

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2024

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number: 001-37576



Surgery Partners, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

340 Seven Springs Way, Suite 600

Brentwood, Tennessee

(Address of Principal Executive Offices)

47-3620923

(I.R.S. Employer
Identification No.)

37027

(Zip Code)

(615) 234-5900

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	SGRY	The Nasdaq Global Select Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of July 30, 2024, there were 127,123,940 shares of the registrant's common stock outstanding.

SURGERY PARTNERS, INC.
FORM 10-Q
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PART I - FINANCIAL INFORMATION**Item 1. Financial Statements**

SURGERY PARTNERS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in millions, except per share amounts)

	(Unaudited) June 30, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 213.5	\$ 195.9
Accounts receivable	523.4	496.4
Inventories	80.9	75.2
Prepaid expenses	44.7	31.0
Other current assets	150.0	96.5
Total current assets	1,012.5	895.0
Property and equipment, net of accumulated depreciation of \$519.1 and \$454.4, respectively	1,005.8	968.7
Goodwill and other intangible assets, net	4,858.5	4,380.8
Investments in and advances to affiliates	227.1	184.1
Right-of-use operating lease assets	266.9	255.3
Long-term deferred tax assets	81.8	89.5
Other long-term assets	36.0	103.3
Total assets	\$ 7,488.6	\$ 6,876.7
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 174.0	\$ 171.8
Accrued payroll and benefits	63.1	73.8
Other current liabilities	222.3	204.1
Current maturities of long-term debt	92.4	73.3
Total current liabilities	551.8	523.0
Long-term debt, less current maturities	3,039.7	2,701.8
Right-of-use operating lease liabilities	257.6	248.9
Other long-term liabilities	21.1	41.1
Non-controlling interests—redeemable	442.1	327.4
Stockholders' equity:		
Preferred stock, \$0.01 par value; shares authorized - 20,310,000; shares issued or outstanding - none	—	—
Common stock, \$0.01 par value; shares authorized - 300,000,000; shares issued and outstanding - 127,123,940 and 126,593,727, respectively	1.3	1.3
Additional paid-in capital	2,511.1	2,497.6
Accumulated other comprehensive income	37.1	57.5
Retained deficit	(597.1)	(569.2)
Total Surgery Partners, Inc. stockholders' equity	1,952.4	1,987.2
Non-controlling interests—non-redeemable	1,223.9	1,047.3
Total stockholders' equity	3,176.3	3,034.5
Total liabilities and stockholders' equity	\$ 7,488.6	\$ 6,876.7

See notes to unaudited condensed consolidated financial statements.

SURGERY PARTNERS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited, dollars in millions, except per share amounts; shares in thousands)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenues	\$ 762.1	\$ 667.6	\$ 1,479.5	\$ 1,333.8
Operating expenses:				
Salaries and benefits	223.2	195.2	438.4	397.4
Supplies	199.7	182.2	388.5	370.6
Professional and medical fees	92.4	72.9	175.0	147.5
Lease expense	22.2	21.8	43.6	43.2
Other operating expenses	45.4	41.4	99.5	87.0
Cost of revenues	582.9	513.5	1,145.0	1,045.7
General and administrative expenses	40.3	31.2	73.5	63.2
Depreciation and amortization	34.8	24.4	68.5	58.1
Transaction and integration costs	19.3	12.0	36.7	24.5
Net loss (gain) on disposals, consolidations and deconsolidations	5.3	(8.8)	6.8	1.7
Equity in earnings of unconsolidated affiliates	(4.4)	(2.6)	(7.1)	(5.9)
Litigation settlements	0.5	1.5	(1.3)	4.5
Loss on debt extinguishment	5.1	—	5.1	—
Other income, net	(6.5)	(1.2)	(8.5)	(2.0)
	<u>677.3</u>	<u>570.0</u>	<u>1,318.7</u>	<u>1,189.8</u>
Operating income	84.8	97.6	160.8	144.0
Interest expense, net	(51.5)	(47.7)	(98.8)	(94.5)
Income before income taxes	33.3	49.9	62.0	49.5
Income tax (expense) benefit	(4.9)	7.8	(9.3)	9.4
Net income	28.4	57.7	52.7	58.9
Less: Net income attributable to non-controlling interests	(43.9)	(38.8)	(80.6)	(64.9)
Net (loss) income attributable to Surgery Partners, Inc.	<u>\$ (15.5)</u>	<u>\$ 18.9</u>	<u>\$ (27.9)</u>	<u>\$ (6.0)</u>
Net (loss) income per share attributable to common stockholders:				
Basic	\$ (0.12)	\$ 0.15	\$ (0.22)	\$ (0.05)
Diluted ⁽¹⁾	\$ (0.12)	\$ 0.15	\$ (0.22)	\$ (0.05)
Weighted average common shares outstanding:				
Basic	126,134	125,718	126,053	125,463
Diluted ⁽¹⁾	126,134	127,370	126,053	125,463

(1) The impact of potentially dilutive securities for the three months ended June 30, 2024 and the six months ended June 30, 2024 and 2023 was not considered because the effect would be anti-dilutive.

See notes to unaudited condensed consolidated financial statements.

SURGERY PARTNERS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited, dollars in millions)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Net income	\$ 28.4	\$ 57.7	\$ 52.7	\$ 58.9
Other comprehensive (loss) income, net of tax:				
Derivative activity, net of tax of \$0	(14.9)	13.9	(20.4)	2.6
Comprehensive income	13.5	71.6	32.3	61.5
Less: Comprehensive loss attributable to non-controlling interests	(43.9)	(38.8)	(80.6)	(64.9)
Comprehensive (loss) income attributable to Surgery Partners, Inc.	<u>\$ (30.4)</u>	<u>\$ 32.8</u>	<u>\$ (48.3)</u>	<u>\$ (3.4)</u>

See notes to unaudited condensed consolidated financial statements.

SURGERY PARTNERS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited, dollars in millions, shares in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Retained Deficit	Non-Controlling Interests— Non-Redeemable	Total
	Shares	Amount					
Balance as of December 31, 2022	125,961	\$ 1.3	\$ 2,478.0	\$ 76.2	\$ (557.3)	\$ 942.7	\$ 2,940.9
Net (loss) income	—	—	—	—	(25.0)	18.3	(6.7)
Equity-based compensation	519	—	3.7	—	—	—	3.7
Other comprehensive loss	—	—	—	(11.3)	—	—	(11.3)
Acquisition and disposal of shares of non-controlling interests, net	—	—	(3.6)	—	—	49.7	46.1
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(30.2)	(30.2)
Balance as of March 31, 2023	126,480	\$ 1.3	\$ 2,478.1	\$ 64.9	\$ (582.3)	\$ 980.5	\$ 2,942.5
Net income	—	—	—	—	19.0	27.6	46.6
Equity-based compensation	13	—	4.5	—	—	—	4.5
Other comprehensive income	—	—	—	13.9	—	—	13.9
Acquisition and disposal of shares of non-controlling interests, net	—	—	18.8	—	—	(19.7)	(0.9)
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(23.8)	(23.8)
Balance as of June 30, 2023	126,493	\$ 1.3	\$ 2,501.4	\$ 78.8	\$ (563.3)	\$ 964.6	\$ 2,982.8
Balance as of December 31, 2023	126,594	\$ 1.3	\$ 2,497.6	\$ 57.5	\$ (569.2)	\$ 1,047.3	\$ 3,034.5
Net (loss) income	—	—	—	—	(12.4)	29.3	16.9
Equity-based compensation	508	—	4.9	—	—	—	4.9
Other comprehensive loss	—	—	—	(5.5)	—	—	(5.5)
Acquisition and disposal of shares of non-controlling interests, net	—	—	(6.9)	—	—	23.7	16.8
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(29.7)	(29.7)
Balance as of March 31, 2024	127,102	\$ 1.3	\$ 2,495.6	\$ 52.0	\$ (581.6)	\$ 1,070.6	\$ 3,037.9
Net (loss) income	—	—	—	—	(15.5)	35.5	20.0
Equity-based compensation	22	—	15.1	—	—	—	15.1
Other comprehensive loss	—	—	—	(14.9)	—	—	(14.9)
Acquisition and disposal of shares of non-controlling interests, net	—	—	0.4	—	—	147.4	147.8
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(29.6)	(29.6)
Balance as of June 30, 2024	127,124	\$ 1.3	\$ 2,511.1	\$ 37.1	\$ (597.1)	\$ 1,223.9	\$ 3,176.3

See notes to unaudited condensed consolidated financial statements.

SURGERY PARTNERS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, dollars in millions)

	Six Months Ended June 30,	
	2024	2023
Cash flows from operating activities:		
Net income	\$ 52.7	\$ 58.9
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	68.5	58.1
Non-cash lease expense	18.7	17.9
Non-cash interest expense, net	3.1	13.1
Equity-based compensation expense	20.0	8.8
Net loss on disposals, consolidations and deconsolidations	6.8	1.7
Loss on debt extinguishment	5.1	—
Deferred income taxes	7.6	(11.5)
Equity in earnings of unconsolidated affiliates, net of distributions received	0.2	(0.8)
Changes in operating assets and liabilities, net of acquisitions and divestitures:		
Accounts receivable	(12.1)	(5.1)
Medicare accelerated payments and deferred governmental grants	—	(1.2)
Other operating assets and liabilities	(47.1)	(13.3)
Net cash provided by operating activities	<u>123.5</u>	<u>126.6</u>
Cash flows from investing activities:		
Purchases of property and equipment	(47.9)	(50.1)
Payments for acquisitions, net of cash acquired	(264.6)	(43.5)
Proceeds from disposals of facilities and other assets	1.5	26.1
Purchases of equity investments	(1.7)	(48.4)
Proceeds from sales of equity investments	4.0	—
Other investing activities	(18.5)	(26.0)
Net cash used in investing activities	<u>(327.2)</u>	<u>(141.9)</u>
Cash flows from financing activities:		
Principal payments on long-term debt	(973.8)	(31.5)
Borrowings of long-term debt	1,295.4	26.5
Payments of debt issuance costs	(14.9)	(1.4)
Distributions to non-controlling interest holders	(80.7)	(76.9)
Proceeds related to ownership transactions with non-controlling interest holders	1.0	0.6
Other financing activities	(5.7)	(7.5)
Net cash provided by (used in) financing activities	<u>221.3</u>	<u>(90.2)</u>
Net increase (decrease) in cash and cash equivalents	17.6	(105.5)
Cash and cash equivalents at beginning of period	195.9	282.9
Cash and cash equivalents at end of period	<u>\$ 213.5</u>	<u>\$ 177.4</u>

See notes to unaudited condensed consolidated financial statements.

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Summary of Accounting Policies

Organization

Surgery Partners, Inc., a Delaware corporation, acting through its subsidiaries, owns and operates a national network of surgical facilities and ancillary services. The surgical facilities, which include ambulatory surgery centers ("ASCs") and surgical hospitals, primarily provide non-emergency surgical procedures across many specialties, including orthopedics and pain management, gastroenterology, ophthalmology, and general surgery. The Company's surgical hospitals also provide services such as diagnostic imaging, laboratory, oncology, pharmacy, physical therapy and wound care. Ancillary services are comprised of multi-specialty physician practices, urgent care facilities and anesthesia services. Unless the context otherwise indicates, Surgery Partners, Inc. and its subsidiaries are referred to herein as "Surgery Partners," "we," "us," "our" or the "Company."

As of June 30, 2024, the Company owned or operated a portfolio of 167 surgical facilities, comprised of 148 ASCs and 19 surgical hospitals in 33 states. The Company owns these facilities in partnership with physicians and, in some cases, health care systems in the markets and communities it serves. The Company owned a majority interest in 92 of these surgical facilities and consolidated 127 surgical facilities for financial reporting purposes.

Basis of Presentation

The accompanying condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for fair presentation of the Company's financial position and results of operations have been included. The Company's fiscal year ends on December 31 and interim results are not necessarily indicative of results for a full year or any other interim period. The information contained in these condensed consolidated financial statements should be read in conjunction with the Company's consolidated financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Annual Report on Form 10-K"). Certain prior year amounts have been reclassified to conform with the current year presentation.

The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, as well as interests in partnerships and limited liability companies controlled by the Company through its ownership of a majority voting interest or other rights granted to the Company by contract to manage and control the affiliate's business. All significant intercompany balances and transactions are eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and footnotes. Examples include, but are not limited to, estimates of accounts receivable allowances, professional and general liabilities and the estimate of deferred tax assets or liabilities. Actual results could differ from those estimates.

Revenues

The Company's revenues generally relate to contracts with patients in which the performance obligations are to provide health care services. The Company recognizes revenues in the period in which its obligations to provide health care services are satisfied and reports the amount that reflects the consideration the Company expects to be entitled to receive. The contractual relationships with patients, in most cases, also involve a third-party payor (e.g., Medicare, Medicaid and private insurance organizations, including plans offered through the health insurance exchanges) and the transaction prices for the services provided are dependent upon the terms provided by or negotiated with the third-party payors. The payment arrangements with third-party payors for the services provided to the related patients typically specify payments at amounts less than the Company's standard charges. The Company continually reviews the contractual estimation process to consider and incorporate updates to laws and regulations and the frequent changes in managed care contractual terms resulting from contract renegotiations and renewals.

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

The following table presents a summary of revenues by service type as a percentage of total revenues:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Patient service revenues:				
Surgical Facility Services	94.0 %	96.0 %	94.5 %	96.0 %
Ancillary Services	4.1 %	2.6 %	3.8 %	2.5 %
Total patient service revenues	98.1 %	98.6 %	98.3 %	98.5 %
Other service revenues	1.9 %	1.4 %	1.7 %	1.5 %
Total revenues	100.0 %	100.0 %	100.0 %	100.0 %

Patient service revenues. This revenue is related to charging facility fees in exchange for providing patient care. The fee charged for health care procedures performed in surgical facilities varies depending on the type of service provided, but usually includes all charges for usage of an operating room, a recovery room, special equipment, medical supplies, nursing staff and medications. The fee does not normally include professional fees charged by the patient's surgeon, anesthesiologist or other attending physician, which are billed directly by such physicians to the patient or third-party payor. However, in several surgical facilities, the Company charges for anesthesia services. Ancillary service revenues include fees for patient visits to the Company's physician practices, pharmacy services and diagnostic tests ordered by physicians.

Patient service revenues are recognized as performance obligations are satisfied. Performance obligations are based on the nature of services provided. Typically, the Company recognizes revenue at a point in time in which services are rendered and the Company has no obligation to provide further patient services. Because the Company primarily performs outpatient procedures, performance obligations are generally satisfied same day and revenue is recognized on the date of service.

The Company determines the transaction price based on gross charges for services provided, net of estimated contractual adjustments and discounts from third-party payors. The Company estimates its contractual adjustments and discounts based on contractual agreements, its discount policies and historical experience. Changes in estimated contractual adjustments and discounts are recorded in the period of change.

Several states utilize supplemental Medicaid reimbursement programs for the purpose of providing reimbursement to providers to increase base rates to the levels that Medicare would have paid for the same service or for payments that offset a portion of the cost of providing care to Medicaid and indigent patients. These programs are designed with input from the Centers for Medicare & Medicaid Services ("CMS") and are funded with a combination of state and federal resources, including, in certain instances, fees or taxes levied on the providers. We account for payments under these supplemental programs as variable consideration and estimate the amount using the most likely amount method. Reimbursement under these programs, including the recognition of variable consideration, is reflected in patient service revenues. Taxes or other program-related costs are reflected in other operating expenses.

Other service revenues. Other service revenues include management and administrative service fees derived from the non-consolidated facilities that the Company accounts for under the equity method, management of surgical facilities in which it does not own an interest, and management services provided to physician practices for which the Company is not required to provide capital or additional assets and other non-patient services. The management agreements typically require the Company to provide recurring management services over a multi-year period, which are billed and collected on a monthly basis. The fees derived from these management arrangements are based on a predetermined percentage of the revenues of each facility or practice and are recognized in the period in which management services are rendered and billed.

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

The following table sets forth patient service revenues by type of payor and as a percentage of total patient service revenues for the Company's consolidated surgical facilities (dollars in millions):

	Three Months Ended June 30,			
	2024		2023	
	Amount	%	Amount	%
Patient service revenues:				
Private insurance	\$ 398.0	53.2 %	\$ 341.6	51.9 %
Government	310.1	41.5 %	278.2	42.3 %
Self-pay	20.7	2.8 %	17.1	2.6 %
Other ⁽¹⁾	19.3	2.5 %	21.1	3.2 %
Total patient service revenues	748.1	100.0 %	658.0	100.0 %
Other service revenues	14.0		9.6	
Total revenues	<u>\$ 762.1</u>		<u>\$ 667.6</u>	

	Six Months Ended June 30,			
	2024		2023	
	Amount	%	Amount	%
Patient service revenues:				
Private insurance	\$ 759.0	52.2 %	\$ 677.2	51.5 %
Government	613.7	42.2 %	566.0	43.1 %
Self-pay	40.5	2.8 %	32.7	2.5 %
Other ⁽¹⁾	40.2	2.8 %	38.5	2.9 %
Total patient service revenues	1,453.4	100.0 %	1,314.4	100.0 %
Other service revenues	26.1		19.4	
Total revenues	<u>\$ 1,479.5</u>		<u>\$ 1,333.8</u>	

(1) Other is comprised of automobile liability, letters of protection and other payor types.

Accounts Receivable

Accounts receivable from third-party payors are recorded net of estimated implicit price concessions, which are estimated based on the historical trend of the Company's surgical hospitals' cash collections and contractual write-offs, and for the Company's surgical facilities in general, established fee schedules, relationships with payors and procedure statistics. While changes in estimated reimbursement from third-party payors remain a possibility, the Company expects that any such changes would be minimal and, therefore, would not have a material effect on its financial condition or results of operations.

Accounts receivable consists of receivables from federal and state agencies (under the Medicare and Medicaid programs), private insurance organizations, employers and patients. Management recognizes that revenues and receivables from government agencies are significant to the Company's operations, but it does not believe that there is significant credit risk associated with these government agencies. Concentration of credit risk with respect to other payors is limited because of the large number of such payors.

The Company recognizes that final reimbursement of accounts receivable is subject to final approval by each third-party payor. However, because the Company has contracts with its third-party payors and also verifies insurance coverage of the patient before medical services are rendered, the amounts that are pending approval from third-party payors are not considered significant. Amounts are classified outside of self-pay if the Company has an agreement with the third-party payor or has verified a patient's coverage prior to services rendered. The Company's policy is to collect co-payments and deductibles prior to providing medical services. Patient services of the Company are primarily non-emergency, which allows the surgical facilities to control the procedures for which third-party reimbursement is sought and obtained. The Company does not require collateral from self-pay patients.

The Company's collection policies and procedures are based on the type of payor, size of claim and estimated collection percentage for each patient account. The Company analyzes accounts receivable at each of its surgical facilities to ensure the proper collection and aged category. Collection efforts include direct contact with third-party payors or patients, written correspondence and the use of legal or collection agency assistance, as required.

Income Taxes

The Company uses the asset and liability method to account for income taxes. Under this method, deferred income tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. If a carryforward exists, the Company makes a determination as to whether the carryforward will be utilized in the future. A valuation allowance is established for certain carryforwards when their recoverability is deemed to be uncertain. The carrying value of the net deferred tax assets assumes that the Company will be able to generate sufficient future taxable income in certain tax jurisdictions, based on estimates and assumptions. If our expectations for future operating results on a consolidated basis or at the state jurisdiction level vary from actual results due to changes in health care regulations, general economic conditions, or other factors, we may need to adjust the valuation allowance, for all or a portion of our deferred tax assets. Our income tax expense in future periods will be reduced or increased to the extent of offsetting decreases or increases, respectively, in our valuation allowance in the period when the change in circumstances occurs. These changes could have a significant impact on our future earnings.

The Company and certain of its subsidiaries file a consolidated federal income tax return. The partnerships, limited liability companies, and certain non-consolidated physician practice corporations also file separate income tax returns. The Company's allocable portion of each partnership's and limited liability company's income or loss is included in taxable income of the Company. The remaining income or loss of each partnership and limited liability company is allocated to the other owners.

The Company's effective tax rate was 15.0% for the six months ended June 30, 2024 compared to (19.0)% for the six months ended June 30, 2023. For the six months ended June 30, 2024, the effective tax rate differed from the U.S. federal statutory rate of 21% primarily due to earnings attributable to non-controlling interests, an increase in the Company's valuation allowance attributable to interest expense limitations, state tax expense, and a discrete tax expense of \$0.6 million related to the vesting of restricted stock awards. For the six months ended June 30, 2023, the effective tax rate differed from the U.S. federal statutory rate of 21% primarily due to earnings attributable to non-controlling interests, an increase in the Company's valuation allowance attributable to interest expense limitations, and discrete tax benefits of (i) \$1.8 million related to the vesting of restricted stock awards and (ii) \$15.9 million related to entity divestitures. Based upon the application of interim accounting guidance, the tax rate as a percentage of net income after income attributable to non-controlling interests will vary based upon the relative net income from period to period.

Goodwill

Goodwill represents the excess of the fair value of the consideration provided in an acquisition plus the fair value of any non-controlling interests over the fair value of net assets acquired and is not amortized. Additions to goodwill include amounts resulting from new business combinations and incremental ownership purchases in the Company's subsidiaries. A summary of the Company's acquisitions and disposals for the six months ended June 30, 2024 is included in Note 2. "Acquisitions and Disposals."

A summary of activity related to goodwill for the six months ended June 30, 2024 is as follows (in millions):

Balance at December 31, 2023	\$	4,326.0
Acquisitions, including post acquisition adjustments		486.3
Disposals		(6.0)
Balance at June 30, 2024	\$	<u>4,806.3</u>

A detailed evaluation of potential impairment indicators was performed as of June 30, 2024, which specifically considered recent increases in interest rates, inflation risk and market volatility. On the basis of available evidence as of June 30, 2024, no indicators of impairment were identified. Future estimates of fair value could be adversely affected if the actual outcome of one or more of the Company's assumptions changes materially in the future, including a material decline in the Company's stock price and the fair value of its long-term debt, lower than expected surgical case volumes, higher market interest rates or increased operating costs. Such changes impacting the calculation of fair value could result in a material impairment charge in the future.

Derivative Instruments and Hedging Activities

The Company records all derivatives on the balance sheet at fair value and any financing elements treated as debt instruments are recorded at amortized cost. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether the Company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. The Company may enter into derivative contracts that are intended to economically hedge certain risks, even though hedge accounting does not apply or the Company elects not to apply hedge accounting.

The Company made an accounting policy election to measure the credit risk of its derivative financial instruments that are subject to master netting agreements on a net basis by counterparty portfolio.

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Non-Controlling Interests—Redeemable

Each partnership and limited liability company through which the Company owns and operates its surgical facilities is governed by a partnership or operating agreement, respectively. In certain circumstances, the applicable partnership or operating agreements for the Company's surgical facilities provide that the facilities will purchase all of the physician limited partners' or physician minority members', as applicable, ownership if certain adverse regulatory events occur, such as it becoming illegal for the physician(s) to own an interest in a surgical facility, refer patients to a surgical facility or receive cash distributions from a surgical facility. Management believes the likelihood of an event occurring that would trigger such purchases was remote as of June 30, 2024. The non-controlling interests—redeemable are reported outside of stockholders' equity in the condensed consolidated balance sheets.

A summary of activity related to redeemable non-controlling interests is as follows (in millions):

	Six Months Ended June 30,	
	2024	2023
Balance at beginning of period	\$ 327.4	\$ 342.0
Net income attributable to non-controlling interests—redeemable	15.8	19.0
Acquisition and disposal of shares of non-controlling interests, net—redeemable	120.3	(10.0)
Distributions to non-controlling interest —redeemable holders	(21.4)	(22.9)
Balance at end of period	<u>\$ 442.1</u>	<u>\$ 328.1</u>

Fair Value of Financial Instruments

The fair value of a financial instrument is the amount at which the instrument could be exchanged in an orderly transaction between market participants to sell the asset or transfer the liability. The Company uses fair value measurements based on inputs classified into the following hierarchy:

- Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2: Inputs other than quoted prices that are observable for the asset or liability, either directly or indirectly. These may include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
- Level 3: Unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions, depending on the nature of the item being valued.

The carrying amounts reported in the condensed consolidated balance sheets for cash and cash equivalents, accounts receivable and accounts payable approximate their fair values under Level 3 calculations.

A summary of the carrying amounts and estimated fair values of the Company's long-term debt follows (in millions):

	Carrying Amount		Fair Value	
	June 30, 2024	December 31, 2023	June 30, 2024	December 31, 2023
Senior secured term loan	\$ 1,398.5	\$ 1,398.4	\$ 1,402.0	\$ 1,401.9
6.750% senior unsecured notes due 2025	\$ —	\$ 185.0	\$ —	\$ 183.2
10.000% senior unsecured notes due 2027	\$ —	\$ 320.0	\$ —	\$ 321.2
7.250% senior unsecured notes due 2032	\$ 800.0	\$ —	\$ 808.0	\$ —

The fair values in the table above were based on Level 2 inputs using quoted prices for identical liabilities in inactive markets. The carrying amounts related to the Company's other long-term debt obligations, including finance lease obligations, approximate their fair values based on Level 3 inputs.

Variable Interest Entities

The condensed consolidated financial statements include the accounts of variable interest entities ("VIE") in which the Company is the primary beneficiary under the provisions of the Financial Accounting Standards Board's ("FASB") Accounting Standards Codification 810, "Consolidation". The Company has the power to direct the activities that most significantly impact a VIE's economic performance. Additionally, the Company would absorb the majority of the expected losses from any of these entities should such expected losses occur. As of June 30, 2024, the Company's consolidated VIEs consisted of nine surgical facilities, eighteen physician practices, and one anesthesia practice.

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The total assets (excluding goodwill and intangible assets, net) of the consolidated VIEs included in the accompanying condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, were \$71.9 million and \$65.3 million, respectively, and the total liabilities of the consolidated VIEs were \$43.0 million and \$41.2 million, respectively.

Recent Accounting Pronouncements

In November 2023, the FASB issued Accounting Standards Update ("ASU") 2023-07, *Segment Reporting (Topic 280), Improvements to Reportable Segment Disclosures*, which requires enhanced disclosures of significant segment expenses. The ASU is effective for annual periods beginning after December 15, 2023 and interim periods beginning after December 15, 2024. The amendments in this ASU must be applied retrospectively to all periods presented and early adoption is permitted. The Company is evaluating the impact of this ASU on its condensed consolidated financial statements.

In December 2023, the FASB issued ASU 2023-09, *Income Taxes (Topic 740), Improvements to Income Tax Disclosures*, which establishes new requirements for the categorization and disaggregation of information in the rate reconciliation as well as for disaggregation of income taxes paid. The ASU is effective for annual periods beginning after December 15, 2024 and interim periods beginning after December 15, 2025. The amendments in this ASU may be applied prospectively or retrospectively to all periods presented and early adoption is permitted. The Company is evaluating the impact of this ASU on its condensed consolidated financial statements.

2. Acquisitions, Disposals and Deconsolidations

Acquisitions

During the six months ended June 30, 2024:

- The Company acquired a controlling interest in six surgical facilities and several physician practices for aggregate cash consideration of \$264.6 million, net of cash acquired, and non-cash consideration of \$1.1 million, which consisted of a non-controlling interest in one of the Company's existing surgical facilities. In connection with these acquisitions, the Company preliminarily recognized non-controlling interests of \$290.7 million, goodwill of \$483.0 million and investments and advances to affiliates of \$44.6 million related to an acquired surgical facility accounted for as an equity method investment.

During the six months ended June 30, 2023:

- The Company acquired a controlling interest in one surgical facility and one physician practice for aggregate cash consideration of \$17.9 million, net of cash acquired and non-cash consideration of \$1.3 million, which consisted of non-controlling interest in one of the Company's existing surgical facilities. In connection with these acquisitions, the Company preliminarily recognized non-controlling interests of \$12.0 million and goodwill of \$27.4 million.
- The Company acquired a controlling interest in two surgical facilities, which were previously accounted for as equity method investments, for aggregate cash consideration of \$26.9 million, net of cash acquired. The Company also amended the operating agreement of a previously non-controlled surgical facility resulting in the Company obtaining a controlling interest in the facility. These transactions resulted in the consolidation of the previously non-consolidated entities. The previously held non-controlling interests were remeasured and recorded at fair value as of the dates of the transactions. The fair value measurement utilizes Level 3 inputs, which includes unobservable data. The acquisition date fair value of the previously held non-controlling interests was \$27.3 million. As a result of increasing its ownership interest, the Company recognized a net loss of \$7.1 million included in net loss on disposals, consolidations and deconsolidations in the condensed consolidated statements of operations for the six months ended June 30, 2023. The net loss was determined based on the difference between the fair value of the Company's previously held non-controlling interests in the entities and the carrying values immediately prior to the transactions. In connection with the consolidation of these facilities, the Company preliminarily recognized non-controlling interests of \$55.2 million and goodwill of \$106.3 million.
- The Company acquired non-controlling interests in four surgical facilities and two in-development de novo surgical facilities for aggregate cash consideration of \$48.4 million. The non-controlling interests were accounted for as equity method investments and recorded as a component of investments in and advances to affiliates in the condensed consolidated balance sheets. The Company also paid cash consideration of \$20.0 million to acquire management rights from the prior management service provider related to three of the aforementioned surgical facilities. Management rights agreements are accounted for and recorded as a component of intangibles assets, net in the accompanying condensed consolidated balance sheets. The cash paid to acquire the management rights is presented as a component of other investing activities on the condensed consolidated statements of cash flows.

Disposals and Deconsolidations

During the six months ended June 30, 2024:

- The Company disposed of its non-controlling interests in one surgical facility, which was previously accounted for as an equity method investment, for cash proceeds of \$2.0 million. In connection with this transaction, the Company recognized a pre-tax loss of \$3.7 million, which is included in net loss on disposals, consolidations and deconsolidations in the accompanying condensed consolidated statements of operations for the six months ended June 30, 2024.

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- The Company sold a portion of its interests in one surgical facility for net cash proceeds of \$2.5 million. As a result of the transaction, the Company lost control of the previously controlled surgical facility but retains a non-controlling interest, resulting in the deconsolidation of the previously consolidated entity. This transaction resulted in a pretax net gain on deconsolidation of \$2.7 million, which is included in net loss on disposals, consolidations and deconsolidations in the accompanying condensed consolidated statements of operations for the six months ended June 30, 2024. The net gain was determined based on the difference between the net cash proceeds plus the fair value of the Company's retained interests in the entity and the carrying values of both the tangible and intangible assets of the entity immediately prior to the transaction.

During the six months ended June 30, 2023:

- The Company sold its interests in four surgical facilities for aggregate net cash proceeds of \$30.4 million, a portion of which was held in escrow pursuant to the purchase agreements for such transactions. In connection with these transactions, the Company recognized a pre-tax gain of \$26.7 million included in net loss on disposals, consolidations and deconsolidations in the condensed consolidated statements of operations for the six months ended June 30, 2023.
- The Company disposed of its non-controlling interests in a surgical facility and an in-development de novo surgical facility, which were previously accounted for as equity method investments, for cash proceeds of \$1.5 million. In connection with these transactions, the Company recognized a pre-tax loss of \$13.7 million included in net loss on disposals, consolidations and deconsolidations in the condensed consolidated statements of operations for the six months ended June 30, 2023.

3. Long-Term Debt

A summary of long-term debt follows (in millions):

	June 30, 2024	December 31, 2023
Senior secured term loan ⁽¹⁾	\$ 1,398.5	\$ 1,398.4
Senior secured revolving credit facility	46.0	—
6.750% senior unsecured notes due 2025	—	185.0
10.000% senior unsecured notes due 2027	—	320.0
7.250% senior unsecured notes due 2032	800.0	—
Notes payable and other secured loans	210.0	205.2
Finance lease obligations	712.6	693.6
Less: unamortized debt issuance costs and discounts	(35.0)	(27.1)
Total debt	3,132.1	2,775.1
Less: current maturities	92.4	73.3
Total long-term debt	\$ 3,039.7	\$ 2,701.8

(1) Includes unamortized fair value discount of \$1.5 million and \$1.6 million as of June 30, 2024 and December 31, 2023, respectively.

Revolving Credit Facility

As of June 30, 2024, the Company's availability on its \$703.8 million senior secured revolving credit facility (the "Revolver") was \$647.8 million (including letters of credit of \$10.0 million). The increase in outstanding borrowings on the Revolver, was primarily due to the timing of acquisitions completed during the first quarter of 2024.

7.250% Senior Unsecured Notes Due 2032

On April 10, 2024, the Company completed the issuance and sale of \$800.0 million in aggregate principal amount of senior unsecured notes due 2032 (the "2032 Notes"). The 2032 Notes were issued pursuant to an Indenture dated April 10, 2024 by and among Surgery Center Holdings, Inc., certain subsidiaries of Surgery Center Holdings, Inc., as guarantors, and Wilmington Trust, National Association, as trustee. The 2032 Notes bear interest at an annual rate of 7.250% per year, payable semi-annually on April 15 and October 15 of each year, beginning on October 15, 2024. Proceeds from the sale of the 2032 Notes were used (i) to redeem all of the outstanding 6.750% senior unsecured notes due 2025 (the "2025 Notes") and the 10.000% senior unsecured notes due 2027 (the "2027 Notes," together with the 2025 Notes, the "Existing Notes"), (ii) to pay accrued interest on the Existing Notes through, but not including, April 25, 2024, (iii) to pay related fees and expenses in connection with the offering of the 2032 Notes and redemption of the Existing Notes and (iv) for general corporate purposes, including to fund future acquisitions.

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First Amendment to Credit Agreement

On June 20, 2024, the Company entered into a first amendment (the "Amendment") to its credit agreement, dated as of December 19, 2023, by and among Surgery Center Holdings, Inc., the Borrower, Jefferies Finance LLC, as administrative agent and collateral agent, and the other financial institutions party thereto from time to time (the "Credit Agreement") to provide for a new tranche of term loans under the Credit Agreement in an aggregate principal amount of \$1,400 million (the "2024 Refinancing Term Loans"), which 2024 Refinancing Term Loans replace or refinance in full all of the existing term loans outstanding under the Credit Agreement (as in effect immediately prior to the Amendment), all as further set forth in the Amendment. The 2024 Refinancing Term Loans mature on December 19, 2030. The 2024 Refinancing Term Loans shall bear interest at a rate per annum equal to (x) the forward-looking term rate based on Secured Overnight Financing Rate ("Term SOFR") plus 2.75% per annum or (y) an alternate base rate (which will be the highest of (i) the prime rate plus 0.5% per annum above the federal funds effective rate and (ii) Term SOFR plus 1.00% per annum (which shall not be less than 1.00%)) plus 1.75% per annum. The 2024 Refinancing Term Loans amortize in equal quarterly installments of 0.25% of the aggregate original principal amount of the 2024 Refinancing Term Loans (such amortization payments will commence on or around the last business day of the fiscal quarter ending June 30, 2024). Voluntary prepayments of the 2024 Refinancing Term Loans are permitted, in whole or in part, with prior notice, without premium or penalty (except a 1.00% call premium in the case of certain repricing events occurring prior to the sixth month anniversary of the Amendment Effective Date).

In connection with the Amendment, the Company recorded debt issuance costs and discount of \$2.4 million, and a debt extinguishment loss of \$5.1 million which is included in loss on debt extinguishment in the accompanying condensed consolidated statement of operations for the three and six months ended June 30, 2024. The loss on debt extinguishment includes the partial write-off of unamortized debt issuance costs and discounts.

4. Leases

The Company's operating leases are primarily for real estate, including medical office buildings, and corporate and other administrative offices. The Company's finance leases are primarily for medical equipment and information technology and telecommunications assets.

The following table presents the components of the Company's right-of-use assets and liabilities related to leases and their classification in the condensed consolidated balance sheets (in millions):

	Classification in Condensed Consolidated Balance Sheets	June 30, 2024	December 31, 2023
Assets:			
Operating lease assets	Right-of-use operating lease assets	\$ 266.9	\$ 255.3
Finance lease assets	Property and equipment, net of accumulated depreciation	594.6	587.0
Total leased assets		<u>\$ 861.5</u>	<u>\$ 842.3</u>
Liabilities:			
Operating lease liabilities:			
Current	Other current liabilities	\$ 39.3	\$ 37.6
Long-term	Right-of-use operating lease liabilities	257.6	248.9
Total operating lease liabilities		<u>296.9</u>	<u>286.5</u>
Finance lease liabilities:			
Current	Current maturities of long-term debt	28.5	25.4
Long-term	Long-term debt, less current maturities	684.1	668.2
Total finance lease liabilities		<u>712.6</u>	<u>693.6</u>
Total lease liabilities		<u>\$ 1,009.5</u>	<u>\$ 980.1</u>

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The following table presents the components of the Company's lease expense and their classification in the condensed consolidated statements of operations (in millions):

	Six Months Ended June 30,	
	2024	2023
Operating lease costs	\$ 32.3	\$ 33.2
Finance lease costs:		
Amortization of leased assets	23.6	18.3
Interest on lease liabilities	26.7	23.8
Total finance lease costs	50.3	42.1
Variable and short-term lease costs	11.8	10.4
Total lease costs	\$ 94.4	\$ 85.7

The following table presents supplemental cash flow information (in millions):

	Six Months Ended June 30,	
	2024	2023
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash outflows from operating leases	\$ 31.3	\$ 32.2
Operating cash outflows from finance leases	\$ 25.4	\$ 22.6
Financing cash outflows from finance leases	\$ 15.4	\$ 12.6
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 38.0	\$ 15.1
Finance leases	\$ 21.2	\$ 23.6

5. Derivatives and Hedging Activities

The Company's objectives in using interest rate derivatives are to add stability to interest expense and to manage its exposure to interest rate movements. To accomplish this objective, the Company primarily uses interest rate swaps and interest rate caps as part of its interest rate risk management strategy. During 2024 and 2023, such derivatives have been used to hedge the variable cash flows associated with existing variable-rate debt.

The key terms of interest rate swaps and interest rate caps outstanding are presented below:

Description	Effective Date	June 30, 2024		December 31, 2023		Maturity Date
		Notional Amount (in millions)	Status	Notional Amount (in millions)	Status	
Pay-fixed swap	May 7, 2021	\$ 435.0	Active	\$ 435.0	Active	March 31, 2025
Pay-fixed swap	May 7, 2021	330.0	Active	330.0	Active	March 31, 2025
Pay-fixed swap	May 7, 2021	435.0	Active	435.0	Active	March 31, 2025
Interest rate cap	September 30, 2021	147.5	Active	151.4	Active	March 31, 2025
Interest rate cap	September 30, 2021	8.4	Active	8.7	Active	March 31, 2025
Deferred premium cap	March 31, 2025	396.0	Active	—	N/A	December 31, 2028
Deferred premium cap	March 31, 2025	198.0	Active	—	N/A	December 31, 2028
Deferred premium cap	March 31, 2025	396.0	Active	—	N/A	December 31, 2028
Deferred premium cap	March 31, 2025	198.0	Active	—	N/A	December 31, 2028
Deferred premium cap	March 31, 2025	198.0	Active	—	N/A	December 31, 2028
		\$ 2,741.9		\$ 1,360.1		

As of June 30, 2024, the Company had three interest rate swaps with a total net notional amount of \$1.2 billion. The interest rate swaps are pay-fixed, receive 1-Month Secured Overnight Financing Rate ("SOFR") (subject to a minimum of 0.75%) designated in cash flow hedging relationships and have a termination date of March 31, 2025.

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As of June 30, 2024, the Company had two interest rate caps designated in cash flow hedging relationships with a total notional amount of \$155.9 million. The interest rate caps each have a termination date of March 31, 2025. During the six months ended June 30, 2023, the Company partially terminated a previously undesignated portion of one of its interest rate caps. In connection with the termination, the Company received \$8.6 million, which is included as a component of operating activities in the condensed consolidated statements of cash flows for the six months ended June 30, 2023.

On April 9, 2024, the Company entered into five deferred premium interest rate cap agreements, each with an effective date of March 31, 2025. The interest rate caps are designated in cash flow hedging relationships with a total notional amount of \$1.4 billion. The deferred premium interest rate caps each have a termination date of December 31, 2028. These financial instruments are designed to limit the Company's interest rate exposure on its term loan concurrent with the expected maturity of positions held as of June 30, 2024. As of June 30, 2024, the Company's deferred premium interest rate caps had a total notional amount of \$1.4 billion.

The pay-fixed, receive floating interest rate swaps did not meet the requirements to be considered derivatives in their entirety as a result of the financing component. Accordingly, the swaps are considered hybrid instruments, consisting of a financing element treated as a debt instrument and an embedded at-market derivative that was designated as a cash flow hedge.

Within the Company's condensed consolidated balance sheets, the financing elements treated as debt instruments described above are carried at amortized cost and the embedded at-market derivatives are recorded at fair value. The cash flows related to the portion treated as debt are classified as financing activities in the condensed consolidated statements of cash flows while the portion treated as an at-market derivative are classified as operating activities. Within the Company's condensed consolidated balance sheets, the interest rate caps are recorded at fair value. The cash flows related to the interest rate caps are classified as operating activities in the condensed consolidated statements of cash flows.

The Company's interest rate swap agreements, excluding the portion treated as debt, are recognized at fair value in the condensed consolidated balance sheets and are valued using pricing models that rely on market observable inputs such as yield curve data, which are classified as Level 2 inputs within the fair value hierarchy. The fair value of the interest rate caps is determined using the market standard methodology of discounting the future expected cash receipts that would occur if variable interest rates rise above the strike rate of the caps. The variable interest rates used in the calculation of projected receipts on the caps are based on an expectation of future interest rates derived from observable market interest rate curves and volatilities. The interest rate caps are classified using Level 2 inputs within the fair value hierarchy.

For derivatives designated and that qualify as cash flow hedges of interest rate risk, the gain or loss on the derivative is recorded in accumulated other comprehensive income ("OCI") and subsequently reclassified into interest expense in the same period(s) during which the hedged transaction affects earnings, as documented at hedge inception in accordance with the Company's accounting policy election. Amounts reported in accumulated OCI related to derivatives will be reclassified to interest expense as interest payments are made on the Company's variable-rate debt. Over the next 12 months, the Company estimates that an additional \$39.1 million will be reclassified as a decrease to interest expense.

The following table presents the fair values of our derivatives and their location on the condensed consolidated balance sheets (in millions):

	June 30, 2024		December 31, 2023	
	Assets	Liabilities	Assets	Liabilities
Derivatives in cash flow hedging relationships				
Interest rate caps ⁽¹⁾	\$ 4.2	\$ —	\$ 6.0	\$ —
Interest rate swaps ⁽¹⁾	36.1	—	51.4	—
Interest rate caps	—	3.4	—	—
Interest rate swaps ^{(2) (3)}	—	10.7	—	17.8
Total	<u>\$ 40.3</u>	<u>\$ 14.1</u>	<u>\$ 57.4</u>	<u>\$ 17.8</u>

(1) Amounts were included in other current assets and other long-term assets on the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively.

(2) Amounts related to the financing component of the pay-fixed interest rate swaps.

(3) Amounts were included in other current liabilities and other long-term liabilities on the condensed consolidated balance sheets as of June 30, 2024 and December 31, 2023, respectively.

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The following table presents the pre-tax effect of the interest rate swaps and caps on the Company's accumulated OCI and condensed consolidated statements of operations (in millions):

	Location	Three Months Ended June 30,		Six Months Ended June 30,	
		2024	2023	2024	2023
Derivatives not designated as hedging instruments					
Loss recognized in income	Other income, net	\$ —	\$ —	\$ —	\$ 0.6
Derivatives in cash flow hedging relationships					
Gain (loss) recognized in OCI (effective portion)		\$ (0.1)	\$ 21.9	\$ 9.1	\$ 16.7
Gain reclassified from accumulated OCI into income (effective portion) ⁽¹⁾	Interest expense, net	\$ (14.8)	\$ (8.0)	\$ (29.5)	\$ (14.1)

(1) Includes amortization of accumulated OCI related to de-designated and terminated interest rate swaps of \$5.3 million and \$10.7 million for the three and six months ended June 30, 2023, respectively. There were no corresponding amounts for the three and six months ended June 30, 2024.

6. Earnings Per Share

Basic and diluted earnings (loss) per share are calculated based on the weighted-average number of shares outstanding in each period and dilutive stock options, unvested shares and warrants, to the extent such securities exist and have a dilutive effect on earnings per share. A reconciliation of the numerator and denominator of basic and diluted earnings per share follows (dollars in millions, except per share amounts; shares in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Numerator:				
Net (loss) income attributable to Surgery Partners, Inc.	\$ (15.5)	\$ 18.9	\$ (27.9)	\$ (6.0)
Denominator:				
Weighted average common shares outstanding:				
Basic	126,134	125,718	126,053	125,463
Diluted ⁽¹⁾	126,134	127,370	126,053	125,463
Net loss per share attributable to common stockholders:				
Basic	\$ (0.12)	\$ 0.15	\$ (0.22)	\$ (0.05)
Diluted ⁽¹⁾	\$ (0.12)	\$ 0.15	\$ (0.22)	\$ (0.05)
Dilutive securities outstanding not included in the computation of diluted loss per share as their effect is antidilutive:				
Stock options	1,052	—	1,152	1,407
Restricted shares	110	—	154	147

(1) The impact of potentially dilutive securities for the three months ended June 30, 2024 and the six months ended June 30, 2024 and 2023 was not considered because the effect would be anti-dilutive.

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7. Other Current Liabilities

A summary of other current liabilities was as follows (in millions):

	June 30, 2024	December 31, 2023
Right-of-use operating lease liabilities	\$ 39.3	\$ 37.6
Cost report liabilities	21.3	23.9
Amounts due to patients and payors	30.0	23.9
Interest payable	16.7	17.8
Interest rate swaps	10.7	—
Accrued expenses and other	104.3	100.9
Total	<u>\$ 222.3</u>	<u>\$ 204.1</u>

8. Commitments and Contingencies

Professional, General and Workers' Compensation, and Cyber Liability Risks

The Company is subject to claims and legal actions in the ordinary course of business, including claims relating to patient treatment, employment practices and personal injuries. The Company maintains professional, general and workers' compensation and cyber liability insurance in excess of self-insured retentions, through third party commercial insurance carriers. Although management believes the coverage is sufficient for the Company's operations, some claims may potentially exceed the scope of coverage in effect. Plaintiffs in these matters may request punitive or other damages that may not be covered by insurance. The Company is not aware of any such proceedings that are reasonably possible to have a material adverse effect on the Company's business, financial position, results of operations or liquidity. Total professional, general and workers' compensation claim liabilities as of June 30, 2024 and December 31, 2023 were \$18.3 million and \$18.2 million, respectively. Expected insurance recoveries of \$10.2 million as of both June 30, 2024 and December 31, 2023 are included as a component of other current assets and other long-term assets in the condensed consolidated balance sheets.

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

9. Segment Reporting

The Company currently operates in two major lines of business that are also the Company's reportable operating segments - the operation of surgical facilities and the operation of ancillary services. The Surgical Facility Services segment includes the operation of ASCs, surgical hospitals and anesthesia services. The Ancillary Services segment consists of multi-specialty physician practices. The "All other" line item primarily consists of amounts attributable to the Company's corporate general and administrative functions.

The following tables present financial information for each reportable segment (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenues:				
Surgical Facility Services	\$ 730.4	\$ 650.2	\$ 1,423.1	\$ 1,299.2
Ancillary Services	31.7	17.4	56.4	34.6
Total	<u>\$ 762.1</u>	<u>\$ 667.6</u>	<u>\$ 1,479.5</u>	<u>\$ 1,333.8</u>
Adjusted EBITDA:				
Surgical Facility Services	\$ 143.0	\$ 126.7	\$ 269.7	\$ 245.5
Ancillary Services	0.1	(0.1)	(1.3)	(1.5)
All other	(24.8)	(26.4)	(52.6)	(53.7)
Total	<u>\$ 118.3</u>	<u>\$ 100.2</u>	<u>\$ 215.8</u>	<u>\$ 190.3</u>
Reconciliation of Adjusted EBITDA:				
Income before income taxes	\$ 33.3	\$ 49.9	\$ 62.0	\$ 49.5
Net income attributable to non-controlling interests	(43.9)	(38.8)	(80.6)	(64.9)
Interest expense, net	51.5	47.7	98.8	94.5
Depreciation and amortization	34.8	24.4	68.5	58.1
Equity-based compensation expense	15.1	4.6	20.0	8.8
Transaction, integration and acquisition costs ⁽¹⁾	20.8	13.0	39.7	25.8
Net loss (gain) on disposals, consolidations and deconsolidations	5.3	(8.8)	6.8	1.7
Litigation settlements and regulatory change impact ⁽²⁾	1.1	1.7	(0.1)	9.7
Loss on debt extinguishment	5.1	—	5.1	—
Undesignated derivative activity	—	—	—	0.6
Other ⁽³⁾	(4.8)	6.5	(4.4)	6.5
Adjusted EBITDA	<u>\$ 118.3</u>	<u>\$ 100.2</u>	<u>\$ 215.8</u>	<u>\$ 190.3</u>

(1) This amount includes transaction and integration costs of \$19.3 million and \$12.0 million for the three months ended June 30, 2024 and 2023, respectively. This amount further includes start-up costs related to de novo surgical facilities of \$1.5 million and \$1.0 million for the three months ended June 30, 2024 and 2023, respectively.

This amount includes transaction and integration costs of \$36.7 million and \$24.5 million for the six months ended June 30, 2024 and 2023, respectively. This amount further includes start-up costs related to de novo surgical facilities of \$3.0 million and \$1.3 million for the six months ended June 30, 2024 and 2023, respectively.

(2) This amount includes a litigation settlement loss of \$0.5 million and \$1.5 million for the three months ended June 30, 2024 and 2023, respectively. This amount also includes other litigation costs of \$0.6 million and \$0.2 million for the three months ended June 30, 2024 and 2023, respectively.

This amount includes a litigation settlements gain of \$1.3 million and a loss of \$4.5 million for the six months ended June 30, 2024 and 2023, respectively. This amount also includes other litigation costs of \$1.2 million and \$0.8 million for the six months ended June 30, 2024 and 2023, respectively. Additionally, the six months ended June 30, 2023 includes \$4.4 million related to the impact of recent changes in Florida law regarding the use of letters of protection.

(3) For the three and six months ended June 30, 2024, this amount includes insurance proceeds related to cyber event losses predominantly incurred in 2023. For the three and six months ended June 30, 2023, this amount includes estimates for the net impact of the same cyber event and losses from a divested business.

SURGERY PARTNERS, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

	June 30, 2024	December 31, 2023
Assets:		
Surgical Facility Services	\$ 6,874.7	\$ 6,347.4
Ancillary Services	68.1	36.3
All other	545.8	493.0
Total assets	<u>\$ 7,488.6</u>	<u>\$ 6,876.7</u>
	Six Months Ended June 30,	
	2024	2023
Cash purchases of property and equipment:		
Surgical Facility Services	\$ 39.1	\$ 49.5
Ancillary Services	1.3	0.6
All other	7.5	—
Total cash purchases of property and equipment	<u>\$ 47.9</u>	<u>\$ 50.1</u>

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the condensed consolidated financial statements and related notes included elsewhere in this report and our 2023 Annual Report on Form 10-K. Unless the context otherwise indicates, the terms "Surgery Partners," "we," "us," "our" or the "Company," as used herein, refer to Surgery Partners, Inc. and its subsidiaries, and the term "affiliates" means direct and indirect subsidiaries of Surgery Partners, Inc. and partnerships and joint ventures in which such subsidiaries are partners. The terms "facilities" or "hospitals" refer to entities owned and operated by affiliates of Surgery Partners, Inc. and the term "employees" refers to employees of affiliates of Surgery Partners, Inc.

Cautionary Note Regarding Forward-Looking Statements

This report contains forward-looking statements, which are based on our current expectations, estimates and assumptions about future events. All statements other than statements of current or historical fact contained in this report are forward-looking statements. These statements include, but are not limited to, statements regarding our future financial position, business strategy, budgets, effective tax rate, projected costs and plans and objectives of management for future operations. The words "projections," "believe," "continue," "drive," "estimate," "expect," "intend," "may," "plan," "will," "could," "would" and similar expressions are generally intended to identify forward-looking statements.

By their nature, forward-looking statements involve risks, uncertainties and other factors that may cause actual results to differ from the expectations expressed in the statements. Many of these factors are beyond our ability to control or predict. These factors include, without limitation, reductions in payments from government health care programs and private insurance payors, such as health maintenance organizations, preferred provider organizations, and other managed care organizations and employers; our ability to contract with private insurance payors; changes in our payor mix or surgical case mix; failure to maintain or develop relationships with physicians on beneficial or favorable terms, or at all; the impact of payor controls designed to reduce the number of surgical procedures; our efforts to integrate operations of acquired businesses and surgical facilities, attract new physician partners, or acquire additional surgical facilities; supply chain issues, including shortages or quality control issues with surgery-related products, equipment and medical supplies; competition for physicians, nurses, strategic relationships, acquisitions and managed care contracts; our ability to attract and retain qualified health care professionals; our ability to enforce non-compete restrictions against our physicians; our ability to manage material liabilities whether known or unknown incurred as a result of acquiring surgical facilities; the impact of future legislation and other health care regulatory reform actions, and the effect of that legislation and other regulatory actions on our business; our ability to comply with current health care laws and regulations; the outcome of legal and regulatory proceedings that have been or may be brought against us; the impact of cybersecurity attacks or intrusions; changes in the regulatory, economic and other conditions of the states where our surgical facilities are located; our indebtedness; the social and economic impact of a pandemic, epidemic or outbreak of a contagious disease, such as COVID-19, on our business; and the risks and uncertainties set forth under the heading "Risk Factors" in our 2023 Annual Report on Form 10-K and discussed from time to time in our reports filed with the SEC.

Considering these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this report may not occur, and actual results could differ materially from those anticipated or implied in the forward-looking statements. When you consider these forward-looking statements, you should keep in mind these risk factors and other cautionary statements in this report.

These forward-looking statements speak only as of the date made. Other than as required by law, we undertake no obligation to publicly update or revise any forward-looking statements, whether because of new information, future events or otherwise.

Executive Overview

As of June 30, 2024, we owned or operated, primarily in partnership with physicians, a portfolio of 167 surgical facilities comprised of 148 ASCs and 19 surgical hospitals across 33 states. We owned a majority interest in 92 of the surgical facilities and consolidated 127 of these facilities for financial reporting purposes.

Total revenues for the second quarter of 2024 increased 14.2% to \$762.1 million from \$667.6 million for the second quarter of 2023. The increase in revenues was attributable to same-facility revenue growth and the net impact from acquisitions and divestitures completed during the twelve months ended June 30, 2024. Days adjusted same-facility revenues for the second quarter of 2024 increased 9.9% from the second quarter of 2023, with an 5.7% increase in revenue per case and a 3.9% increase in same-facility cases. Additionally, for the second quarter of 2024, Adjusted EBITDA increased 18.1% to \$118.3 million compared to \$100.2 million for the same period in 2023. The increase in Adjusted EBITDA was primarily attributable to revenue growth, continued cost management initiatives and acquisitions completed since the prior year period. For the second quarter of 2024, net loss attributable to common stockholders was \$15.5 million compared to net income attributable to common stockholders of \$18.9 million for the same period in 2023. A reconciliation of non-GAAP financial measures appears below under the heading "Certain Non-GAAP Measures."

We continue to focus on improving our same-facility performance, selectively acquiring established facilities, developing new facilities and other portfolio management initiatives. During the second quarter of 2024, we completed the following:

- We acquired a controlling interest in six surgical facilities and several physician practices for aggregate cash consideration of \$264.6 million, net of cash acquired, and non-cash consideration of \$1.1 million.
- We sold a non-controlling interest in a surgical facility for net cash proceeds of \$2.0 million.

- We sold a portion of our interests in a surgical facility for net cash proceeds of \$2.5 million. In connection with this transaction, we no longer hold a controlling interest in the surgical facility but did retain a non-controlling interest, which resulted in the deconsolidation of the previously consolidated entity.

We had cash and cash equivalents of \$213.5 million and \$647.8 million of borrowing capacity under the Revolver as of June 30, 2024.

Revenues

Our revenues consist of patient service revenues and other service revenues. Patient service revenues consist of revenue from our Surgical Facility Services and Ancillary Services segments. Specifically, patient service revenues include fees for surgical or diagnostic procedures performed at surgical facilities that we consolidate for financial reporting purposes, as well as for patient visits to our physician practices, anesthesia services, pharmacy services and diagnostic screens ordered by our physicians. Other service revenues include management and administrative service fees derived from our non-consolidated facilities that we account for under the equity method, management of surgical facilities and physician practices in which we do not own an interest, management services we provide to physician practices for which we are not required to provide capital or additional assets and other non-patient services.

The following table summarizes revenues by service type as a percentage of total revenues:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Patient service revenues:				
Surgical Facility Services	94.0 %	96.0 %	94.5 %	96.0 %
Ancillary Services	4.1 %	2.6 %	3.8 %	2.5 %
Total patient service revenues	98.1 %	98.6 %	98.3 %	98.5 %
Other service revenues	1.9 %	1.4 %	1.7 %	1.5 %
Total revenues	100.0 %	100.0 %	100.0 %	100.0 %

Payor Mix

The following table sets forth by type of payor the percentage of our patient service revenues generated at the surgical facilities that we consolidate for financial reporting purposes:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Private insurance payors	53.2 %	51.9 %	52.2 %	51.5 %
Government payors	41.5 %	42.3 %	42.2 %	43.1 %
Self-pay payors	2.8 %	2.6 %	2.8 %	2.5 %
Other payors ⁽¹⁾	2.5 %	3.2 %	2.8 %	2.9 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

(1) Other is comprised of automobile liability, letters of protection and other payor types.

Surgical Case Mix

We primarily operate multi-specialty surgical facilities where physicians perform a variety of procedures in various specialties. We believe this diversification helps to protect us from adverse pricing and utilization trends in any individual procedure type and results in greater consistency in our case volume.

The following table sets forth the percentage of cases in each specialty performed at the surgical facilities that we consolidate for financial reporting purposes for the periods indicated:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Orthopedics and pain management	39.9 %	34.7 %	40.0 %	35.2 %
Ophthalmology	23.4 %	24.7 %	23.4 %	24.4 %
Gastrointestinal	22.6 %	24.9 %	22.3 %	24.2 %
General surgery	2.3 %	2.6 %	2.3 %	2.8 %
Other	11.8 %	13.1 %	12.0 %	13.4 %
Total	100.0 %	100.0 %	100.0 %	100.0 %

Critical Accounting Policies

A summary of significant accounting policies is disclosed in our 2023 Annual Report on Form 10-K under the caption “Critical Accounting Policies” in the Management’s Discussion and Analysis of Financial Condition and Results of Operations section. There have been no material changes in the nature of our critical accounting policies or the application of those policies since December 31, 2023.

Results of Operations

Comparison of Operating Results for the Three Months Ended June 30, 2024 to the Three Months Ended June 30, 2023

The following tables summarize certain results from the statements of operations for the periods indicated (in millions):

	Three Months Ended June 30,	
	2024	2023
Revenues	\$ 762.1	\$ 667.6
Operating expenses:		
Cost of revenues	582.9	513.5
General and administrative expenses	40.3	31.2
Depreciation and amortization	34.8	24.4
Transaction and integration costs	19.3	12.0
Net loss (gain) on disposals, consolidations and deconsolidations	5.3	(8.8)
Equity in earnings of unconsolidated affiliates	(4.4)	(2.6)
Litigation settlements	0.5	1.5
Loss on debt extinguishment	5.1	—
Other income, net	(6.5)	(1.2)
	<u>677.3</u>	<u>570.0</u>
Operating income	84.8	97.6
Interest expense, net	(51.5)	(47.7)
Income before income taxes	33.3	49.9
Income tax (expense) benefit	(4.9)	7.8
Net income	28.4	57.7
Less: Net income attributable to non-controlling interests	(43.9)	(38.8)
Net (loss) income attributable to Surgery Partners, Inc.	<u>\$ (15.5)</u>	<u>\$ 18.9</u>

Revenues. The following table sets forth patient service revenues (in millions):

	Three Months Ended June 30,	
	2024	2023
Patient service revenues	\$ 748.1	\$ 658.0
Other service revenues	14.0	9.6
Total revenues	<u>\$ 762.1</u>	<u>\$ 667.6</u>

Patient service revenues increased 13.7% to \$748.1 million for the three months ended June 30, 2024 compared to \$658.0 million for the three months ended June 30, 2023. The increase was primarily driven by a 9.9% increase in days adjusted same-facility revenues and the net impact from acquisitions and divestitures completed during the twelve months ended June 30, 2024. The increase in days adjusted same-facility revenues was attributable to a 3.9% increase in same-facility case volumes and a 5.7% increase in same-facility revenue per case.

Cost of Revenues. Cost of revenues was \$582.9 million for the three months ended June 30, 2024 compared to \$513.5 million for the three months ended June 30, 2023. The increase was primarily driven by increased performance of high acuity procedures and acquisitions completed during the twelve months ended June 30, 2024. As a percentage of revenues, cost of revenues was 76.5% and 76.9% for the three months ended June 30, 2024 and 2023, respectively.

General and Administrative Expenses. General and administrative expenses were \$40.3 million and \$31.2 million for the three months ended June 30, 2024 and 2023, respectively. As a percentage of revenues, general and administrative expenses were 5.3% and 4.7% for the three months ended June 30, 2024 and 2023, respectively.

Depreciation and Amortization. Depreciation and amortization expenses were \$34.8 million and \$24.4 million for the three months ended June 30, 2024 and 2023, respectively. As a percentage of revenues, depreciation and amortization expenses were 4.6% and 3.7% for the three months ended June 30, 2024 and 2023, respectively.

Transaction and Integration Costs. The Company incurred \$19.3 million of transaction and integration costs for the three months ended June 30, 2024 compared to \$12.0 million for the three months ended June 30, 2023. The costs for both periods primarily related to ongoing development initiatives and the integration of acquisitions.

Net Loss (Gain) on Disposals, Consolidations and Deconsolidations. The net loss (gain) on disposals, consolidations and deconsolidations for the three months ended June 30, 2024 and 2023 includes activity discussed in Note 2. "Acquisitions, Disposals and Deconsolidations" of the accompanying notes to the condensed consolidated financial statements. The remaining net loss (gain) in both periods was primarily attributable to sales and disposals of other assets.

Interest Expense, Net. Interest expense, net was \$51.5 million for the three months ended June 30, 2024 compared to \$47.7 million for the three months ended June 30, 2023. As a percentage of revenues, interest expense, net was 6.8% and 7.1% for the three months ended June 30, 2024 and 2023, respectively.

Income Tax (Expense) Benefit. Income tax expense was \$4.9 million for the three months ended June 30, 2024 compared to income tax benefit of \$7.8 million for the three months ended June 30, 2023. The effective tax rate was 14.7% and (15.6)% for the three months ended June 30, 2024 and 2023, respectively. See Note 1. "Organization and Summary of Accounting Policies" under the heading *Income Taxes* for additional information related to the Company's effective tax rates for the three months ended June 30, 2024 and June 30, 2023, including why these rates differed from the U.S. federal statutory rate of 21%.

Net Income Attributable to Non-Controlling Interests. As a percentage of revenues, net income attributable to non-controlling interests was 5.8% for each of the three months ended June 30, 2024 and 2023.

Comparison of Operating Results for the Six Months Ended June 30, 2024 to the Six Months Ended June 30, 2023

The following tables summarize certain results from the statements of operations for the periods indicated (dollars in millions):

	Six Months Ended June 30,	
	2024	2023
Revenues	\$ 1,479.5	\$ 1,333.8
Operating expenses:		
Cost of revenues	1,145.0	1,045.7
General and administrative expenses	73.5	63.2
Depreciation and amortization	68.5	58.1
Transaction and integration costs	36.7	24.5
Net loss on disposals, consolidations and deconsolidations	6.8	1.7
Equity in earnings of unconsolidated affiliates	(7.1)	(5.9)
Litigation settlements	(1.3)	4.5
Loss on debt extinguishment	5.1	—
Other income, net	(8.5)	(2.0)
	1,318.7	1,189.8
Operating income	160.8	144.0
Interest expense, net	(98.8)	(94.5)
Income before income taxes	62.0	49.5
Income tax (expense) benefit	(9.3)	9.4
Net income	52.7	58.9
Less: Net income attributable to non-controlling interests	(80.6)	(64.9)
Net loss attributable to Surgery Partners, Inc.	\$ (27.9)	\$ (6.0)

Revenues. The following table sets forth patient service revenues (in millions):

	Six Months Ended June 30,	
	2024	2023
Patient service revenues	\$ 1,453.4	\$ 1,314.4
Other service revenues	26.1	19.4
Total revenues	\$ 1,479.5	\$ 1,333.8

Patient service revenues increased 10.6% to \$1.5 billion for the six months ended June 30, 2024 compared to \$1.3 billion for the six months ended June 30, 2023. The increase was primarily driven by a 10.0% increase in days adjusted same-facility revenues and the net impact from acquisitions and divestitures completed in 2024. The increase in days adjusted same-facility revenues was attributable to a 2.7% increase in same-facility case volumes and a 7.1% increase in same-facility revenue per case.

Cost of Revenues. Cost of revenues was \$1.1 billion for the six months ended June 30, 2024 compared to \$1.0 billion for the six months ended June 30, 2023. The increase was primarily driven by increased performance of high acuity procedures and acquisitions completed in 2024. As a percentage of revenues, cost of revenues was 77.4% and 78.4% for the six months ended June 30, 2024 and 2023, respectively.

General and Administrative Expenses. General and administrative expenses were \$73.5 million and \$63.2 million for the six months ended June 30, 2024 and 2023, respectively. As a percentage of revenues, general and administrative expenses were 5.0% and 4.7% for the six months ended June 30, 2024 and 2023, respectively.

Depreciation and Amortization. Depreciation and amortization expenses were \$68.5 million and \$58.1 million for the six months ended June 30, 2024 and 2023, respectively. As a percentage of revenues, depreciation and amortization expenses were 4.6% and 4.4% for the six months ended June 30, 2024 and 2023, respectively.

Transaction and Integration Costs. The Company incurred \$36.7 million of transaction and integration costs for the six months ended June 30, 2024 compared to \$24.5 million for the six months ended June 30, 2023. The costs for both periods primarily related to ongoing development initiatives and the integration of acquisitions.

Net Loss (Gain) on Disposals, Consolidations and Deconsolidations. The net loss (gain) on disposals, consolidations and deconsolidations for the six months ended June 30, 2024 and 2023 includes activity discussed in Note 2. "Acquisitions, Disposals and Deconsolidations" of the accompanying notes to the condensed consolidated financial statements. The remaining net loss (gain) in both periods was primarily attributable to sales and disposals of other assets.

Interest Expense, Net. Interest expense, net was \$98.8 million for the six months ended June 30, 2024 compared to \$94.5 million for the six months ended June 30, 2023. As a percentage of revenues, interest expense, net was 6.7% and 7.1% for the six months ended June 30, 2024 and 2023, respectively.

Income Tax (Expense) Benefit. Income tax expense was \$9.3 million for the six months ended June 30, 2024 compared to income tax benefit of \$9.4 million for the six months ended June 30, 2023. The effective tax rate was 15.0% and (19.0)% for the six months ended June 30, 2024 and 2023, respectively. See Note 1. "Organization and Summary of Accounting Policies" under the heading *Income Taxes* for additional information related to the Company's effective tax rates for the six months ended June 30, 2024 and 2023, including why these rates differed from the U.S. federal statutory rate of 21%.

Net Income Attributable to Non-Controlling Interests. As a percentage of revenues, net income attributable to non-controlling interests was 5.4% and 4.9% for the six months ended June 30, 2024 and 2023, respectively.

Liquidity and Capital Resources

Cash and cash equivalents were \$213.5 million at June 30, 2024 compared to \$195.9 million at December 31, 2023.

The primary source of our operating cash flows is the collection of accounts receivable from private insurance companies, federal and state agencies (under the Medicare and Medicaid programs) and individuals. Our cash flows provided by operating activities was \$123.5 million for the six months ended June 30, 2024 compared to \$126.6 million for the six months ended June 30, 2023. The \$3.1 million decrease was primarily driven by the timing of routine transactions involving working capital and accrued payroll and benefits.

Net cash used in investing activities for the six months ended June 30, 2024 was \$327.2 million compared to \$141.9 million for the six months ended June 30, 2023. The \$185.3 million increase was primarily driven by an aggregate net increase of \$174.4 million in payments for acquisitions (net of cash acquired) and purchases of equity method investments and a \$24.6 million decrease in proceeds from sales of facilities.

Net cash provided by financing activities for the six months ended June 30, 2024 was \$221.3 million compared to net cash used of \$90.2 million for the six months ended June 30, 2023. The increase of \$311.5 million was primarily driven by net proceeds received from the issuance and sale of \$800.0 million in senior unsecured notes, partially offset by the redemption all the Existing Notes (as discussed in the following section). The remaining increase was due to net borrowings on the Revolver used to fund acquisitions completed during the six months ended June 30, 2024.

Debt

On April 10, 2024, we completed the issuance and sale of \$800.0 million in aggregate principal amount of senior unsecured notes due 2032 (the "2032 Notes"). The 2032 Notes bear interest at an annual rate of 7.250% per year, payable semi-annually on April 15 and October 15 of each year, beginning on October 15, 2024. Proceeds from sale of the 2032 Notes were used (i) to redeem all of the outstanding 2025 Notes and 2027 Notes, (ii) to pay accrued interest on the Existing Notes through, but not including, April 25, 2024, (iii) to pay related fees and expenses in connection with the offering of the 2032 Notes and redemption of the Existing Notes, and (iv) for general corporate purposes, including to fund future acquisitions.

On June 20, 2024, the Company entered into a first amendment to its credit agreement, dated as of December 19, 2023, by and among Surgery Center Holdings, Inc., the Borrower, Jefferies Finance LLC, as administrative agent and collateral agent, and the other financial institutions party thereto from time to time to provide for a new tranche of term loans under the Credit Agreement in an aggregate principal amount of \$1.4 billion, which 2024 Refinancing Term Loans replace or refinance in full all of the existing term loans outstanding under the Credit Agreement (as in effect immediately prior to the Amendment), all as further set forth in the Amendment. The 2024 Refinancing Term Loans mature on December 19, 2030. The 2024 Refinancing Term Loans shall bear interest at a rate per annum equal to (x) the forward-looking term rate based on Secured Overnight Financing Rate ("Term SOFR") plus 2.75% per annum or (y) an alternate base rate (which will be the highest of (i) the prime rate plus 0.5% per annum above the federal funds effective rate and (ii) Term SOFR plus 1.00% per annum (which shall not be less than 1.00%) plus 1.75% per annum. The 2024 Refinancing Term Loans amortize in equal quarterly installments of 0.25% of the aggregate original principal amount of the 2024 Refinancing Term Loans (such amortization payments will commence on or around the last business day of the fiscal quarter ending June 30, 2024). Voluntary prepayments of the 2024 Refinancing Term Loans are permitted, in whole or in part, with prior notice, without premium or penalty (except a 1.00% call premium in the case of certain repricing events occurring prior to the sixth month anniversary of the Amendment Effective Date).

Capital Resources

Net working capital was approximately \$460.7 million at June 30, 2024 compared to \$372.0 million at December 31, 2023.

In addition to cash flows from operations and available cash, other sources of capital include amounts available on our Revolver as well as anticipated continued access to the capital markets.

Material Cash Requirements

There have been no material changes outside of the ordinary course of business to our upcoming cash obligations during the six months ended June 30, 2024 from those disclosed under "Material Cash Requirements" in Management's Discussion and Analysis of Financial Condition and Results of Operations in our 2023 Annual Report on Form 10-K.

Summary

Broad economic factors, including recent increases in interest rates, inflation and supply chain risks and market volatility, could negatively affect our payor mix, increase the relative proportion of lower margin services we provide and reduce patient volumes, as well as diminish our ability to collect outstanding receivables. Any increase in the amount or deterioration in the collectability of patient accounts receivable will adversely affect our cash flows and results of operations, requiring an increased level of working capital.

If general economic conditions, including recent increases in interest rates, inflation risk and market volatility, continue to deteriorate or remain uncertain for an extended period of time, our ability to access capital could be harmed, which could negatively affect our liquidity and ability to repay our outstanding debt.

Based on our current level of operations, we believe cash flows from operations, available cash, available capacity on our Revolver and continued anticipated access to capital markets, will be adequate to meet our short-term (i.e., 12 months) and long-term (beyond 12 months) liquidity needs.

Certain Non-GAAP Measures

Adjusted EBITDA is not a measurement of financial performance under GAAP and should not be considered in isolation or as a substitute for net income, operating income or any other measure calculated in accordance with GAAP. The items excluded from this non-GAAP metric are significant components in understanding and evaluating our financial performance. We believe such adjustments are appropriate, as the magnitude and frequency of such items can vary significantly and are not related to the assessment of normal operating performance. Our calculation of Adjusted EBITDA may not be comparable to similarly titled measures reported by other companies. We use Adjusted EBITDA as a measure of financial performance. Adjusted EBITDA is a key measure used by our management to assess operating performance, make business decisions and allocate resources.

The following table reconciles Adjusted EBITDA to income before income taxes, the most directly comparable GAAP financial measure (in millions and unaudited):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Condensed Consolidated Statements of Operations Data:				
Income before income taxes	\$ 33.3	\$ 49.9	\$ 62.0	\$ 49.5
<i>Plus (minus):</i>				
Net income attributable to non-controlling interests	(43.9)	(38.8)	(80.6)	(64.9)
Depreciation and amortization	34.8	24.4	68.5	58.1
Interest expense, net	51.5	47.7	98.8	94.5
Equity-based compensation expense	15.1	4.6	20.0	8.8
Transaction, integration and acquisition costs ⁽¹⁾	20.8	13.0	39.7	25.8
Net loss (gain) on disposals, consolidations and deconsolidations	5.3	(8.8)	6.8	1.7
Litigation settlements and regulatory change impact ⁽²⁾	1.1	1.7	(0.1)	9.7
Loss on debt extinguishment	5.1	—	5.1	—
Undesignated derivative activity	—	—	—	0.6
Other ⁽³⁾	(4.8)	6.5	(4.4)	6.5
Adjusted EBITDA	<u>118.3</u>	<u>100.2</u>	<u>215.8</u>	<u>190.3</u>

(1) This amount includes transaction and integration costs of \$19.3 million and \$12.0 million for the three months ended June 30, 2024 and 2023, respectively. This amount further includes start-up costs related to de novo surgical facilities of \$1.5 million and \$1.0 million for the three months ended June 30, 2024 and 2023, respectively.

This amount includes transaction and integration costs of \$36.7 million and \$24.5 million for the six months ended June 30, 2024 and 2023, respectively. This amount further includes start-up costs related to de novo surgical facilities of \$3.0 million and \$1.3 million for the six months ended June 30, 2024 and 2023, respectively.

(2) This amount includes a litigation settlement loss of \$0.5 million and \$1.5 million for the three months ended June 30, 2024 and 2023, respectively. This amount also includes other litigation costs of \$0.6 million and \$0.2 million for the three months ended June 30, 2024 and 2023, respectively.

This amount includes a litigation settlements gain of \$1.3 million and a loss of \$4.5 million for the six months ended June 30, 2024 and 2023, respectively. This amount also includes other litigation costs of \$1.2 million and \$0.8 million for the six months ended June 30, 2024 and 2023, respectively. Additionally, the six months ended June 30, 2023 includes \$4.4 million related to the impact of recent changes in Florida law regarding the use of letters of protection.

(3) For the three and six months ended June 30, 2024, this amount includes insurance proceeds related to cyber event losses predominantly incurred in 2023. For the three and six months ended June 30, 2023, this amount includes estimates for the net impact of the same cyber event and losses from a divested business.

We use Credit Agreement EBITDA as a measure of liquidity and to determine our compliance under certain covenants pursuant to our Credit Agreement, as amended. Credit Agreement EBITDA is determined on a trailing twelve-month basis. We have included it because we believe that it provides investors with additional information about our ability to incur and service debt and make capital expenditures. Credit Agreement EBITDA is not a measurement of liquidity under GAAP and should not be considered in isolation or as a substitute for any other measure calculated in accordance with GAAP. The items excluded from Credit Agreement EBITDA are significant components in understanding and evaluating our liquidity. Our calculation of Credit Agreement EBITDA may not be comparable to similarly titled measures reported by other companies.

When we use the term "Credit Agreement EBITDA," we are referring to Adjusted EBITDA, as defined above, further adjusted for acquisitions and synergies. These adjustments do not relate to our historical financial performance and instead relate to estimates compiled by management and calculated in conformance with the definition of "Consolidated EBITDA" used in the credit agreements governing our credit facilities.

The following table reconciles Credit Agreement EBITDA to cash flows from operating activities, the most directly comparable GAAP financial measure (in millions and unaudited):

	Twelve Months Ended June 30, 2024
Cash flows from operating activities	\$ 290.7
<i>Plus (minus):</i>	
Non-cash interest expense, net	(15.0)
Non-cash lease expense	(36.0)
Deferred income taxes	(17.4)
Equity in earnings of unconsolidated affiliates, net of distributions received	1.2
Changes in operating assets and liabilities, net of acquisitions and divestitures	103.1
Income tax expense	18.4
Net income attributable to non-controlling interests	(162.9)
Interest expense, net	197.3
Transaction, integration and acquisition costs	78.8
Litigation settlements and other litigation costs	7.7
Other ⁽¹⁾	(2.3)
Acquisitions and synergies ⁽²⁾	73.6
Credit Agreement EBITDA	\$ 537.2

(1) This amount includes estimates for the impact of a cyber event and losses from divested business that occurred in 2023.

(2) Represents impact of acquisitions as if each acquisition had occurred on July 1, 2023. Further this includes revenue and cost synergies from other business initiatives and de novo facilities and an adjustment for the effects of adopting the new lease accounting standard, as defined in the credit agreement governing the Credit Agreement, as amended.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

We are subject to market risk primarily from exposure to changes in interest rates based on our financing, investing and cash management activities. We utilize a balanced mix of maturities along with both fixed rate and variable rate debt to manage our exposures to changes in interest rates. Additionally, we periodically enter into interest rate swap and cap agreements to manage our exposure to interest rate fluctuations. Our interest rate swap and cap agreements involve the exchange of fixed and variable rate interest payments between two parties, based on common notional principal amounts and maturity dates. The notional amounts of the swap agreements represent balances used to calculate the exchange of cash flows and are not our assets or liabilities. Our credit risk related to these agreements is considered low because the swap agreements are with creditworthy financial institutions. The interest payments under these agreements are settled on a net basis. These derivatives have been recognized in the financial statements at their respective fair values. Changes in the fair value of these derivatives, which are designated as cash flow hedges, are included in other comprehensive income.

Our variable rate debt instruments are primarily indexed to the prime rate or SOFR. Without derivatives, interest rate changes would result in gains or losses in the market value of our fixed rate debt portfolio due to differences in market interest rates and the rates at the inception of the debt agreements. Based on our indebtedness and the effectiveness of our interest rate swap and cap agreements at June 30, 2024, we do not expect changes in interest rates to have a material effect on our net earnings or cash flows in 2024.

For more information regarding our interest rate swap and cap agreements, please refer to Note 5. "Derivatives and Hedging Activities" of the accompanying notes to the condensed consolidated financial statements for additional information.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management, including the chief executive officer and the chief financial officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended) as of June 30, 2024. Based on that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

We are, from time to time, subject to claims and suits, or threats of claims or suits, relating to our business, including claims for damages for personal injuries, breach of management contracts and employment related claims. In certain of these actions, plaintiffs request payment for damages, including punitive damages, which may not be covered by insurance or may otherwise have a material adverse effect on our business or results of operations. In the opinion of management, we are not currently a party to any proceedings that would have a material adverse effect on our business, financial condition, or results of operations.

Item 1A. Risk Factors

There have been no material changes with respect to the risk factors discussed in our 2023 Annual Report on Form 10-K.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

Compensatory Arrangements of Certain Officers

On August 5, 2024, Bradley R. Owens, the President, National Group of Surgery Partners, Inc. (the “Company”), notified the Board of Directors of the Company of his retirement from the Company. Mr. Owens and the Company agreed that Mr. Owens’ resignation would be effective August 31, 2024.

In connection with his retirement and in recognition of his service to the Company, the Company entered into a retirement agreement (the “Retirement Agreement”) with Mr. Owens. Pursuant to the Retirement Agreement, Mr. Owens will receive (a) all base salary earned but not paid as of his retirement date, (b) 12 months of continued base salary, (c) \$385,000, representing his target bonus, payable over a period of 12 months, (d) an amount equal to a prorated portion (based on time employed in 2024) of any bonus earned for the calendar year 2024 determined and paid following the end of calendar year 2024 in accordance with the Company’s past practices for the determination of annual bonuses, and (e) continued health and welfare plan benefits for a period of 12 months at no cost to him. In addition, pursuant to the Retirement Agreement, Mr. Owens shall be entitled to the vesting of all of his outstanding, unvested restricted stock awards upon the effectiveness of his retirement and shall be entitled to vesting of all of his outstanding, unvested performance stock unit awards in accordance with and on the terms and dates specified in the applicable award agreements. The Retirement Agreement also contains a release of claims and various restrictive covenants, including covenants relating to confidentiality, as well as covenants not to compete with the Company or to solicit its employees.

The foregoing description of the Retirement Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Retirement Agreement, a copy of which is attached to this report as Exhibit 10.3 and incorporated by reference herein.

Nonqualified Deferred Compensation Plan

Effective August 1, 2024, Surgery Partners, Inc. (the “Company”) and its wholly-owned subsidiary, SP Management Services, Inc., adopted the SP Management Services, Inc. Nonqualified Deferred Compensation Plan (the “Plan”). Participation in the Plan is voluntary and is limited to a select group of management or highly compensated employees of the Company. The Plan enables participants to voluntarily defer a portion of the receipt of their base salary and cash bonus payments to be earned in the future.

The Plan is a non-qualified deferred compensation plan that is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended. The Plan allows for participant deferrals of up to 50% of such participant’s annual base compensation and up to 90% of such participant’s annual bonus. The Plan also permits, but does not require, the Company to make discretionary contributions to

participants' Plan accounts. Participants are at all times 100% vested in the amounts credited to their deferral accounts, but Company contributions may be subject to vesting requirements.

Each participant's deferred compensation account will be deemed invested in investments selected by the Plan administrator. Participants will be eligible to receive distributions from their deferral accounts at pre-selected specified dates prior to their termination of employment or at or after their termination of employment in a lump sum or installments pursuant to elections made under the rules of the Plan.

The foregoing summary of the Plan does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Plan, a copy of which is attached to this report as Exhibit 10.4 and incorporated by reference herein.

Insider Trading Arrangements

From time to time, certain of our executive officers and directors have, and we expect they will in the future, enter into, amend and terminate written trading arrangements pursuant to Rule 10b5-1 of the Securities and Exchange Act of 1934 or otherwise. During the three months ended June 30, 2024, none of the Company's directors or officers adopted or terminated any Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K).

Item 6. Exhibits

No.	Description
4.1	Indenture, dated April 10, 2024, among Surgery Center Holdings, Inc., the Guarantors from time to time party thereto and Wilmington Trust, National Association, as Trustee (incorporated herein by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed April 10, 2024).
4.2	Form of 7.250% Notes due 2032 (incorporated herein by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed April 10, 2024).
10.1	Surgery Partners, Inc. Employee Stock Purchase Plan (incorporated herein by reference to Appendix A of the Company's Proxy Statement filed on April 25, 2024).
10.2	First Amendment to Credit Agreement, dated as of June 20, 2024, by and among SP Holdco I, Inc., Surgery Center Holdings, Inc., the Subsidiary Guarantors, Jefferies Finance LLC, and the other lenders party thereto. (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed June 20, 2024).
10.3	Retirement Agreement, dated August 5, 2024, by and between Surgery Partners, Inc. and Bradley R. Owens.
10.4	SP Management Services, Inc. Nonqualified Deferred Compensation Plan
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as amended as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	Inline XBRL Taxonomy Extension Instance Document - the instance document does not appear in the interactive data file because its XBRL tags are embedded within the inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2024, formatted in Inline XBRL (included in Exhibit 101).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

SURGERY PARTNERS, INC.

Date: August 6, 2024

By: /s/ David T. Doherty

David T. Doherty

Executive Vice President and Chief Financial Officer

(Principal Financial and Accounting Officer)

RETIREMENT AGREEMENT

This RETIREMENT AGREEMENT (the "Agreement") is entered into on August 5, 2024, by and between Surgery Partners, Inc., a Delaware corporation (the "Company"), and Brad Owens, a resident of Tennessee ("Executive").

WHEREAS, Executive is employed by and provides services to the Company as the President of the National Group;

WHEREAS, Executive has expressed a desire to retire from employment;

WHEREAS, the parties are entering into this Agreement to specify the following: (i) the date of Executive's retirement; (ii) certain additional consideration provided to Executive; (iii) Executive's agreement to be bound by certain restrictive covenants; and (iv) a release and waiver of all claims by Executive based on his employment with the Company;

NOW, THEREFORE, based on the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree:

1. Retirement from Employment. The intended date of retirement is August 31, 2024 (the "Retirement Date"). As of the Retirement Date, Executive hereby agrees that he shall relinquish all positions which he then holds with the Company and any of its "Affiliates" (as defined below), including positions he holds as an officer or director. For purposes of this Agreement, an "Affiliate" is any business entity that directly, or indirectly through one or more intermediaries, either controls, or is controlled by, the Company.

2. Payments and Benefits.

(a) *Expense Reimbursement.* Executive has presented or will present evidence of all expenditures that may be reimbursed under the Company's business expense reimbursement policy. The Company will provide full reimbursement of any such expenses that are outstanding within ten days of receipt of such evidence.

(b) *Company Benefits.* The parties acknowledge that Executive is participating in certain employee health, welfare, retirement and fringe benefit plans maintained by the Company or an Affiliate (collectively, the "Employee Plans"). Executive's rights under the Employee Plans on and after the Retirement Date shall be determined under the terms of the Employee Plans. Executive's retirement on the Retirement Date is intended to be a separation from service under the Employee Plans. The waiver or settlement of rights herein are not intended to include a waiver of amounts due, payable or owing under the Employee Plans.

(c) *Payments on Separation.* Executive shall receive the following payments and benefits:

(i) \$550,000 paid over a period of 12 months, commencing on September 1, 2024 or, if later, as described in Section 2(e);

- (ii) \$385,000 representing a full annual bonus at target, paid over a period of 12 months, commencing on September, 1, 2024 or, if later, as described in Section 2(e);
- (iii) All base salary that has been earned but not paid as of the Retirement Date, paid in a single sum in accordance with normal payroll procedures;
- (iv) An amount equal to a prorated portion (based on time employed in 2024) of any bonus earned by Executive for the calendar year 2024 determined and paid following the end of calendar year 2024 in accordance with past Company practices for the determination of Executive's annual bonus; and
- (v) Continued participation in the Company's group health plan under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") for a period of 12 months at no cost to Executive. Thereafter, Executive may continue COBRA continuation coverage for any remaining period of COBRA eligibility at the normal cost of continuation coverage. Executive's continued participation is contingent on Executive timely enrolling in COBRA continuation coverage. Notwithstanding the foregoing, COBRA participation will terminate when Executive and covered dependents are no longer eligible for continuation coverage under COBRA.

(d) *Tax Withholdings.* The payments payable to Executive under this Agreement are subject to reduction to satisfy any and all applicable standard federal, state and local withholding obligations and any other required withholdings.

(e) *Section 409A Restrictions.* This Agreement shall be interpreted in such a manner that the payments to Executive are either exempt from, or comply with, Section 409A of the Internal Revenue Code, including any regulations or other guidance that may be issued after the date hereof. For purposes of Section 409A, each payment made under this Agreement shall be treated as a separate payment and the right to a series of installment payments under this Agreement is to be treated as a right to a series of separate payments. Notwithstanding anything to the contrary in this Agreement, if Executive is a "specified employee" as defined below, as of the Retirement Date, then, to the extent any payment under this Agreement resulting from Executive's retirement from the Company constitutes deferred compensation (after taking into account any applicable exemptions from Section 409A) and to the extent required by Section 409A, no payments due under this Agreement as a result of Executive's retirement may be made until the earlier of (a) the first day following the six-month period that follows the Retirement Date or, if later, six months following the date that Executive incurs a separation from service defined in Treas. Reg. §1.409A-1(h), and (b) Executive's date of death; provided, however, that any payments delayed during this six-month period shall be paid in the aggregate in a lump sum as soon as reasonably practicable after the expiration thereof. For purposes of this Agreement, the term "specified employee" means an individual determined by the Company to be a specified employee under Treas. Reg. §1.409A-1(i).

3. Stock Incentive Awards. The parties acknowledge that Executive holds the awards described in this Section 3 under the terms of the Surgery Partners, Inc. Stock Incentive Plan (the "Stock Incentive Plan") that are not fully vested. The awards will be amended and modified so that they do not terminate upon the Retirement Date and that additional vesting will be applied to such awards, as described herein, provided Executive continues in employment through the Retirement Date and does not violate the restrictive covenants in Sections 4 and 5.

(a) *Restricted Stock Awards.* Executive holds the following “Restricted Stock” awards, as described in the Stock Incentive Plan, that are not fully vested. Each of the Restricted Stock award will become vested as specified below:

- (i) 3,420 Restricted Stock shares, awarded February 28, 2022 to become vested on August 31, 2024; and
- (ii) 4,057 Restricted Stock shares, awarded March 2, 2022 to become vested on August 31, 2024; and
- (iii) 7,095 Restricted Stock shares, awarded March 11, 2022 to become vested on August 31, 2024; and
- (iv) 3,421 Restricted Stock shares, awarded February 28, 2023 to become vested on August 31, 2024; and
- (v) 4,058 Restricted Stock shares, awarded March 2, 2023 to become vested on August 31, 2024; and
- (vi) 3,421 Restricted Stock shares, awarded February 28, 2024 to become vested on August 31, 2024.

(b) *Performance Share Units.* Executive holds the following “Performance Share Units,” as described in the Stock Incentive Plan, that are not fully vested. For Performance Share Units that are earned upon the achievement of performance goals, as described in the Stock Incentive Plan, will become vested as specified below, and will be paid to Executive as described in the Stock Incentive Plan or an award agreement between the Company and Executive:

- (i) 22,209 Performance Share Units awarded March 11, 2022 with performance to be certified and entire amount of the resulting shares to be vested on March 11, 2025; and
- (ii) 6,762 Performance Share Units awarded March 2, 2023; reflected as 20/36 of initial units awarded, shares to become vested on March 2, 2026; and
- (iii) 3,420 Performance Share Units awarded February 28, 2024; reflected as 8/36 of initial units awarded, shares to become vested on February 28, 2027.

4. Confidential Information. Other than in the performance of his duties hereunder, during the Restrictive Period (as defined below) and thereafter, Executive shall keep secret and retain in strictest confidence, and shall not, without the prior written consent of the Company, furnish, make available or disclose to any third party or use for the benefit of himself or any third party, any Confidential Information.

(a) As used in this Agreement, “Confidential Information” shall mean any information relating to the business or affairs of the Company or any of its Affiliates or the Business, including but not limited to any technical or non-technical data, formulae, compilations, programs, devices, methods, techniques, designs, processes, procedures, improvements, models, manuals, financial data, acquisition strategies and information, information relating to operating procedures and marketing strategies, and any other proprietary information used by the Company or any of its Affiliates in connection with the Business, irrespective of its form; provided, however, that Confidential Information shall not include any information which is in the public domain or becomes known in the industry, in each case through no wrongful act on the part of Executive. Executive acknowledges that the Confidential Information is vital, sensitive, confidential and proprietary to the Company and its Affiliates. Executive will immediately notify the Company of any unauthorized possession, use, disclosure, copying, removal

or destruction, or attempt thereof, of any Confidential Information by anyone of which Executive becomes aware and of all details thereof. Executive shall take all reasonably appropriate steps to safeguard Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft. Executive shall deliver to the Company at the termination or expiration of the Employment Period, or at any other time the Company may request, all memoranda, notes, plans, records, reports, computer tapes, computers, printouts and software and other documents and data (and copies thereof) embodying or relating to the Confidential Information, Inventions and Discoveries (as defined below) or the business of the Company or any of its Affiliates which Executive may then possess or have under his control. Nothing in this Agreement limits, restricts or in any other way affects Executive's communicating with any governmental agency or entity, or communicating with any official or staff person of a governmental agency or entity, concerning matters relevant to the governmental agency or entity, or requires Executive to provide notice to the Company of the same. Executive cannot be held criminally or civilly liable under any federal or state trade secret law for disclosing a trade secret (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law, or (2) in a compliant or other document filed under seal in a lawsuit or other proceeding. Notwithstanding this immunity from liability, Executive may be held liable if Executive unlawfully accesses trade secrets by unauthorized means.

(b) "Business" as used herein means the business of owning, operating, developing and/or managing, or providing management or administrative services to, (a) ambulatory surgery centers anywhere in the United States or (b) physician-owned surgical hospitals within a 50 mile radius of any hospital that is owned, operated, developed or managed by the Company or any Affiliate.

5. Restrictive Covenants. Executive acknowledges that in the course of his employment with the Company or any of its Affiliates, or their predecessors or successors, he has been given access to and has become familiar with their trade secrets and with other Confidential Information and that his services have been and shall be of special, unique and extraordinary value to the Company and Affiliates. Therefore, and in further consideration of the compensation to be paid to Executive hereunder and in connection with his employment, and to protect the Company's and its Affiliates' Confidential Information, business interests and goodwill:

(a) *Non-compete.* Except as specifically agreed between Executive and the Chief Executive Officer of the Company, Executive hereby agrees that for a period ending twelve (12) months after the Retirement Date (the "Restrictive Period"), he shall not, directly or indirectly, as employee, agent, consultant, stockholder, director, co-partner or in any other individual or representative capacity, own, operate, manage, control, engage in, invest in or participate in any manner in, act as a consultant or advisor to, render services for (alone or in association with any person, firm, corporation or entity), or otherwise assist any person or entity (other than the Company and its Affiliates) that engages in or owns, invests in, operates, manages or controls any venture or enterprise that directly or indirectly engages or is actively developing or attempting to develop in any element of the Business anywhere within a 50-mile radius of the Nashville, Tennessee metropolitan area or within a 50-mile radius of any area (or in the event such area is a major city, the metropolitan area relating to such city) in which the Company or any of its Affiliates on the Termination Date actively engages or is actively developing or attempting to develop in any element of the Business (the "Territory"); provided, however, that nothing contained herein shall be construed to prevent Executive from investing in the stock of any competing corporation listed on a national securities exchange or traded in the over-the-counter market, but only if Executive is not involved in the business of said corporation and if Executive and his associates (as such term is defined in Regulation 14(A) promulgated under the Securities Exchange Act of 1934, as in effect on the date hereof), collectively, do not own more than an aggregate of 3% of the stock of such corporation. With respect to the Territory, Executive specifically acknowledges that the Company and its Affiliates

intend to expand the Business into and throughout the United States. Notwithstanding the foregoing, the activity proscribed by this Section 5(a) shall not constitute a violation of this Section where performed for (x) an entity where no more than a *de minimis* amount of revenue is derived from a business that is competitive with the business of the Company or any of its Affiliates; or (y) an entity that derives no more than \$100 million in revenue from one or more divisions, departments or segments, in the aggregate, that are engaged in any business competitive with the business of the Company or any of its Affiliates; provided, that in either case, you are not responsible for (and do not engage or participate in) the day-to-day management, oversight or supervision of such business and provided you do not have direct supervision over the individual or individuals who are so responsible for such day-to-day management, oversight or supervision.

(b) *Interference with Relationships.* Without limiting the generality of the provisions of Section 5(a) hereof, Executive hereby agrees that, during the Restrictive Period, he will not, directly or indirectly, as employee, agent, consultant, stockholder, director, partner or in any other individual or representative capacity, (i) solicit or encourage, or participate in any business which solicits or encourages (A) any person, firm, corporation or other entity which has executed, or proposes to execute, a management services agreement or other services agreement with the Company or any of its Affiliates at any time during the term of this Agreement, or any successor in interest to any such person, firm, corporation or other entity, for the purpose of securing business or contracts related to any element of the Business, or (B) any present customer or patient of the Company or any of its Affiliates or any of their Affiliated Practices to terminate or otherwise alter his, her or its relationship with the Company or any of its Affiliates or such Affiliated Practice; or (ii) divert, entice away, solicit or encourage, or attempt to divert, entice away, solicit or encourage, any physician who utilizes or has invested in an Affiliated Practice to become an owner, investor or user of another practice or facility that is not an Affiliated Practice or approach any such physician for any of the foregoing purposes or authorize or assist in the taking of any such action by any third party. In addition, at all times from and after the Retirement Termination Date, Executive shall not contact or communicate in any manner with any of Company's or any of its Affiliates' suppliers or vendors, or any other third party providing services to the Company or any of its Affiliates, regarding the Company or any of its Affiliates or any Company- or any such Affiliate-related matter (which suppliers, vendors or third party service providers will include, without limitation, any third party with whom the Company or any of its Affiliates was, during the term of Executive's employment with the Company or any of its Affiliates, contemplating engaging, or negotiating with, for the future provision of products or services). Provided, however, that these restrictions shall apply (x) only with respect to those persons who are or have been a business partner of the Company or any of its Affiliates at any time within the immediately preceding two (2)-year period or whose business has been solicited on behalf of the Company or any of the Affiliates by any of their officers, employees or agents within such two (2)-year period, other than by form letter, blanket mailing or published advertisement, and (y) only if Executive has performed work for such person during his employment with the Company or one of its Affiliates or been introduced to, or otherwise had contact with, such person as a result of his employment or other associations with the Company or one of its Affiliates or have had access to Confidential Information which would assist in his solicitation of such person.

(c) *Non-solicitation.* Other than in the performance of his duties hereunder, during the Restrictive Period, Executive shall not, directly or indirectly, as employee, agent, consultant, stockholder, director, co-partner or in any other individual or representative capacity, employ, recruit or solicit for employment or engagement, any person who is employed or engaged by the Company or any of its Affiliates or any of its Affiliated Practices during the Restrictive Period, or otherwise seek to influence or alter any such person's relationship with any of the Affiliated Practices, the Company or

any of its Affiliates; provided, however that responses to a general solicitation (such as an internet or newspaper solicitation) that are not targeted towards any particular person shall not be deemed to be a violation of the restrictions set forth in this Section 5(c).

(d) *Affiliated Practice*. For purposes of this Agreement, an “Affiliated Practice” shall include any practice or facility (i) in which the Company or any of its Affiliates has an ownership interest or (ii) that is managed by or receives other services from the Company or any of its Affiliates in connection with any element of the Business.

(e) *Blue Pencil*. If any court of competent jurisdiction shall at any time deem the term of this Agreement or any particular Restrictive Covenant (as defined below) too lengthy or the Territory too extensive, the other provisions of this Section 5 shall nevertheless stand, the Restrictive Period herein shall be deemed to be the longest period permissible by law under the circumstances and the Territory herein shall be deemed to comprise the largest territory permissible by law under the circumstances. The court in each case shall reduce the time period and/or Territory to permissible duration or size.

(f) *Covenant Not to Disparage*. During the Restrictive Period and thereafter, Executive shall not disparage, denigrate or derogate in any way, directly or indirectly, the Company, any of its Affiliates, or any of its or their respective agents, officers, directors, employees, parent, subsidiaries, affiliates, Affiliated Practices, affiliated doctors (including any physicians who utilize or have invested in any Affiliated Practice), representatives, attorneys, executors, administrators, successors and assigns (collectively, the “Protected Parties”), nor shall Executive disparage, denigrate or derogate in any way, directly or indirectly, his experience with any Protected Party, or any actions or decisions made by any Protected Party.

(g) *Remedies*. Executive acknowledges and agrees that the covenants set forth in this Section 5 and the preceding Section 4 (collectively, the “Restrictive Covenants”) are reasonable and necessary for the protection of the business interests of the Company and its Affiliates, that irreparable injury may result to the Company and its Affiliates if Executive breaches any of the terms of said Restrictive Covenants, and that in the event of Executive’s actual or threatened breach of any such Restrictive Covenants, the Company and its Affiliates will have no adequate remedy at law. Executive accordingly agrees that in the event of any actual or threatened breach by him of any of the Restrictive Covenants, the Company and its Affiliates shall be entitled to immediate temporary injunctive and other equitable relief subject to hearing as soon thereafter as possible. Nothing contained herein shall be construed as prohibiting the Company or any of its Affiliates from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages which it is able to prove. In addition and supplementary to other rights and remedies existing in its (or their) favor, in the event of the material breach by Executive of any of the provisions of this Section 5, the Company (and/or its Affiliates) shall be entitled to require Executive to account for and pay over to the Company (and/or its Affiliates) all compensation, profits, moneys, accruals, increments or other benefits actually derived from or received as a result of any transactions constituting a breach of the covenants contained in this Agreement which may require Executive to repay any severance. In addition, in the event of an alleged breach or violation by Executive of this Section 5, the restricted periods set forth in this Section 5 shall be tolled until such breach or violation has been duly cured.

(h) *Acknowledgements*. Executive understands that the foregoing restrictions may limit his ability to earn a livelihood in a business similar to the business of the Company and its Affiliates, but he nevertheless believes that he has received and will receive sufficient consideration and other benefits as an executive of the Company and as otherwise provided hereunder to clearly justify

such restrictions which, in any event (given his education, skills and ability), Executive does not believe would prevent him from otherwise earning a living. Executive acknowledges that the Restrictive Covenants are reasonable and that he has reviewed the provisions of this Agreement with his legal counsel. During the Restricted Period, Executive shall inform any prospective or future employer of any and all restrictions contained in this Agreement and provide such employer with a copy of such restrictions, prior to the commencement of that employment.

(i) *Non-Enforcement for Permitted Activities.* Nothing contained in this Agreement limits Executive's ability to file a charge or complaint with any federal, state or local governmental agency or commission ("Governmental Agencies"), as permitted under Securities and Exchange Commission Rule 21F-17, 17 C.F.R. §240.21F-17(a) ("Rule 21F-17"). Executive acknowledges and understands that this Agreement does not limit his ability to communicate with any Governmental Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information. The Company will take no enforcement action against Executive described in this Agreement in the event that Executive validly engages in the conduct described in Rule 21F-17.

6. Release and Waiver of Claims.

(a) *Claims Released by Executive.* As of the date of the execution of this Agreement, in consideration of the payments, benefits, and other consideration provided to Executive under this Agreement, Executive hereby releases and forever discharges the Company and all of its Affiliates, each of their owners, officers, directors, employees, agents, stockholders, representatives, and their successors and assigns (each a "Company Entity" or, collectively, "Company Entities"), from any and all charges, complaints, obligations, liabilities, promises, agreements, rights, claims, debts, expenses or demands Executive now has or may have, arising at any time on or before the date hereof, based on his employment with the Company or the termination of that employment or any positions, including directorships, with the Company or any of its Affiliates. This includes a release of any and all rights, claims or demands Executive has or may have, whether known or unknown, under the Age Discrimination in Employment Act, which prohibits age discrimination in employment; Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, color, national origin, religion or sex; the Equal Pay Act, which prohibits paying men and women unequal pay for equal work; the Americans with Disabilities Act; the Family and Medical Leave Act; or under any other federal, state or local laws or regulations regarding employment or termination of employment. This also includes a release by Executive of any claims for wrongful discharge under any statute, rule, or regulation or under the common law.

(b) *Review of Release.* By signing below, Executive hereby acknowledges and represents that he has been given 21 days to review and consider whether to sign this Agreement and has been advised by the Company to consult with an attorney and his personal advisors before doing so. Executive understands and agrees that by signing this Agreement, Executive gives up any and all rights Executive may have to recover damages against the Company or any other Company Entity, other than payments and benefits described in this Agreement. Executive hereby acknowledges that he is voluntarily entering into this Agreement of his own free will, free of any coercion, pressure or duress, that he understands the terms and conditions of this Agreement, and that he is knowingly releasing each of the Company Entities in accordance with the terms contained herein. Executive further acknowledges that he is receiving consideration under this Agreement beyond anything of value to which he is already entitled.

(c) *Right of Revocation.* Executive acknowledges that he has been advised by the Company that he has seven days after signing this Agreement within which to revoke his signature, that

neither the Company nor any other person is obligated to provide any benefits to him pursuant to the Agreement until eight days have passed, and then only if he has not revoked his signature. Any such revocation must be received by the Company within the seven day revocation period to be effective, and that such a revocation may only be sent by electronic delivery or facsimile to the Company, attention General Counsel. The parties agree that in the event Executive revokes his signature within such seven-day period, Executive's retirement shall remain effective on the Retirement Date but that this Agreement shall otherwise be void *ab initio*.

(d) *Rights Not Released or Waived.* Notwithstanding the foregoing, by executing this Agreement, neither Executive nor the Company will have relinquished his or its rights to enforce the provisions of this Agreement, the Employee Plans or the Company, Inc. Long-Term Incentive Plan.

(e) *Non-Admission.* The parties acknowledge that this Agreement does not constitute an admission by Executive or the Company of any violation of any employment law, regulation, ordinance, or administrative procedure, or any other federal, state, or local law, common law, regulation or ordinance, liability for which is expressly denied.

7. Cooperation. The parties recognize that Executive may be named as a defendant in legal actions with respect to his role as an officer of the Company. The Company shall continue to cover Executive under any director's and officer's liability insurance policy that it maintains with respect to such claims against Executive in such capacities for six years following the date hereof, which coverage shall be at the same level as the Company provides to its senior executives. Executive agrees that he will participate in, and cooperate with, such defense without additional compensation from the Company, provided, that the Company will reimburse Executive with respect to any expense incurred by Executive as the result of participating in, and cooperating with, such defense. Executive further agrees to provide his full cooperation with the Company or any of the Company Entities in the defense or prosecution of one or more existing or future court actions, governmental investigations, arbitrations, mediations or other legal, equitable or business matters or proceedings which involve the Company Entities. Executive acknowledges and understands that his obligations of cooperation under this Section are not limited in time and may include, but shall not be limited to, the need for or availability for testimony in deposition, affidavit, trial, mediation or arbitration, as well as preparation for that testimony, and consultation for other business matters unrelated to litigation. Executive will be available at the Company's reasonable request for any meetings or conferences deemed necessary in preparation for the defense or prosecution of any such matters or proceedings.

8. Executive's Representations. As a material inducement to the Company to enter into this Agreement, Executive hereby makes the following representations:

(a) *Document Review.* Executive has read all of the terms of this Agreement, including the fact that his employment relationship with the Company shall be permanently and irrevocably terminated as of the Retirement Date and that this Agreement releases the Company and all Company Entities forever from any legal action arising from that employment relationship and the termination of that relationship. Executive acknowledges that he has been advised to seek legal advice and that he has signed this Agreement of his own free will and in exchange for the consideration to be given which is acknowledged to be adequate and satisfactory and in excess of anything he might be entitled otherwise to receive. Executive represents and warrants that he is competent to execute this Agreement.

(b) *Covenant Not to Sue.* Except with respect to any activities that are protected under Rule 21F-17, Executive has not filed any complaints or charges against any Company Entity or

insurers with any local, state or federal agency or court related to his employment with or retirement from the Company, and will not do so at any time hereafter.

9. Miscellaneous.

(a) *Notices.* Any notice under this Agreement must be in writing and given by certified or registered mail, postage prepaid, addressed to the party or parties to be notified with return receipt requested, or by delivering the notice in person, to the relevant address set forth below, or to such other address as the recipient of such notice or communication has specified in writing to the other party hereto in accordance with this Section:

If to the Company to:

Surgery Partners, Inc.
310 Seven Springs Way, Suite 500
Brentwood, TN 37027
Attention: Chief Human Resource Officer

If to Executive, to:

Notice to Executive may be to the then-current address of Executive on the records of the Company.

(b) *No Offset.* No payment under this Agreement will be subject to offset or reduction attributable to any amount Executive may owe to the Company or any other person, except as required by law.

(c) *Entire Agreement.* The parties have executed this Agreement based upon the express terms and provisions set forth herein and have not relied on any communications or representations, oral or written, which are not set forth in this Agreement. Except with respect to the Employee Plans, the Company's compensation and agreements referenced in Section 2, and any other agreement specifically referenced herein, this Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

(d) *Amendment.* This Agreement may be amended in writing at any time by the Company, provided that Executive's written consent is required for any amendment that would diminish the benefits provided hereunder to Executive.

(e) *Choice of Law.* This Agreement and the performance hereof will be construed and governed in accordance with the internal laws of the State of Tennessee, without regard to its choice of law principles, except to the extent that federal law controls or preempts state law. Any litigation based hereon, or arising out of, under, or in connection with, this agreement, or any course of conduct, course of dealing, statements (whether oral or written) or actions of any party herein, shall be brought and maintained exclusively in the federal or state courts of the state of Tennessee that are located in Davidson County, Tennessee. Each party hereby irrevocably consents to the service of process of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof in accordance with Section 10(a).

(f) *Successors and Assigns.* The obligations, duties and responsibilities of Executive under this Agreement are personal and shall not be assignable. In the event of Executive's death or disability, the release contained in this Agreement shall be binding on, and the terms of this Agreement shall be enforceable by, Executive's estate, executors or legal representatives, provided that the Company shall require any corporation, entity, individual or other person who is the successor (whether direct or indirect, by purchase, merger, consolidation, reorganization, or otherwise) to all or substantially all of the business or assets of the Company to expressly assume and agree to perform all of the obligations of the Company under this Agreement. As used in this Agreement, the term "Company" shall mean the Company, as defined herein, and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, written agreement, or otherwise.

(g) *Waiver of Provisions.* Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other terms and conditions hereof.

(h) *Severability.* The provisions of this Agreement and the benefits and amounts payable hereunder shall be deemed severable, and if any portion shall be held invalid, illegal or enforceable for any reason, the remainder of this Agreement and/or benefit or payment shall be effective and binding upon the parties.

(i) *Attorneys' Fees.* In the event the Company or Executive breaches any term or provision of this Agreement and the other party employs an attorney or attorneys to enforce the terms of this Agreement, then upon a finding by a court of competent jurisdiction, the breaching or defaulting party agrees to pay the other party the reasonable attorneys' fees and costs incurred to enforce this Agreement.

(j) *Counterparts.* This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

[signature page follows]

PLEASE READ CAREFULLY. THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

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

EXECUTIVE

/s/ Brad Owens
Brad Owens

SURGERY PARTNERS, INC.

/s/ J. Eric Evans
J. Eric Evans, Chief Executive Officer

SP Management Services, Inc.

Effective August 1st, 2024

IMPORTANT NOTE

This document has not been approved by the Department of Labor, Internal Revenue Service, or any other governmental entity. An adopting Employer must determine whether the Plan is subject to the Federal securities laws and the securities laws of the various states. An adopting Employer may not rely on this document to ensure any particular tax consequences or to ensure that the Plan is “unfunded and maintained primarily for the purpose of providing deferred compensation to a select group of management or highly compensated employees” under Title I of the Employee Retirement Income Security Act of 1974, as amended, with respect to the Employer’s particular situation. FMR LLC, its affiliates and employees cannot provide you with legal advice in connection with the execution of this document. This document should be reviewed by the Employer’s attorney prior to execution.

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Preamble

The Plan is intended to be a “plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees” within the meaning of Sections 201(2), 301(a)(3) and 401(a)(1) of the Employee Retirement Income Security Act of 1974, as amended, or an “excess benefit plan” within the meaning of Section 3(36) of the Employee Retirement Income Security Act of 1974, as amended, or a combination of both. The Plan is further intended to conform with the requirements of Internal Revenue Code Section 409A and the final regulations issued thereunder and shall be interpreted, implemented, and administered in a manner consistent therewith.

Article 1 - General

1.1. Plan

The Plan will be referred to by the name specified in the Adoption Agreement.

1.2. Effective Dates

- (a) **Original Effective Date.** The Original Effective Date is the date as of which the Plan was initially adopted.
- (b) **Amendment Effective Date.** The Amendment Effective Date is the date specified in the Adoption Agreement as of which the Plan is amended and restated. Except as otherwise provided in the Adoption Agreement, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.
- (c) **Special Effective Date.** A Special Effective Date may apply to any given provision if so specified in Appendix A of the Adoption Agreement. A Special Effective Date will control over the Original Effective Date or Amendment Effective Date, whichever is applicable, with respect to such provision of the Plan.

1.3. Amounts Not Subject to Code Section 409A

Except as otherwise indicated by the Plan Sponsor in Section 1.01 of the Adoption Agreement, amounts deferred before January 1, 2005 that are earned and vested on December 31, 2004 will be separately accounted for and administered in accordance with the terms of the Plan as in effect on December 31, 2004.

Article 2 - Definitions

Wherever used herein, the following terms have the meanings set forth below, unless a different meaning is clearly required by the context:

2.1. *Account*

“Account” means an account and any subaccounts established for the purpose of recording amounts credited on behalf of a Participant and any earnings, expenses, gains, losses, or distributions included thereon. The Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant or to the Participant’s Beneficiary pursuant to the Plan.

2.2. *Administrator*

“Administrator” means the person or persons designated by the Plan Sponsor in Section 1.05 of the Adoption Agreement to be responsible for the administration of the Plan. If no Administrator is designated in the Adoption Agreement, the Administrator is the Plan Sponsor.

2.3. *Adoption Agreement*

“Adoption Agreement” means the agreement adopted by the Plan Sponsor that establishes the Plan.

2.4. *Beneficiary*

“Beneficiary” means the persons, trusts, estates, or other entities entitled under Section 8.2 to receive benefits under the Plan upon the death of a Participant.

2.5. *Board or Board of Directors*

“Board” or “Board of Directors” means the Board of Directors of the Plan Sponsor.

2.6. *Bonus*

“Bonus” means an amount of incentive remuneration payable by the Employer to a Participant.

2.7. *Change in Control*

“Change in Control” means the occurrence of an event involving the Plan Sponsor that is described in Section 9.7.

2.8. *Code*

“Code” means the Internal Revenue Code of 1986, as amended.

2.9. *Compensation*

“Compensation” has the meaning specified in Section 3.01 of the Adoption Agreement.

2.10. Director

“Director” means a non-employee member of the Board.

2.11. Disability

“Disability” means that a Participant is disabled as defined in Section 5.01(e) of the Adoption Agreement.

2.12. Eligible Employee

“Eligible Employee” means an employee of the Employer who is identified as eligible.

2.13. Employer

“Employer” means the Plan Sponsor and any other Related Employer that is listed in Section 1.04 of the Adoption Agreement and which is authorized by the Plan Sponsor to participate in and, in fact, does adopt the Plan.

2.14. ERISA

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

2.15. Identification Date

“Identification Date” means the date as of which Key Employees are determined. For the purposes of the Plan, the Identification Date shall be December 31.

2.16. Key Employee

“Key Employee” means an employee who satisfies the conditions set forth in Section 9.6.

2.17. Participant

“Participant” means an Eligible Employee who commences participation in the Plan in accordance with Article 3.

2.18. Plan

“Plan” means the unfunded plan of deferred compensation set forth herein, including the Adoption Agreement and any trust agreement, as adopted by the Plan Sponsor, and as amended from time to time.

2.19. Plan Sponsor

“Plan Sponsor” means the entity identified in Section 1.03 of the Adoption Agreement or any successor by merger, consolidation or otherwise.

2.20. Plan Year

“Plan Year” means the period identified in Section 1.02 of the Adoption Agreement.

2.21. Related Employer

“Related Employer” means the Plan Sponsor and (a) any corporation that is a member of a controlled group of corporations as defined in Code Section 414(b) that includes the Plan Sponsor and (b) any trade or business that is under common control as defined in Code Section 414(c) that includes the Plan Sponsor.

2.22. Retirement

“Retirement” has the meaning specified in 5.01(d) of the Adoption Agreement.

2.23. Separation from Service

“Separation from Service” means the date that the Participant dies, retires, or otherwise has a termination of employment with respect to all entities comprising the Related Employer. A Separation from Service does not occur if the Participant is on military leave, sick leave or other bona fide leave of absence if the period of leave does not exceed six months or such longer period during which the Participant’s right to re-employment is provided by statute or contract. If the period of leave exceeds six months and the Participant’s right to re-employment is not provided either by statute or contract, a Separation from Service will be deemed to have occurred on the first day following the six-month period. If the period of leave is due to any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than six months, where the impairment causes the Participant to be unable to perform the duties of his or her position of employment or any substantially similar position of employment, a 29 month period of absence may be substituted for the six month period.

Whether a termination of employment has occurred is based on whether the facts and circumstances indicate that the Related Employer and the Participant reasonably anticipated that no further services would be performed after a certain date or that the level of bona fide services the Participant would perform after such date (whether as an employee or as an independent contractor) would permanently decrease to no more than 20 percent of the average level of bona fide services performed (whether as an employee or an independent contractor) over the immediately preceding 36 month period (or the full period of services to the Related Employer if the employee has been providing services to the Related Employer for less than 36 months).

An independent contractor is considered to have experienced a Separation from Service with the Related Employer upon the expiration of the contract (or, in the case of more than one contract, all contracts) under which services are performed for the Related Employer if the expiration constitutes a good-faith and complete termination of the contractual relationship.

If a Participant provides services as both an employee and an independent contractor of the Related Employer, the Participant must separate from service both as an employee and as an independent contractor to be treated as having incurred a Separation from Service. If a Participant ceases providing services as an independent contractor and begins providing services as an employee, or ceases providing services as an employee and begins providing services as an independent contractor, the Participant will not be considered to have experienced a Separation from Service until the Participant has ceased providing services in both capacities.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate Related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as a Director are not taken into account in determining whether the Participant has incurred a Separation from Service as an employee for purposes of a nonqualified deferred compensation plan in which the Participant participates as an employee that is not aggregated under Code Section 409A with any plan in which the Participant participates as a Director.

If a Participant provides services both as an employee and as a member of the Board of Directors of a corporate related Employer (or an analogous position with respect to a noncorporate Related Employer), the services provided as an employee are not taken into account in determining whether the Participant has experienced a Separation from Service as a Director for purposes of a nonqualified deferred compensation plan in which the Participant participates as a Director that is not aggregated under Code Section 409A with any plan in which the Participant participates as an employee.

All determinations of whether a Separation from Service has occurred will be made in a manner consistent with Code Section 409A and the final regulations thereunder.

2.24. Unforeseeable Emergency

“Unforeseeable Emergency” means a severe financial hardship of the Participant resulting from an illness or accident of the Participant, the Participant’s spouse, the Participant’s Beneficiary, or the Participant’s dependent (as defined in Code Section 152, without regard to Code section 152(b)(1), (b)(2) and (d)(1)(B); loss of the Participant’s property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

2.25. Valuation Date

“Valuation Date” means each business day of the Plan Year that the New York Stock Exchange is open.

2.26. Years of Service

“Years of Service” means each one-year period for which the Participant receives service credit according to the elapsed time method in Treas. Reg. Sec. 1.410(a)-7. A Participant’s Years of Service shall include all service performed for the Employer and shall include service performed for the Related Employer.

Article 3 - Participation

3.1. *Participation*

The Participants in the Plan shall be those Eligible Employees as selected by the Employer.

3.2. *Termination of Participation*

The Administrator may terminate a Participant's participation in the Plan in a manner consistent with Code Section 409A. If the Employer terminates a Participant's participation before the Participant experiences a Separation from Service, the Participant's vested Accounts shall be paid in accordance with the provisions of Article 9.

Article 4 - Participant Elections

4.1. *Deferral Agreement*

If permitted by the Plan Sponsor in accordance with Section 3.01 of the Adoption Agreement, each Eligible Employee may elect to defer his or her Compensation within the meaning of Section 2.01 of the Adoption Agreement by executing in writing or electronically, a deferral agreement in accordance with rules and procedures established by the Administrator and the provisions of this Article 4.

A new deferral agreement must be timely executed for each Plan Year during which the Eligible Employee desires to defer Compensation. An Eligible Employee who does not timely execute a deferral agreement shall be deemed to have elected zero deferrals of Compensation for such Plan Year.

A deferral agreement may be changed or revoked during the period specified by the Administrator. Except as provided in Section 9.3, a deferral agreement becomes irrevocable at the close of the specified period.

4.2. *Amount of Deferral*

An Eligible Employee may elect to defer Compensation in any amount permitted by Section 3.01(a) of the Adoption Agreement.

4.3. *Timing of Election to Defer*

Each Eligible Employee who desires to defer Compensation otherwise payable during a Plan Year must execute a deferral agreement within the period preceding the Plan Year specified by the Administrator. Each Eligible Employee who desires to defer Compensation that is a Bonus must execute a deferral agreement within the period preceding the Plan Year during which the Bonus is earned that is specified by the Administrator, except that if the Bonus can be treated as performance based compensation as described in Code Section 409A(a)(4)(B)(iii), the deferral agreement may be executed within the period specified by the Administrator, which period, in no event, shall end after the date which is six months prior to the end of the period during which the Bonus is earned, provided the Participant has performed services continuously from the later of the beginning of the performance period or the date the performance criteria are established through the date the Participant executed the deferral agreement and provided further that the compensation has not yet become 'readily ascertainable' within the meaning of Treas. Reg. § 1.409A-2(a)(8). In addition, if the Compensation qualifies as 'fiscal year compensation' within the meaning of Treas. Reg. § 1.409A-2(a)(6), the deferral agreement may be made not later than the end of the Employer's taxable year immediately preceding the first taxable year of the Employer in which any services are performed for which such Compensation is payable.

Except as otherwise provided below, an employee who is classified or designated as an Eligible Employee during a Plan Year may elect to defer Compensation otherwise payable during the remainder of such Plan Year in accordance with the rules of this Section 4.3 by executing a deferral agreement within the thirty (30) day period beginning on the date the employee is classified or designated as an Eligible Employee. If Compensation is based on a specified performance period that begins before the Eligible Employee executes his or her deferral agreement, the election will be deemed to apply to the portion of such Compensation equal to the total amount of Compensation for the performance period multiplied by the ratio of the number of days remaining in the performance period after the election becomes irrevocable and effective over the total number of days in the performance period. The rules of this paragraph shall not apply unless the Eligible Employee can be treated as initially eligible in accordance with Treas. Reg. § 1.409A-2(a)(7).

4.4. *Election of Payment Schedule and Form of Payment*

All elections of a payment schedule and a form of payment will be made in accordance with rules and procedures established by the Administrator and the provisions of this Section 4.4.

The Plan Sponsor permits annual distribution elections in accordance with Section 5.01(b) of the Adoption Agreement. At the time an Eligible Employee completes a deferral agreement, the Eligible Employee must elect a distribution event (which includes a specified time) and a form of payment for the Compensation subject to the deferral agreement from among the options the Plan Sponsor has made available for this purpose and which are specified in 5.01(b) of the Adoption Agreement. Prior to the time required by Treas. Reg. § 1.409A-2, the Eligible Employee shall elect a distribution event (which includes a specified time) and a form of payment for any Employer contributions that may be credited to the Participant's Account during the Plan Year. If an Eligible Employee fails to elect a distribution event, he or she shall be deemed to have elected Separation from Service as the distribution event. If he or she fails to elect a form of payment, he or she shall be deemed to have elected a lump sum form of payment.

Article 5 - Employer Contributions

5.1. *Matching Contributions*

If elected by the Plan Sponsor in Section 4.01(a) of the Adoption Agreement, the Employer will credit the Participant's Account with a matching contribution determined in accordance with a formula elected by the Employer. The matching contribution will be treated as allocated to the Participant's Account at the time elected by the Employer.

5.2. *Other Contributions*

If elected by the Plan Sponsor in Section 4.01(b) of the Adoption Agreement, the Employer will credit the Participant's Account with a contribution or contributions determined in accordance with a formula elected by the Employer. These contributions will be treated as allocated to the Participant's Account at the time elected by the Employer.

Article 6 - Accounts and Credits

6.1. *Establishment of Account*

For accounting and computational purposes only, the Administrator will establish and maintain an Account on behalf of each Participant which will reflect the credits made pursuant to Section 6.2, distributions or withdrawals, along with the earnings, expenses, gains and losses allocated thereto, attributable to the hypothetical investments made with the amounts in the Account as provided in Article 7. The Administrator may establish and maintain such other records and accounts, as it decides in its discretion to be reasonably required or appropriate to discharge its duties under the Plan.

6.2. *Credits to Account*

A Participant's Account will be credited for each Plan Year with the amount of his or her elective deferrals under Section 4.1 at the time the amount subject to the deferral election would otherwise have been payable to the Participant and the amount of Employer contributions, if any, treated as allocated on his or her behalf under Article 5.

Article 7 - Investment of Contributions

7.1. *Investment Options*

The amount credited to each Account shall be treated as invested in the investment options designated for this purpose by the Administrator.

7.2. *Adjustment of Accounts*

The amount credited to each Account shall be adjusted for hypothetical investment earnings, expenses, gains or losses in an amount equal to the earnings, expenses, gains or losses attributable to the investment options selected from among the investment options provided in Section 7.1. A Participant (or the Participant's Beneficiary after the death of the Participant) may, in accordance with rules and procedures established by the Administrator, select the investments from among the options provided in Section 7.1 to be used for the purpose of calculating future hypothetical investment adjustments to the Account or to future credits to the Account under Section 6.2 effective as of the Valuation Date coincident with or next following notice to the Administrator. Each Account shall be adjusted as of each Valuation Date to reflect: (a) the hypothetical earnings, expenses, gains, and losses described above; (b) amounts credited pursuant to Section 6.2; and (c) distributions or withdrawals. In addition, each Account may be adjusted for its allocable share of the hypothetical costs and expenses associated with the maintenance of the hypothetical investments provided in Section 7.1.

Article 8 - Right to Benefits

8.1. Vesting

A Participant, at all times, has a 100% nonforfeitable interest in the amounts credited to his or her Account attributable to his or her elective deferrals made in accordance with Section 4.1.

A Participant's right to the amounts credited to his or her Account attributable to Employer contributions made in accordance with Article 5 shall be determined in accordance with the relevant schedule and provisions in Section 6.01 of the Adoption Agreement. Upon a Separation from Service and after application of the provisions of Section 6.01 of the Adoption Agreement, the Participant shall forfeit the nonvested portion of his or her Account.

8.2. Death

The Plan Sponsor may elect to accelerate vesting upon the death of the Participant in accordance with Section 6.01(b) of the Adoption Agreement and/or to accelerate distributions upon death in accordance with Section 5.01(c) of the Adoption Agreement. If the Plan Sponsor does not elect to accelerate distributions upon death in accordance with Section 5.01(c) of the Adoption Agreement, the vested amount credited to the Participant's Account will be paid in accordance with the provisions of Article 9.

A Participant may designate a Beneficiary or Beneficiaries, or change any prior designation of Beneficiary or Beneficiaries in accordance with rules and procedures established by the Administrator. Whenever a Participant designates a new Beneficiary, all former Beneficiary designations by such Participant shall be revoked automatically. If a Participant and the Participant's spouse divorce, any designations of the spouse as Beneficiary shall become null and void. The former spouse shall be treated as the Beneficiary under the Plan only if after the divorce is final, the Participant expressly re-designates the former spouse as the Participant's Beneficiary.

A copy of the death notice or other sufficient documentation must be filed with and approved by the Administrator. If upon the death of the Participant there is, in the opinion of the Administrator, no designated Beneficiary for part or all of the Participant's vested Account, such amount will be paid to his or her estate (such estate shall be deemed to be the Beneficiary for purposes of the Plan) in accordance with the provisions of Article 9.

8.3. Disability

If the Plan Sponsor has elected to accelerate vesting upon the occurrence of a Disability in accordance with Section 6.01(b) of the Adoption Agreement and/or to permit distributions upon Disability in accordance with Section 5.01(c) of the Adoption Agreement, the determination of whether a Participant has incurred a Disability shall be based on the definition of Disability in Section 5.01(e) of the Adoption Agreement and in a manner consistent with the requirements of Code Section 409A.

Article 9 - Distribution of Benefits

9.1. Amount of Benefits

The vested amount credited to a Participant's Account as determined under Articles 6, 7 and 8 shall determine and constitute the basis for the value of benefits payable to the Participant under the Plan.

9.2. Method and Timing of Distributions

Except as otherwise provided in this Article 9, distributions under the Plan shall be made in accordance with the elections made or deemed made by the Participant under Article 4. Subject to an election in Section 5.01 of the Adoption Agreement requiring a six-month delay for certain distributions to all Employees if stock of the Plan Sponsor, any Employer or any Related Employer is publicly traded on an established securities market, distributions following a payment event shall commence at the time specified in Section 5.01(a) of the Adoption Agreement. A Participant may elect, at least twelve months before a scheduled distribution event, to delay the payment date for a minimum period of sixty months from the originally scheduled date of payment, provided the election does not take effect for at least twelve months from the date on which the election is made. The participant may elect up to three distribution election changes, and each must be made in accordance with procedures and rules established by the Administrator. The Participant may, at the same time the date of payment is deferred, change the form of payment but such change in the form of payment may not effect an acceleration of payment in violation of Code Section 409A or the provisions of Treas. Reg. § 1.409A-2(b). For purposes of this Section 9.2, a series of installment payments is always treated as a single payment and not as a series of separate payments.

9.3. Unforeseeable Emergency

A Participant may request a distribution due to an Unforeseeable Emergency if the Plan Sponsor has elected to permit Unforeseeable Emergency withdrawals under Section 7.01(a) of the Adoption Agreement. The request must be in writing and must be submitted to the Administrator along with evidence that the circumstances constitute an Unforeseeable Emergency. The Administrator has the discretion to require whatever evidence it deems necessary to determine whether a distribution is warranted, and may require the Participant to certify that the need cannot be met from other sources reasonably available to the Participant. Whether a Participant has incurred an Unforeseeable Emergency will be determined by the Administrator on the basis of the relevant facts and circumstances in its sole discretion, but, in no event, will an Unforeseeable Emergency be deemed to exist if the hardship can be relieved: (a) through reimbursement or compensation by insurance or otherwise, (b) by liquidation of the Participant's assets to the extent such liquidation would not itself cause severe financial hardship, or (c) by cessation of deferrals under the Plan. A distribution due to an Unforeseeable Emergency must be limited to the amount reasonably necessary to satisfy the emergency need and may include any amounts necessary to pay any federal, state, foreign or local income taxes and penalties reasonably anticipated to result from the distribution. The distribution will be made in the form of a single lump sum cash payment. If permitted by Section 7.01(b) of the Adoption Agreement, a Participant's deferral elections for the remainder of the Plan Year will be cancelled upon a withdrawal due to an Unforeseeable Emergency. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with Section 9.6 at the time he or she experiences an Unforeseeable Emergency, the amount being delayed shall not be subject to

the provisions of this Section 9.3 until the expiration of the six month period of delay required by section 9.6.

9.4. *Payment Election Overrides*

If the Plan Sponsor has elected one or more payment election overrides in accordance with Section 5.01(c) of the Adoption Agreement, the following provisions apply. Upon the occurrence of the first event selected by the Plan Sponsor, the remaining vested amount credited to the Participant's Account shall be paid in the form designated to the Participant or his or her Beneficiary regardless of whether the Participant had made different elections of time and/or form of payment or whether the Participant was receiving installment payments at the time of the event.

9.5. *Cashouts of Amounts Not Exceeding Stated Limit*

If the vested amount credited to the Participant's Account does not exceed \$25,000 at the time he or she incurs a Separation from Service for any reason, the Employer shall distribute such amount to the Participant at the time specified in Section 5.01(a) of the Adoption Agreement in a single lump sum cash payment following such Separation from Service regardless of whether the Participant had made different elections of time or form of payment as to the vested amount credited to his or her Account or whether the Participant was receiving installments at the time of such termination. A Participant's Account, for purposes of this Section 9.5, shall include any amounts described in Section 1.3.

9.6. *Required Delay in Payment to Key Employees*

Except as otherwise provided in this Section 9.6, a distribution made on account of Separation from Service to a Participant who is a Key Employee as of the date of his or her Separation from Service shall not be made before the date which is six months after the Separation from Service .

- (a) A Participant is treated as a Key Employee if: (i) he or she is employed by a Related Employer any of whose stock is publicly traded on an established securities market, and (ii) he or she satisfies the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii), determined without regard to Code Section 416(i)(5), at any time during the twelve month period ending on the Identification Date.
- (b) A Participant who is a Key Employee on an Identification Date shall be treated as a Key Employee for purposes of the six month delay in distributions for the twelve month period beginning on the first day of a month no later than the fourth month following the Identification Date. April 1 shall be the effective date for purposes of applying the six month delay in distributions to Key Employees.
- (c) The Plan Sponsor may elect to apply an alternative method to identify Participants who will be treated as Key Employees for purposes of the six month delay in distributions if the method satisfies each of the following requirements: (i) is reasonably designed to include all Key Employees, (ii) is an objectively determinable standard providing no direct or indirect election to any Participant regarding its application, and (iii) results in either all Key Employees or no more than 200 Key Employees being identified in the class as of any date. Use of an alternative method that satisfies the requirements of this Section 9.6(c) will not be treated as a change in the time and form of payment for purposes of Treas. Reg. § 1.409A-2(b).

- (d) The six-month delay does not apply to payments described in Section 9.9(a), (b) or (d) or to payments that occur after the death of the Participant. If the payment of all or any portion of the Participant's vested Account is being delayed in accordance with this Section 9.6 at the time he or she incurs a Disability which would otherwise require a distribution under the terms of the Plan, no amount shall be paid until the expiration of the six month period of delay required by this Section 9.6.

9.7. *Change in Control*

The Plan Sponsor reserves the right to terminate the Plan and distribute all vested amounts credited to Participant Accounts upon a Change in Control as described in this Section 9.7. Distribution of the remaining vested balance of each Participant's Account shall not automatically be paid as a lump sum payment upon the occurrence of a Change in Control.

A Change in Control, for purposes of the Plan, will occur upon a change in the ownership of the Plan Sponsor, a change in the effective control of the Plan Sponsor or a change in the ownership of a substantial portion of the assets of the Plan Sponsor. The Plan Sponsor, for this purpose, includes any corporation identified in this Section 9.7.

Whether a Change in Control has occurred will be determined by the Administrator in accordance with the rules and definitions set forth in this Section 9.7. A distribution to the Participant will be treated as occurring upon a Change in Control if the Plan Sponsor terminates the Plan in accordance with Section 10.2 and distributes the Participant's benefits within twelve months of a Change in Control as provided in Section 10.3.

- (a) **Relevant Corporations.** To constitute a Change in Control for purposes of the Plan, the event must relate to: (i) the corporation for whom the Participant is performing services at the time of the Change in Control, (ii) the corporation that is liable for the payment of the Participant's benefits under the Plan (or all corporations liable if more than one corporation is liable) but only if either the deferred compensation is attributable to the performance of services by the Participant for such corporation (or corporations) or there is a bona fide business purpose for such corporation (or corporations) to be liable for such payment and, in either case, no significant purpose of making such corporation (or corporations) liable for such payment is the avoidance of federal income tax, or (iii) a corporation that is a majority shareholder of a corporation identified in (i) or (ii), or any corporation in a chain of corporations in which each corporation is a majority shareholder of another corporation in the chain, ending in a corporation identified in (i) or (ii). A majority shareholder is defined as a shareholder owning more than fifty percent (50%) of the total fair market value and voting power of such corporation.

- (b) **Stock Ownership.** Code Section 318(a) applies for purposes of determining stock ownership. Stock underlying a vested option is considered owned by the individual who owns the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). If, however, a vested option is exercisable for stock that is not substantially vested (as defined by Treas. Reg. § 1.83-3(b) and (j)) the stock underlying the option is not treated as owned by the individual who holds the option.
- (c) **Change in the Ownership of a Corporation.** A change in the ownership of a corporation occurs on the date that any one person or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of such corporation. If any one person or more than one person acting as a group is considered to own more than fifty percent (50%) of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation as discussed below in Section 9.7(d)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock. Section 9.7(c) applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction. For purposes of this Section 9.7(c), persons will not be considered to be acting as a group solely because they purchase or own stock of the same corporation at the same time or as a result of a public offering. Persons will, however, be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase, or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (d) **Change in the Effective Control of a Corporation.** A change in the effective control of a corporation occurs on the date that either (i) any one person, or more than one person acting as a group, acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing thirty percent (30%) or more of the total voting power of the stock of such corporation, or (ii) a majority of members of the corporation's Board of Directors is replaced during any twelve month period by Directors whose appointment or election is not endorsed by a majority of the members of the corporation's Board of Directors prior to the date of the appointment or election, provided that for purposes of this paragraph (ii), the term corporation refers solely to the relevant corporation identified in Section 9.7(a) for which no other corporation is a majority shareholder for purposes of Section 9.7(a). In the absence of an event described in Section 9.7(d)(i) or (ii), a change in the effective control of a corporation will not have occurred. A change in effective control may also occur in any transaction in which either of the two corporations involved in the transaction has a change in the ownership of such corporation as described in Section 9.7(c) or a change in the ownership of a substantial portion of the assets of such corporation as described in Section 9.7(e). If any one person, or more than one person acting as a group, is considered to effectively control a corporation within the meaning of this Section 9.7(d), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation or to cause a change in the ownership of the corporation within the meaning of Section 9.7(c). For purposes of this Section 9.7(d), persons will or will not be considered to be acting as a group in accordance with rules similar to those set forth in Section 9.7(c) with the following exception. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

- (e) **Change in the Ownership of a Substantial Portion of a Corporation's Assets.** A change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in accordance with rules similar to those set forth in Section 9.7(d)), acquires (or has acquired during the twelve month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the corporation or the value of the assets being disposed of determined without regard to any liabilities associated with such assets. There is no Change in Control event under this Section 9.7(e) when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer. A transfer of assets by a corporation is not treated as a change in ownership of such assets if the assets are transferred to (i) a shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock, (ii) an entity, fifty percent (50%) or more of the total value or voting power of which is owned, directly or indirectly, by the corporation, (iii) a person, or more than one person acting as a group, that owns, directly or indirectly, fifty percent (50%) or more of the total value or voting power of all the outstanding stock of the corporation, or (iv) an entity, at least fifty (50%) of the total value or voting power of which is owned, directly or indirectly, by a person described in Section 9.7(e)(iii). For purposes of the foregoing, and except as otherwise provided, a person's status is determined immediately after the transfer of assets.

9.8. *Permissible Delays in Payment*

Distributions may be delayed beyond the date payment would otherwise occur in accordance with the provisions of Articles 8 and 9 in any of the following circumstances (as long as the Employer treats all payments to similarly situated Participants on a reasonably consistent basis):

- (a) The Employer may delay payment if it reasonably anticipates that its deduction with respect to such payment would be limited or eliminated by the application of Code Section 162(m). Payment must be made during the Participant's first taxable year in which the Employer reasonably anticipates, or should reasonably anticipate, that if the payment is made during such year the deduction of such payment will not be barred by the application of Code Section 162(m) or during the period beginning with the Participant's Separation from Service and ending on the later of the last day of the Employer's taxable year in which the Participant separates from service or the 15th day of the third month following the Participant's Separation from Service. If a scheduled payment to a Participant is delayed in accordance with this Section 9.8(a), all scheduled payments to the Participant that could be delayed in accordance with this Section 9.8(a) will also be delayed.
- (b) The Employer may also delay payment if it reasonably anticipates that the making of the payment will violate federal securities laws or other applicable laws provided payment is made at the earliest date on which the Employer reasonably anticipates that the making of the payment will not cause such violation.

- (c) The Employer reserves the right to amend the Plan to provide for a delay in payment upon such other events and conditions as the Secretary of the Treasury may prescribe in generally applicable guidance published in the Internal Revenue Bulletin.

9.9. Permitted Acceleration of Payment

The Employer may permit acceleration of the time or schedule of any payment or amount scheduled to be paid pursuant to a payment under the Plan provided such acceleration would be permitted by the provisions of Treas. Reg. § 1.409A-3(j)(4), including the following events:

- (a) **Domestic Relations Order.** A payment may be accelerated if such payment is made to an alternate payee pursuant to and following the receipt and qualification of a domestic relations order as defined in Code Section 414(p).
- (b) **Compliance with Ethics Agreement and Legal Requirements.** A payment may be accelerated as may be necessary to comply with ethics agreements with the Federal government or as may be reasonably necessary to avoid the violation of Federal, state, local or foreign ethics law or conflicts of laws, in accordance with the requirements of Code Section 409A.
- (c) **De Minimis Amounts.** A payment may be accelerated if (i) the amount of the payment is not greater than the applicable dollar amount under Code Section 402(g)(1)(B), (ii) at the time the payment is made the amount constitutes the Participant's entire interest under the Plan and all other plans that are aggregated with the Plan under Treas. Reg. § 1.409A-1(c)(2).
- (d) **FICA Tax.** A payment may be accelerated to the extent required to pay the Federal Insurance Contributions Act tax imposed under Code Sections 3101, 3121(a) and 3121(v)(2) of the Code with respect to compensation deferred under the Plan (the "FICA Amount"). Additionally, a payment may be accelerated to pay the income tax on wages imposed under Code Section 3401 of the Code on the FICA Amount and to pay the additional income tax at source on wages attributable to the pyramiding Code Section 3401 wages and taxes. The total payment under this subsection (d) may not exceed the aggregate of the FICA Amount and the income tax withholding related to the FICA Amount.
- (e) **Section 409A Additional Tax.** A payment may be accelerated if the Plan fails to meet the requirements of Code Section 409A; provided that such payment may not exceed the amount required to be included in income as a result of the failure to comply with the requirements of Code Section 409A.
- (f) **Offset.** A payment may be accelerated in the Employer's discretion as satisfaction of a debt of the Participant to the Employer, where such debt is incurred in the ordinary course of the service relationship between the Participant and the Employer, the entire amount of the reduction in any of the Employer's taxable years does not exceed \$5,000, and the reduction is made at the same time and in the same amount as the debt otherwise would have been due and collected from the Participant.

- (g) **Other Events.** A payment may be accelerated in the Administrator's discretion in connection with such other events and conditions as permitted by Code Section 409A.

Article 10 - Amendment and Termination

10.1. Amendment by Plan Sponsor

The Plan Sponsor reserves the right to amend the Plan (for itself and each Employer) through action of its Board of Directors or other authorized person. No amendment can directly or indirectly deprive any current or former Participant or Beneficiary of all or any portion of his or her Account which had accrued and vested prior to the amendment.

10.2. Plan Termination Following Change in Control or Corporate Dissolution

The Plan Sponsor reserves the right to terminate the Plan and distribute all amounts credited to all Participant Accounts within the 30 days preceding or the twelve months following a Change in Control as determined in accordance with the rules set forth in Section 9.7. For this purpose, the Plan will be treated as terminated only if all agreements, methods, programs and other arrangements sponsored by the Related Employer immediately after the Change in Control which are treated as a single plan under Treas. Reg. § 1.409A-1(c)(2) are also terminated so that all Participants under the Plan and all similar arrangements are required to receive all amounts deferred under the terminated arrangements within twelve months of the date the Plan Sponsor irrevocably takes all necessary action to terminate the arrangements. In addition, the Plan Sponsor reserves the right to terminate the Plan within twelve months of a corporate dissolution taxed under Code Section 331 or with the approval of a bankruptcy court pursuant to 11 U. S. C. Section 503(b)(1)(A) provided that amounts deferred under the Plan are included in the gross incomes of Participants in the latest of (a) the calendar year in which the termination and liquidation occurs, (b) the first calendar year in which the amount is no longer subject to a substantial risk of forfeiture, or (c) the first calendar year in which payment is administratively practicable.

10.3. Other Plan Terminations

The Plan Sponsor retains the discretion to terminate the Plan if (a) all arrangements sponsored by the Plan Sponsor that would be aggregated with any terminated arrangement under Code Section 409A and Treas. Reg. § 1.409A-1(c)(2) are terminated, (b) no payments other than payments that would be payable under the terms of the arrangements if the termination had not occurred are made within twelve months of the termination of the arrangements, (c) all payments are made within twenty-four months of the date the Plan Sponsor takes all necessary action to irrevocably terminate and liquidate the arrangements, (d) the Plan Sponsor does not adopt a new arrangement that would be aggregated with any terminated arrangement under Code Section 409A and the regulations thereunder at any time within the three year period following the date of termination of the arrangement, and (e) the termination does not occur proximate to a downturn in the financial health of the Plan Sponsor. The Plan Sponsor also reserves the right to amend the Plan to provide that termination of the Plan will occur under such conditions and events as may be prescribed by the Secretary of the Treasury in generally applicable guidance published in the Internal Revenue Bulletin.

Article 11 - The Trust

11.1. Establishment of Trust

The Plan Sponsor may establish a trust to hold amounts which the Plan Sponsor may contribute from time to time to correspond to some or all amounts credited to Participants under Section 6.2. Such trust shall be constructed to constitute an unfunded arrangement that does not affect the status of the Plan as an unfunded plan for purposes of Title I of ERISA and the Code.

11.2. Trust

Any trust established by the Plan Sponsor shall be between the Plan Sponsor and a trustee pursuant to a separate written agreement under which assets are held, administered and managed, subject to the claims of the Plan Sponsor's creditors in the event of the Plan Sponsor's insolvency. The Plan Sponsor must notify the trustee in the event of a bankruptcy or insolvency.

11.3. Investment of Trust Funds

Any amounts contributed to the trust by the Plan Sponsor shall be invested by the trustee in accordance with the provisions of the trust and the instructions of the Administrator. Trust investments need not reflect the hypothetical investments selected by Participants under Section 7.1 for the purpose of adjusting Accounts and the earnings or investment results of the trust need not affect the hypothetical investment adjustments to Participant Accounts under the Plan.

Article 12 - Plan Administration

12.1. Powers and Responsibilities of the Administrator

The Administrator has the full power and the full responsibility to administer the Plan in all of its details; subject, however, to the applicable requirements of ERISA. The Administrator's powers and responsibilities include, but are not limited to, the following:

- (a) To make and enforce such rules and procedures as it deems necessary or proper for the efficient administration of the Plan;
- (b) To interpret the Plan, its interpretation thereof to be final, except as provided in Section 12.2, on all persons claiming benefits under the Plan;
- (c) To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan;
- (d) To administer the claims and review procedures specified in Section 12.2;
- (e) To compute the amount of benefits which will be payable to any Participant, former Participant or Beneficiary in accordance with the provisions of the Plan;
- (f) To determine the person or persons to whom such benefits will be paid;
- (g) To authorize the payment of benefits;
- (h) To make corrections and recover the overpayment of any benefits;
- (i) To comply with the reporting and disclosure requirements of Part 1 of Subtitle B of Title I of ERISA;
- (j) To appoint such agents, counsel, accountants, and consultants as may be required to assist in administering the Plan;
- (k) By written instrument, to allocate and delegate its responsibilities, including the formation of an Administrative Committee to administer the Plan.

12.2. Claims and Review Procedures

- (a) **Claims Procedure.** If any person believes he or she is being denied any rights or benefits under the Plan, such person may file a claim in writing with the Administrator. If any such claim is wholly or partially denied, the Administrator will notify such person of its decision in writing. Such notification will contain (i) specific reasons for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for such person to perfect such claim and an explanation of why such material or information is necessary, and (iv) a description of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the person's right to bring a civil action following an adverse decision on review. If the claim involves a Disability, the denial must also include the standards that governed the decision, including the basis for disagreeing with any health care professionals, vocational professionals or the Social Security Administration as well as an explanation of the scientific or clinical judgement underlying the denial. Such notification will be given within 90 days (45 days in the case of a claim regarding Disability) after the claim is received by the Administrator. The Administrator may extend the period for providing the notification by 90 days (30 days in the case of a claim regarding Disability, which may be extended an additional 30 days) if special circumstances require an extension of time for processing the claim and if written notice of such extension and circumstance is given to such person within the initial 90 day period (45 day period in the case of a claim regarding Disability). If such notification is not given within such period, the claim will be considered denied as of the last day of such period and such person may request a review of his or her claim.
- (b) **Review Procedure.** Within 60 days (180 days in the case of a claim regarding Disability) after the date on which a person receives a written notification of denial of claim (or, if written notification is not provided, within 60 days (180 days in the case of a claim regarding Disability) of the date denial is considered to have occurred), such person (or his or her duly authorized representative) may (i) file a written request with the Administrator for a review of his or her denied claim and of pertinent documents and (ii) submit written issues and comments to the Administrator. The Administrator will notify such person of its decision in writing. Such notification will be written in a manner calculated to be understood by such person and will contain specific reasons for the decision as well as specific references to pertinent Plan provisions. The notification will explain that the person is entitled to receive, upon request and free of charge, reasonable access to and copies of all pertinent documents and has the right to bring a civil action following an adverse decision on review. The decision on review will be made within 60 days (45 days in the case of a claim regarding Disability). The Administrator may extend the period for making the decision on review by 60 days (45 days in the case of a claim regarding Disability) if special circumstances require an extension of time for processing the request such as an election by the Administrator to hold a hearing, and if written notice of such extension and circumstances is given to such person within the initial 60-day period (45 days in the case of a claim regarding Disability). If the decision on review is not made within such period, the claim will be considered denied.

If the claim is regarding Disability, and the determination of Disability has not been made by the Social Security Administration, the Railroad Retirement Board, or under the Plan Sponsor's long-term disability plan, the person may, upon written request and free of charge, also receive the identification of medical or vocational experts whose advice was obtained in connection with the denial of a claim regarding Disability, even if the advice was not relied upon.

Before issuing any decision with respect to a claim involving Disability, the Administrator will provide to the person, free of charge, the following information as soon as possible and sufficiently in advance of the date on which the response is required to be provided to the person to allow the person a reasonable opportunity to respond prior to the due date of the response:

- (i) Any new or additional evidence considered, relied upon, or generated by the Administrator or other person making the decision; and
- (ii) A new or addition rationale if the decision will be based on that rationale.
- (c) Exhaustion of Claims Procedures and Right to Bring Legal Claim. No action at law or equity shall be brought more than one year after the Administrator's affirmation of a denial of a claim, or, if earlier, more than four years after the facts or events giving rising to the claimant's allegation(s) or claim(s) first occurred.

12.3. *Plan Administrative Costs*

All reasonable costs and expenses (including legal, accounting, and employee communication fees) incurred by the Administrator in administering the Plan shall be paid by the Plan to the extent not paid by the Employer.

Article 13 - Miscellaneous

13.1. Unsecured General Creditor of the Employer

Participants and their Beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Employer. For purposes of the payment of benefits under the Plan, any and all of the Employer's assets shall be, and shall remain, the general, unpledged, unrestricted assets of the Employer. Each Employer's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

13.2. Employer's Liability

Each Employer's liability for the payment of benefits under the Plan shall be defined only by the Plan and by the deferral agreements entered into between a Participant and the Employer. An Employer shall have no obligation or liability to a Participant under the Plan except as provided by the Plan and a deferral agreement or agreements. An Employer shall have no liability to Participants employed by other Employers.

13.3. Limitation of Rights

Neither the establishment of the Plan, nor any amendment thereof, nor the creation of any fund or account, nor the payment of any benefits, will be construed as giving to the Participant or any other person any legal or equitable right against the Employer, the Plan or the Administrator, except as provided herein; and in no event will the terms of employment or service of the Participant be modified or in any way affected hereby.

13.4. Anti-Assignment

Except as may be necessary to fulfill a domestic relations order within the meaning of Code Section 414(p), none of the benefits or rights of a Participant or any Beneficiary of a Participant shall be subject to the claim of any creditor. In particular, to the fullest extent permitted by law, all such benefits and rights shall be free from attachment, garnishment, or any other legal or equitable process available to any creditor of the Participant and his or her Beneficiary. Neither the Participant nor his or her Beneficiary shall have the right to alienate, anticipate, commute, pledge, encumber, or assign any of the payments which he or she may expect to receive, contingently or otherwise, under the Plan, except the right to designate a Beneficiary to receive death benefits provided hereunder. Notwithstanding the preceding, the benefit payable from a Participant's Account may be reduced, at the discretion of the Administrator, to satisfy any debt or liability to the Employer.

13.5. Facility of Payment

If the Administrator determines, on the basis of medical reports or other evidence satisfactory to the Administrator, that the recipient of any benefit payments under the Plan is incapable of handling his or her affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Employer to disburse such payments to a person or institution designated by a court which has jurisdiction over such recipient or a person or institution otherwise having the legal authority under State law for the care and control of such recipient. The receipt by such person or institution of any such payments therefore, and any such payment to the extent thereof, shall discharge the liability of the Employer, the Plan and the Administrator for the payment of benefits hereunder to such recipient.

13.6. Notices

Any notice or other communication to the Employer or Administrator in connection with the Plan shall be deemed delivered in writing if addressed to the Plan Sponsor at the address specified in Section 1.03 of the Adoption Agreement and if either actually delivered at said address or, in the case of a letter, five business days shall have elapsed after the same shall have been deposited in the United States mails, first-class postage prepaid and registered or certified.

13.7. Tax Withholding

If the Employer concludes that tax is owing with respect to any deferral or payment hereunder, the Employer shall withhold such amounts from any payments due the Participant or from amounts deferred, as permitted by law, or otherwise make appropriate arrangements with the Participant or his or her Beneficiary for satisfaction of such obligation. Tax, for purposes of this Section 13.7 means any federal, state, local or any other governmental income tax, employment or payroll tax, excise tax, or any other tax or assessment owing with respect to amounts deferred, any earnings thereon, and any payments made to Participants under the Plan.

13.8. Indemnification

- (a) Each Indemnitee (as defined in Section 13.8(e)) shall be indemnified and held harmless by the Employer for all actions taken by him or her and for all failures to take action (regardless of the date of any such action or failure to take action), to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated, against all expense, liability, and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding (as defined in subsection (e)). No indemnification pursuant to this Section shall be made, however, in any case where (1) the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness or (2) there is a settlement to which the Employer does not consent.
- (b) The right to indemnification provided in this Section shall include the right to have the expenses incurred by the Indemnitee in defending any Proceeding paid by the Employer in advance of the final disposition of the Proceeding, to the fullest extent permitted by the law of the jurisdiction in which the Employer is incorporated; provided that, if such law requires, the payment of such expenses incurred by the Indemnitee in advance of the final disposition of a Proceeding shall be made only on delivery to the Employer of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced without interest if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section or otherwise.
- (c) Indemnification pursuant to this Section shall continue as to an Indemnitee who has ceased to be such and shall inure to the benefit of his or her heirs, executors, and administrators. The Employer agrees that the undertakings made in this Section shall be binding on its successors or assigns and shall survive the termination, amendment, or restatement of the Plan.
- (d) The foregoing right to indemnification shall be in addition to such other rights as the Indemnitee may enjoy as a matter of law or by reason of insurance coverage of any kind and is in addition to and not in lieu of any rights to indemnification to which the Indemnitee may be entitled pursuant to the by-laws of the Employer.
- (e) For the purposes of this Section, the following definitions shall apply:

 - (i) "Indemnitee" shall mean each person serving as an Administrator (or any other person who is an employee, Director, or officer of the Employer) who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that he or she is or was performing administrative functions under the Plan.
 - (ii) "Proceeding" shall mean any threatened, pending, or completed action, suit, or proceeding (including, without limitation, an action, suit, or proceeding by or in the right of the Employer), whether civil, criminal, administrative, investigative, or through arbitration.

13.9. Successors

The provisions of the Plan shall bind and inure to the benefit of the Plan Sponsor, the Employer and their successors and assigns and the Participant and the Participant's designated Beneficiaries.

13.10. Disclaimer

It is the Plan Sponsor's intention that the Plan comply with the requirements of Code Section 409A. Neither the Plan Sponsor nor the Employer shall have any liability to any Participant should any provision of the Plan fail to satisfy the requirements of Code Section 409A.

13.11. Governing Law

The Plan will be construed, administered, and enforced according to the laws of the State specified by the Plan Sponsor in Section 8.01 of the Adoption Agreement.

SP Management Services, Inc.
Nonqualified Deferred Compensation Plan
Adoption Agreement

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1.01 Preamble

By the execution of this Adoption Agreement the Plan Sponsor hereby [complete (a) or (b)]

- (a) adopts a new plan as of August 1st, 2024
- (b) amends and restates its existing plan as of [month, day, year] which is the Amendment Effective Date. Except as otherwise provided in Appendix A, all amounts deferred under the Plan prior to the Amendment Effective Date shall be governed by the terms of the Plan as in effect on the day before the Amendment Effective Date.

Original Effective Date: [month, day, year]

Pre-409A Grandfathering: Yes No

By executing this Adoption Agreement, the Plan Sponsor (as defined below) has adopted the Plan (as defined below) consisting of the Basic Plan Document along with this Adoption Agreement (and any exhibits or scheduled attached hereto). The Plan Sponsor, by completing this Adoption Agreement has made the specific choices regarding plan design as set forth in the Adoption Agreement together with the detailed additional provisions set out in the Basic Plan Document. All capitalized terms used in this Adoption Agreement have the same meaning given in the Basic Plan Document.

1.02 Plan

Plan Name: SP Management Services, Inc. Nonqualified Deferred Compensation Plan

Plan Year: January - December

1.03 Plan Sponsor

Name: SP Management Services, Inc.

Address: 310 Seven Springs Way, Ste 500, Brentwood, TN 37027

Phone #: (615) 234-5900

EIN #: 000349215

Fiscal Year: Jan. 1st through Dec. 31st

2.01 Compensation

For purposes of determining Participant contributions under Article 4 of the Plan and Section 3.01 of this Adoption Agreement and Employer contributions under Article 5 of the Plan and Section 4.01 of this Adoption Agreement, Compensation shall be defined in the following manner [complete (a) or (b), or select (c), if applicable]:

(a) Compensation is defined as:

Base Salary

(b) Compensation as defined in [insert name of qualified plan] without regard to the limitation in Section 401(a)(17) of the Code for such Plan Year.

(c) Not Applicable.

2.02 Bonuses

Compensation, as defined in Section 2.01 of this Adoption Agreement, includes the following type of bonuses that will be the subject of a separate deferral election:

<u>Type</u>	<u>[Will be treated as]</u>	
	<u>Yes</u>	<u>No</u>
<u>Annual Bonus</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

Not Applicable.

3.01 Participant Contributions

If Participant contributions are permitted, complete (a)(i) and/or (a)(ii). Otherwise complete (c).

(a) Amount of Deferrals

A Participant may elect to defer the following amounts of remuneration.

(i) Compensation other than Bonuses

Type of Remuneration	% Amount		Increment
	Min	Max	
Base Salary	1%	50%	1%
	1%	80%	1%
	1%	80%	1%

(ii) Bonuses

Type of Bonus	% Amount		Increment
	Min	Max	
Annual Bonus	1%	90%	1%
	1%	100%	1%
	1%	100%	1%

(b) Election Period for Performance Based Compensation

A special election period

Does

Does Not

apply to each eligible type of performance based compensation referenced in Section 2.02 of this Adoption Agreement.

The special election period, if applicable, will be determined by the Employer.

(c) No Participant Contributions

Participant contributions are not permitted under the Plan.

4.01 *Employer Contributions*

If Employer contributions are permitted, complete (a) or (b). Otherwise complete (c). If (a) or (b) are selected, any Employer contributions may be made in an amount determined by the Employer in its sole discretion, allocated in a manner determined by the Employer in its sole discretion, and at such times as determined by the Employer in its sole discretion.

(a) Employer Matching Contributions

Employer matching contributions are permitted under the Plan.

(b) Other Employer Contributions

Other Employer contributions are permitted under the Plan.

(c) No Employer Contributions

Employer contributions are not permitted under the Plan.

5.01 Distributions

The timing and form of payment of distributions made from the Participant's vested Account shall be made in accordance with the elections in this Section 5.01 of the Adoption Agreement. Notwithstanding the above, if the checkbox below indicates that stock of the Plan Sponsor, any Employer or any Related Employer, is publicly traded on an established securities market, a Participant's distribution on account of a Separation from Service shall be delayed by six months whether or not such Participant is a Key Employee.

Is stock of the Plan Sponsor, any Employer or any Related Employer publicly traded on an established securities market? Yes No

(a) Timing of Distributions

- (i) All distributions shall commence Monthly on specified day 15th day of the month
- (ii) The timing of distributions as determined in Section 5.01(a)(i) shall be modified by the adoption of:
 - Hold Until Next Year - Separation from Service distribution events will be treated as not having occurred for twelve months from the date of the event.

(b) Distribution Events

- (i) Participant Contributions under Article 4 of the Plan and Section 3.01 of this Adoption Agreement

Participants may elect the following payment events and the associated form or forms of payment. If multiple events for each year are selected, the earliest to occur will trigger payment.

	<u>Lump Sum</u>	<u>Annual Installments</u>
(A) <input checked="" type="checkbox"/> Specified Date	<input checked="" type="checkbox"/>	<u>2-5 years</u>
(B) <input checked="" type="checkbox"/> Separation from Service	<input checked="" type="checkbox"/>	<u>2-15 years</u>

The minimum deferral period for Specified Date event shall be 2 years.

(ii) **Employer contributions under Article 5 of the Plan and Section 4.01 of this Adoption Agreement**

Participants may elect the following payment events and the associated form or forms of payment.

	<u>Lump Sum</u>	<u>Annual Installments</u>
(C) <input checked="" type="checkbox"/> Separation from Service	<input checked="" type="checkbox"/>	<u>2-10</u> years

(c) **Payment Election Override**

Payment of the remaining vested balance of the Participant's Account will automatically occur at the time specified in Section 5.01(a) of this Adoption Agreement in the form indicated upon the earliest to occur of the following events [check each event that applies]:

<u>Events</u>	<u>Form of Payment</u> <u>Lump Sum</u>
<input checked="" type="checkbox"/> Death	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Disability	<input checked="" type="checkbox"/>

(d) **Retirement**

- Retirement shall be defined as a Separation from Service that occurs on or after the Participant [insert description of requirements]:

- No special definition of Retirement applies.

(e) Disability

For Purposes of Section 2.11 of the Plan, Disability shall be defined as

Total disability as determined by the Social Security Administration or the Railroad Retirement Board.

As determined by the Employer's long term disability insurance policy.

As follows [insert description of requirements]:

Not applicable.

6.01 Vesting

(a) Employer Contributions

The Participant's vested interest in the amount credited to his or her Account attributable to Employer contributions shall be based on the following schedule:

- (i) Immediately 100% vested
- (ii) Cliff vesting: 100% vested after ___ (2-5) Years of Service
- (iii)

<u>Years of Service</u>	<u>Vesting %</u>
0	<u>0%</u>
1	<u>20%</u>
2	<u>40%</u>
3	<u>60%</u>
4	<u>80%</u>
5	<u>100%</u>

(b) Acceleration of Vesting

The Participant's vested interest in his or her Account will be 100% automatically upon the occurrence of the following events [select each event that is applicable]:

- (i) Death.
- (ii) Disability
- (iii) Eligibility for Retirement

7.01 Unforeseeable Emergency

(a) A withdrawal due to an Unforeseeable Emergency as defined in Section 2.24:

Will

Will Not [if Unforeseeable Emergency withdrawals are not permitted, proceed to Section 8.01]

be allowed.

(b) Upon a withdrawal due to an Unforeseeable Emergency, a Participant's deferral election for the remainder of the Plan Year:

Will

Will Not

be cancelled. If cancellation occurs, the Participant may resume participation in accordance with Article 4 of the Plan and Section 3.01 of this Adoption Agreement.

8.01 *Governing State Law*

The laws of Tennessee shall apply in the administration of the Plan to the extent not preempted by ERISA.

Execution Page

The Plan Sponsor has caused this Adoption Agreement to be executed this 1st day of August, 2024.

Plan Sponsor: SP Management Services, Inc. _____
By: _____
Title: _____

Appendix A
Special Effective Dates
Not Applicable

CERTIFICATIONS

I, J. Eric Evans, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Surgery Partners, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ J. Eric Evans
J. Eric Evans
Chief Executive Officer

Date: August 6, 2024

CERTIFICATIONS

I, David T. Doherty, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Surgery Partners, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ David T. Doherty
David T. Doherty
Executive Vice President and Chief Financial Officer

Date: August 6, 2024

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Surgery Partners, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned certifies, pursuant to 18 U.S.C. Sec. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company for the periods presented therein.

By: /s/ J. Eric Evans
J. Eric Evans
Chief Executive Officer

Date: August 6, 2024

By: /s/ David T. Doherty
David T. Doherty
Executive Vice President and Chief Financial Officer

Date: August 6, 2024