manage the Facility to promote quality and satisfaction such that the Facility's patient satisfaction scores, as indicated by its overall rating by patients for each fiscal year commencing with the first full year of operations after both the Effective Date of this Agreement and the relocation of the Facility from its original site of operations, shall not be less than a score of Eighty-Five (85) utilizing the EdgePerception™ Performance Analysis Report (the "Patient Satisfaction Score Quality Performance Objective"). In the event that the Management Committee of the LLC elects to use a different survey or tool to evaluate patient satisfaction at the Facility, then the Patient Satisfaction Score Quality Performance Objective shall be based upon that survey/tool with the requirement that the Facility achieve a comparable score of Eighty-Five (85) under that survey or tool. Should CSC not achieve the Patient Satisfaction Score Quality Performance Objective, commencing after the first full fiscal year of operation of the LLC after the Effective Date of this Agreement, based upon the aggregate performance over a full fiscal year, the LLC shall notify CSC in writing, along with providing CSC with the underlying survey results. Should the Facility fail to achieve the Patient Satisfaction Score Quality Performance Objective in the next full quarterly survey subsequent to CSC's receipt of notice from the LLC, then the Patient Satisfaction Score Quality Performance Objective shall be deemed not to have been satisfied and the LLC may then terminate this Agreement upon thirty (30) days' prior written notice to CSC.

(iv) Accreditation. CSC shall take such actions and manage the Facility so as to allow the Facility to maintain accreditation from either the Joint Commission or the Accreditation Association for Ambulatory Health Care (the "Accreditation Objective"). If the Facility loses its accreditation, the LLC shall notify CSC in writing, along with providing CSC with underlying survey results or other pertinent information. Should CSC not address issues identified in such survey results and information as leading to the Facility's failure to achieve, or lose, accreditation to the LLC's reasonable satisfaction within ninety (90) days, then the Accreditation Objective shall be deemed not to have been satisfied and the LLC may terminate this Agreement upon thirty (30) days' prior written notice to CSC.

With respect to all of the Financial Performance Objective, the Patient Satisfaction Quality Performance Objective, and the Accreditation Objective, should the failure to satisfy any Performance Objective be the result of specific, intentional and material actions or inactions of the LLC or other events beyond CSC's control, then the LLC shall not be entitled to terminate this Agreement as provided above due to failure to achieve the Performance Objective in question.

The parties acknowledge and agree that the LLC's sole remedy for CSC's failure to achieve any of the Performance Objectives shall be termination of this Agreement.

## **12. EFFECTS OF TERMINATION.**

In the event of the termination of this Agreement, CSC shall immediately be paid all Fees heretofore earned and reimbursed for all expenses incurred for which reimbursement is required under this Agreement. The termination of this Agreement for any reason shall be without prejudice to any payments or obligations which may have accrued or become due hereunder prior to the date of termination or which may become due after such termination. Sections 8(b), 8(c), 8(d), 8(e) and Article 10 shall survive the expiration or termination for any reason of this Agreement.

## **13. NOTICES.**

All notices permitted or required by this Agreement shall be in writing and deemed given immediately when delivered personally or sent by facsimile or deemed received five (5) business days after deposited in the United States mail, postage prepaid, return receipt requested, addressed to the other party at the address set forth below or such other address as the party may designate in writing

To: CSC: Constitution Surgery Alliance, LLC  
100 Avon Meadow Lane  
Avon, CT 06001  
Attn: Kristian M. Mineau, President and CEO

To the LLC: Constitution Surgery Center East, LLC  
174 Cross Road  
Waterford, Connecticut 06385  
Attn: Kristian M. Mineau, Manager

To the Hospital: The William W. Backus Hospital  
c/o Hartford HealthCare  
1 State Street, Suite 19  
Hartford, Connecticut 06103  
Attn: Janette Edwards, Vice President Operational  
Integration

With a copy to: The William W. Backus Hospital  
/o Hartford HealthCare  
1 State Street, Suite 19  
Hartford, Connecticut 06103  
Attn: Margaret Marchak, Senior Vice President and  
Chief Legal Officer

**14. AFFILIATES.**

As used in this Agreement with regard to a party, the term “Affiliate” means any person or entity (a “Parent”) owning fifty percent (50%) or more of the voting membership interests of such party, any subsidiary entity of which such party owns fifty percent (50%) or more of the voting interests, and any subsidiary of a Parent of which the Parent owns fifty percent (50%) or more of the voting interests.

**15. BINDING EFFECT.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their permitted assigns, successors in interest, and successors in ownership, operation or control of the Facility.

**16. CONFIDENTIALITY.**

Neither party may disclose the terms of this Agreement to any other person or entity, except by mutual written consent of the parties or unless such disclosure is required by legal process, by law or regulation.

17. **FORCE MAJEURE.**

Notwithstanding any provision contained herein to the contrary, neither party shall be deemed to be in default hereunder for failing to perform or provide any of the services or other obligations to be performed or provided by said party pursuant to this Agreement if such failure is the result of any labor dispute, act of God, inability to obtain labor or materials, government restrictions or any other event which is beyond said party's reasonable control (an "Event of Force Majeure"). If the performance of any obligation shall have been delayed, interfered with or prevented by an Event of Force Majeure, then the parties shall take such steps as shall be reasonably available to them to remove the Event of Force Majeure or to mitigate the effect of such occurrence (except that labor disputes shall be settled at the sole discretion of the party affected). If an Event of Force Majeure (alone or extended by another Event of Force Majeure) continues so that the mutual obligations remain suspended for a period of thirty (30) consecutive days and at the end of such period or at any time thereafter during which such suspension continues uninterrupted, either party, in the exercise of reasonable judgment, concludes that there is no likelihood of the Event of Force Majeure ending within the next thirty (30) days, then either party may terminate this Agreement without liability to the other party by giving to the other at least ten (10) days' written notice of its intention to terminate.

18. **ASSIGNMENT.**

Neither party may assign this Agreement, except with the prior written consent of the other party, except that either party may assign all of its rights and obligations hereunder to an Affiliate, or in connection with a sale of substantially all of the assets of such party, without the prior written consent of the other party. An assignment or attempted assignment in violation of this provision shall be null and void.

19. **MISCELLANEOUS.**

(a) **Headings.** Section headings are for convenience of reference only and shall not be used to construe the meaning of any provision of this Agreement.

(b) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall together constitute one agreement.

(c) **Severance.** Should any part of this Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining portions.

(d) **Authority.** Each individual signing this Agreement warrants that such execution has been duly authorized by the party for which he or she is signing. The execution and performance of this Agreement by each party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Agreement constitutes the valid and enforceable obligation of each party in accordance with its terms.

(e) **Governing Law.** This Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise, by the laws of the State of Connecticut, and any applicable Federal laws. The parties agree that the proper venue for any legal proceedings arising out of this Agreement shall be in New London County, Connecticut. All the parties hereto consent to the

personal jurisdiction of the United States District Court for the Federal District of Connecticut and to the Superior Court of Connecticut.

(f) **Amendment.** This Agreement may not be modified, altered, amended or supplemented except in writing executed by the parties hereto.

(g) **Arbitration.** All disputes, claims, controversies and grievances arising out of or in connection with this Agreement or the breach thereof, including a dispute as to the scope or applicability of this agreement to arbitrate, which cannot be resolved by the parties within thirty (30) days after written notice by either party, shall be settled by binding arbitration by a single arbitrator appointed pursuant to the rules of American Health Lawyers Association (“AHLA”); provided, however, this provision shall not apply to any action seeking solely equitable relief. The arbitrator shall be a person who is experienced in health care matters. The cost of any arbitration proceeding under this provision shall be shared equally by both parties. The arbitrator shall state in writing the reasons for his or her award and the legal and factual conclusions underlying the award. The award of the arbitrator shall be final, and judgment upon the award may be entered in any state or federal court located in Connecticut. The parties agree that all of the negotiations and arbitration proceedings relating to such disputes and all testimony, transcripts and other documents relating to such arbitration shall be treated as confidential and will not be disclosed or otherwise divulged to any other person except as necessary in connection with such negotiations and arbitration proceedings. The prevailing party in any dispute relating to this Agreement shall be entitled to recover its reasonable costs and expenses incurred in prosecuting or defending such a dispute, including a reasonable attorney’s fee, from the non-prevailing party.

(h) **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior agreements, written or oral, and representations with respect to the subject matter hereof.

(i) **Assumption of Liabilities.** CSC shall not be liable for or assume responsibility for any of the debts, obligations or liabilities of the Facility due to its management of the Facility under the terms of this Agreement.

## 21. **HIPAA AND BUSINESS ASSOCIATE AGREEMENT.**

The parties agree that they have entered into a Business Associate Agreement to evidence their compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”) and its implementing regulations, and such Business Associate Agreement is attached hereto as Exhibit D and incorporated herein by reference.

[The next page is the signature page.]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written to be effective as provided hereinabove.

**CONSTITUTION SURGERY CENTER EAST, LLC,**  
a Connecticut limited liability company

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

Its: \_\_\_\_\_

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

**CONSTITUTION SURGERY ALLIANCE, LLC,**  
a Connecticut limited liability company

By: \_\_\_\_\_  
Kristian Mineau, President and Chief Executive Officer

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

**THE WILLIAM W. BACKUS HOSPITAL,**  
a Connecticut nonstock corporation

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

Its: \_\_\_\_\_

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

## Exhibit A

### MANAGEMENT SERVICES

From the Effective Date and thereafter throughout the Term, CSC shall provide, assist and/or oversee provision of the following services to the LLC for the Facility:

#### **Operational Leadership:**

- Management of day-to-day Facility operations through CSC's on-site Administrator
- Overall account responsibility through a CSC Principal, or designee
  - Regular attendance at on-site meetings
  - Reasonable, daily electronic availability
  - Assign consulting resources
  - Communicate with owners
- Annual Management Plan
  - Defines the goals & objectives of the Facility
  - Annual performance report to Board and, upon mutual agreement, Hospital's Board and the governing bodies of surgeon investment entities (or the surgeon investors collectively)
- Monthly Executive Board Summaries
  - Overall progress of the Facility implementing the Management Plan
  - Performance of Facility management/Operational Overview (e.g., Key Indicator Report)
  - Status of Customer relationships

#### **Financial Support & Services to be Provided by CBFS through a separate agreement**

- Preparation of Monthly Financial Statements & Reports
  - Balance Sheet
  - Income Statement
  - Budget variance explanation
  - Cash flow statements
  - Accounts receivable analysis
  - Investment schedules
  - Key financial / performance indicators & benchmarks
- Prepare Annual Budgets
  - Capital
  - Operating
  - Cash Flow
- Oversee monthly bank reconciliation
- Oversee preparation of State and Federal required reports
- Oversee cash management
- Facilitate independent audit / review
- Facilitate tax return preparation
- Recommend owner profit distributions
- Manage owner profits distributions
- Manage ownership transfers

### **Operational Management:**

- Review, recommend and manage capital equipment purchases
- Analyze, review and recommend new surgical procedures
- Monitor and assure cost effective Inventory management
- Monitor and assure cost effective Medical supply purchases
- Monitor Group purchasing contracts & discount utilization
- Maintain and update charge master
- Provide support for negotiation of managed care contracts
- Monitor cost per case benchmarks
- Monitor salary to net revenue benchmarks
- Monitor medical supply cost to net revenue benchmarks
- Oversee Accounts Payable
- Assist in negotiation of all external agreements (e.g. anesthesia, pathology, biomedical, Biohazardous waste disposal, laundry & linen, maintenance, etc.)
- Oversee purchase of appropriate insurance policies by owner
- Mediate physicians and/or partners issues as requested (e.g. supplies, equipment, personnel, etc.)
- Provide recommendations for performance improvement

### **Regulatory, Accreditation & Licensure:**

- HIPAA privacy and compliance services as liaison to HHC Office of Compliance and Privacy
- Provide regular updates on regulatory issues effecting Surgery Centers
- Provide regular updates on compliance and HIPAA issues effecting Surgery Centers
- Maintain current standards for: Medicare, accrediting body (Joint Commission or AAAHC) and state licensure
- Provide education to Facility personnel regarding all Medicare, state and accrediting body regulations
- Oversee preparation of all survey applications
- Assist in preparation for Medicare, accreditation and licensure surveys
- Maintain and update policies & procedures as needed:
  - Administration
  - Medical Staff Bylaws
  - Medical Staff Credentialing
  - Emergency protocols
  - Human Resources
  - Infection Control
  - OSHA
  - Compliance & HIPAA
  - Medical Records & Coding
  - Environment of Care
  - Quality & Performance Improvement
  - Life Safety

### **Risk Management Program:**

- Implement risk management and corporate compliance program
- Perform periodic on-site risk analysis
- Develop education and training programs
- Provide guidance to committee as needed

### **Business Office & Billing Assistance:**

- Implement admission & scheduling protocols
- Establish and implement pre-certification process
- Implement billing and collection practices
- Provide recommendations to improve revenue cycle
- Provide training and education to billing & collection staff
- Maintain updated fee schedules
- Oversee management of Accounts Receivable
- Implement and monitor collection performance benchmarks

### **Human Resources:**

- Develop and maintain job descriptions
- Administer wage, salary and benefit s programs for LLC employees
- Develop and maintain new employee orientation program
- Provide guidelines for mandatory employee education programs
- Oversee proper storage and maintenance of employee personnel records
- Develop performance evaluation tools
- Develop technical skills checklist
- Recommend and implement employee incentive bonus program
- Provide guidance for the employment, supervision and termination of all non-physician staff positions

### **Information Systems Support:**

- Oversee development and/or coordination of all Management Information System functions:
  - Scheduling & patient registration
  - Insurance profiles & logs
  - Fee schedules
  - Electronic claims filing
  - Patient statements
  - Credential files
  - Clinical outcomes program
  - General Accounting Ledger
  - Accounts Payable / Accounts Receivable
  - Payroll
  - Inventory Management
  - Physician preference cards
  - Resource Utilization analysis
  - Payer mix analysis
  - Cost tracking modules

### **Quality Assurance:**

- Implement policies, procedures and protocols consistent with industry best practices
- Implement patient, employee and physician satisfaction survey programs
- Oversee continuous quality improvement process to promote performance excellence to industry standards
- Recommend opportunities for LLC awards and recognition

**Exhibit B**

**Non-Compete City List**

Waterford, East Lyme, Montville, Groton, and Ledyard, Connecticut.

**Exhibit C**

**Current CSC Management Engagements**

**[TO BE COMPLETED BY CSC]**

## Exhibit D

### BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT is made and entered into as of [\_\_\_\_\_] [\_\_\_\_], 201[ ] (“Effective Date”), by and between CONSTITUTION SURGERY CENTER EAST, LLC, a Connecticut limited liability company (“Covered Entity”), and CONSTITUTION SURGERY ALLIANCE, LLC, a Connecticut limited liability company (“Business Associate”).

#### RECITALS:

WHEREAS, the Business Associate and the Covered Entity have entered into a Management Services Agreement dated \_\_\_\_\_, \_\_\_\_ (the “Agreement”) wherein the Business Associate creates, receives, maintains or transmits Protected Health Information (PHI) on behalf of the Covered Entity and to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), and implementing regulations which are codified at 45 C.F.R. Parts 160 and 164, as amended from time to time (collectively the “HIPAA Standards”), the parties agree to the terms herein.

#### **1. Permitted Uses and Disclosures by Business Associate**

- a) The Business Associate’s use and disclosure of PHI shall comply in all respects with the HIPAA Standards.
- b) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity. Business Associate shall not use or disclose PHI other than permitted or required by this Business Associate Agreement or as required by law. The Business Associate shall limit the use and disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure of the PHI or as required pursuant to the Agreement.
- c) Except as otherwise limited in this Business Associate Agreement, Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that (i) the disclosure is required by law, or (ii) Business Associate obtains reasonable assurances from the recipient that the PHI will remain confidential and used or further disclosed only as required by law for the purposes for which it was disclosed to the recipient, and the recipient promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
- d) Unless requested in writing by the Covered Entity, Business Associate may not use PHI to provide Data Aggregation services.
- e) Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.

## 2. Obligations and Activities of Business Associate

- a) Business Associate shall ensure, through a written agreement, that any subcontractors of Business Associate that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such PHI, including without limitation, the restrictions, conditions, and requirements of this Business Associate Agreement and the HIPAA Standards.
- b) Business Associate shall immediately report to Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement, any Breach, or any Security Incident involving the PHI of which the Business Associate, or a subcontractor of the Business Associate, becomes aware (each, an "Incident"). The Business Associate shall identify each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during an Incident. Notice shall be made to the Covered Entity no later than five (5) calendar days after Business Associate's discovery of the Incident by Business Associate or a subcontractor of the Business Associate, whichever is earlier, except that in the event urgent notice may be required due to the possible imminent misuse of PHI, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than two (2) calendar days. Business Associate accepts the burden of demonstrating that such notice was timely, proper and in accordance with HIPAA Standards. Business Associate shall, at its expense, take any action necessary or reasonably requested by the Covered Entity to mitigate, to the extent practicable, any harmful effect of an Incident. Business Associate shall, at its expense, provide all information necessary to assist Covered Entity in providing notice of a Breach of Unsecured PHI.
- c) Business Associate shall restrict disclosures or communicate confidentially with Individuals as required by the HIPAA Standards and as requested by the Covered Entity.
- d) If the Business Associate maintains PHI in a Designated Record Set, the Business Associate shall:
  - (1) provide access (including inspection, obtaining a copy or both), in the time and manner reasonably designated by Covered Entity, and Business Associate shall not charge any fee greater than the lesser of the amount permitted by State Law or the Business Associate's actual cost of postage, labor and supplies for complying with the request;
  - (2) make available PHI for amendment and incorporate any amendment(s) in the time and manner reasonably designated by Covered Entity; and
  - (3) provide access to PHI that is in electronic format in the form and format requested by the Individual or Covered Entity, if not readily producible in such form or format, in a readable electronic form and format agreed to by the Covered Entity and the Individual, and transmit such copy directly to an entity or person designated by the Individual or Covered Entity. Business Associate shall not charge any fee greater than the lesser of the amount permitted by State law or the Business Associate's actual cost of postage, labor, and supplies for complying with the request.

- e) Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's or Business Associate's compliance with the HIPAA Standards.
- f) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity or Business Associate under the HIPAA Standards to respond to a request by an Individual for an accounting of disclosures of PHI. Business Associate shall provide, in the time and manner reasonably designated by Covered Entity, an accounting of disclosures required by the HIPAA Standards made by the Business Associate.
- g) Business Associate shall prevent use or disclosure of the PHI other than as provided for in this Business Associate Agreement and shall comply, where applicable, with the HIPAA Standards with respect to electronic PHI, including Subpart C of 45 C.F.R. Part 164 ("Security Rule"). The Business Associate shall implement and maintain safeguards as necessary to ensure that all PHI is used or disclosed only as authorized under the HIPAA Standards and this Business Associate Agreement. Without limiting Business Associate's obligations under the HIPAA Standards, the Business Associate agrees to assess potential risks and vulnerabilities to PHI in its possession and develop, implement and maintain appropriate administrative, physical and technical safeguards set forth in the HIPAA Standards to protect the confidentiality, availability and integrity of the PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity. These measures must be documented and kept current, and must include, at a minimum, those measures that fulfill the requirements outlined in the HIPAA Standards.
- h) Business Associate recognizes that violation of any HIPAA Standard by Business Associate may subject Business Associate to civil and criminal penalties, including those set forth in 42 U.S.C. § 1320d-5 and 1320d-6 and Subparts C-E of 45 C.F.R. Part 160 ("Enforcement Rule").
- i) Business Associate shall not, and shall ensure that its subcontractors do not, directly or indirectly receive any remuneration in exchange for any PHI unless approved in advance in writing by the Covered Entity in accordance with the HIPAA Standards.
- j) Business Associate shall not, and shall ensure that its subcontractors do not, engage in any marketing or fundraising that uses or discloses PHI.
- k) Business Associate shall respond to and shall assist the Covered Entity with responding to an investigation or compliance audit by the Secretary, or an action by an attorney general having jurisdiction involving PHI subject to this Agreement.
- l) To the extent that Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R Part 164 ("Privacy Rule"), Business Associate shall comply with such requirements that apply to Covered Entity in the performance of such obligations.
- m) Business Associate shall not create, receive, maintain, or transmit PHI outside of the United States or its Territories.

### 3. Term and Termination

- a) Term. The Term of this Business Associate Agreement shall be effective as of \_\_\_\_\_, 20\_\_\_\_, and shall terminate when all of the PHI maintained by Business Associate on behalf of Covered Entity is properly and completely destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.
- b) Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Business Associate Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation, and Covered Entity shall terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or immediately terminate the Agreement if Business Associate has breached a material term of this Business Associate Agreement and cure is not possible, as determined by the Covered Entity in its reasonable discretion.
- c) Effect of Termination.
  - (1) Except as provided in subparagraph (2) of this subsection (c), upon termination of the Agreement or this Business Associate Agreement, for any reason, Business Associate shall return or if authorized by Covered Entity, destroy all PHI maintained by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors of Business Associate. Business Associate shall retain no copies of the PHI.
  - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. The Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible. Business Associate shall not use or disclose such PHI and shall maintain its security pursuant to this Business Associate Agreement for so long as Business Associate maintains such PHI.

### 4. Miscellaneous

- a) Indemnification. Business Associate agrees to indemnify, defend, and hold harmless the Covered Entity from any and all loss, liability, damage, cost, and expense, including, without limitation, civil monetary penalties, monetary settlements, fines, damages as a result of attorney general enforcement, costs of breach notification, and attorneys' fees resulting or arising from use or disclosure of PHI, breach of this Business Associate Agreement, or violation of the HIPAA Standards by Business Associate or its subcontractors, agents, or employees, provided that Business Associate shall not indemnify Covered Entity for any act or omission made on advice, request, or discretion of Covered Entity. This Section 4(b) shall survive the termination of this Business Associate Agreement.
- b) Insurance. Business Associate shall maintain technical errors and omissions insurance with coverage for Breaches of Unsecured Protected Health Information with coverage limits of at least \$2 million per incident and \$2 million in the annual aggregate. Business

Associate shall add Covered Entity as an additional insured on the insurance policy.

- c) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Standards.
- d) No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state or federal law or regulation relating to privacy or security.
- e) Amendment. In the event that any law or regulation is enacted or promulgated regarding the protection of health information that is in any way inconsistent with the terms of this Business Associate Agreement or that interferes with Covered Entity's obligations with respect to the protection of health information so as to warrant a modification to this Business Associate Agreement or in the event any HIPAA Standard is amended or modified, the Covered Entity shall have the right to amend this Business Associate Agreement to effectuate such change by providing notice thereof to Business Associate but without having to obtain Business Associate's consent thereto. Except as set forth above in this Section 5(c), this Business Associate Agreement shall only be amended or modified upon written consent of the parties.
- f) Application of State Law. Where any applicable provision of State law relates to the privacy or security of health information and is not preempted by HIPAA, as determined by application of the HIPAA Standards, the parties shall comply with the applicable provisions of State law.
- g) Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect.
- h) Governing Law. This Business Associate Agreement shall be interpreted, construed, and governed according to the laws of the State in which the Covered Entity maintains its principal place of business. The parties agree that venue shall lie in Federal and State courts in the State in which the Covered Entity maintains its principal place of business, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.
- i) Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, or (c) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.

[Signatures on next page]

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

**CONSTITUTION SURGERY ALLIANCE, LLC**

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

**CONSTITUTION SURGERY CENTER EAST, LLC**

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

Exhibit 7: Copy of Hartford Hospital's Charity Care policy.

## **Hartford Healthcare System Financial Assistance Policy**

**Purpose:** The purpose of this Policy is to set forth Hartford Healthcare System policy of providing free or discounted health care services to patients who meet the Systems criteria for Financial Assistance. Specifically, this Policy will describe: (i) eligibility criteria for Financial Assistance, and whether such assistance includes free or discounted care; (ii) the basis for calculating amounts charged to patients; (iii) the method for applying for Financial Assistance from the System; (iv) the actions the System will take in the event of nonpayment, including collections action and reporting to credit agencies for patients that qualify for Financial Assistance; and (v) the Systems measures to widely publicize this Policy in the community served by the Hartford Healthcare System.

**Scope:** This Policy applies to all Hartford Healthcare System services regardless of the location at which they are being provided by the System:

### **Definitions:**

*“Charges”* means [the Medicare rate, the lowest managed care rate, or an average of the three lowest managed care rates] for those patients who are Uninsured and qualify for Financial Assistance, and for patients who are underinsured, Charges shall mean the contractual amounts agreed to by the Hartford Healthcare entity with the third-party payor.

*“Eligibility Criteria”* means the criteria set forth in this Policy to determine whether a patient needs Financial Assistance for the Health Care Services provided by the System.

*“Family”* means pursuant to the Census Bureau definition, a group of two or more people who reside together and who are related by birth, marriage, civil union or adoption. For purposes of this Policy, if the patient claims someone as a dependent on their income tax return, they may be considered a dependent.

*“Family Income”* means the following income when calculating Federal Poverty Level Guidelines of liquid assets: earnings, unemployment compensation, workers’ compensation, Social Security, Supplemental Security Income, public assistance, veterans’ payments, survivor benefits, pension or retirement income, interest, dividends, rents, royalties, income from estates, trusts, educational assistance, alimony, child support, assistance from outside the household, and other miscellaneous sources of income.

*“Federal Poverty Level Guidelines”* means the federal poverty level guidelines established by the United States Department of Health and Human Services.

*“Financial Assistance”* means free or discounted Health Care Services provided to persons who pursuant to the Eligibility Criteria, the System has determined to be unable to pay for all or a portion of the Health Care Services.

*“Free Bed Funds”* means any gift of money, stock, bonds, financial instruments or other property made by any donor to the System for the purpose of establishing a fund to provide medical care to an inpatient or outpatient of the System.

*“Health Care Services”* means Hartford Healthcare System (i) emergency medical services as defined by the federal law known as “EMTALA”; services for a condition if not promptly treated will result in adverse change in the health status of the individual; (ii) non-elective services provided in response to life-threatening circumstances in a non-emergency department setting; and (iii) medically necessary services as determined by the System on a case-by-case basis.

*“Medically Indigent”* means persons for whom the System has determined to be unable to pay some or all of their medical bills because their medical bills exceed a certain percentage of their Family income or assets even though they have income or assets that otherwise exceed the generally applicable Eligibility Criteria for free or discounted care under the Policy.

*“Uninsured”* means a patient who has no level of insurance or third party assistance to assist in meeting his or her payment obligations for Health Care Services and is not covered by Medicare, Medicaid or Champus or any other health insurance program of any nation, state, territory or commonwealth, or under any other governmental or privately sponsored health or accident insurance or benefit program including, but not limited to workers’ compensation and awards, settlements or judgments arising from claims, suits or proceedings involving motor vehicle accidents or alleged negligence.

*“Underinsured”* means the patient has some level of insurance or third-party assistance but still has out-of-pocket expenses such as high deductible plans that exceed his or her level of financial resources.

**Policy:** It is Hartford Healthcare System policy to provide Financial Assistance to all eligible individuals who are uninsured, underinsured, ineligible for a government program, or otherwise unable to pay for Health Care Services due to their limited financial resources. It is also the System’s policy to provide without discrimination care for emergency medical conditions (as defined by federal law known as “EMTALA”) to individuals regardless of their eligibility for Financial Assistance under this Policy.

## **I. Determining Eligibility.**

In determining eligibility for Financial Assistance, it is important that both the Hospital and the patient work collaboratively. Specifically, the System will do its best to apply the Eligibility Criteria in a flexible and reasonable manner and the patient will do

its best in responding to the Hartford Healthcare Entity's requests for information in a timely manner.

**1. Eligibility for Financial Assistance.** Individuals who are Uninsured, Underinsured (ex: high deductible plans), ineligible for any government health care benefit program and unable to pay for their Health Care Services may be eligible for Financial Assistance pursuant to this Policy.

**2. Process for Determining Eligibility for Financial Assistance.** In connection with determining eligibility for Financial Assistance, the System (i) will require that the patient complete an application for Financial Assistance along with providing other financial information and documentation relevant to making a determination of financial eligibility; (ii) may rely upon publicly available information and resources to determine the financial resources of the patient or a potential guarantor; (iii) pursue alternative sources of payment from public and private payment benefit programs; (iv) may review the patient's prior payment history; and (v) may consider the patient's receipt of state-funded prescription programs, participation in Women, Infants and Children programs, food stamps, subsidized school lunches, subsidized housing, or other public assistance as presumptive eligibility when there is insufficient information provided by the patient to determine eligibility.

**3. Processing Requests.** The Hartford Healthcare entity will use its best efforts to facilitate the determination process prior to rendering services so long as the determination process does not interfere with the provision of emergency medical services as defined under federal law. However, eligibility determinations can be made at any time during the revenue cycle. During the eligibility determination process, the System will at all times treat the patient or their authorized representative with dignity and respect and in accordance with all State and Federal laws.

**4. Financial Assistance Guidelines.** Eligibility criteria for Financial Assistance may include, but is not limited to, such factors as Family size, liquid and non-liquid assets, employment status, financial obligations, amount and frequency of healthcare expense (i.e. Medically Indigent) and other financial resources available to the patient. In particular, eligibility for Financial Assistance will be determined in accordance with the following guidelines:

**(a) Uninsured Patients:**

- (i) If Family income is at or below 250% of the Federal Poverty Level Guidelines, the patient may qualify for a 100% discount against Charges for Health Care Services;
- (ii) If Family income is between 250% and 400% of the Federal Poverty Level Guidelines, the patient may qualify for a discount against Charges for Health Care Services based on the Health Reform guidelines in IRC Section 501(5) that states "*limits amount*

*charged for emergency or other medically necessary care provided to individuals eligible for assistance under the financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care".* The discounted rate will be reviewed annually based on the individual system facility Managed Care Contracts. Family size is determined based upon the number of dependents living in the household;

- (iii) Patients may also qualify for Free Bed Funds in accordance with the System's Free Bed Funds Policy; and
- (iv) Patients may have presumptive eligibility if they are homeless and have no assets or qualify for other means-tested government programs.

(b) **Underinsured Patients:**

- (i) Payment plans will be extended for any patient liability (high deductible plans) identified in alignment with Hartford Healthcare System Payment Plan policy: *(example: patient balance of \$2500 at \$200 monthly payment plan).*
- (ii) If Family income is at or below 250% of the Federal Poverty Level Guidelines and the liquid asset test described in subsection (iv) below is met, the patient may qualify for a 100% discount against Charges for Health Care Services;
- (iii) If Family income is between 250% and 400% of the Federal Poverty Level Guidelines and the liquid asset test described in subsection (iv) below is met, the patient may qualify for discount that is equal to the facilities lowest managed care contracted discount against Charges for Health Care Services;
- (iv) The liquid asset test is based upon the patient's median family income per each Hartford Healthcare System Entity's Service Area statistics published annually by Housing and Urban Development and cash or other funds that can be converted to cash to meet immediate and emergency needs, *excluding* residence, vehicles, personal property, retirement funds and real estate;
- (v) Family size is determined based upon the number of dependents living in the household;
- (vi) Patient may also qualify for Free Bed Funds in accordance with the System Entity's Free Bed Funds Policy;

- (vii) The Financial Assistance discount percentage is applied to the System Entity's account balance after insurance payments from third-party payors (both Medicare and non-Medicare); and
- (vii) Patients may have presumptive eligibility if they are homeless and have no assets or qualify for other means-tested government programs.

(c) ***Medically Indigent:*** Patients will be required to submit a Financial Assistance application along with other supporting documentation, such as medical bills, drug and medical device bills and other evidence relating to high-dollar medical liabilities, so that the appropriate Hartford Healthcare System Entity's committee can determine whether the patient qualifies for Financial Assistance due to the patient's medical expenses and liabilities.

**II. Method for Applying for Financial Assistance.** Patients may ask any nurse, physician, chaplain, or staff member from Patient Registration, Patient Accounts, Office of Professional Services, Case Coordination, or Social Services about initiating the Financial Assistance application process. Information about applying for Financial Assistance is also available online at [www.harthosp.org](http://www.harthosp.org). Signage and written information regarding how to apply for Financial Assistance will be available in all System emergency service and patient registration areas. Once patient requests information about Financial Assistance, a Financial Counselor will provide the patient with the Financial Assistance application along with a list of the required documents that must be provided to process the application. If the patient or his or her legal representative does not provide the necessary documentation and information required to make a Financial Eligibility determination within fourteen (14) calendar days of the Hartford Healthcare System Entity's request, the Financial Assistance application will be deemed incomplete and rendered void. However, if an application is deemed complete by the Entity, the Entity will provide to the patient a written determination of financial eligibility within twenty (5) business days. Decisions by the Entity that the patient does not qualify for Financial Assistance may be appealed by the patient with fourteen (14) calendar days of the determination. If the patient appeals the determination, the Director of Patient Access will review the determination along with any new information and render a final decision within five (5) business days.

**III. Relationship to Hartford Healthcare System Collection Practices.** In the event a patient fails to qualify for Financial Assistance or fails to pay their portion of discounted Charges pursuant to this Policy, and the patient does not pay timely their obligations to the System, the System reserves the right to begin collection actions, including but not limited to, imposing wage garnishments or liens on primary residences, instituting legal action and reporting the matter to one or more credit rating agencies. For those patients that qualify for Financial Assistance and who are cooperating in good

faith to resolve the Entity's outstanding accounts, the Entity may offer extended payment plans to eligible patients, will not impose wage garnishments or liens on primary residences, will not send unpaid bills to outside collection agencies and will cease all collection efforts.

**IV. Publication and Education.** The System will disseminate information about its Financial Assistance Policy as follows: (i) provide signage regarding this Policy and written summary information describing the Policy along with financial assistance contact information in the Emergency Department, Labor and Delivery areas and all other Hospital patient registration areas; (ii) directly provide to each patient written summary information describing the Policy along with financial assistance contact information in all admission, patient registration, discharge, billing and collection written communications; (iii) post the Policy on the System's web site with clear linkage to the Policy on the System's Home page; (iv) educate all admission and registration personnel regarding the Policy so that they can serve as an informational resource to patients regarding the Policy; and (v) include the tag line "Please ask about our Financial Assistance Policy" in all System written advertisements.

**V. Relation to Free Bed Funds.** If a patient applies for Financial Assistance, the System will determine their eligibility for Financial Assistance and or Free Bed Funds.

**VI. Regulatory Compliance.** The System will comply with all state and federal laws, rules and regulations applicable to the conduct described in this Policy.

**VII. Uninsured patients.** Patients that are uninsured and do not qualify for the full or partial discounted Financial Assistance program, will receive a Self Pay discount = to the lowest managed care discount rate. This discounted rate is to be determined annually by each facility in accordance with the IRC 501 (5) guidelines.

**Reviewed By:** Niobus Queiro, Revenue Cycle Director, Hartford Healthcare Corporation  
Shelly McCafferty, PFS Director, Hartford Healthcare Corporation  
Becky Peters, PAS Director, Hartford Hospital  
Joan Feldman, Hartford Healthcare Corporation, Legal Department

**Approved By:** \_\_\_\_\_ Thomas Marchozzi, EVP & CFO Hartford Healthcare Corp.

**Date:** \_\_\_\_\_ October 1, 2010 \_\_\_\_\_

**Issued Date:** 08/16/2010

1493202v2

Exhibit 8: Copy of summary of financing terms.



\$163,180,000

**HARTFORD HEALTHCARE CORPORATION**  
**TAXABLE BONDS, SERIES D**

5.746% Bonds

Price: 99.999%

Yield 5.746%

CUSIP<sup>1</sup>: 41652PAB5

Dated: Date of Delivery

Due: April 1, 2044

This Offering Memorandum has been prepared to provide information in connection with the execution and delivery of the bonds described above (the "Series D Bonds") issued by Hartford HealthCare Corporation ("Hartford HealthCare"). The Series D Bonds are issuable only as fully registered bonds without coupons and, when issued, will be registered in the name of Cede & Co., as Bondowner and nominee for The Depository Trust Company ("DTC"), New York, New York. Purchases of beneficial interests in the Series D Bonds will be made in book-entry-only form and will be made in the denomination of \$1,000 or any integral multiple thereof. Purchasers of beneficial interests will not receive certificates representing their interests in the Series D Bonds. So long as Cede & Co. is the Bondowner, as nominee of DTC, references herein to the "Bondowners" or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners (as defined herein) of the Series D Bonds. See Appendix F - "BOOK-ENTRY-ONLY SYSTEM" herein.

Principal of and interest on the Series D Bonds will be paid directly to DTC by U.S. Bank National Association, as trustee (the "Trustee"), so long as DTC or its nominee, Cede & Co., is the Bondowner. Disbursement of such payments to the Beneficial Owners is the responsibility of the DTC Participants (as defined herein) and the Indirect Participants (as defined herein), as more fully described herein. Interest on the Series D Bonds will be payable on October 1, 2014 and semi-annually thereafter on each April 1 and October 1 until maturity.

The Series D Bonds will be issued pursuant to the Trust Indenture, dated as of February 1, 2014, by and between Hartford HealthCare and the Trustee (the "Indenture"). To secure Hartford HealthCare's obligations under the Indenture, the Obligated Group (as defined below) will issue to the Trustee its note, in the principal amount of the Series D Bonds (the "Note"), under and pursuant to the Master Indenture, as supplemented (as defined herein). The current Members of the Obligated Group are: Hartford HealthCare, Hartford Hospital, Windham Community Memorial Hospital, Inc., The Hospital of Central Connecticut at New Britain General and Bradley Memorial, MidState Medical Center and The William W. Backus Hospital (collectively, the "Obligated Group"). The Note, along with certain other obligations issued under the Master Indenture, will be secured by a pledge of the Gross Revenues (as defined in the Master Indenture) of the Obligated Group and by the Mortgages (as defined in the Master Indenture) on certain real property of certain Members (as defined herein) of the Obligated Group, subject to the Permitted Encumbrances (as defined in the Master Indenture). The obligations of Hartford HealthCare to make payments pursuant to the Indenture and the obligations of the Obligated Group to make payments pursuant to the Note are absolute and unconditional.

**The Series D Bonds are subject to optional redemption prior to maturity at the Make-Whole Redemption Price, as described herein.**

**Interest on and profit, if any, on the sale of the Series D Bonds are not excludable from gross income for federal, state or local income tax purposes. See "TAX MATTERS" herein.**

This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of the Series D Bonds. Investors are instructed to read the entire Offering Memorandum to obtain information essential to the making of an informed investment decision.

*The Series D Bonds are offered when, as, and if issued and received by the underwriters listed on this cover page (the "Underwriters"), subject to prior sale, to withdrawal or modification of the offer without notice, and to the approval of the legality of the Series D Bonds by Hawkins Delafield & Wood LLP, Hartford, Connecticut and New York, New York, special counsel to Hartford HealthCare. Certain legal matters will be passed upon for Hartford HealthCare by its counsel, McDermott Will & Emery LLP, Boston, Massachusetts, and Murtha Cullina LLP, Hartford, Connecticut, and for the Underwriters by their counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York. It is expected that the Series D Bonds will be available for delivery to DTC in New York, New York or its custodial agent, on or about March 26, 2014.*

**Citigroup**

**BofA Merrill Lynch**  
March 19, 2014

**Wells Fargo Securities**

<sup>1</sup> "CUSIP" is a copyright of American Bankers Association. CUSIP data herein are provided by Standard & Poor's, CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. The CUSIP numbers listed above are being provided solely for the convenience of owners of the Series D Bonds only at the time of issuance of the Series D Bonds and Hartford HealthCare does not make any representation with respect to such numbers or undertake any responsibility for their accuracy now or at any time in the future. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series D Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity.

## DEBT SERVICE SCHEDULE

The following table sets forth, for each fiscal year ending September 30, (i) the amount required to be paid for payment of the principal of and interest on, the Series D Bonds, (ii) total debt service on other indebtedness, and (iii) the total debt service on all long-term indebtedness. Columns may not add to total due to rounding.

12 Month Period Ending September 30	Series D Bonds			Other Indebtedness <sup>†</sup>		Total Debt Service on Long-Term Indebtedness
	Principal	Interest	Debt Service	Series E Bonds <sup>*</sup>	Debt Service	
2014	-	-	-	\$ 1,080,044	\$ 35,319,636	\$ 36,399,680
2015	-	\$ 9,506,550	\$ 9,506,550	4,092,800	25,924,685	39,524,034
2016	-	9,376,323	9,376,323	4,092,800	21,287,569	34,756,692
2017	-	9,376,323	9,376,323	4,092,800	20,875,730	34,344,853
2018	-	9,376,323	9,376,323	4,092,800	20,993,702	34,462,824
2019	-	9,376,323	9,376,323	4,092,800	21,002,999	34,472,122
2020	-	9,376,323	9,376,323	4,092,800	21,009,260	34,478,383
2021	-	9,376,323	9,376,323	4,092,800	21,011,468	34,480,591
2022	-	9,376,323	9,376,323	4,092,800	21,009,968	34,479,091
2023	-	9,376,323	9,376,323	4,092,800	20,997,890	34,467,013
2024	-	9,376,323	9,376,323	4,092,800	20,972,453	34,441,576
2025	-	9,376,323	9,376,323	7,917,800	20,657,154	37,951,277
2026	-	9,376,323	9,376,323	7,981,550	20,592,932	37,950,805
2027	-	9,376,323	9,376,323	7,962,550	20,612,609	37,951,482
2028	-	9,376,323	9,376,323	7,979,300	20,598,230	37,953,853
2029	-	9,376,323	9,376,323	7,994,550	20,584,346	37,955,219
2030	-	9,376,323	9,376,323	8,005,150	20,569,879	37,951,352
2031	-	9,376,323	9,376,323	8,022,750	20,553,747	37,952,819
2032	-	9,376,323	9,376,323	5,515,250	23,061,241	37,952,814
2033	-	9,376,323	9,376,323	5,930,250	22,649,182	37,955,754
2034	-	9,376,323	9,376,323	5,917,250	22,658,545	37,952,117
2035	-	9,376,323	9,376,323	5,906,250	22,669,045	37,951,617
2036	-	9,376,323	9,376,323	5,896,750	22,681,045	37,954,117
2037	-	9,376,323	9,376,323	5,878,250	22,697,795	37,952,367
2038	-	9,376,323	9,376,323	5,855,750	22,722,295	37,954,367
2039	-	9,376,323	9,376,323	5,854,000	22,722,295	37,952,617
2040	-	9,376,323	9,376,323	5,856,500	22,722,045	37,954,867
2041	-	9,376,323	9,376,323	5,852,500	22,724,545	37,953,367
2042	-	9,376,323	9,376,323	12,321,750	16,255,666	37,953,738
2043	-	9,376,323	9,376,323	-	16,432,082	25,808,404
2044	\$163,180,000	9,376,323	172,556,323	-	16,559,794	189,116,117
2045	-	-	-	-	16,823,893	16,823,893
2046	-	-	-	-	17,016,253	17,016,253
2047	-	-	-	-	17,222,952	17,222,952
2048	-	-	-	-	17,438,209	17,438,209
2049	-	-	-	-	17,661,358	17,661,358
<b>TOTAL:</b>	<b>\$163,180,000</b>	<b>\$281,419,911</b>	<b>\$444,599,911</b>	<b>\$ 168,656,194</b>	<b>\$757,292,493</b>	<b>\$1,370,548,598</b>

<sup>†</sup> Other Indebtedness includes debt as defined under the Master Indenture and is displayed for purposes of covenant calculation in accordance with the Master Indenture and the provisions regarding Balloon Indebtedness therein. Other Existing Indebtedness does not include all indebtedness. Other indebtedness includes the Series 2011A Bonds, Series 2011B Bonds, Series 2011C Bonds and Series E Bonds, as well as long term loans and capital leases. The amounts in this column assume a rate of 3.49% for the Series 2011B Bonds and 4.63% for the Series 2011C Bonds. See "PLAN OF ADDITIONAL FINANCING" herein

<sup>\*</sup> The Series E Bonds are expected to be issued simultaneously with the Series D Bonds.

the System or the Obligated Group, as the case may be, for the most recent fiscal year of the Obligated Group. Numerous other encumbrances are permitted as described in Appendix D - "Excerpts from the Master Indenture" under the heading "Permitted Encumbrances."

### **Additional Indebtedness**

Any Member of the Obligated Group may incur additional indebtedness subject to the limitations set forth in the Master Indenture. See Appendix D - "EXCERPTS FROM THE MASTER INDENTURE—Permitted Indebtedness."

### **THE PROJECT**

The Series D Bonds are being issued to (i) finance pension costs, (ii) refinance routine capital expenditures, (iii) refinance lines of credit, (iv) fund working capital and other eligible corporate purposes and (v) pay the costs of issuance of the Series D Bonds. The proceeds of the lines of credit were applied to pay pension costs, finance capital projects at Hartford Hospital and fund working capital and other corporate purposes.

Exhibit 9: Copy of FY 2015 internally prepared financial statements for Constitution Surgery Center East, LLC.

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**BALANCE SHEETS**  
**DECEMBER 31, 2015 and 2014**

	<u>12/31/15</u>	<u>12/31/14</u>	<u>Variance</u>
<i><u>Assets</u></i>			
<b>Current Assets</b>			
<b>Cash:</b>			
Checking - Wells Fargo	\$ 376,396	\$ 407,880	\$ ( 31,484 )
Checking - Bank of America	7,584	3,390	4,194
Checking - People's United Bank	283,014	-	283,014
Petty Cash	100	100	-
MM Sweep Account	4,289	4,287	2
MM Account	43,241	99,243	( 56,002 )
<b>Total Cash</b>	<u><b>714,625</b></u>	<u><b>514,900</b></u>	<u><b>199,725</b></u>
<b>Fixed Assets:</b>			
Leasehold Improvements	498,413	496,516	1,897
Equipment - Computers	51,313	48,792	2,521
Equipment - Medical	2,204,412	2,192,880	11,532
Equipment - Other	69,491	69,491	-
Furniture & Fixtures	87,808	87,808	-
Software	93,000	93,000	-
Signage	984	984	-
754 Step Up 5 Yr Assets	10,819	9,038	1,781
754 Step Up 7 Yr Assets	637,281	564,205	73,076
754 Step Up 10 Yr Assets	33,869	32,006	1,863
754 Step Up 15 Yr Assets	27,464	25,133	2,331
Less Accumulated Depreciation	( 2,974,578 )	( 2,776,506 )	( 198,071 )
<b>Fixed Assets-Net</b>	<u><b>740,276</b></u>	<u><b>843,346</b></u>	<u><b>( 103,070 )</b></u>
<b>Intangibles Assets:</b>			
754 Step-Up Goodwill	2,950,824	2,335,854	614,970
Start-Up Costs	60,419	60,419	-
Organization Costs	500	500	-
754 Step Up A/R	186,847	186,847	-
Less Accumulated Amortization	( 610,820 )	( 518,452 )	( 92,368 )
<b>Intangible Assets-Net</b>	<u><b>2,587,770</b></u>	<u><b>2,065,168</b></u>	<u><b>522,602</b></u>
<b>Other Assets:</b>			
Other Deposits	51,104	1,500	49,604
<b>Other Assets-Net</b>	<u><b>51,104</b></u>	<u><b>1,500</b></u>	<u><b>49,604</b></u>
<b>Total Assets</b>	<u><b>\$ 4,093,775</b></u>	<u><b>\$ 3,424,914</b></u>	<u><b>\$ 668,861</b></u>
<i><u>Liabilities &amp; Members' Capital</u></i>			
<b>Current Liabilities</b>			
Accounts Payable	\$ 124,962	\$ 128,214	\$ ( 3,252 )
Contra A/P	( 124,962 )	( 128,214 )	3,252
American Express	195,990	185,552	10,438
Bank of America Visa	-	1,441	( 1,441 )
<b>Total Current Liabilities</b>	<u><b>\$ 195,990</b></u>	<u><b>\$ 186,993</b></u>	<u><b>\$ 8,997</b></u>
<b>Other Liabilities</b>			
Other Employee Insurance	377	255	122
<b>Total Other Liabilities</b>	<u><b>377</b></u>	<u><b>255</b></u>	<u><b>122</b></u>

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**BALANCE SHEETS**  
**DECEMBER 31, 2015 and 2014**

	<u>12/31/15</u>	<u>12/31/14</u>	<u>Variance</u>
<b>Physician/Member Loans:</b>			
David Oakley, M.D.	321,056	-	321,056
Prior Parker, M.D.	-	26,414	( 26,414 )
Michael Halperin, M.D.	-	26,414	( 26,414 )
<b>Total Physician/Member Loans</b>	<u><b>321,056</b></u>	<u><b>52,829</b></u>	<u><b>268,227</b></u>
<b>Note Payable:</b>			
Dime Bank	129,226	288,659	( 159,433 )
<b>Total Notes Payable</b>	<u><b>129,226</b></u>	<u><b>288,659</b></u>	<u><b>( 159,433 )</b></u>
<b>Capital Lease:</b>			
Alcon	179,902	204,813	( 24,911 )
GE Healthcare: C-Arm	42,501	74,311	( 31,809 )
Conmed Linvatec	-	17,627	( 17,627 )
Sonosite	13,081	19,282	( 6,201 )
Leica Microscope	78,363	112,855	( 34,491 )
Conmed Linvatec - Camera System	-	10,812	( 10,812 )
GE Healthcare - Mini C-Arm	28,500	46,143	( 17,643 )
<b>Total Capital Lease</b>	<u><b>342,348</b></u>	<u><b>485,843</b></u>	<u><b>( 143,495 )</b></u>
<b>Total Liabilities</b>	<u><b>988,997</b></u>	<u><b>1,014,579</b></u>	<u><b>( 25,582 )</b></u>
<b>Members' Capital:</b>			
Constitution Surgery Centers, LLC	( 37,792 )	4,654	( 42,445 )
Anthony Barri, M.D.	( 39,421 )	( 22,018 )	( 17,403 )
Prior Parker, M.D.	35,652	52,104	( 16,452 )
David Oakley, M.D.	461,698	( 27,143 )	488,840
Francis Falck, M.D.	( 49,264 )	( 27,513 )	( 21,751 )
Jeffrey Hertz, M.D.	( 43,799 )	( 17,711 )	( 26,088 )
John Hornby, M.D.	( 19,749 )	( 11,050 )	( 8,699 )
Peter Spence McKay, M.D.	2,995	20,696	( 17,701 )
Anish Shah, M.D.	7,610	25,676	( 18,066 )
Charles Lanzillo, M.D.	35,670	52,121	( 16,451 )
Steven Wei, M.D.	179,230	224,935	( 45,705 )
Michael Halperin, M.D.	362,642	457,033	( 94,391 )
Steven Carlow, M.D.	179,225	224,931	( 45,706 )
Ammar Anbari, M.D.	359,193	453,525	( 94,332 )
Tarik Kardestuncer, M.D.	359,193	453,524	( 94,331 )
William Cambridge, M.D.	85,294	107,473	( 22,179 )
John Giacchetto, M.D.	85,296	107,473	( 22,177 )
Daniel Gaccione, M.D.	96,898	116,541	( 19,643 )
Christopher Hutchins, M.D.	101,495	121,508	( 20,013 )
Lior Haim, M.D.	255,317	236,000	19,317
Kevin Cranmer, M.D.	251,312	236,000	15,312
Jeffrey Miller, M.D.	251,313	236,000	15,313
Ron Slocumb, M.D.	236,000	-	236,000
<b>Total Members' Capital</b>	<u><b>3,156,007</b></u>	<u><b>3,024,758</b></u>	<u><b>131,249</b></u>

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**BALANCE SHEETS**  
**DECEMBER 31, 2015 and 2014**

	<u>12/31/15</u>	<u>12/31/14</u>	<u>Variance</u>
<b>Members' Draw:</b>			
Constitution Surgery Centers, LLC	( 580,500 )	( 703,500 )	123,000
Anthony Barri, M.D.	( 185,345 )	( 232,219 )	46,874
Prior Parker, M.D.	( 83,120 )	( 107,044 )	23,924
David Oakley, M.D.	( 546,075 )	( 278,611 )	( 267,464 )
Francis Falck, M.D.	( 231,682 )	( 290,275 )	58,593
Jeffrey Hertz, M.D.	( 250,428 )	( 314,371 )	63,943
John Hornby, M.D.	( 92,672 )	( 116,107 )	23,435
Peter Spence McKay, M.D.	( 111,806 )	( 141,801 )	29,995
Anish Shah, M.D.	( 111,924 )	( 142,164 )	30,240
Charles Lanzillo, M.D.	( 83,121 )	( 107,043 )	23,922
Steven Wei, M.D.	( 181,821 )	( 239,013 )	57,192
Michael Halperin, M.D.	( 363,726 )	( 478,548 )	114,822
Steven Carlow, M.D.	( 181,821 )	( 239,013 )	57,192
Ammar Anbari, M.D.	( 363,635 )	( 478,293 )	114,658
Tarik Kardestuncer, M.D.	( 363,635 )	( 478,293 )	114,658
William Cambridge, M.D.	( 84,372 )	( 111,077 )	26,705
John Giachetto, M.D.	( 84,372 )	( 111,077 )	26,705
Daniel Gaccione, M.D.	( 84,698 )	( 110,243 )	25,545
Christopher Hutchins, M.D.	( 84,815 )	( 110,605 )	25,790
Lior Haim, M.D.	( 64,105 )	( 37,870 )	( 26,235 )
Kevin Cranmer, M.D.	( 49,053 )	( 17,516 )	( 31,537 )
Jeffrey Miller, M.D.	( 49,053 )	( 17,516 )	( 31,537 )
Ron Slocumb, M.D.	( 7,043 )	-	( 7,043 )
<b>Total Members' Draw</b>	<b>( 4,238,822 )</b>	<b>( 4,862,199 )</b>	<b>623,377</b>
Capital Before Net Income	<b>( 1,082,815 )</b>	<b>( 1,837,441 )</b>	<b>754,627</b>
Net Income	4,187,593	4,247,777	( 60,184 )
	<b>4,187,593</b>	<b>4,247,777</b>	<b>( 60,184 )</b>
<b>Total Members' Capital</b>	<b>3,104,778</b>	<b>2,410,335</b>	<b>694,443</b>
<b>Total Liabilities and Members' Capital</b>	<b>\$ 4,093,775</b>	<b>\$ 3,424,914</b>	<b>\$ 668,861</b>

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**INCOME STATEMENTS**  
**ACTUAL vs. PRIOR YEAR**  
**FOR THE MONTH AND YEAR-TO-DATE ENDED DECEMBER 31, 2015 and 2014**

	MONTH			YEAR TO DATE		
	Actual	Prior Year	Variance	Actual	Prior Year	Variance
<b><u>INCOME</u></b>						
<b><i>Patient Income</i></b>						
Patient Fees	\$ 1,066,029	\$ 908,033	\$ 157,996	\$ 11,822,912	\$ 11,883,351	\$ (60,439)
Patient Refunds	(940)	-	(940)	(30,398)	(24,126)	(6,271)
Patient Refunds - Ortho	(5,494)	-	(5,494)	(55,321)	(19,844)	(35,477)
Credit Card Fees	(2,761)	(2,227)	(535)	(33,196)	(24,493)	(8,703)
Collection Agency Fees	-	-	-	(1,231)	(1,588)	357
<b><i>Net Patient Income</i></b>	<b><u>1,056,834</u></b>	<b><u>905,806</u></b>	<b><u>151,028</u></b>	<b><u>11,702,768</u></b>	<b><u>11,813,300</u></b>	<b><u>(110,532)</u></b>
<b><u>EXPENSES</u></b>						
<b><i>Salaries &amp; Fringe Benefits</i></b>						
Salaries	198,321	159,259	39,062	1,319,444	1,086,351	233,093
Salaries - Ortho	95,342	131,651	(36,309)	840,070	935,564	(95,494)
Bonus	8,249	-	8,249	26,473	-	26,473
Shared Payroll - Billing & Finance	-	-	-	7,000	-	7,000
Health Insurance	13,866	12,313	1,553	188,429	171,367	17,062
Health Insurance - Employee Contribution	(3,369)	(2,798)	(570)	(25,654)	(20,091)	(5,563)
401K Employer Contribution	-	-	-	28,916	24,623	4,293
401K Employer Contribution - Ortho	-	-	-	25,764	21,488	4,276
<b><i>Total Salaries &amp; Fringe Benefits</i></b>	<b><u>312,409</u></b>	<b><u>300,425</u></b>	<b><u>11,984</u></b>	<b><u>2,410,442</u></b>	<b><u>2,219,302</u></b>	<b><u>191,140</u></b>
<b><i>Payroll Taxes</i></b>						
F.I.C.A.	14,957	12,002	2,955	99,341	81,861	17,480
F.U.T.A.	5	20	(14)	6,107	1,563	4,544
S.U.T.A.	146	62	84	8,289	6,602	1,687
F.I.C.A. - Ortho	7,213	9,996	(2,783)	64,081	70,923	(6,842)
F.U.T.A. - Ortho	-	23	(23)	643	2,818	(2,175)
S.U.T.A. - Ortho	-	149	(149)	4,518	4,752	(234)
<b><i>Total Payroll Taxes</i></b>	<b><u>22,321</u></b>	<b><u>22,252</u></b>	<b><u>69</u></b>	<b><u>182,978</u></b>	<b><u>168,519</u></b>	<b><u>14,459</u></b>
<b><i>Occupancy Expense</i></b>						
Rent	16,642	16,236	406	199,699	194,829	4,871
Electricity	4,062	3,972	90	51,267	41,886	9,381
Gas	105	709	(604)	5,689	10,931	(5,242)
Water	-	-	-	829	6,595	(5,767)
Generator Fuel	-	83	(83)	167	365	(199)
Building Repairs	-	5,373	(5,373)	61,711	97,843	(36,132)
Equipment Repairs (non-medical)	-	-	-	5,336	4,690	645
Landscaping	-	-	-	5,567	2,592	2,975
Fire Service	-	50	(50)	1,873	1,234	639
Sewer Usage	-	-	-	8,652	10,698	(2,047)
Snow Removal	1,595	-	1,595	5,333	8,309	(2,975)
Trash Removal	887	871	16	10,785	10,505	280
Janitorial	2,627	2,627	-	32,385	31,522	863
Pest Control	-	-	-	307	391	(84)
<b><i>Total Occupancy Expense</i></b>	<b><u>25,918</u></b>	<b><u>29,920</u></b>	<b><u>(4,003)</u></b>	<b><u>389,601</u></b>	<b><u>422,391</u></b>	<b><u>(32,791)</u></b>
<b><i>Commercial Insurance</i></b>						
Liability Insurance	495	575	(80)	6,833	6,590	243
Malpractice Insurance	-	-	-	15,000	15,000	-
Workers' Comp Insurance	654	1,254	(601)	9,890	13,497	(3,607)
Cyber Liability Insurance	658	-	658	3,232	-	3,232
<b><i>Total Commercial Insurance</i></b>	<b><u>1,806</u></b>	<b><u>1,829</u></b>	<b><u>(23)</u></b>	<b><u>34,955</u></b>	<b><u>35,087</u></b>	<b><u>(131)</u></b>

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**INCOME STATEMENTS**  
**ACTUAL vs. PRIOR YEAR**  
**FOR THE MONTH AND YEAR-TO-DATE ENDED DECEMBER 31, 2015 and 2014**

	MONTH			YEAR TO DATE		
	Actual	Prior Year	Variance	Actual	Prior Year	Variance
<b>Office Expense</b>						
Office Supplies	1,763	408	1,355	16,034	17,177	( 1,143 )
Office Equipment-Non Capital	-	-	-	486	187	298
Office Equipment Repair	632	706	( 74 )	4,112	5,421	( 1,309 )
Cleaning Supplies	318	-	318	1,032	48	985
Computer Maintenance & Support	16,514	16,685	( 171 )	131,813	84,853	46,959
Equipment Rental/CIT Lease	-	540	( 540 )	540	2,181	( 1,641 )
Equipment Rental/Lease-Water Cooler	84	84	-	1,008	1,083	( 75 )
Equipment Rental/Lease	143	143	-	2,866	1,727	1,139
Storage	1,442	143	1,298	21,032	1,862	19,169
Postage & Delivery Charges	344	232	112	5,090	5,509	( 419 )
Printing & Reproduction	-	182	( 182 )	-	3,042	( 3,042 )
Bank Service Charges	306	488	( 182 )	7,086	5,716	1,370
Dues & Subscriptions	-	-	-	75	75	-
Credit Card Fees	-	-	-	95	-	95
Filing Fee	-	-	-	14	-	14
Late Fees	-	-	-	707	-	707
Employee Morale Expense	165	773	( 608 )	12,712	13,417	( 705 )
Miscellaneous	-	-	-	-	784	( 784 )
<b>Total Office Expense</b>	<b>21,710</b>	<b>20,383</b>	<b>1,327</b>	<b>204,701</b>	<b>143,082</b>	<b>61,620</b>
<b>Medical Supplies</b>						
Drugs	29,683	11,544	18,139	207,505	143,948	63,557
Drugs - Ortho	5,034	10,568	( 5,534 )	126,851	138,325	( 11,474 )
Implants	28,080	36,046	( 7,966 )	533,175	529,988	3,187
Implants - Ortho	44,624	31,748	12,876	392,026	360,890	31,137
Medical Equipment - Non Capital	-	-	-	378	-	378
Medical Equipment - Non Capital - Ortho	-	-	-	378	-	378
Instrumentation	3,035	722	2,312	19,217	10,412	8,804
Instrumentation - Ortho	13,204	8,156	5,047	114,700	71,533	43,167
Medical Equipment Rental	173	310	( 137 )	2,083	2,489	( 406 )
Medical Equipment Rental - Ortho	8,889	2,608	6,281	90,285	32,380	57,905
Other Medical Supplies	17,017	38,347	( 21,330 )	430,305	430,551	( 246 )
Other Medical Supplies - Ortho Paks	83,288	73,200	10,088	826,397	822,195	4,202
Patient Refreshments	1,124	690	434	11,035	6,920	4,115
Freight	1,166	950	216	14,385	12,339	2,046
Freight - Ortho	2,561	2,618	( 57 )	35,053	29,806	5,247
<b>Total Medical Supplies</b>	<b>237,878</b>	<b>217,508</b>	<b>20,370</b>	<b>2,803,771</b>	<b>2,591,775</b>	<b>211,996</b>
<b>Services - Professional</b>						
Management Fee (CSC)	14,853	15,810	( 957 )	221,562	251,594	( 30,032 )
Billing & Financial Services	36,893	32,356	4,536	463,425	480,002	( 16,577 )
Legal	27,757	331	27,426	47,342	9,284	38,058
Accounting	-	-	-	8,705	9,450	( 745 )
Pharmacist	779	-	779	3,835	3,619	216
Architectural	-	44,399	( 44,399 )	-	65,651	( 65,651 )
Payroll Services	294	278	16	5,972	6,781	( 809 )
Section 125 Admin. Fee	-	-	-	4,430	1,964	2,466
Recruiting	-	-	-	-	385	( 385 )
Other Professional Services	-	255	( 255 )	5,471	3,700	1,771
<b>Total Services - Professional</b>	<b>80,576</b>	<b>93,430</b>	<b>( 12,854 )</b>	<b>760,741</b>	<b>832,430</b>	<b>( 71,690 )</b>
<b>Other Outside Services</b>						
Laundry	4,948	3,519	1,429	52,266	46,005	6,261
Medical Waste	2,368	1,679	689	23,369	15,778	7,592
Patient Transportation	2,682	3,523	( 841 )	43,774	37,070	6,704
Transcription Service	1,291	1,401	( 110 )	18,344	16,750	1,595
Security	-	-	-	5,120	5,464	( 345 )
Instrument/Medical Equipment Repair	1,627	10,748	( 9,121 )	49,090	56,304	( 7,215 )
Instrument/Medical Equipment Repair - Ortho	9,835	16,420	( 6,585 )	84,715	122,774	( 38,059 )
Repairs & Maintenance - Other	-	-	-	237	247	( 9 )
Repairs & Maintenance - Other - Ortho	-	-	-	595	691	( 96 )
Shredding	48	48	-	769	766	3
Medical Records Stor & Retr	447	420	27	6,169	4,525	1,644
<b>Total Other Outside Services</b>	<b>23,246</b>	<b>37,759</b>	<b>( 14,513 )</b>	<b>284,448</b>	<b>306,372</b>	<b>( 21,924 )</b>

**CONSTITUTION SURGERY CENTER EAST, LLC**  
**INCOME STATEMENTS**  
**ACTUAL vs. PRIOR YEAR**  
**FOR THE MONTH AND YEAR-TO-DATE ENDED DECEMBER 31, 2015 and 2014**

	MONTH			YEAR TO DATE		
	Actual	Prior Year	Variance	Actual	Prior Year	Variance
<i>Training &amp; Education</i>						
Professional Conferences	-	-	-	2,300	-	2,300
Seminars & Workshops	-	900	( 900 )	6,704	3,747	2,957
Tuition Reimbursement	-	-	-	650	( 398 )	1,048
Books & Educational Supplies	-	-	-	307	1,305	( 998 )
<b>Total Training &amp; Education</b>	<b>-</b>	<b>900</b>	<b>( 900 )</b>	<b>9,961</b>	<b>4,654</b>	<b>5,307</b>
<i>Professional Fees</i>						
Professional Dues & Subscriptions	1,450	-	1,450	8,340	14,343	( 6,003 )
Credentialing	-	42	( 42 )	876	1,070	( 194 )
Licenses & Permits	-	-	-	826	1,151	( 325 )
<b>Total Professional Fees</b>	<b>1,450</b>	<b>42</b>	<b>1,408</b>	<b>10,042</b>	<b>16,564</b>	<b>( 6,522 )</b>
<i>Travel &amp; Entertainment</i>						
Mileage Reimbursement	-	-	-	115	-	115
Hotel	-	-	-	1,420	876	545
Air Fare	-	-	-	-	50	( 50 )
Ground Transportation (Incl Tolls, Parking, Tips)	-	-	-	107	80	28
Meals	3,335	-	3,335	3,442	46	3,396
Auto Repair	-	-	-	-	795	( 795 )
Gifts	-	3,196	( 3,196 )	-	3,196	( 3,196 )
<b>Total Travel &amp; Entertainment</b>	<b>3,335</b>	<b>3,196</b>	<b>139</b>	<b>5,084</b>	<b>5,042</b>	<b>42</b>
<i>Communication Expense</i>						
Telephone	71	1,085	( 1,014 )	12,761	12,751	10
Cable TV	205	97	108	1,314	1,072	242
Internet	200	200	-	2,766	8,119	( 5,353 )
Advertising	-	-	-	-	320	( 320 )
Meeting Expense	-	40	( 40 )	2,156	505	1,651
<b>Total Communication</b>	<b>477</b>	<b>1,422</b>	<b>( 946 )</b>	<b>18,996</b>	<b>22,766</b>	<b>( 3,770 )</b>
<i>Depreciation &amp; Amortization</i>						
Depreciation	7,020	449,718	( 442,699 )	198,071	547,694	( 349,622 )
Amortization	( 44,579 )	( 91,909 )	47,330	92,368	149,397	( 57,029 )
<b>Total Depreciation/Amortization Expense</b>	<b>( 37,559 )</b>	<b>357,809</b>	<b>( 395,369 )</b>	<b>290,439</b>	<b>697,091</b>	<b>( 406,651 )</b>
<i>Interest Expense</i>						
Loan Interest	3,582	3,636	( 54 )	36,846	58,054	( 21,207 )
Finance Charge	14	14	-	165	232	( 67 )
<b>Total Interest Expense</b>	<b>3,596</b>	<b>3,650</b>	<b>( 54 )</b>	<b>37,011</b>	<b>58,286</b>	<b>( 21,275 )</b>
<i>Taxes</i>						
Property Tax	31,298	-	31,298	61,872	30,470	31,402
Sales Tax	258	-	258	10,153	11,512	( 1,359 )
Sales Tax - Ortho	-	-	-	38	-	38
State Taxes	-	-	-	-	250	( 250 )
<b>Total Taxes</b>	<b>31,556</b>	<b>-</b>	<b>31,556</b>	<b>72,063</b>	<b>42,231</b>	<b>29,831</b>
<i>Other Expense (Income)</i>						
Interest Income	( 3 )	( 7 )	4	( 60 )	( 69 )	9
<b>Total Other Income/Expense</b>	<b>( 3 )</b>	<b>( 7 )</b>	<b>4</b>	<b>( 60 )</b>	<b>( 69 )</b>	<b>9</b>
<b>Total Expenses</b>	<b>728,715</b>	<b>1,090,520</b>	<b>( 361,806 )</b>	<b>7,515,174</b>	<b>7,565,523</b>	<b>( 50,349 )</b>
<b>Net Income (Loss)</b>	<b>\$ 328,119</b>	<b>\$ ( 184,714 )</b>	<b>\$ 512,834</b>	<b>\$ 4,187,593</b>	<b>\$ 4,247,777</b>	<b>\$ ( 60,184 )</b>
<b>EBITDA</b>				<b>\$ 4,514,879</b>	<b>\$ 5,002,921</b>	<b>\$ ( 488,042 )</b>

Exhibit 10: Copies of financial worksheet A and financial worksheet B.

NON-PROFIT

Applicant: WWBH Please provide one year of actual results and three years of projections of Total Entity revenue, expense and volume statistics without, incremental to and with the CON proposal in the following reporting format:

Financial Worksheet (A)

LINE	Total Entity; Description	(1)		(2)		(3)		(4)		(5)		(6)		(7)		(8)		(9)		(10)		(11)		(12)		(13)		
		FY15		FY16		FY16		FY16		FY17		FY17		FY17		FY18		FY18		FY18		FY19		FY19		FY19		
		Actual	Results	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected	Projected
		W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental	W/out CON	Incremental							
<b>A. OPERATING REVENUE</b>																												
1	Total Gross Patient Revenue	\$738,803,146		\$787,525,373		\$787,525,373		\$808,188,152	\$42,689,598	\$850,877,750		\$824,351,915	\$58,408,783	\$882,760,698		\$840,838,953	\$59,924,452	\$900,763,405		\$501,618,488	\$46,892,572	\$548,511,061		\$500,918	\$130,960	\$5,139,879		
2	Less: Allowances	\$429,678,200		\$469,691,302		\$469,691,302		\$482,140,031	\$33,422,164	\$515,562,195		\$491,782,832	\$45,717,535	\$537,500,367		\$501,618,488	\$46,892,572	\$548,511,061		\$429,678,200	\$33,422,164	\$469,691,302		\$429,678,200	\$33,422,164	\$469,691,302		
3	Less: Charity Care	\$4,309,525		\$4,629,246		\$4,629,246		\$4,814,416	\$93,131	\$4,907,546		\$4,910,704	\$127,537	\$5,038,242		\$5,008,918	\$130,960	\$5,139,879		\$4,309,525	\$93,131	\$4,629,246		\$4,309,525	\$93,131	\$4,629,246		
4	Less: Other Deductions	\$10,600,846		\$12,574,553		\$12,574,553		\$12,574,553	\$94,161	\$12,668,714		\$12,574,553	\$128,949	\$12,703,502		\$12,574,553	\$132,410	\$12,706,963		\$10,600,846	\$94,161	\$12,574,553		\$10,600,846	\$94,161	\$12,574,553		
	<b>Net Patient Service Revenue</b>	<b>\$294,014,575</b>		<b>\$300,630,272</b>	\$0	<b>\$300,630,272</b>		<b>\$308,659,152</b>	<b>\$9,080,141</b>	<b>\$317,739,293</b>		<b>\$315,083,826</b>	<b>\$12,434,762</b>	<b>\$327,518,588</b>		<b>\$321,636,994</b>	<b>\$12,768,509</b>	<b>\$334,405,503</b>		<b>\$294,014,575</b>	<b>\$0</b>	<b>\$294,014,575</b>		<b>\$294,014,575</b>	<b>\$0</b>	<b>\$294,014,575</b>		
5	Medicare	\$98,008,978		\$100,772,590		\$100,772,590		\$103,355,855	\$2,354,875	\$105,710,730		\$105,422,972	\$3,195,582	\$108,618,554		\$107,531,431	\$3,252,224	\$110,783,656		\$98,008,978	\$0	\$98,008,978		\$98,008,978	\$0	\$98,008,978		
6	Medicaid	\$34,157,147		\$35,120,294		\$35,120,294		\$36,020,589	\$130,609	\$36,151,198		\$36,741,001	\$176,897	\$36,917,898		\$37,475,821	\$179,692	\$37,655,513		\$34,157,147	\$0	\$34,157,147		\$34,157,147	\$0	\$34,157,147		
7	CHAMPUS & TriCare	\$3,254,068		\$3,345,825		\$3,345,825		\$3,431,594	\$16,801	\$3,448,395		\$3,500,225	\$22,953	\$3,523,179		\$3,570,230	\$23,514	\$3,593,744		\$3,254,068	\$0	\$3,254,068		\$3,254,068	\$0	\$3,254,068		
8	Other	(\$10,600,845)		(\$12,574,553)		(\$12,574,553)		(\$12,574,553)	\$7,093	(\$12,567,460)		(\$12,574,553)	\$7,330	(\$12,567,223)		(\$12,574,553)	\$7,571	(\$12,566,982)		(\$10,600,845)	\$0	(\$10,600,845)		(\$10,600,845)	\$0	(\$10,600,845)		
	<b>Total Government</b>	<b>\$124,819,348</b>		<b>\$126,664,156</b>	\$0	<b>\$126,664,156</b>		<b>\$130,233,485</b>	<b>\$2,509,378</b>	<b>\$132,742,862</b>		<b>\$133,089,645</b>	<b>\$3,402,762</b>	<b>\$136,492,407</b>		<b>\$136,002,929</b>	<b>\$3,463,001</b>	<b>\$139,465,930</b>		<b>\$124,819,348</b>	<b>\$0</b>	<b>\$124,819,348</b>		<b>\$124,819,348</b>	<b>\$0</b>	<b>\$124,819,348</b>		
9	Commercial Insurers	\$156,786,550		\$161,207,545		\$161,207,545		\$165,340,035	\$3,710,532	\$169,050,567		\$168,646,836	\$5,235,652	\$173,882,489		\$172,019,773	\$5,383,683	\$177,403,457		\$156,786,550	\$0	\$156,786,550		\$156,786,550	\$0	\$156,786,550		
10	Uninsured			\$0		\$0		\$0	\$0	\$0		\$0	\$0	\$0		\$0	\$0	\$0										
11	Self Pay	\$5,358,015		\$5,509,098		\$5,509,098		\$5,650,321	\$8,774	\$5,659,096		\$5,763,328	\$12,236	\$5,775,564		\$5,878,594	\$12,512	\$5,891,106		\$5,358,015	\$0	\$5,358,015		\$5,358,015	\$0	\$5,358,015		
12	Workers Compensation	\$7,050,662		\$7,249,473		\$7,249,473		\$7,435,311	\$2,744,625	\$10,179,936		\$7,584,017	\$3,909,715	\$11,493,732		\$7,735,697	\$4,038,287	\$11,773,985		\$7,050,662	\$0	\$7,050,662		\$7,050,662	\$0	\$7,050,662		
13	Other			\$0		\$0		\$0	\$0	\$0		\$0	\$0	\$0		\$0	\$0	\$0										
	<b>Total Non-Government</b>	<b>\$169,195,227</b>		<b>\$173,966,116</b>	\$0	<b>\$173,966,116</b>		<b>\$178,425,667</b>	<b>\$6,463,931</b>	<b>\$184,889,599</b>		<b>\$181,994,181</b>	<b>\$9,157,604</b>	<b>\$191,151,784</b>		<b>\$185,634,065</b>	<b>\$9,434,483</b>	<b>\$195,068,547</b>		<b>\$169,195,227</b>	<b>\$0</b>	<b>\$169,195,227</b>		<b>\$169,195,227</b>	<b>\$0</b>	<b>\$169,195,227</b>		
	<b>Net Patient Service Revenue<sup>a</sup> (Government+Non-Government)</b>	<b>\$294,014,575</b>		<b>\$300,630,272</b>	\$0	<b>\$300,630,272</b>		<b>\$308,659,152</b>	<b>\$8,973,309</b>	<b>\$317,632,461</b>		<b>\$315,083,826</b>	<b>\$12,560,366</b>	<b>\$327,644,192</b>		<b>\$321,636,994</b>	<b>\$12,897,484</b>	<b>\$334,534,478</b>		<b>\$294,014,575</b>	<b>\$0</b>	<b>\$294,014,575</b>		<b>\$294,014,575</b>	<b>\$0</b>	<b>\$294,014,575</b>		
14	Less: Provision for Bad Debts	\$8,486,887		\$9,014,796		\$9,014,796		\$7,407,065	\$0	\$37,407,065		\$7,555,206	\$0	\$7,555,206		\$7,706,310	\$0	\$7,706,310		\$8,486,887	\$0	\$8,486,887		\$8,486,887	\$0	\$8,486,887		
	<b>Net Patient Service Revenue less provision for bad debts</b>	<b>\$285,527,688</b>		<b>\$291,615,476</b>	\$0	<b>\$291,615,476</b>		<b>\$301,252,087</b>	<b>\$9,080,141</b>	<b>\$310,332,228</b>		<b>\$307,528,620</b>	<b>\$12,434,762</b>	<b>\$319,963,382</b>		<b>\$313,930,683</b>	<b>\$12,768,509</b>	<b>\$326,699,192</b>		<b>\$285,527,688</b>	<b>\$0</b>	<b>\$285,527,688</b>		<b>\$285,527,688</b>	<b>\$0</b>	<b>\$285,527,688</b>		
15	Other Operating Revenue	\$6,358,845		\$5,413,071		\$5,413,071		\$5,077,578	\$0	\$5,077,578		\$5,153,742	\$0	\$5,153,742		\$5,231,048	\$0	\$5,231,048		\$6,358,845	\$0	\$6,358,845		\$6,358,845	\$0	\$6,358,845		
17	Net Assets Released from Restrictions	\$217,950		\$302,359		\$302,359		\$305,174	\$0	\$305,174		\$308,226	\$0	\$308,226		\$311,308	\$0	\$311,308		\$217,950	\$0	\$217,950		\$217,950	\$0	\$217,950		
	<b>TOTAL OPERATING REVENUE</b>	<b>\$292,104,483</b>		<b>\$297,330,906</b>	\$0	<b>\$297,330,906</b>		<b>\$306,634,839</b>	<b>\$9,080,141</b>	<b>\$315,714,980</b>		<b>\$312,990,587</b>	<b>\$12,434,762</b>	<b>\$325,425,349</b>		<b>\$319,473,039</b>	<b>\$12,768,509</b>	<b>\$332,241,548</b>		<b>\$292,104,483</b>	<b>\$0</b>	<b>\$292,104,483</b>		<b>\$292,104,483</b>	<b>\$0</b>	<b>\$292,104,483</b>		
<b>B. OPERATING EXPENSES</b>																												
1	Salaries and Wages	\$108,506,446		\$108,225,413		\$108,225,413		\$109,044,181	\$1,711,188	\$110,755,369		\$111,225,065	\$2,240,083	\$113,465,148		\$112,893,441	\$2,298,149	\$115,191,589		\$108,506,446	\$0	\$108,506,446		\$108,506,446	\$0	\$108,506,446		
2	Fringe Benefits	\$23,769,984		\$31,325,320		\$31,325,320		\$31,488,163	\$169,680	\$31,657,843		\$32,117,926	\$222,125	\$32,340,051		\$32,599,695	\$227,882	\$32,827,578		\$23,769,984	\$0	\$23,769,984		\$23,769,984	\$0	\$23,769,984		
3	Physicians Fees	\$3,109,419		\$3,066,072		\$3,066,072		\$3,112,063	\$0	\$3,112,063		\$3,174,304	\$0	\$3,174,304		\$3,221,919	\$0	\$3,221,919		\$3,109,419	\$0	\$3,109,419		\$3,109,419	\$0	\$3,109,419		
4	Supplies and Drugs	\$39,945,030		\$42,493,441		\$42,493,441		\$43,130,843	\$2,272,419	\$45,403,261		\$43,993,459	\$3,142,628	\$47,136,087		\$44,873,329	\$3,258,904	\$48,132,233		\$39,945,030	\$0	\$39,945,030		\$39,945,030	\$0	\$39,945,030		
5	Depreciation and Amortization	\$15,041,302		\$13,402,972		\$13,402,972		\$13,343,005	\$194,389	\$13,537,394		\$13,609,865	\$360,185	\$13,970,050		\$13,882,062	\$360,185	\$14,242,247		\$15,041,302	\$0	\$15,041,302		\$15,041,302	\$0	\$15,041,302		
6	Provision for Bad Debts-Other <sup>b</sup>	\$0		\$0		\$0		\$0	\$0	\$0		\$0	\$0	\$0		\$0	\$0	\$0		\$0	\$0		\$0	\$0				
7	Interest Expense	\$3,380,083		\$3,375,673		\$3,375,673		\$3,342,132	\$702,999	\$4,045,131		\$3,408,975	\$976,377	\$4,385,351		\$3,477,154	\$963,310	\$4,440,464		\$3,380,083	\$0	\$3,380,083		\$3,380,083	\$0	\$3,380,083		
8	Malpractice Insurance Cost	\$3,154,911		\$2,537,239		\$2,537,239		\$2,575,298	\$12,213	\$2,587,511		\$2,626,804	\$16,596	\$2,643,399		\$2,679,340	\$16,913	\$2,696,253		\$3,154,911	\$0	\$3,154,911		\$3,154,911	\$0	\$3,154,911		
9	Lease Expense	\$2,266,659		\$2,152,532		\$2,152,532		\$2,184,820	\$157,828	\$2,342,648		\$2,228,516	\$215,827	\$2,444,343		\$2,273,087	\$215,827	\$2,488,914		\$2,266,659	\$0	\$2,266,659		\$2,266,659	\$0	\$2,266,659		
10	Other Operating Expenses	\$51,980,559		\$59,826,428		\$59,826,428		\$62,303,040	\$1,896,546	\$64,199,585		\$63,549,101	\$2,763,966	\$66,313,067		\$64,820,083	\$2,818,852	\$67,638,934		\$51,980,559	\$0	\$51,980,559		\$51,980,559	\$0	\$51,980,559		
	<b>TOTAL OPERATING EXPENSES</b>	<b>\$251,154,393</b>		<b>\$266,405,090</b>	\$0	<b>\$266,405,090</b>		<b>\$270,523,544</b>	<b>\$7,117,260</b>	<b>\$277,640,804</b>		<b>\$275,934,015</b>	<b>\$9,937,786</b>	<b>\$285,871,801</b>		<b>\$280,720,109</b>	<b>\$10,160,022</b>	<b>\$290,880,131</b>		<b>\$251,154,393</b>	<b>\$0</b>	<b>\$251,154,393</b>		<b>\$251,154,393</b>	<b>\$0</b>	<b>\$251,154,393</b>		
	<b>INCOME/(LOSS) FROM OPERATIONS</b>	<b>\$40,950,090</b>		<b>\$30,925,816</b>	\$0	<b>\$30,925,816</b>		<b>\$36,111,295</b>	<b>\$1,962,881</b>	<b>\$38,074,176</b>		<b>\$37,056,572</b>	<b>\$2,4</b>															

FOR-PROFIT

Applicant Name: **Constitution Surgery Center E** Please provide one year of actual results and three years of projections of Total Entity revenue, expense and volume statistics without, incremental to and with the CON proposal in the following reporting format:

LINE	Total Entity: Description	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
		FY 15 Actual Results	FY 16 Projected W/out CON	FY 16 Projected Incremental	FY 16 Projected With CON	FY 17 Projected W/out CON	FY 17 Projected Incremental	FY 17 Projected With CON	FY 18 Projected W/out CON	FY 18 Projected Incremental	FY 18 Projected With CON	FY Projected W/out CON	FY Projected Incremental	FY Projected With CON
<b>A. OPERATING REVENUE</b>														
1	Total Gross Patient Revenue	\$54,270,284	\$55,455,891	\$0	\$55,455,891	\$56,919,463		\$56,919,463	\$58,408,783		\$58,408,783	\$59,924,452		\$59,924,452
2	Less: Allowances	\$42,445,570	\$43,428,160	\$0	\$43,428,160	\$44,562,886		\$44,562,886	\$45,717,535		\$45,717,535	\$46,892,572		\$46,892,572
3	Less: Charly Care	\$1,802	\$1,833	\$0	\$1,833	\$1,833	\$122,291	\$124,174	\$1,934	\$125,604	\$127,537	\$1,986	\$128,975	\$130,960
4	Less: Other Deductions	\$120,144	\$122,207	\$0	\$122,207	\$125,548		\$125,548	\$128,949		\$128,949	\$132,410		\$132,410
	<b>Net Patient Service Revenue</b>	<b>\$11,702,768</b>	<b>\$11,903,691</b>	<b>\$0</b>	<b>\$11,903,691</b>	<b>\$12,229,147</b>	<b>(\$122,291)</b>	<b>\$12,106,855</b>	<b>\$12,560,366</b>	<b>(\$125,604)</b>	<b>\$12,434,762</b>	<b>\$12,897,484</b>	<b>(\$128,975)</b>	<b>\$12,768,509</b>
5	Medicare	\$2,893,141	\$3,084,961	\$0	\$3,084,961	\$3,139,833		\$3,139,833	\$3,195,582		\$3,195,582	\$3,252,224		\$3,252,224
6	Medicaid	\$159,169	\$171,435	\$0	\$171,435	\$174,145		\$174,145	\$176,897		\$176,897	\$179,692		\$179,692
7	CHAMPUS & TriCare	\$21,227	\$21,859	\$0	\$21,859	\$22,402		\$22,402	\$22,953		\$22,953	\$23,514		\$23,514
8	Other	\$6,957	\$6,860	\$0	\$6,860	\$7,093		\$7,093	\$7,330		\$7,330	\$7,571		\$7,571
	<b>Total Government</b>	<b>\$3,080,494</b>	<b>\$3,285,116</b>	<b>\$0</b>	<b>\$3,285,116</b>	<b>\$3,343,473</b>	<b>\$0</b>	<b>\$3,343,473</b>	<b>\$3,402,762</b>	<b>\$0</b>	<b>\$3,402,762</b>	<b>\$3,463,001</b>	<b>\$0</b>	<b>\$3,463,001</b>
9	Commercial Insurers	\$4,899,887	\$4,899,887	\$0	\$4,899,887	\$4,947,376		\$4,947,376	\$5,235,652		\$5,235,652	\$5,383,683		\$5,383,683
10	Uninsured	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
11	Self Pay	\$11,248	\$11,248	\$0	\$11,248	\$11,699		\$11,699	\$12,236		\$12,236	\$12,512		\$12,512
12	Workers Compensation	\$3,711,139	\$3,711,139	\$0	\$3,711,139	\$3,659,500		\$3,659,500	\$3,909,715		\$3,909,715	\$4,038,287		\$4,038,287
13	Other	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
	<b>Total Non-Government</b>	<b>\$8,622,273</b>	<b>\$8,622,273</b>	<b>\$0</b>	<b>\$8,622,273</b>	<b>\$8,618,575</b>	<b>\$0</b>	<b>\$8,618,575</b>	<b>\$9,157,604</b>	<b>\$0</b>	<b>\$9,157,604</b>	<b>\$9,434,483</b>	<b>\$0</b>	<b>\$9,434,483</b>
	<b>Net Patient Service Revenue* (Government+Non-Government)</b>	<b>\$11,702,768</b>	<b>\$11,907,389</b>	<b>\$0</b>	<b>\$11,907,389</b>	<b>\$11,962,048</b>	<b>\$0</b>	<b>\$11,962,048</b>	<b>\$12,560,366</b>	<b>\$0</b>	<b>\$12,560,366</b>	<b>\$12,897,484</b>	<b>\$0</b>	<b>\$12,897,484</b>
14	Less: Provision for Bad Debts	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
	<b>Net Patient Service Revenue less provision for bad debts</b>	<b>\$11,702,768</b>	<b>\$11,903,691</b>	<b>\$0</b>	<b>\$11,903,691</b>	<b>\$12,229,147</b>	<b>(\$122,291)</b>	<b>\$12,106,855</b>	<b>\$12,560,366</b>	<b>(\$125,604)</b>	<b>\$12,434,762</b>	<b>\$12,897,484</b>	<b>(\$128,975)</b>	<b>\$12,768,509</b>
15	Other Operating Revenue	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
17	Net Assets Released from Restrictions	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
	<b>TOTAL OPERATING REVENUE</b>	<b>\$11,702,768</b>	<b>\$11,903,691</b>	<b>\$0</b>	<b>\$11,903,691</b>	<b>\$12,229,147</b>	<b>(\$122,291)</b>	<b>\$12,106,855</b>	<b>\$12,560,366</b>	<b>(\$125,604)</b>	<b>\$12,434,762</b>	<b>\$12,897,484</b>	<b>(\$128,975)</b>	<b>\$12,768,509</b>
<b>B. OPERATING EXPENSES</b>														
1	Salaries and Wages	\$2,192,987	\$2,236,847	\$0	\$2,236,847	\$2,281,584		\$2,281,584	\$2,240,083		\$2,240,083	\$2,298,149		\$2,298,149
2	Fringe Benefits	\$217,455	\$221,804	\$0	\$221,804	\$226,240		\$226,240	\$222,125		\$222,125	\$227,882		\$227,882
3	Physicians Fees	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
4	Supplies and Drugs	\$2,803,771	\$2,920,595	\$0	\$2,920,595	\$3,029,892		\$3,029,892	\$3,142,628		\$3,142,628	\$3,258,904		\$3,258,904
5	Depreciation and Amortization	\$259,185	\$259,185	\$0	\$259,185	\$259,185		\$259,185	\$360,185		\$360,185	\$360,185		\$360,185
6	Provision for Bad Debts-Other <sup>b</sup>	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
7	Interest Expense	\$37,011	\$34,231	\$0	\$34,231	\$17,971		\$17,971	\$57,017		\$57,017	\$43,950		\$43,950
8	Malpractice Insurance Cost	\$15,000	\$15,979	\$0	\$15,979	\$16,284		\$16,284	\$16,596		\$16,596	\$16,913		\$16,913
9	Lease Expense	\$199,699	\$205,182	\$0	\$205,182	\$210,437		\$210,437	\$215,827		\$215,827	\$215,827		\$215,827
10	Other Operating Expenses	\$1,758,811	\$2,502,418	\$0	\$2,502,418	\$2,528,727		\$2,528,727	\$2,763,966		\$2,763,966	\$2,818,852		\$2,818,852
	<b>TOTAL OPERATING EXPENSES</b>	<b>\$7,483,920</b>	<b>\$8,396,242</b>	<b>\$0</b>	<b>\$8,396,242</b>	<b>\$8,570,321</b>	<b>\$0</b>	<b>\$8,570,321</b>	<b>\$9,018,426</b>	<b>\$0</b>	<b>\$9,018,426</b>	<b>\$9,240,662</b>	<b>\$0</b>	<b>\$9,240,662</b>
	<b>INCOME/(LOSS) FROM OPERATIONS</b>	<b>\$4,218,847</b>	<b>\$3,507,449</b>	<b>\$0</b>	<b>\$3,507,449</b>	<b>\$3,658,826</b>	<b>(\$122,291)</b>	<b>\$3,536,535</b>	<b>\$3,541,939</b>	<b>(\$125,604)</b>	<b>\$3,416,336</b>	<b>\$3,656,822</b>	<b>(\$128,975)</b>	<b>\$3,527,847</b>
	<b>NON-OPERATING INCOME</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		<b>\$0</b>	<b>\$0</b>		<b>\$0</b>	<b>\$0</b>		<b>\$0</b>
	Income before provision for income taxes	\$4,218,847	\$3,507,449	\$0	\$3,507,449	\$3,658,826	(\$122,291)	\$3,536,535	\$3,541,939	(\$125,604)	\$3,416,336	\$3,656,822	(\$128,975)	\$3,527,847
	Provision for income taxes <sup>c</sup>	\$0	\$0	\$0	\$0	\$0		\$0	\$0		\$0	\$0		\$0
	<b>NET INCOME</b>	<b>\$4,218,847</b>	<b>\$3,507,449</b>	<b>\$0</b>	<b>\$3,507,449</b>	<b>\$3,658,826</b>	<b>(\$122,291)</b>	<b>\$3,536,535</b>	<b>\$3,541,939</b>	<b>(\$125,604)</b>	<b>\$3,416,336</b>	<b>\$3,656,822</b>	<b>(\$128,975)</b>	<b>\$3,527,847</b>
<b>C.</b>														
	Retained Earnings, beginning of year	\$2,410,335	\$2,442,011	\$0	\$2,442,011	\$2,442,011		\$2,442,011	\$2,442,011		\$2,442,011	\$2,442,011		\$2,442,011
	Retained Earnings, end of year	\$2,442,011	\$2,442,011	\$0	\$2,442,011	\$2,442,011		\$2,442,011	\$2,442,011		\$2,442,011	\$2,442,011		\$2,442,011
	Principal Payments	\$515,060	\$245,992	\$0	\$245,992	\$245,992		\$245,992	\$415,315		\$415,315	\$257,723		\$257,723
<b>D. PROFITABILITY SUMMARY</b>														
1	Hospital Operating Margin	36.0%	29.5%	0.0%	29.5%	29.9%	100.0%	29.2%	28.2%	100.0%	27.5%	28.4%	100.0%	27.6%
2	Hospital Non Operating Margin	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
3	Hospital Total Margin	36.0%	29.5%	0.0%	29.5%	29.9%	100.0%	29.2%	28.2%	100.0%	27.5%	28.4%	100.0%	27.6%
<b>E. FTEs</b>														
		30	30	0	30	30		30	30		30	31		31
<b>F. VOLUME STATISTICS<sup>d</sup></b>														
1	Inpatient Discharges	0	0	0	0	0		0	0		0	0		0
2	Outpatient Visits	5,832	5,910	0	5,910	5,963		5,963	6,017		6,017	6,072		6,072
	<b>TOTAL VOLUME</b>	<b>5,832</b>	<b>5,910</b>	<b>0</b>	<b>5,910</b>	<b>5,963</b>	<b>0</b>	<b>5,963</b>	<b>6,017</b>	<b>0</b>	<b>6,017</b>	<b>6,072</b>	<b>0</b>	<b>6,072</b>

\*Total amount should equal the total amount on cell line "Net Patient Revenue" Row 14.

<sup>b</sup>Provide the amount of any transaction associated with Bad Debts not related to the provision of direct services to patients. For additional information, refer to FASB, No.2011-07, July 2011.

<sup>c</sup>Provide the amount of income taxes as defined by the Internal Revenue Services for for-profit entities.

<sup>d</sup>Provide projected inpatient and/or outpatient statistics for any new services and provide actual and projected inpatient and/or outpatient statistics for any existing services which will change due to the proposal.



---

Supplemental CON Application Form  
**Transfer of Ownership of a Health Care Facility**  
Conn. Gen. Stat. § 19a-638(a)(2)

---

**Applicant: Constitution Surgery Center East, LLC, and William W. Backus Hospital**

**Project Name: Transfer of 51% Ownership of Constitution Surgery Center East, LLC to William W. Backus Hospital**

## **1. Project Description and Need: Change of Ownership or Control**

- a. Describe the transition plan and how the Applicants will ensure continuity of services. Provide a copy of a transition plan, if available.

**The William W. Backus Hospital (“Backus Hospital”) and Constitution Surgery Center East, LLC (together, “Applicants”) are requesting approval from the Office of Health Care Access (“OHCA”) to transfer 51% ownership of Constitution Surgery Center East, LLC (“Constitution”) to Backus Hospital as described in the Main Application and this Supplemental Application. If this proposal is approved by OHCA, the transfer of ownership interests in Constitution Surgery Center East, LLC will be completed as follows:**

**The Applicants propose to enter into a two-stage transaction structured as follows:**

- 1) The current owners of Constitution will transfer 100% ownership of Constitution to a new holding company called CSCE Holdings, LLC.**
- 2) Backus Hospital, or a wholly owned subsidiary of Backus Hospital designated by Backus Hospital will purchase a 51% majority ownership interest in Constitution from CSCE Holdings, LLC. Post transaction, Backus Hospital will own 51% of the membership interests in Constitution Surgery Center East, LLC.**

**Post transaction, the management of the Company shall be vested in a Management Committee, which shall consist of six individuals (each individually referred to as a “Manager,” and collectively as the “Managers”). The Class A Member (CSCE Holdings, LLC) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class A Manager”, and collectively as the “Class A Managers”) to the Management Committee. The Class B Member (Backus Hospital) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class B Manager”, and collectively as the “Class B Managers”) to the Management Committee.**

**Continuity of services is ensured because Constitution will continue to provide the same services in the same location. No changes to services or location will occur as a result of this transaction.**

- b. For each Applicant (and any new entities to be created as a result of the proposal), provide the following information as it would appear **prior** and **subsequent** to approval of this proposal:
  - i. Legal chart of corporate or entity structure including all affiliates.

**Please see Exhibit 1 for the organizational chart of Constitution Surgery Center East LLC prior to the transaction.**

**Please see Exhibit 2 for the organizational chart of Constitution Surgery Center East LLC subsequent to the transaction.**

- ii. Governance or controlling body

**Constitution is currently governed by a Board of Managers. Backus Hospital is a member of Hartford HealthCare Corporation, a nonprofit, nonstock corporation.**

**Subsequent to the transaction, Constitution will be governed by the Management Committee, which shall consist of six individuals (each individually referred to as a “Manager,” and collectively as the “Managers”). The Class A Member (CSCE Holdings, LLC) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class A Manager,” and collectively as the “Class A Managers”) to the Management Committee. The Class B Member (Backus Hospital) shall be responsible for designating three of such six Managers (each of which shall be referred to individually as a “Class B Manager,” and collectively as the “Class B Managers”) to the Management Committee. The Class B Member will have certain extraordinary powers regarding Tax Exempt Status matters and financial control as described in the Operating Agreement.**

- iii. List of owners and the % ownership and shares of each.

**Please see Exhibit 3 for the list of owners and the ownership interest percentages prior to the transaction.**

**Please see Exhibit 4 for the list of owners and the ownership interest percentages subsequent to the transaction.**

- c. Does this proposal avoid the corporate practice of medicine? Explain in detail.

**This proposal does not implicate the corporate practice of medicine (“CPM”) doctrine. Constitution is an ambulatory surgery facility (“ASC”) that does not and will not render professional services or practice medicine. The CPM doctrine reflects the notion that only individuals licensed pursuant to General Statutes § 20-9 may practice medicine in Connecticut. General Statutes § 19a-493b governs the licensure of ASCs and expressly recognizes that corporations may be “joint” owners of ASCs. Moreover, OHCA and the Department of Public Health (“Department”) have previously approved the applications of a number of corporately-owned ASCs. In addition, throughout the country, it is widely accepted that ASCs may be owned by corporate entities and such ownership does not violate the CPM doctrine.**

## **2. Clear Public Need**

- a. Is the proposal being submitted due to provisions of the Federal Sherman Antitrust Act and Conn. Gen Stat. §35-24 et seq. statutes? Explain in detail.

**This proposal is not being submitted due to provisions of the Federal Sherman Antitrust Act or Conn. Gen Stat. § 35-24 et seq. The proposal is being submitted in accordance with OHCA Certificate of Need requirements. See OHCA Report No. 15-31980-DTR.**

- b. Is the proposal being submitted due to provisions of the Patient Protection and Affordable Care Act (PPACA)? Explain in detail.

**The proposal is not being submitted due to provisions of the Patient Protection and Affordable Care Act (PPACA).**

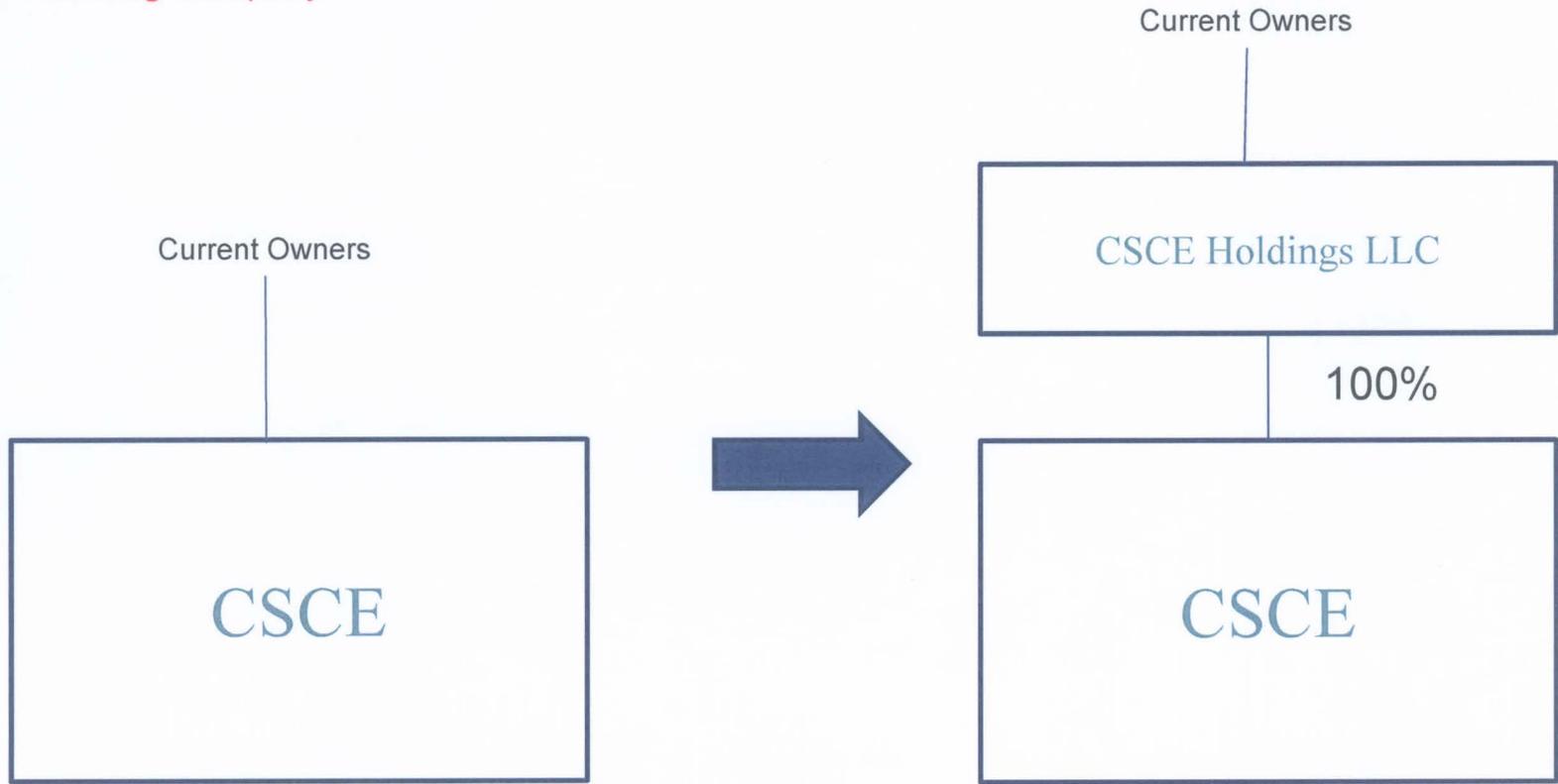
List of Exhibits:

- 1) Exhibit 1: Copy of the organizational chart of Constitution Surgery Center East LLC prior to the transaction.
- 2) Exhibit 2: Copy of the organizational chart of Constitution Surgery Center East LLC subsequent to the transaction.
- 3) Exhibit 3: Copy of the list of owners and the ownership interest percentages prior to the transaction.
- 4) Exhibit 4: Copy of the list of owners and the ownership interest percentages subsequent to the transaction.

Exhibit 1: Copy of the organizational chart of Constitution Surgery Center East LLC prior to the transaction.

# Exhibit 1 – Current Structure

Current Members contribute interest to new Holding Company



Current Structure

Slide 1

Exhibit 2: Copy of the organizational chart of Constitution Surgery Center East LLC subsequent to the transaction.

# Exhibit 2 - Ultimate Structure

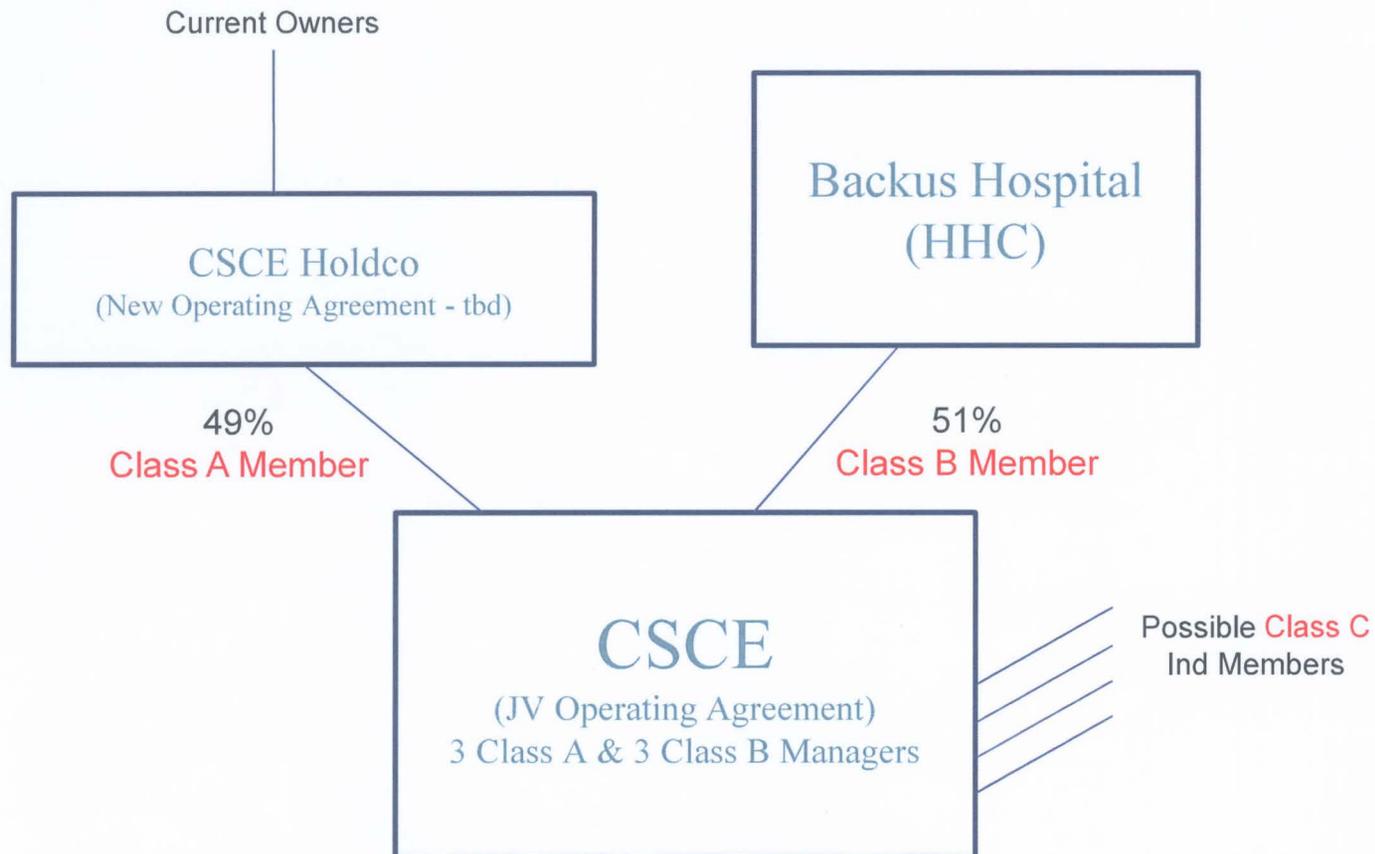


Exhibit 3: Copy of the list of owners and the ownership interest percentages prior to the transaction.

Exhibit 3 - Supplemental  
Current Ownership Roster

<u>Last</u>	<u>First</u>	<u>CSCE Ownership</u>
CSC		15.00%
Barri, MD	Anthony	4.99%
Parker, MD	Prior	2.20%
Falck, MD	Francis	6.24%
Hertz, MD	Jeffrey	6.73%
Hornby, MD	John	2.49%
McKay MD	Peter Spen	2.99%
Shah, MD	Anish	2.99%
Wei, MD	Steven	4.75%
Halperin, MD	Michael	9.50%
Carlow, MD	Steven	4.75%
Anbari, MD	Ammar	9.50%
Kardestuncer, MD	Tarik	9.50%
Cambridge, MD	William	2.20%
Giacchetto, MD	John	2.20%
Gaccione, MD	Daniel	2.20%
Hutchins, MD	Christophe	2.20%
Haim, MD	Lior	2.17%
Cranmer, MD	Kevin	2.17%
Miller, MD	Jeffrey	2.17%
Slocumb, MD	Ron	2.03%
Sajjad, MD	Sepehr	1.00%
Totals		100.00%

Exhibit 4: Copy of the list of owners and the ownership interest percentages subsequent to the transaction.

Exhibit 4 - Supplemental  
Proposed Ownership Roster

<u>Last</u>	<u>First</u>	<u>CSCE Ownership</u>
CSC		7.35%
Barri, MD	Anthony	2.41%
Parker, MD	Prior	1.07%
Falck, MD	Francis	3.02%
Hertz, MD	Jeffrey	3.26%
Hornby, MD	John	1.21%
McKay MD	Peter Spen	1.45%
Shah, MD	Anish	1.45%
Wei, MD	Steven	2.30%
Halperin, MD	Michael	4.60%
Carlow, MD	Steven	2.30%
Anbari, MD	Ammar	4.60%
Kardestuncer, MD	Tarik	4.60%
Cambridge, MD	William	1.07%
Giacchetto, MD	John	1.07%
Gaccione, MD	Daniel	1.07%
Hutchins, MD	Christophe	1.07%
Haim, MD	Lior	1.05%
Cranmer, MD	Kevin	1.05%
Miller, MD	Jeffrey	1.05%
Slocumb, MD	Ron	0.98%
Sajjad, MD	Sepehr	1.00%
Sub Total - Class A Member		49.00%
Class B Member (Backus)		51.00%
Total		100.00%

## Greer, Leslie

---

**From:** Carney, Brian  
**Sent:** Monday, October 03, 2016 3:45 PM  
**To:** Barbara.Durdy@hhchealth.org  
**Cc:** Riggott, Kaila; Greer, Leslie  
**Subject:** 16-32122-CON Constitution Surgery Center Transfer of 51% Ownership to Backus Hospital  
**Attachments:** 16-32122-CON Completeness Letter.pdf; 16-32122-CON Completeness letter.docx

Good afternoon Barbara,

Please see the attached completeness letter in the above referenced matter. Please confirm receipt of this email and corresponding attachments and provide your written responses to OHCA no later than **December 2, 2016**.

Sincerely,  
Brian A. Carney

**Brian A. Carney, MBA**

Associate Research Analyst  
Office of Health Care Access  
CT Department of Public Health  
410 Capitol Avenue, MS #13HCA  
P.O. Box 340308  
Hartford, CT 06134-0308

Phone: (860) 418-7014  
Fax: (860) 418 7053  
Email: [brian.carney@ct.gov](mailto:brian.carney@ct.gov)  
Web: [www.ct.gov/ohca](http://www.ct.gov/ohca)



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.  
Acting Commissioner

Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of Health Care Access

October 3, 2016

Via Email Only

[barbara.durdy@hhchealth.org](mailto:barbara.durdy@hhchealth.org)

Ms. Barbara Durdy  
Hartford HealthCare  
Director, Strategic Planning  
181 Patricia M. Genova Blvd.  
Newington, CT 06111

RE: Certificate of Need Application: Docket Number: 16-32122-CON  
Transfer 51% ownership interest of Constitution Surgery Center East, LLC to The William W. Backus Hospital  
Certificate of Need Completeness Letter

Dear Ms. Durdy:

On September 9, 2016, OHCA received the Certificate of Need application from Constitution Surgery Center East, LLC ("CSCE") and The William W. Backus Hospital ("Backus"), seeking authorization to transfer a 51% ownership interest in CSCE to Backus. OHCA requests additional information pursuant to Connecticut General Statutes §19a-639a(c). *Please electronically confirm receipt of this email as soon as you receive it.* Provide responses to the questions below in both a Word document and PDF format as an attachment to a responding email. ***Please email your responses to each of the following email addresses: [OHCA@ct.gov](mailto:OHCA@ct.gov), [brian.carney@ct.gov](mailto:brian.carney@ct.gov) and [kaila.riggott@ct.gov](mailto:kaila.riggott@ct.gov).***

Paginate and date your response (i.e., each page in its entirety). Repeat each OHCA question before providing your response. Information filed after the initial CON application submission (e.g., completeness response letter, prefiled testimony, late file submissions, etc.) must be numbered sequentially from the Applicant's preceding document. Begin your submission using **Page 247** and reference "**Docket Number: 16-32122-CON.**"

Pursuant to Section 19a-639a(c) of the Connecticut General Statutes, you must submit your response to this request for additional information no later than sixty days after the date this request was transmitted. Therefore, please provide your written responses to OHCA no later than **December 2, 2016**, otherwise your application will be automatically considered withdrawn.



Phone: (860) 509-8000 • Fax: (860) 509-7184 • VP: (860) 899-1611  
410 Capitol Avenue, P.O. Box 340308  
Hartford, Connecticut 06134-0308  
[www.ct.gov/dph](http://www.ct.gov/dph)

*Affirmative Action/Equal Opportunity Employer*

1. When will the proposed transfer of ownership occur? How will patients be notified of the change?
2. Revise the payer mix table submitted on page 37 of the application, using the table below. Please use FY 2015 as the current year, as it is the most recently completed fiscal year and include projections through FY 2019. Include all payer categories listed in the table below, even if the value is zero.

**APPLICANT'S CURRENT & PROJECTED PAYER MIX**

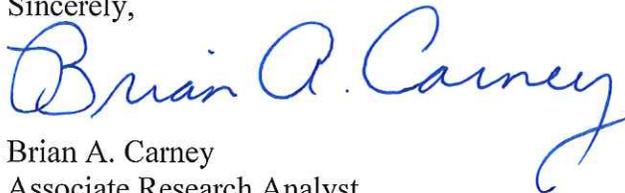
Payer	Current FY 2015		Projected							
			FY 2016		FY 2017		FY 2018		FY 2019	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Medicare*										
Medicaid*										
CHAMPUS										
Other Govt.										
<b>Total Government</b>										
Commercial Insurers										
Uninsured										
Self Pay										
Workers Compensation										
<b>Total Non-Government</b>										
<b>Total Payer Mix</b>										

\*Includes managed care activity.

3. With the proposal, CSCE projects operational income of \$3,536,535, \$3,416,336 and \$3,527,847 from FY 2017-FY 2019, respectively. For the same period, Backus financials list incremental operational income of \$1,962,881, \$2,496,976 and \$2,608,487. Since Backus is acquiring only 51% of CSCE, why does the incremental income listed for Backus exceed 51% of CSCE's income in each of the projected years? Further, why are the full amounts of CSCE's revenues and expenses (except interest expense) reflected in the Backus incremental column (e.g., FY 2019), given that the hospital is only acquiring 51% of the surgery center? Please explain in detail how the CSCE and Backus financials correlate. If necessary, revise and resubmit the financial worksheets provided on pages 232 and 233 of the application.
4. Page 232 of the application shows incremental non-operating revenue losses at Backus in FY 2017, FY 2018 and FY 2019. What specifically do these losses represent? Please explain in detail.
5. Page 22 of the application states that the Management Agreement contains "financial incentives associated with patient satisfaction scores." Please describe the type, value, funding source and party to receive this financial incentive.

If you have any questions concerning this letter, please feel free to contact me at (860) 418-7014.

Sincerely,

A handwritten signature in blue ink that reads "Brian A. Carney". The signature is written in a cursive style with a large, sweeping "B" and a long, trailing flourish at the end of the name.

Brian A. Carney  
Associate Research Analyst

## Greer, Leslie

---

**From:** Carney, Brian  
**Sent:** Thursday, October 13, 2016 2:54 PM  
**To:** Greer, Leslie  
**Cc:** Riggott, Kaila  
**Subject:** FW: Certificate of Need Application: Docket Number: 16-32122-CON Completeness Response  
**Attachments:** 16-32122-CON Completeness Response.pdf

Hi Leslie,

I received the responses to completeness earlier today. When you have a moment, please add to the record.

Thanks,  
Brian

**Brian A. Carney, MBA**  
Office of Health Care Access

Phone: (860) 418-7014  
Fax: (860) 418 7053  
Email: [brian.carney@ct.gov](mailto:brian.carney@ct.gov)

---

**From:** Klein, Megan [<mailto:Megan.Klein@hhchealth.org>]  
**Sent:** Thursday, October 13, 2016 11:26 AM  
**To:** Carney, Brian  
**Cc:** Durdy, Barbara  
**Subject:** Certificate of Need Application: Docket Number: 16-32122-CON Completeness Response

Brian,

Attached please find The William W. Backus Hospital's response to OHCA's completeness questions.

Megan

**Megan Klein, MHA**  
181 Patricia M. Genova Drive.  
Newington, CT 06111  
Office: 860-972-9814  
Cell: 860-670-1312  
[megan.klein@hhchealth.org](mailto:megan.klein@hhchealth.org)





October 13, 2016

Mr. Brian A Carney  
Associate Research Analyst  
Department of Public Health  
Office of Health Care Access  
410 Capitol Avenue,  
P.O. Box 340308  
Hartford, CT 06134-0308  
[brian.carney@ct.gov](mailto:brian.carney@ct.gov)

RE: Certificate of Need Application: Docket Number: 16-32122-CON  
Transfer 51% ownership interest of Constitution Surgery Center East, LLC to The  
William W. Backus Hospital  
Certificate of Need Completeness Letter

Mr. Carney:

Enclosed please find The William W. Backus Hospital's responses to the Office of Health Care Access's completeness questions dated October 3, 2016.

Please do not hesitate to contact me at 860-972-4231 if you have any questions. Thank you for your time and consideration.

Sincerely,

Barbara A. Durdy

Enclosures

1. When will the proposed transfer of ownership occur? How will patients be notified of the change?

**Pre-operatively, each patient receives an intake package including a Patient Information Brochure from Constitution Surgery Center ('the Center') which, among other things, discloses physician ownership in the Center. On the day of surgery, each patient signs a Facility Consent form, which also has this ownership disclosure. Both the brochure and the form will be updated to include the change of ownership information. In addition, the Center's website will be updated to note the affiliation with Backus Hospital. The exact language of these notifications will be developed upon OHCA approval.**

2. Revise the payer mix table submitted on page 37 of the application, using the table below. Please use FY 2015 as the current year, as it is the most recently completed fiscal year and include projections through FY 2019. Include all payer categories listed in the table below, even if the value is zero.

**APPLICANT'S CURRENT & PROJECTED PAYER MIX**

Payer	Current		Projected							
	FY 2015		FY 2016		FY 2017		FY 2018		FY 2019	
	Cases	%								
Medicare*	2,974	51%	3,013	51%	3,041	51%	3,068	51%	3,097	51%
Medicaid*	222	3.80%	225	3.80%	227	3.80%	229	3.80%	231	3.80%
CHAMPUS	12	0.20%	12	0.20%	12	0.20%	12	0.20%	12	0.20%
Other Govt.	0	0%	0	0%	0	0%	0	0%	0	0%
<b>Total Government</b>	<b>3,208</b>	<b>55%</b>	<b>3,250</b>	<b>55%</b>	<b>3,280</b>	<b>55%</b>	<b>3,309</b>	<b>55%</b>	<b>3,340</b>	<b>55%</b>
Commercial Insurers	2,210	37.90%	2,240	37.90%	2,260	37.90%	2,281	37.90%	2,301	37.90%
Uninsured	6	0.10%	6	0.10%	6	0.10%	6	0.10%	6	0.10%
Self Pay	0	0%	0	0%	0	0%	0	0%	0	0%
Workers Compensation	408	7%	414	7%	417	7%	421	7%	425	7%
<b>Total Non-Government</b>	<b>2,624</b>	<b>45%</b>	<b>2,660</b>	<b>45%</b>	<b>2,683</b>	<b>45%</b>	<b>2,708</b>	<b>45%</b>	<b>2,732</b>	<b>45%</b>
<b>Total Payer Mix</b>	<b>5,832</b>	<b>100%</b>	<b>5,910</b>	<b>100%</b>	<b>5,963</b>	<b>100%</b>	<b>6,017</b>	<b>100%</b>	<b>6,072</b>	<b>100%</b>

\*Includes managed care activity.

3. With the proposal, CSCE projects operational income of \$3,536,535, \$3,416,336 and \$3,527,847 from FY 2017-FY 2019, respectively. For the same period, Backus financials list incremental operational income of \$1,962,881, \$2,496,976 and \$2,608,487. Since Backus is acquiring only 51% of CSCE, why does the incremental income listed for Backus exceed 51% of CSCE's income in each of the projected years? Further, why are the full amounts of CSCE's revenues and expenses (except interest expense) reflected in the Backus incremental column (e.g., FY 2019), given that the hospital is only acquiring 51% of the surgery center? Please explain in detail how the CSCE and Backus financials correlate. If necessary, revise and resubmit the financial worksheets provided on pages 232 and 233 of the application.

**The \$1,962,881 does not represent Backus' 51% ownership. Since Backus has a 51% majority interest in CSCE, the proper accounting is to record 100% of CSCE's operating revenue and expenses and subtract the 49% minority interest in non-operating revenue. As a result, the net 51% income is reflected in the excess of revenue over expenses line, \$663,206, and not in income from operations, or \$1,962,881 for FY17. The reconciliation, attached as Exhibit A below, shows the detailed calculations for Backus' incremental income from operations and excess of revenue over expenses. Please note that FY17 is adjusted to reflect a partnership begin date of 1/1/17 and Backus will see incremental interest expense each year as a result of the partnership that is in the Interest Expense line in the Operating Expenses section.**

4. Page 232 of the application shows incremental non-operating revenue losses at Backus in FY 2017, FY 2018 and FY 2019. What specifically do these losses represent? Please explain in detail.

**The non-operating revenue losses are the deduction of CSCE's 49% minority interest. The reconciliation, in Exhibit A below, details the accounting for this.**

5. Page 22 of the application states that the Management Agreement contains "financial incentives associated with patient satisfaction scores." Please describe the type, value, funding source and party to receive this financial incentive.

**The transaction contemplates a new, long-term management agreement with Constitution Surgery Centers (CSC), and the facility's current manager. Under the new management agreement, if the facility does not maintain a score of Eighty-Five (85) utilizing the EdgePerception™ Performance Analysis Report or equivalent benchmark, this long-term agreement becomes cancellable at the Center's discretion upon 30 days' notice. In this way, CSC has a financial incentive to maintain high patient satisfaction at the Center.**

**Exhibit A: Financial Reconciliation**

<b>Reconciliation from CSCE's Net Income to Backus'</b>			
<b>Incremental Excess of Revenue Over Expenses</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
CSCE Projected Net Income with CON	3,536,535	3,416,336	3,527,847
CSCE Net Inc adj to reflect 1/1/17 partnership (FY17 only)	x 0.75	x 1.0	x 1.0
CSCE 9 mths or 12 mths Net Income	2,652,401	3,416,336	3,527,847
Less 9 or 12 mths Backus incremental interest expense	- 689,520	- 919,360	- 919,360
Total Incremental Income from Operations	1,962,881	2,496,976	2,608,487
Less 9 or 12 months of 49% CSCE net income*	- 1,299,676*	- 1,674,005*	- 1,728,645*
Backus Incremental Excess of Revenue Over Expenses	663,206	822,971	879,842

<b>*Calculation for 49% minority interest deduction</b>			
	<b>2017</b>	<b>2018</b>	<b>2019</b>
CSCE Projected Net Income with CON	3,536,535	3,416,336	3,527,847
CSCE minority interest percent to deduct	x 49%	x 49%	x 49%
CSCE minority interest to deduct	1,732,902	1,674,005	1,728,645
Adjusted to reflect 1/1/17 partnership (FY17 only)	x 0.75	x 1.0	x 1.0
Amount to deduct from Total Inc Income from Operations	1,299,676	1,674,005	1,728,645

## Greer, Leslie

---

**From:** Carney, Brian  
**Sent:** Tuesday, October 25, 2016 1:48 PM  
**To:** Barbara.Durdy@hhchealth.org  
**Cc:** Riggott, Kaila; Greer, Leslie; Megan.Klein@hhchealth.org  
**Subject:** 16-32122-CON Constitution Surgery Center Transfer of 51% Ownership to Backus Hospital  
**Attachments:** 16-32122-CON Deemed complete.pdf

Good afternoon Barbara,

Please see the attached letter deeming the above-referenced application complete. Please confirm receipt of this email and corresponding attachment.

Sincerely,  
Brian A. Carney

**Brian A. Carney, MBA**

Associate Research Analyst  
Office of Health Care Access  
CT Department of Public Health  
410 Capitol Avenue, MS #13HCA  
P.O. Box 340308  
Hartford, CT 06134-0308

Phone: (860) 418-7014  
Fax: (860) 418 7053  
Email: [brian.carney@ct.gov](mailto:brian.carney@ct.gov)  
Web: [www.ct.gov/ohca](http://www.ct.gov/ohca)



STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH



Raul Pino, M.D., M.P.H.  
Commissioner

Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of Health Care Access

October 25, 2016

Via Email Only

Ms. Barbara Durdy  
Director, Strategic Planning  
Hartford HealthCare  
181 Patricia M. Genova Blvd.  
Newington, CT 06111  
[barbara.durdy@hhchealth.org](mailto:barbara.durdy@hhchealth.org)

RE: Certificate of Need Application: Docket Number: 16-32122-CON  
Transfer 51% ownership interest of Constitution Surgery Center East, LLC to The  
William W. Backus Hospital

Dear Ms. Durdy:

This letter is to inform you that, pursuant to Section 19a-639a (d) of the Connecticut General Statutes, the Office of Health Care Access has deemed the above-referenced application complete as of October 25, 2016.

If you have any questions concerning this letter, please feel free to contact me at (860) 418-7014.

Sincerely,

A handwritten signature in blue ink that reads "Brian A. Carney".

Brian A. Carney  
Associate Research Analyst



Phone: (860) 418-7001 • Fax: (860) 418-7053  
410 Capitol Avenue, P.O. Box 340308  
Hartford, Connecticut 06134-0308  
[www.ct.gov/dph](http://www.ct.gov/dph)

*Affirmative Action/Equal Opportunity Employer*

## Greer, Leslie

---

**From:** Greer, Leslie  
**Sent:** Friday, December 16, 2016 9:10 AM  
**To:** Barbara Durdy  
**Cc:** Carney, Brian; Riggott, Kaila; Hansted, Kevin; Martone, Kim; Olejarz, Barbara  
**Subject:** Constitution Surgery Center East, LLC and The William W. Backus Hospital Final Decision  
**Attachments:** 32122\_201612160903.pdf

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	Barbara Durdy	
	Carney, Brian	Delivered: 12/16/2016 9:11 AM
	Riggott, Kaila	Delivered: 12/16/2016 9:10 AM
	Hansted, Kevin	Delivered: 12/16/2016 9:10 AM
	Martone, Kim	Delivered: 12/16/2016 9:11 AM
	Olejarz, Barbara	Delivered: 12/16/2016 9:11 AM

Barbara,  
Attached is the final decision for Constitution Surgery Center East, LLC and The William W. Backus Hospital's Certificate of Need application.

Leslie M. Greer  
Office of Health Care Access  
Connecticut Department of Public Health  
410 Capitol Avenue, MS#13HCA, Hartford, CT 06134  
Phone: (860) 418-7013 Fax: (860) 418-7053  
*Website:* [www.ct.gov/ohca](http://www.ct.gov/ohca)



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Raul Pino, M.D., M.P.H.  
Commissioner



Dannel P. Malloy  
Governor  
Nancy Wyman  
Lt. Governor

Office of Health Care Access

### Certificate of Need Final Decision

**Applicants:** Constitution Surgery Center East, LLC  
174 Cross Road  
Waterford, CT 06385

The William W. Backus Hospital  
326 Washington Street  
Norwich, CT 06360

**Docket Number:** 16-32122-CON

**Project Title:** Transfer 51% ownership interest of Constitution Surgery Center East, LLC to The William W. Backus Hospital

**Project Description:** Constitution Surgery Center East, LLC ("CSCE") and The William W. Backus Hospital ("Backus"), herein collectively referred to as ("Applicants") seek authorization to transfer a 51% ownership interest in CSCE to Backus, with an associated capital expenditure of \$16,712,700.

**Procedural History:** The Applicants published notice of their intent to file a Certificate of Need ("CON") application in *The Day* (New London) on July 14, 15 and 16, 2016. On September 9, 2016, the Office of Health Care Access ("OHCA") received the CON application from the Applicant for the above-referenced project and deemed the application complete on October 25, 2016. OHCA received no responses from the public concerning the proposal and no hearing requests were received from the public per Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-639a(e). Deputy Commissioner Addo considered the entire record in this matter.



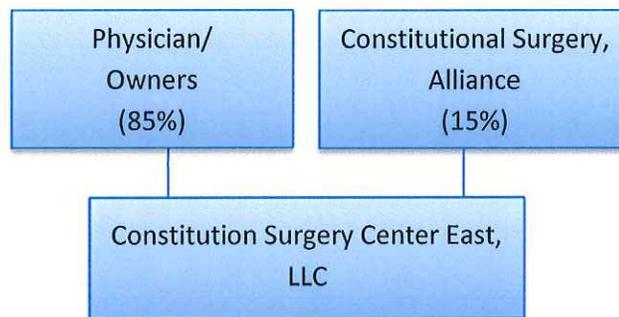
Phone: (860) 418-7001 • Fax: (860) 418-7053  
410 Capitol Avenue, MS#13HCA  
Hartford, Connecticut 06134-0308  
[www.ct.gov/dph](http://www.ct.gov/dph)

*Affirmative Action/Equal Opportunity Employer*

## Findings of Fact and Conclusions of Law

1. CSCE is a licensed outpatient surgery facility located in Waterford, Connecticut that provides ophthalmic and orthopedic services. Ex. A, p. 14
2. CSCE currently utilizes two operating rooms, one procedure room, four pre-op and five post anesthesia care unit beds at its facility. Ex. A, p. 14
3. Backus is a 233- bed (including bassinets) acute care hospital located in Norwich, Connecticut and a member of the Hartford HealthCare (“HHC”) system. Backus provides primary, secondary and tertiary acute care services to residents of New London and Windham counties. Ex. A, p. 14
4. At present, CSCE is owned by 21 licensed and board certified physicians (“Physician/ Owners”) and the Constitution Surgery Alliance, an independent operator of outpatient surgery centers:

CSCE Ownership/membership structure

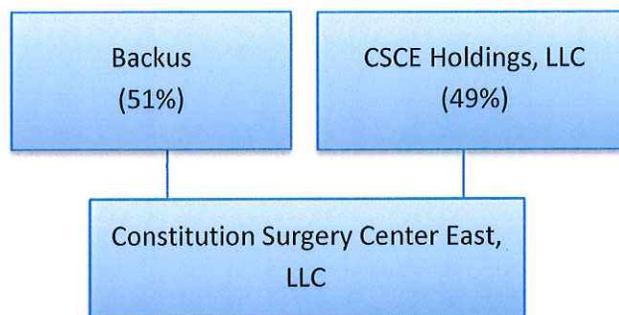


Ex. A, p. 14; <http://csasurgery.com/>

5. CSCE and Backus have requested authorization to transfer a 51% ownership interest in CSCE to Backus. Ex. A, p. 14
6. Following approval, the Applicants will complete the transfer in two transactions:
  - The current owners of CSCE will transfer 100% of their ownership interest to a new holding company called CSCE Holdings, LLC; and
  - Backus, or a wholly owned subsidiary of Backus, will then purchase a 51% majority ownership interest in CSCE, from CSCE Holdings, LLC.

7. The post-transaction organization structure of CSCE is reflected below:

**Post Transaction CSCE Ownership/membership structure**



Ex. A, p. 15

8. Following the change in ownership, a management committee will be formed and shall consist of six individual managers; three will be designated by CSCE Holdings, LLC and the remaining three by Backus. Ex. A, p. 15
9. All of the physicians involved in this proposal have active privileges at Backus or other local hospitals and will continue to perform inpatient procedures at these institutions, as well as hospital-based outpatient procedures for patients who have significant co-morbid conditions. Ex. A, p. 15
10. Integration with Backus and HHC will allow CSCE and its physicians greater opportunity to:
- participate on clinical quality councils and be actively engaged in hospital quality initiatives;
  - share data on outcomes and best practices;
  - access and evaluate new technologies;
  - investigate and participate in emerging, quality-based payer initiatives; and
  - coordinate the emerging migration of joint and spine orthopedic procedures from an inpatient to an outpatient setting.
- Ex. A, pp. 15-16
11. CSCE will use quality-related resources from Backus and HHC and adhere to specific quality metrics embedded in the proposed Management Agreement (“MA”) and Operating Agreement (“OA”). Specifically:
- The MA requires the development of quality performance benchmarks and supporting data;
  - The MA also contains incentives to maintain high patient satisfaction scores;
  - The OA compels CSCE to supply quality data as requested by Backus; and
  - The OA requires integration with Backus’ electronic health record system and participation in health information exchanges.
- Ex. A, pp. 22, 167; Ex. C, p. 250
12. The change in ownership and resulting affiliation is intended to strengthen CSCE’s ability to recruit physicians due to the breadth and depth of subspecialty clinical services offered by Backus and its parent corporation, HHC. Ex. A, p. 16

13. CSCE’s service area consists primarily of towns in New London County. The Applicants do not expect any change in the service area or the patient population served as a result of the proposal. Ex. A, p. 16
14. Patients will be notified of CSCE’s change in ownership by receiving a pre-operative intake package, which includes a patient information brochure that discloses the surgery center ownership. In addition, the CSCE Website will be updated to reflect the Backus affiliation. Ex. C, p. 248
15. No clinical services offered by the Applicant will be added, modified or terminated as a result of the change in ownership. Ex. A, p. 17
16. Historical utilization volumes are shown in the table below:

**TABLE 1  
 HISTORICAL UTILIZATION BY SERVICE**

Service	Actual Volume (cases)			
	FY 2013	FY 2014	FY 2015	FY 2016*
Ophthalmology	4,067	3,823	3,913	4,013
Orthopedic Surgery	1,712	1,780	1,919	1,894
<b>Total</b>	<b>5,779</b>	<b>5,603</b>	<b>5,832</b>	<b>5,910</b>

\*FY 2016 annualized and based on actual volume from October through June 2016  
 Ex. A, p. 35

17. Projected utilization volumes are shown in the table below:

**TABLE 2  
 PROJECTED UTILIZATION BY SERVICE**

Service	Projected Volume* (cases)		
	FY 2017	FY 2018	FY 2019
Ophthalmology	4,036	4,056	4,077
Orthopedic Surgery	1,927	1,961	1,995
<b>Total</b>	<b>5,963</b>	<b>6,017</b>	<b>6,072</b>

\*Projected volumes are based on historical annual growth trends of ophthalmologic and orthopedic cases.  
 Ex. A, p. 36

18. Currently, four percent of CSCE’s patient population is comprised of Medicaid patients. The Applicants do not anticipate any change in payer mix as a result of this proposal.

**TABLE 3  
APPLICANT’S CURRENT & PROJECTED PAYER MIX**

Payer	FY 2015		Projected							
			FY 2016		FY 2017		FY 2018		FY 2019	
	Cases	%								
Medicare*	2,974	51%	3,013	51%	3,041	51%	3,068	51%	3,097	51%
Medicaid*	222	4%	225	4%	227	4%	229	4%	231	4%
CHAMPUS	12	<1%	12	<1%	12	<1%	12	<1%	12	<1%
Other Govt.	0	0%	0	0%	0	0%	0	0%	0	0%
<b>Total Government</b>	<b>3,208</b>	<b>55%</b>	<b>3,250</b>	<b>55%</b>	<b>3,280</b>	<b>55%</b>	<b>3,309</b>	<b>55%</b>	<b>3,340</b>	<b>55%</b>
Commercial Insurers	2,210	38%	2,240	38%	2,260	38%	2,281	38%	2,301	38%
Uninsured	6	<1%	6	<1%	6	<1%	6	<1%	6	<1%
Self Pay	0	0%	0	0%	0	0%	0	0%	0	0%
Workers Compensation	408	7%	414	7%	417	7%	421	7%	425	7%
<b>Total Non-Government</b>	<b>2,624</b>	<b>45%</b>	<b>2,660</b>	<b>45%</b>	<b>2,683</b>	<b>45%</b>	<b>2,708</b>	<b>45%</b>	<b>2,732</b>	<b>45%</b>
<b>Total Payer Mix</b>	<b>5,832</b>	<b>100%</b>	<b>5,910</b>	<b>100%</b>	<b>5,963</b>	<b>100%</b>	<b>6,017</b>	<b>100%</b>	<b>6,072</b>	<b>100%</b>

\*Includes managed care activity.  
Ex. C, p. 249

19. Following adoption of the proposal, CSCE will adopt Backus’s charity care policy, which includes the provision of services for indigent populations. Ex. A, pp. 23

20. The total capital expenditure for the proposal is \$16,712,700 and will be funded by an HHC bond issuance. Ex. A, pp. 25, 33

21. The projected incremental loss is the result of CSCE adopting Backus’ charity care policies following the ownership change.

**TABLE 4  
CSCE PROJECTED INCREMENTAL REVENUES AND EXPENSES**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$(122,291)	\$(125,604)	\$(128,975)
Total Operating Expenses	\$0	\$0	\$0
<b>Gain/Loss from Operations</b>	<b>\$(122,291)</b>	<b>\$(125,604)</b>	<b>\$(128,975)</b>

Ex. A, pp. 34, 233

22. Despite an incremental loss, CSCE will achieve overall operational gains with the proposal.

**TABLE 5  
CSCE PROJECTED REVENUES AND EXPENSES WITH CON**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$12,106,855	\$12,434,762	\$12,768,509
Total Operating Expenses <sup>1</sup>	\$8,570,321	\$9,018,426	\$9,240,662
<b>Gain/Loss from Operations</b>	<b>\$3,536,535</b>	<b>\$3,416,336</b>	<b>\$3,527,847</b>

<sup>1</sup>Operating expenses include salaries and fringe benefits, depreciation/amortization, supplies and drugs, lease expense and other operating expenses required to operate the surgery center and support the forecasted volumes

Ex. A, pp. 34, 233

23. Backus projects operational gains through FY 2019, following adoption of the proposal.

**TABLE 6  
PROJECTED REVENUES AND EXPENSES WITH CON**

	FY 2017	FY 2018	FY 2019
Revenue from Operations	\$315,714,980	\$325,425,349	\$332,241,548
Total Operating Expenses <sup>1</sup>	\$277,640,604	\$285,871,801	\$290,880,131
<b>Gain/Loss from Operations</b>	<b>\$38,074,176</b>	<b>\$39,553,548</b>	<b>\$41,361,417</b>

<sup>1</sup>Operating expenses include salaries and fringe benefits, depreciation/amortization, supplies and drugs, lease expense and other operating expenses required to operate the hospital.

Ex. A, pp. 29, 36

24. The transfers of ownership will not negatively affect patient health care costs. No additional facility fees will be imposed as a result of the proposal. Ex. A, p. 24

25. OHCA is currently in the process of establishing its policies and standards as regulations. Therefore, OHCA has not made any findings as to this proposal's relationship to any regulations not yet adopted by OHCA. (Conn. Gen. Stat. § 19a-639(a)(1))

26. This CON application is consistent with the Statewide Health Care Facilities and Service Plan. (Conn. Gen. Stat. § 19a-639(a)(2))

27. The Applicants have established that there is a clear public need for the proposal. (Conn. Gen. Stat. § 19a-639(a)(3))

28. The Applicants have demonstrated that the proposal is financially feasible. (Conn. Gen. Stat. § 19a-639(a)(4))

29. The Applicants have satisfactorily demonstrated that the proposal will likely improve quality and accessibility and maintain the cost effectiveness of health care delivery in the region. (Conn. Gen. Stat. § 19a-639(a)(5))

30. The Applicants have shown that there would be no change in the provision of health care services to the relevant populations and payer mix, including access to services by Medicaid

recipients. Enhanced charity care policies will improve access for the indigent. (Conn. Gen. Stat. § 19a-639(a)(6))

31. The Applicants have satisfactorily identified the population to be affected by this proposal. (Conn. Gen. Stat. § 19a-639(a)(7))
32. The Applicants' historical provision of treatment in the service area supports this proposal. (Conn. Gen. Stat. § 19a-639(a)(8))
33. The Applicants have satisfactorily demonstrated that this proposal would not result in an unnecessary duplication of existing services in the area. (Conn. Gen. Stat. § 19a-639(a)(9))
34. The Applicants have demonstrated that there will be no reduction in access to services by Medicaid recipients or indigent persons. (Conn. Gen. Stat. § 19a-639(a)(10))
35. The Applicants have demonstrated that the proposal will not negatively impact the diversity of health care providers and patient choice in the region. (Conn. Gen. Stat. § 19a-639(a)(11))
36. The Applicants have satisfactorily demonstrated that the proposal will not result in any consolidation that would affect health care costs or access to care. (Conn. Gen. Stat. § 19a-639(a)(12))

## Discussion

CON applications are decided on a case by case basis and do not lend themselves to general applicability due to the uniqueness of the facts in each case. In rendering its decision, OHCA considers the factors set forth in § 19a-639(a) of the Statutes. The Applicants bear the burden of proof in this matter by a preponderance of the evidence. *Jones v. Connecticut Medical Examining Board*, 309 Conn. 727 (2013).

CSCE is a licensed outpatient surgery facility located in Waterford, Connecticut that provides both ophthalmic and orthopedic services. *FF1* CSCE currently utilizes two operating rooms, one procedure room, four pre-op and five post anesthesia care unit beds at its facility. *FF2* Backus is a 233-bed (including bassinets) acute care hospital located in Norwich, Connecticut and a member of the HHC system. Backus provides primary, secondary and tertiary acute care services, primarily to residents of New London and Windham counties. *FF3* At present, CSCE is owned by 21 licensed and board certified physicians (“Physician/Owners”) and the Constitution Surgery Alliance, an independent operator of outpatient surgery centers. *FF4* The proposal requests authorization to transfer a 51% ownership interest in CSCE to Backus. *FF5* The transfer will occur in two transactions: first, the current owners of CSCE will transfer 100% of their ownership interest to CSCE Holdings, LLC; second, Backus, or a wholly owned subsidiary of Backus will purchase a 51% majority ownership interest from CSCE Holdings, LLC to conclude the transaction. *FF6*

All of the physicians involved in this proposal have active privileges at Backus or other local hospitals and will continue to perform inpatient procedures at these institutions, as well as hospital-based outpatient procedures for patients with significant co-morbid conditions. *FF9* Through increased alignment with Backus and HHC, CSCE will enhance patients’ ability to navigate between the inpatient and outpatient settings for surgical services. Integration with Backus and HHC will allow CSCE and its physicians greater opportunity to participate in clinical quality councils, be actively engaged in hospital quality initiatives, share data on outcomes and best practices, access and evaluate new technologies, investigate and participate in emerging quality-based payer initiatives and coordinate the emerging migration of joint and spine orthopedic procedures from an inpatient to an outpatient setting. *FF10* CSCE will use quality-related resources from Backus and HHC and adhere to specific quality metrics embedded in the proposed management and operating agreements. *FF11* In addition, the change in ownership and resulting affiliation is intended to strengthen CSCE’s ability to recruit physicians due to the breadth and depth of subspecialty clinical services offered by Backus and its parent corporation. *FF12*

CSCE’s service area consists primarily of towns in New London County. The Applicants do not expect any change to the service area or patient population served as a result of the proposal. *FF13* No clinical services offered by the Applicant will be added, modified or terminated following the ownership change. *FF15* CSCE performed approximately 6,000 surgical cases in FY 2015. Based on historical trends, projected volumes are expected to increase 0.5% for ophthalmology and 1.5% for orthopedic cases. *FF16- FF17*

The total capital expenditure for the proposal is \$16,712,700 and will be funded by an HHC bond issuance. *FF20* Following adoption of the proposal, CSCE will adopt Backus’s charity care

policy, which includes the provision of services for indigent populations *FF19* CSCE projects a slight incremental loss following adoption of the new charity care policies. However, CSCE projects overall operational gains in FYs 2017-2019. *FF21-FF22* Further, no additional facility fees will be imposed as a result of this proposal. *FF24* Therefore, the Applicants have satisfactorily demonstrated that the proposal is financially feasible and will not adversely affect health care costs.

The transfer of CSCE's majority interest to Backus will improve access and quality of services for all patient populations (including Medicaid). CSCE's integration with Backus and HHC will provide greater opportunity to share best practices, participate in hospital quality initiatives and gain access to the evaluation and use of new technologies. As a result, these benefits are consistent with the Statewide Health Care Facilities and Services Plan.

Notably, the Applicants have satisfactorily demonstrated that the proposed transaction was the result of a voluntary offer for sale. As a result, there is a presumption in favor of approving this application pursuant to Conn. Gen. Stat. § 19a-639(b).

## Order

Based upon the foregoing Findings and Discussion, the Certificate of Need application requesting authorization to transfer a 51% ownership interest in CSCE to Backus, with an associated capital expenditure of \$16,712,700 is hereby APPROVED.

All of the foregoing constitutes the final order of the Office of Health Care Access in this matter.

By Order of the  
Department of Public Health  
Office of Health Care Access

12/15/2016  
Date

  
Yvonne T. Addo, MBA  
Deputy Commissioner