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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**Form 10-Q**

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(Mark One)

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

**For the quarterly period ended March 31, 2020**

**or**

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

**Commission file number: 001-37576**

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**Surgery Partners, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**47-3620923**

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

**310 Seven Springs Way, Suite 500  
Brentwood, Tennessee 37027**

(Address of principal executive offices and zip code)

**(615) 234-5900**

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
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 May 4, 2020, there were 50,518,377 shares of the registrant's common stock outstanding.

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**SURGERY PARTNERS, INC.**  
**FORM 10-Q**  
**TABLE OF CONTENTS**

**Page**

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**PART I - FINANCIAL INFORMATION**

Item 1.	Financial Statements	<a href="#"><u>1</u></a>
	Condensed Consolidated Balance Sheets (Unaudited)	<a href="#"><u>1</u></a>
	Condensed Consolidated Statements of Operations (Unaudited)	<a href="#"><u>2</u></a>
	Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)	<a href="#"><u>3</u></a>
	Condensed Consolidated Statements of Stockholders' Equity (Unaudited)	<a href="#"><u>4</u></a>
	Condensed Consolidated Statements of Cash Flows (Unaudited)	<a href="#"><u>5</u></a>
	Notes to Condensed Consolidated Financial Statements (Unaudited)	<a href="#"><u>6</u></a>
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	<a href="#"><u>18</u></a>
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	<a href="#"><u>26</u></a>
Item 4.	Controls and Procedures	<a href="#"><u>26</u></a>

**PART II - OTHER INFORMATION**

Item 1.	Legal Proceedings	<a href="#"><u>28</u></a>
Item 1A.	Risk Factors	<a href="#"><u>28</u></a>
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	<a href="#"><u>29</u></a>
Item 3.	Defaults Upon Senior Securities	<a href="#"><u>30</u></a>
Item 4.	Mine Safety Disclosures	<a href="#"><u>30</u></a>
Item 5.	Other Information	<a href="#"><u>30</u></a>
Item 6.	Exhibits	<a href="#"><u>31</u></a>

## PART I - FINANCIAL INFORMATION

## Item 1. Financial Statements

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

	March 31, 2020	December 31, 2019
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 194.6	\$ 92.7
Accounts receivable	311.7	326.9
Inventories	49.0	46.3
Prepaid expenses and other current assets	59.3	59.6
Total current assets	614.6	525.5
Property and equipment, net of accumulated depreciation of \$130.1 and \$110.7, respectively	513.9	523.3
Goodwill and other intangible assets, net	3,443.3	3,449.7
Investments in and advances to affiliates	90.6	93.2
Right-of-use operating lease assets	293.1	297.7
Long-term deferred tax assets	114.0	98.7
Other long-term assets	21.4	30.8
Total assets	\$ 5,090.9	\$ 5,018.9
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 106.8	\$ 96.7
Accrued payroll and benefits	41.3	54.2
Other current liabilities	203.3	191.2
Current maturities of long-term debt	60.3	56.0
Total current liabilities	411.7	398.1
Long-term debt, less current maturities	2,626.5	2,524.7
Right-of-use operating lease liabilities	279.1	283.1
Other long-term liabilities	129.9	113.6
Non-controlling interests—redeemable	315.8	321.0
Redeemable preferred stock - Series A; shares authorized, issued and outstanding - 310,000; redemption value - \$404.5 and \$395.0, respectively	404.5	395.0
Stockholders' equity:		
Preferred stock, \$0.01 par value; shares authorized - 20,000,000; shares issued or outstanding - none	—	—
Common stock, \$0.01 par value; shares authorized - 300,000,000; shares issued and outstanding - 50,518,377 and 49,298,940, respectively	0.5	0.5
Additional paid-in capital	655.3	662.7
Accumulated other comprehensive loss	(75.9)	(50.7)
Retained deficit	(343.2)	(315.7)
Total Surgery Partners, Inc. stockholders' equity	236.7	296.8
Non-controlling interests—non-redeemable	686.7	686.6
Total stockholders' equity	923.4	983.4
Total liabilities and stockholders' equity	\$ 5,090.9	\$ 5,018.9

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)*

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
Revenues	\$ 441.0	\$ 416.8
Operating expenses:		
Salaries and benefits	140.4	129.2
Supplies	129.3	115.0
Professional and medical fees	46.8	35.1
Lease expense	21.3	20.6
Other operating expenses	28.4	26.2
Cost of revenues	366.2	326.1
General and administrative expenses	22.8	21.7
Depreciation and amortization	21.8	18.8
Income from equity investments	(2.0)	(2.0)
Loss on disposals and deconsolidations, net	3.5	0.6
Transaction and integration costs	5.5	2.0
Litigation settlement	1.2	—
Other income	(1.5)	—
Total operating expenses	417.5	367.2
Operating income	23.5	49.6
Tax receivable agreement expense	—	(2.4)
Interest expense, net	(47.1)	(42.0)
(Loss) income before income taxes	(23.6)	5.2
Income tax (benefit) expense	(15.2)	1.7
Net (loss) income	(8.4)	3.5
Less: Net income attributable to non-controlling interests	(19.1)	(23.6)
Net loss attributable to Surgery Partners, Inc.	(27.5)	(20.1)
Less: Amounts attributable to participating securities	(9.5)	(8.5)
Net loss attributable to common stockholders	\$ (37.0)	\$ (28.6)
Net loss per share attributable to common stockholders		
Basic	\$ (0.76)	\$ (0.60)
Diluted <sup>(1)</sup>	\$ (0.76)	\$ (0.60)
Weighted average common shares outstanding		
Basic	48,472	48,047
Diluted <sup>(1)</sup>	48,472	48,047

<sup>(1)</sup> The impact of potentially dilutive securities for all periods presented was not considered because the effect would be anti-dilutive in those periods.

See notes to unaudited condensed consolidated financial statements.

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

	<u>Three Months Ended March 31,</u>	
	<u>2020</u>	<u>2019</u>
Net (loss) income	\$ (8.4)	\$ 3.5
Other comprehensive loss, net of tax:		
Derivative activity	(25.2)	(11.5)
Comprehensive loss	(33.6)	(8.0)
Less: Comprehensive income attributable to non-controlling interests	(19.1)	(23.6)
Comprehensive loss attributable to Surgery Partners, Inc.	<u>\$ (52.7)</u>	<u>\$ (31.6)</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 Loss	Retained Deficit	Non-Controlling Interests— Non-Redeemable	Total
	Shares	Amount					
Balance at December 31, 2018	48,869	\$ 0.5	\$ 673.5	\$ (22.4)	\$ (247.0)	\$ 694.3	\$ 1,098.9
Net (loss) income	—	—	—	—	(20.1)	16.0	(4.1)
Equity-based compensation	517	—	0.9	—	—	—	0.9
Preferred dividends	—	—	(8.5)	—	—	—	(8.5)
Other comprehensive loss	—	—	—	(11.5)	—	—	(11.5)
Net effect of adoption of new accounting standard	—	—	—	—	18.0	—	18.0
Acquisition and disposal of shares of non-controlling interests, net <sup>(1)</sup>	—	—	8.0	—	—	6.1	14.1
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(23.5)	(23.5)
Balance at March 31, 2019	<u>49,386</u>	<u>\$ 0.5</u>	<u>\$ 673.9</u>	<u>\$ (33.9)</u>	<u>\$ (249.1)</u>	<u>\$ 692.9</u>	<u>\$ 1,084.3</u>
Balance at December 31, 2019	49,299	\$ 0.5	\$ 662.7	\$ (50.7)	\$ (315.7)	\$ 686.6	\$ 983.4
Net (loss) income	—	—	—	—	(27.5)	13.6	(13.9)
Equity-based compensation	1,219	—	2.8	—	—	—	2.8
Preferred dividends	—	—	(9.5)	—	—	—	(9.5)
Other comprehensive loss	—	—	—	(25.2)	—	—	(25.2)
Acquisition and disposal of shares of non-controlling interests, net <sup>(1)</sup>	—	—	(0.7)	—	—	1.4	0.7
Distributions to non-controlling interests—non-redeemable holders	—	—	—	—	—	(14.9)	(14.9)
Balance at March 31, 2020	<u>50,518</u>	<u>\$ 0.5</u>	<u>\$ 655.3</u>	<u>\$ (75.9)</u>	<u>\$ (343.2)</u>	<u>\$ 686.7</u>	<u>\$ 923.4</u>

<sup>(1)</sup> Includes post acquisition date adjustments.

See notes to unaudited condensed consolidated financial statements.

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

	Three Months Ended March 31,	
	2020	2019
<b>Cash flows from operating activities:</b>		
Net (loss) income	\$ (8.4)	\$ 3.5
Adjustments to reconcile net (loss) income to net cash provided by operating activities:		
Depreciation and amortization	21.8	18.8
Non-cash interest expense (income), net	1.3	(0.3)
Equity-based compensation expense	3.5	1.9
Loss on disposals and deconsolidations, net	3.5	0.6
Deferred income taxes	(15.5)	1.3
Income from equity investments, net of distributions received	0.5	0.2
Non-cash lease expense	9.4	10.1
Changes in operating assets and liabilities, net of acquisitions and divestitures:		
Accounts receivable	15.5	13.4
Other operating assets and liabilities	(2.4)	(29.0)
Net cash provided by operating activities	29.2	20.5
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment	(11.8)	(11.8)
Payments for acquisitions, net of cash acquired	(5.5)	(7.6)
Proceeds from disposals of facilities and other assets	9.4	1.2
Other investing activities	0.2	(0.2)
Net cash used in investing activities	(7.7)	(18.4)
<b>Cash flows from financing activities:</b>		
Principal payments on long-term debt	(52.8)	(12.9)
Borrowings of long-term debt	158.4	2.4
Distributions to non-controlling interest holders	(24.0)	(33.8)
(Payments) receipts related to ownership transactions with non-controlling interest holders	(0.4)	1.5
Other financing activities	(0.8)	(1.1)
Net cash provided by (used in) financing activities	80.4	(43.9)
Net increase (decrease) in cash, cash equivalents and restricted cash	101.9	(41.8)
Cash, cash equivalents and restricted cash at beginning of period	93.0	184.6
Cash, cash equivalents and restricted cash at end of period	\$ 194.9	\$ 142.8

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, among others, gastroenterology, general surgery, ophthalmology, orthopedics and pain management. The Company's surgical hospitals also provide services such as diagnostic imaging, laboratory, obstetrics, oncology, pharmacy, physical therapy and wound care. Ancillary services are comprised of a diagnostic laboratory, multi-specialty physician practices, urgent care facilities, anesthesia services and optical 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 March 31, 2020, the Company owned or operated a portfolio of 127 surgical facilities, comprised of 111 ASCs and 16 surgical hospitals in 30 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 84 of the surgical facilities and consolidated 107 of these 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, 2019 (the "2019 Annual Report on Form 10-K").

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.

### 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 March 31, 2020, the consolidated VIEs include four surgical facilities, three anesthesia practices and three physician practices.

The total assets (excluding goodwill and intangible assets, net) of the consolidated VIEs included in the accompanying condensed consolidated balance sheets as of March 31, 2020 and December 31, 2019, were \$34.2 million and \$36.2 million, respectively, and the total liabilities of the consolidated VIEs were \$24.5 million and \$25.2 million, respectively.

### 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.

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

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

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

	Carrying Amount		Fair Value	
	March 31, 2020	December 31, 2019	March 31, 2020	December 31, 2019
Senior secured term loan	\$ 1,430.6	\$ 1,434.1	\$ 1,130.2	\$ 1,434.1
6.750% senior unsecured notes due 2025	\$ 370.0	\$ 370.0	\$ 268.7	\$ 368.2
10.000% senior unsecured notes due 2027	\$ 430.0	\$ 430.0	\$ 309.6	\$ 471.4

The fair values in the table above were based on a 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 under Level 3 inputs.

The Company has entered into certain interest rate swap agreements (see Note 5. "Derivatives and Hedging Activities"). The fair value of these derivative instruments was \$75.9 million and \$50.7 million at March 31, 2020 and December 31, 2019, respectively, and was included in other long-term liabilities in the condensed consolidated balance sheets. The fair value of these derivative financial instruments was based on a quoted market price, or a Level 2 input.

### 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 our 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.

A summary of revenues by service type as a percentage of total revenues follows:

	Three Months Ended March 31,	
	2020	2019
<b>Patient service revenues:</b>		
Surgical facilities revenues	94.7%	93.8%
Ancillary services revenues	3.9%	4.7%
	98.6%	98.5%
<b>Other service revenues:</b>		
Optical services revenues	0.2%	0.3%
Other revenues	1.2%	1.2%
	1.4%	1.5%
<b>Total revenues</b>	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. As the Company primarily performs outpatient procedures, performance obligations are generally satisfied same day and revenue is recognized on the date of service.

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

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.

*Other service revenues.* Optical service revenues consist of handling charges billed to the members of the Company's optical products purchasing organization. The Company's optical products purchasing organization negotiates volume buying discounts with optical products manufacturers. The buying discounts and any handling charges billed to the members of the buying group represent the revenue recognized for financial reporting purposes. The Company satisfies the performance obligation and recognizes revenue when the orders are shipped to members. The Company bases its estimates for sales returns and discounts on historical experience and has not experienced significant fluctuations between estimated and actual return activity and discounts given.

Other 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. These 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.

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):

	<b>Three Months Ended March 31,</b>			
	<b>2020</b>		<b>2019</b>	
	<b>Amount</b>	<b>%</b>	<b>Amount</b>	<b>%</b>
<b>Patient service revenues:</b>				
Private insurance	\$ 226.0	52.0%	\$ 215.3	52.4%
Government	175.8	40.5%	164.9	40.2%
Self-pay	12.8	2.9%	10.8	2.6%
Other <sup>(1)</sup>	20.0	4.6%	19.8	4.8%
Total patient service revenues	434.6	100.0%	410.8	100.0%
<b>Other service revenues:</b>				
Optical services revenues	0.8		1.1	
Other revenues	5.6		4.9	
Total revenues	<u>\$ 441.0</u>		<u>\$ 416.8</u>	

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

### **Cash, Cash Equivalents and Restricted Cash**

The Company considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. The Company maintains its cash and cash equivalent balances at high credit quality financial institutions.

Cash, cash equivalents and restricted cash reported within the consolidated statement of cash flows includes \$0.3 million of restricted investments, which are reflected in other long-term assets in the consolidated balance sheet at both March 31, 2020 and December 31, 2019. These restricted investments represent restricted cash held in accordance with the provisions of a long-term operating lease agreement held as security for performance under the Company's covenants and obligations within the agreement through January 2024.

### **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 facilities' cash collections and contractual write-offs, 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. As of March 31, 2020 and December 31, 2019, the Company had a net third-party Medicaid settlements liability of \$8.3 million and \$5.6 million, respectively, included in other current liabilities in the condensed consolidated balance sheets.

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

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

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 operating systems used to manage patient accounts provide for an aging schedule in 30-day increments, by payor, physician and patient. The Company analyzes accounts receivable at each of its surgical facilities to ensure the proper collection and aged category. The operating systems generate reports that assist in the collection efforts by prioritizing patient accounts. Collection efforts include direct contact with third-party payors or patients, written correspondence and the use of legal or collection agency assistance, as required.

The receivables related to the Company's optical products purchasing organization are recognized separately from patient accounts receivable, as discussed above, and are included in other current assets in the condensed consolidated balance sheets. Such receivables were \$8.6 million as of March 31, 2020 and December 31, 2019.

#### **Goodwill**

Goodwill represents the fair value of the consideration provided in an acquisition 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 dispositions for the three months ended March 31, 2020 is included in Note 2. "Acquisitions and Disposals."

A summary of activity related to goodwill for the three months ended March 31, 2020 is as follows (in millions):

Balance at December 31, 2019	\$	3,402.4
Acquisitions, including post acquisition adjustments		8.3
Divestitures and deconsolidations		(14.2)
Balance at March 31, 2020	\$	<u>3,396.5</u>

A detailed evaluation of potential impairment indicators was performed as of March 31, 2020, which specifically considered the decline in the fair market value of the Company's outstanding senior secured term loan and unsecured notes and common stock during the first quarter as a result of the COVID-19 pandemic. Volatility was observed in the prices of the Company's outstanding debt securities and common stock and the decline in surgical case volumes following the emergence of COVID-19 was also considered. On the basis of available evidence as of March 31, 2020, 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 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, the risks of which are amplified by the COVID-19 pandemic, 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. 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 of its risk, 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.

#### **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. The non-controlling interests—redeemable are reported outside of stockholders' equity in the condensed consolidated balance sheets.

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

A summary of activity related to non-controlling interests—redeemable for the three months ended March 31, 2020 and 2019 is as follows (in millions):

	2020	2019
Balance at beginning of period	\$ 321.0	\$ 326.6
Net income attributable to non-controlling interests—redeemable	5.5	7.6
Acquisition and disposal of shares of non-controlling interests, net—redeemable	(1.6)	(9.3)
Distributions to non-controlling interest—redeemable holders	(9.1)	(10.3)
Balance at end of period	<u>\$ 315.8</u>	<u>\$ 314.6</u>

### 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 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 64.4% for the three months ended March 31, 2020 compared to 32.7% for the three months ended March 31, 2019. The higher effective tax rate for the 2020 period was primarily due to discrete tax benefits of approximately \$6.9 million attributable to the release of federal and state valuation allowances on the Company's IRC Section 163(j) interest carryforwards as a result of the increase in deductible interest expense allowed under the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), and \$5.0 million attributable to a portion of the payments under the Settlement Agreement, as defined in Note 10. "Subsequent Events," being classified as "restitution" for income tax purposes. 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.

### Recent Accounting Pronouncements

In March 2020, the FASB issued Accounting Standard Update ("ASU") 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This ASU provides optional guidance for a limited period of time to ease the potential burden in accounting for or recognizing the effects of reference rate reform on financial reporting and applies only to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. This ASU is effective as of March 12, 2020 through December 31, 2022. Entities may adopt ASU 2020-04 as of any date from the beginning of an interim period that includes or is subsequent to March 12, 2020 or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. The Company is evaluating the impact of this ASU on the Company's consolidated financial statements.

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments - Credit Losses*, which introduced a new model for recognizing credit losses on financial instruments based on an estimate of the current expected credit losses. The new current expected credit losses ("CECL") model generally calls for the immediate recognition of all expected credit losses and applies to financial instruments and other assets, which is primarily applicable to accounts receivable for the Company. This ASU was effective for the Company on January 1, 2020. The adoption of this ASU did not have a material impact on its consolidated financial position and results of operations.

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

## 2. Acquisitions and Disposals

### Acquisitions

During the three months ended March 31, 2020, the Company acquired a controlling interest in a surgical facility in a new market and a surgical facility in an existing market that was merged into an existing facility for total cash consideration of \$5.5 million, net of cash acquired. The cash consideration was funded through cash from operations. The total consideration was allocated to the assets acquired and liabilities assumed based upon the respective acquisition date fair values. The aggregate amounts preliminarily recognized for each major class of assets acquired and liabilities assumed for the acquisitions are as follows (in millions):

Total consideration	\$	6.1
Fair value of non-controlling interests		3.5
Aggregate acquisition date fair value	\$	<u>9.6</u>
Net assets acquired:		
Current assets	\$	1.5
Property and equipment		1.1
Goodwill		8.3
Right-of-use operating lease assets		5.4
Current liabilities		(1.3)
Right-of-use operating lease liabilities		(5.4)
Aggregate acquisition date fair value	\$	<u>9.6</u>

The fair values assigned to certain assets acquired and liabilities assumed by the Company have been estimated on a preliminary basis and are subject to change as new facts and circumstances emerge that were present at the date of acquisition. During the three months ended March 31, 2020, no significant changes were made to the purchase price allocation of assets and liabilities, existing at the date of acquisition, related to individual acquisitions completed in 2019. The goodwill acquired was allocated to the Company's surgical facility services reportable segment. The results of operations of the acquisitions were included in the Company's results of operations beginning on the dates of acquisition and were not considered significant for the three months ended March 31, 2020.

### Disposals

During the three months ended March 31, 2020, the Company sold its interests in two surgery centers, one of which was previously accounted for as an equity method investment, for net cash proceeds of \$9.4 million, and recognized a net pre-tax loss of \$3.1 million included in loss on disposals and deconsolidations, net in the condensed consolidated statement of operations for the three months ended March 31, 2020.

## 3. Long-Term Debt

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

	<u>March 31, 2020</u>	<u>December 31, 2019</u>
Senior secured term loan <sup>(1)</sup>	\$ 1,430.6	\$ 1,434.1
Senior secured revolving credit facility	112.9	—
6.750% senior unsecured notes due 2025	370.0	370.0
10.000% senior unsecured notes due 2027	430.0	430.0
Notes payable and other secured loans	108.5	104.0
Finance lease obligations	245.3	253.4
Less: unamortized debt issuance costs	(10.5)	(10.8)
Total debt	<u>2,686.8</u>	<u>2,580.7</u>
Less: Current maturities	60.3	56.0
Total long-term debt	<u>\$ 2,626.5</u>	<u>\$ 2,524.7</u>

(1) Includes unamortized fair value discount of \$4.4 million and \$4.6 million as of March 31, 2020 and December 31, 2019, respectively.

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

On March 18, 2020, the Company drew down its available capacity under the senior secured revolving credit facility, as a precautionary measure in order to increase liquidity and preserve financial flexibility in light of current uncertainty resulting from the COVID-19 pandemic.

#### 4. Redeemable Preferred Stock

On August 31, 2017, the Company issued 310,000 shares of Series A Preferred Stock to Bain Capital Private Equity, L.P. at a purchase price of \$1,000 per share for an aggregate purchase price of \$310.0 million.

A summary of activity related to the Series A Preferred Stock follows (in millions):

Balance at December 31, 2019	\$	395.0
Dividends accrued (there were no cash dividends declared)		9.5
Balance at March 31, 2020	\$	<u>404.5</u>

There were no unpaid cash dividends declared at both March 31, 2020 and December 31, 2019. The aggregate and per share amounts of unpaid cumulative preferred dividends as of March 31, 2020 was \$78.9 million and \$254.61, respectively.

#### 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 as part of its interest rate risk management strategy. During 2020, such derivatives have been used to hedge the variable cash flows associated with existing variable-rate debt.

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 \$22.1 million will be reclassified as an increase to interest expense.

As of March 31, 2020, the Company had four interest rate swaps with a notional amount of \$1.2 billion and a termination date of November 30, 2023. The derivatives are recorded at fair value (see Note 1. "Organization and Summary of Accounting Policies") and classified as a long-term liability included in other long-term liabilities in the condensed consolidated balance sheets.

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

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Derivatives in cash flow hedging relationships</b>		
Loss recognized in OCI (effective portion)	\$ 28.6	\$ 12.8
Loss reclassified from accumulated OCI to interest expense (effective portion)	\$ 3.4	\$ 1.3

#### 6. Earnings Per Share

Basic and diluted earnings 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. The Company computes basic and diluted earnings per share using the two-class method. The two-class method of computing earnings per share is an earnings allocation method that determines earnings per share for common shares and participating securities according to their participation rights in dividends and undistributed earnings.

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

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):

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Numerator:</b>		
Net loss attributable to Surgery Partners, Inc.	\$ (27.5)	\$ (20.1)
Less: amounts allocated to participating securities <sup>(1)</sup>	(9.5)	(8.5)
Net loss attributable to common stockholders	<u>\$ (37.0)</u>	<u>\$ (28.6)</u>
<b>Denominator:</b>		
Weighted average shares outstanding- basic and diluted <sup>(2)</sup>	48,472	48,047
<b>Loss per share:</b>		
Basic and diluted <sup>(2)</sup>	\$ (0.76)	\$ (0.60)
<b>Dilutive securities outstanding not included in the computation of loss per share as their effect is antidilutive:</b>		
Stock options	72	—
Restricted shares	298	18

(1) Includes dividends accrued during all periods for the Series A Preferred Stock. The Series A Preferred Stock does not participate in undistributed losses.

(2) The impact of potentially dilutive securities for all periods presented was not considered because the effect would be anti-dilutive in each period.

## 7. Other Current Liabilities

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

	<b>March 31, 2020</b>	<b>December 31, 2019</b>
Right-of-use operating lease liabilities	\$ 36.9	\$ 37.3
Accrued legal settlement <sup>(1)</sup>	36.3	35.1
Interest payable	26.2	21.8
Amounts due to patients and payors	16.0	16.5
Accrued expenses and other	87.9	80.5
Total	<u>\$ 203.3</u>	<u>\$ 191.2</u>

(1) See Note 10. "Subsequent Events" for further discussion.

## 8. Commitments and Contingencies

### *Professional, General and Workers' Compensation 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 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 March 31, 2020 and December 31, 2019 were \$20.2 million and \$19.4 million, respectively. The balance includes expected insurance recoveries of \$12.1 million as of both March 31, 2020 and December 31, 2019.

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

### **Laws and Regulations**

Laws and regulations governing the Company's business, including those relating to the Medicare and Medicaid programs, are complex and subject to interpretation. These laws and regulations govern every aspect of how the Company's surgical facilities conduct their operations, from licensing requirements to how and whether the Company's facilities may receive payments pursuant to the Medicare and Medicaid programs. Compliance with such laws and regulations can be subject to future government agency review and interpretation as well as legislative changes to such laws. Noncompliance with such laws and regulations may subject the Company to significant regulatory sanctions including fines, penalties, and exclusion from the Medicare, Medicaid and other federal health care programs. From time to time, governmental regulatory agencies will conduct inquiries of the Company's practices, including, but not limited to, the Company's compliance with federal and state fraud and abuse laws, billing practices and relationships with physicians.

On October 23, 2017, the Company received several civil investigative demands ("CIDs") from the federal government under the False Claims Act (the "FCA") for documents and information dating back to January 1, 2010 relating to the medical necessity of certain drug tests conducted by the Company's physicians and submitted to laboratories owned and operated by the Company. In addition, the Company was informed by the Centers for Medicare and Medicaid Services ("CMS") that payments to its diagnostic laboratory, Logan Laboratories, LLC ("Logan Labs"), a toxicology laboratory based in Tampa, Florida that provides urine testing services, were suspended for a period of time, pending further investigations by CMS. CMS lifted the suspension as of December 18, 2019. On January 23, 2020, the United States District Court for the Middle District of Florida unsealed the Complaint in the case of *Cho et al. ex rel. United States v. Surgery Partners et al.*, which we understand to be related to the investigation that gave rise to the CIDs.

On April 14, 2020, Logan Labs and Tampa Pain Relief Centers, Inc. ("Tampa Pain" and, together with Logan Labs, the "Companies"), a pain management medical practice based in Tampa, Florida, both indirect wholly-owned subsidiaries of the Company, entered into a settlement agreement with the United States of America. See Note 10. "Subsequent Events" for further discussion of this settlement.

### **Acquired Facilities**

The Company, through its wholly-owned subsidiaries or controlled partnerships and limited liability companies, has acquired and will continue to acquire surgical facilities with prior operating histories. Such facilities may have unknown or contingent liabilities, including liabilities for failure to comply with health care laws and regulations, such as billing and reimbursement, fraud and abuse and similar anti-referral laws. Although the Company attempts to assure that no such liabilities exist, obtain indemnification from prospective sellers covering such matters and institute policies designed to conform centers to its standards following completion of acquisitions, there can be no assurance that the Company will not become liable for past activities that may later be asserted to be improper by private plaintiffs or government agencies. There can be no assurance that any such matter will be covered by indemnification or, if covered, that the liability sustained will not exceed contractual limits or the financial capacity of the indemnifying party.

The Company cannot predict whether federal or state statutory or regulatory provisions will be enacted that would prohibit or otherwise regulate relationships which the Company has established or may establish with other health care providers or have materially adverse effects on its business or revenues arising from such future actions. Management believes, however, that it will be able to adjust the Company's operations so as to be in compliance with any statutory or regulatory provision as may be applicable.

### **Potential Physician Investor Liability**

A majority of the physician investors in the partnerships and limited liability companies which operate the Company's surgical facilities carry general and professional liability insurance on a claims-made basis. Each partnership or limited liability company may, however, be liable for damages to persons or property arising from occurrences at the surgical facilities. Although the various physician investors and other surgeons generally are required to obtain general and professional liability insurance with tail coverage that extends beyond the period of any claims-made policies, such individuals may not be able to obtain coverage in amounts sufficient to cover all potential liability. Since most insurance policies contain exclusions, the physician investors will not be insured against all possible occurrences. In the event of an uninsured or underinsured loss, the value of an investment in the partnership interests or limited liability company membership units and the amount of distributions could be adversely affected.

### **Tax Receivable Agreement**

On May 9, 2017, the Company entered into an agreement to amend that certain Income Tax Receivable Agreement, dated September 30, 2015 (as amended, the "TRA"), by and between the Company, and the other parties referred to therein, which amendment became effective on August 31, 2017. Pursuant to the amendment to the TRA, the Company agreed to make payments to H.I.G., the Company's former controlling shareholder, in its capacity as the stockholders representative pursuant to a fixed payment schedule. The amounts payable under the TRA are calculated as the product of (i) an annual base amount and (ii) the maximum corporate federal income tax rate for the applicable year plus three percent. The amounts payable under the TRA are related to the Company's projected realized tax savings over the next five years and are not dependent on the Company's actual tax savings over such period. The calculation of amounts payable pursuant to the TRA is thus dependent on the maximum corporate federal income tax rate. To the extent that the Company is unable to make payments under the TRA, such payments will be deferred and will accrue interest at a rate of the London Interbank Offered Rate ("LIBOR") plus 500 basis points until paid. If the terms of credit agreements and other debt documents cause the Company to be unable to make payments under the TRA and such terms are not materially more restrictive than those existing as of September 30, 2015, such payments will be deferred and will accrue interest at a rate of LIBOR plus 300 basis points until paid.

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

Assuming the Company's tax rate is 24%, calculated as the maximum corporate federal tax rate plus three percent, throughout the remaining term of the TRA, the Company estimates the total remaining amounts payable under the TRA was approximately \$60.1 million as of both March 31, 2020 and December 31, 2019. As a result of the amendment to the TRA, the Company was required to value the liability under the TRA by discounting the fixed payment schedule using the Company's incremental borrowing rate. The carrying value of the liability under the TRA, reflecting the discount, was \$49.9 million and \$48.7 million as of March 31, 2020 and December 31, 2019, respectively. The current portion of the liability was \$16.9 million as of both March 31, 2020 and December 31, 2019, and is included as a component of other current liabilities in the condensed consolidated balance sheets. The long-term portion is included as a component of other long-term liabilities in the condensed consolidated balance sheets.

## 9. Segment Reporting

The Company operates in three major lines of business that are also the Company's reportable operating segments - the operation of surgical facilities, the operation of ancillary services and the operation of optical services. The surgical facility services segment consists of the operation of ASCs and surgical hospitals and includes anesthesia services. The ancillary services segment consists of a diagnostic laboratory and multi-specialty physician practices. The optical services segment consists of an optical products group purchasing organization. "All other" primarily consists of the Company's corporate general and administrative functions.

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

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Revenues:</b>		
Surgical facility services	\$ 423.2	\$ 395.8
Ancillary services	17.0	19.9
Optical services	0.8	1.1
Total	<u>\$ 441.0</u>	<u>\$ 416.8</u>
<b>Adjusted EBITDA:</b>		
Surgical facility services	\$ 67.2	\$ 68.4
Ancillary services	(2.0)	1.2
Optical services	0.4	0.5
All other	(19.1)	(19.4)
Total	<u>\$ 46.5</u>	<u>\$ 50.7</u>
<b>Reconciliation of Adjusted EBITDA:</b>		
(Loss) income before income taxes	\$ (23.6)	\$ 5.2
Net income attributable to non-controlling interests	(19.1)	(23.6)
Depreciation and amortization	21.8	18.8
Interest expense, net	47.1	42.0
Equity-based compensation expense	3.5	1.9
Transaction, integration and acquisition costs <sup>(1)</sup>	12.6	3.4
Loss on disposals and deconsolidations, net	3.5	0.6
Litigation settlement and other litigation costs <sup>(2)</sup>	1.5	—
Gain on escrow release <sup>(3)</sup>	(0.8)	—
Tax receivable agreement expense	—	2.4
Adjusted EBITDA	<u>\$ 46.5</u>	<u>\$ 50.7</u>

(1) This amount includes transaction and integration costs of \$5.5 million and \$2.0 million for the three months ended March 31, 2020 and 2019, respectively. This amount further includes other acquisition costs and start-up costs related to a de novo surgical hospital of \$7.1 million and \$1.4 million for the three months ended March 31, 2020 and 2019, respectively.

(2) This amount includes litigation settlement costs of \$1.2 million and other litigation costs of \$0.3 million for the three months ended March 31, 2020, with no comparable costs in the same 2019 period.

(3) Included in other income in the condensed consolidated statement of operations for the three months ended March 31, 2020, with no comparable gain in the same 2019 period.

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

	March 31, 2020	December 31, 2019
<b>Assets:</b>		
Surgical facility services	\$ 4,596.9	\$ 4,580.4
Ancillary services	69.9	69.6
Optical services	17.7	17.7
All other	406.4	351.2
Total assets	<u>\$ 5,090.9</u>	<u>\$ 5,018.9</u>
<b>Three Months Ended March 31,</b>		
	2020	2019
<b>Cash purchases of property and equipment, net:</b>		
Surgical facility services	\$ 11.0	\$ 10.9
Ancillary services	0.1	0.1
All other	0.7	0.8
Total cash purchases of property and equipment, net	<u>\$ 11.8</u>	<u>\$ 11.8</u>

## 10. Subsequent Events

### Settlement Agreement

On April 14, 2020, Logan Labs and Tampa Pain entered into a settlement agreement (the "Settlement Agreement") with the United States of America., acting through the United States Department of Justice ("DOJ") and on behalf of the Office of Inspector General of the Department of Health and Human Services ("OIG"), the Defense Health Agency, acting on behalf of the TRICARE Program, the Office of Personnel Management, as the administrator of the Federal Employees Health Benefits Program, the Office of Workers Compensation Programs of the United States Department of Labor, which administers federal workers compensation claims for federal employees, including the United States Postal Service, and the United States Department of Veterans Affairs (collectively, the "U.S. Parties") and certain other parties to resolve the pending DOJ investigation. As part of the Settlement Agreement, the DOJ asserted that certain urine tests ordered by Tampa Pain's physicians and conducted at Tampa Pain and Logan Labs for patients receiving opioid therapy to manage pain were not medically necessary and the resulting claims submitted to the U.S. Parties violated the federal False Claims Act (the "Covered Conduct").

Under the terms of the Settlement Agreement, the Companies will pay a total of \$40.0 million plus accrued interest from March 14, 2019, at the rate of 2.75% per annum to the U.S. Parties and participating states. The Settlement Amount is expected to be paid on the following schedule: the forfeiture of \$7.5 million of approved, paid claims currently held in suspense by the U.S. Parties and the payment of \$1.8 million plus accrued interest within 20 business days of the date of the Settlement Agreement and the payment of \$30.7 million plus accrued interest on April 1, 2021. The Company previously recorded a litigation-related charge of \$46.0 million relating to an anticipated resolution of the Covered Conduct on the consolidated statements of operations for the year ended December 31, 2018. For the three months ended March 31, 2020, the Company recorded an additional litigation-related charge of \$1.2 million relating to the resolution of the Covered Conduct on the condensed consolidated statement of operations.

Under the Settlement Agreement, the U.S. Parties agrees to release the Companies from any civil or administrative monetary liability arising from the Covered Conduct. Additionally, under the Settlement Agreement, the OIG agrees, conditioned upon the Companies' full payment of the Settlement Amount, and in consideration of Logan Labs' and Tampa Pain's obligations under their respective Corporate Integrity Agreements (as defined and described below), to release its permissive exclusion rights and refrain from instituting any administrative action seeking to exclude the Companies from participating in Medicare, Medicaid or other Federal health care programs as a result of the Covered Conduct.

The Settlement Agreement contains no admissions of liability on the part of the Companies or the Company.

In connection with the resolution of this matter, and in exchange for the OIG's agreement not to exclude the Companies from participating in the federal health care programs, on April 14, 2020, Tampa Pain entered into a five-year corporate integrity agreement with the OIG and Logan Labs entered into a three-year corporate integrity agreement with the OIG (together, the "Corporate Integrity Agreements").

The foregoing description of the Settlement Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Settlement Agreement, which is attached as Exhibit 10.4 to this Quarterly Report on Form 10-Q.

### Third Amendment to Credit Agreement

On April 16, 2020, SP Holdco I, Inc., a Delaware corporation ("Holdings"), and Surgery Center Holdings, Inc., a Delaware corporation (the "Borrower"), each a wholly-owned subsidiary of the Company, entered into a third amendment to credit agreement governing their

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

revolving credit facility (the “Revolver”), dated as of April 16, 2020 (the “Third Amendment”), with Jefferies Finance LLC, as administrative agent and collateral agent, and the other financial institutions party thereto, which amended and supplemented financial covenants applicable to the Revolver under the credit agreement, dated as of August 31, 2017, by and among the Borrower, Holdings, certain wholly-owned subsidiaries of the Borrower party thereto from time to time, Jefferies Finance LLC, as administrative agent and collateral agent, and the other financial institutions party thereto from time to time (as amended prior to the date hereof) (the “Credit Agreement”). Pursuant to the Third Amendment, the Company's requirement to comply with a maximum consolidated total net leverage ratio will be waived for the remainder of 2020. The amendments pursuant to the Third Amendment became effective concurrently with the funding of the 2020 Incremental Term Loans on April 22, 2020.

#### ***Second Incremental Term Loan Amendment***

On April 22, 2020, Holdings and the Borrower, together with certain wholly-owned subsidiaries of the Borrower, entered into a second incremental term loan amendment, dated as of April 22, 2020 (the “Second Incremental Term Loan Amendment”), with Jefferies Finance LLC, as administrative agent and collateral agent, and the other financial institutions party thereto, which further amended and supplemented the Credit Agreement to provide for a \$120.0 million senior secured incremental term loan (the “2020 Incremental Term Loans”). The 2020 Incremental Term Loans were fully drawn on April 22, 2020 and bear interest at a rate per annum equal to (x) LIBOR plus a margin of 8.00% per annum or (y) an alternate base rate (which will be the highest of (i) the prime rate, (ii) 0.5% per annum above the federal funds effective rate, (iii) one-month LIBOR plus 1.00% per annum and (iv) 2.00% per annum) plus a margin of 7.00% per annum. The 2020 Incremental Term Loans were incurred as a separate tranche of term loans under the Credit Agreement, and are subject to maturity, amortization and mandatory prepayment provisions consistent with the existing terms loans outstanding under the Credit Agreement. Voluntary prepayments of the 2020 Incremental Term Loans are permitted, in whole or in part, with prior notice, without premium or penalty (except LIBOR breakage costs and a make-whole and call premium, as applicable, in the case of certain prepayments or events within a specified period of time after April 22, 2020, as set forth in the Second Incremental Term Loan Amendment).

#### ***CARES Act***

The Company is closely monitoring legislative actions at the federal, state and local levels including the CARES Act and other governmental assistance that might be available. As part of the CARES Act, the United States government initially announced that it would offer \$100 billion of relief to eligible health care providers. On April 7, 2020, CMS officials indicated they would distribute \$30 billion of direct grants to hospitals, ASCs and other health care providers based on how much they bill Medicare. Payments received from these grants are not required to be repaid provided the recipients attest to and comply with certain terms and conditions. The Company received approximately \$45 million of the grant funds distributed through the date of this filing, which did not qualify for recognition during the three months ended March 31, 2020.

As a way to increase cash flow to Medicare providers impacted by the COVID-19 pandemic, the CARES Act expanded the Medicare Accelerated and Advance Payment Program, which allows for most providers and suppliers, including the Company's ASCs, to request up to 100% of the Medicare Fee-for-Service payment amount for a three-month period. Hospitals can request up to 100% of the payment amount for a six-month period, with certain critical access hospitals able to request up to 125% of the payment for a six-month period. Repayment of advance payments will commence 120 days after the date the payment is issued and will be effectuated via an automatic 100% offset against future claims payments. Hospitals will have one year from the date the payment is received to repay the advance payments; all other providers will have 210 days to repay the advance payment. Through the date of this filing, the Company received approximately \$120 million of accelerated payments, which did not qualify for recognition during the three months ended March 31, 2020.

The CARES Act also provides for the deferral of the Company's portion of social security payroll taxes for the remainder of 2020. Under the CARES Act, half of the deferred amount will have to be paid in each of December 2021 and December 2022. The Company began deferring the social security payroll tax match in April 2020.

On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (the “New PPP Act”) was adopted which allocates an additional \$75 billion to eligible health care providers for the same purposes as in the CARES Act. Recipients will not be required to repay the amounts received, provided they comply with terms and conditions, which have not yet been finalized.

## 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 2019 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. Unless the context implies otherwise, 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. These 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, the duration and severity of the COVID-19 outbreak in the United States and the regions in which we operate, the impact to the state and local economies of prolonged shelter in place orders and the pandemic generally, our ability to respond nimbly to challenging economic conditions, the unpredictability of our case volume both in the current environment and if and when restrictions are eased, our ability to preserve or raise sufficient funds to continue operations throughout this period of uncertainty, including through our in-process asset sales, which may not occur during this period of uncertainty, if at all, the impact of our cost-cutting measures on our future performance, our ability to defer payments, including certain lease payments, our ability to cause distributions from our subsidiaries, the responsiveness of our payors, including Medicaid and Medicare, to the challenging operating conditions, including their willingness and ability to continue paying in a timely manner and to advance payments in a timely manner, if at all; our ability to execute on our operational and strategic initiatives; the timing and impact of our portfolio optimization efforts; our ability to continue to improve same-facility volume and revenue growth on the timeline anticipated, if at all; our ability to successfully integrate acquisitions; the anticipated impact and timing of our ongoing efficiency efforts, including insurance consolidations and completed headcount actions, as well as our ongoing procurement and revenue cycle efforts; the impact of adverse weather conditions and other events outside of our control; and the risks and uncertainties set forth under the heading "Risk Factors" in this report and in our 2019 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

Total revenues for the first quarter of 2020 increased 5.8% to \$441.0 million from \$416.8 million for the first quarter of 2019. Same-facility revenues for the first quarter of 2020 increased 2.5% from the same period last year, with a 11.4% increase in revenue per case and a 8.0% decrease in same-facility cases. When adjusted for business days that we operated in the first quarter 2020, same-facility revenues increased 0.9% with a 9.4% decrease in same-facility cases attributable to the impacts of COVID-19 that the Company began experiencing in mid-March, which is described in further detail below in the section titled "Impact of COVID-19." Same-facility revenue per case growth was driven by a favorable surgical case mix as lower acuity cases were some of the first to decline as the COVID-19 crisis developed. For the first quarter of 2020, the Company's net loss attributable to common stockholders and Adjusted EBITDA was \$37.0 million and \$46.5 million, respectively, compared to \$28.6 million and \$50.7 million for the same period last year. A reconciliation of non-GAAP financial measures appears below under "Certain Non-GAAP Metrics." The increase in net loss attributable to common stockholders and the decrease in Adjusted EBITDA are attributable to the decline in surgical cases due to the impacts of COVID-19 as discussed further below.

On March 18, 2020, the Company drew down its available capacity under the senior secured revolving credit facility, as a precautionary measure in order to increase liquidity and preserve financial flexibility in light of current uncertainty resulting from the COVID-19 pandemic. We had cash and cash equivalents of \$194.6 million at March 31, 2020. Net operating cash inflows, including operating cash flows less distributions to non-controlling interests, were \$5.2 million for the first quarter of 2020.

We continue to focus on improving our same-facility performance, selectively acquiring established facilities and developing new facilities. During the three months ended March 31, 2020, we completed the acquisitions of a surgical facility in a new market and a surgical facility in an existing market that was merged into an existing facility for an aggregate cash investment of \$6.1 million.

### Impact of COVID-19

The COVID-19 global pandemic is significantly affecting our facilities, employees, patients, communities, business operations and financial performance, as well as the United States economy and financial markets. Beginning mid-March, the COVID-19 pandemic began

to negatively affect our net revenue and business operations. On March 18, 2020, we reported that we had withdrawn our previously announced full-year 2020 outlook, and on April 15, 2020, we filed a Current Report on Form 8-K providing additional disclosure about the impact of the pandemic on our operations. The COVID-19 crisis is still rapidly evolving and much of its impact remains unknown and difficult to predict; however, due in part to local, state and federal guidelines as well as recommendations from major medical societies, social distancing and self-quarantines in response to the COVID-19 pandemic, most of our surgical facilities are experiencing significantly lower surgical case volume. The impact of COVID-19 on our surgical facilities varies based on the market in which the facility operates, the type of surgical facility and the procedures that are typically performed. It is difficult to predict the duration of this lower surgical case volume and the volume and timing of any potential recapture of backlogged cases once restrictions are eased.

Although we cannot provide any certainty regarding the length and severity of the impact of the COVID-19 pandemic, we currently project that our net revenue will continue to be negatively affected into the second quarter of 2020. Our operating structure naturally enables some flexibility in the cost structure according to the volume of surgical procedures performed, including much of our cost of revenues. In addition to the natural variability of these costs, we and our partners in the surgical facilities are undertaking additional steps to preserve financial flexibility. In mid-March we took actions that remain underway including: furloughing employees, converting salaried employees to an hourly pay rate, negotiating with the our vendors and lessors for revised payment terms and reducing corporate payroll costs. For further discussion, see Item 1A "Risk Factors" elsewhere in this report.

On March 18, 2020, the Company drew down its available capacity under the Revolver, as a precautionary measure in order to increase liquidity and preserve financial flexibility in light of current uncertainty resulting from the COVID-19 pandemic. In addition, on April 22, 2020, we entered into a second incremental term loan amendment, which amended and supplemented the existing credit agreement, to provide for an incremental borrowing of \$120.0 million. The incremental amounts were fully drawn on April 22, 2020. See Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report for a further discussion of the second incremental term loan amendment. Additionally, please see "Capital Resources" and "Summary" under the heading "Liquidity and Capital Resources" below for more information about the impact of the COVID-19 pandemic on the Company.

The Company is closely monitoring legislative actions at federal and state levels including the impact of the CARES Act and other governmental assistance that might be available. See Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report for a further discussion of the CARES Act and relief we have received.

### **Regulatory Developments in Response to COVID-19**

Numerous recent legislative and regulatory actions have been taken in an attempt to provide businesses, including health care providers, with relief from the negative impacts of the COVID-19 pandemic. The legislative and regulatory responses to COVID-19 generally impact many of the statutes, regulations and policies summarized or discussed throughout this report and in our 2019 Annual Report on Form 10-K. Unless otherwise noted, such summaries or discussions have not been updated to reflect the impact of the COVID-19 legislative and regulatory developments since the end of the first quarter.

#### ***CARES Act***

On March 27, 2020, the CARES Act was signed into law. The CARES Act is intended to provide over \$2 trillion in stimulus benefits for the U.S. economy in order to offset the negative economic impact of the COVID-19 public health emergency. Among other things, the CARES Act includes support for small businesses, expands unemployment benefits, and provides \$500 billion for loans, loan guarantees, and other investments for or in U.S. businesses.

The CARES Act contains a number of provisions that are intended to assist health care providers as they combat the effects of the COVID-19 public health emergency. The healthcare-specific provisions include:

- the temporary suspension of Medicare sequestration from May 1, 2020, to December 31, 2020;
- an appropriation of \$100 billion to the Public Health and Social Services Emergency Fund for a new program to reimburse, through grants or other mechanisms, eligible health care providers and other approved entities for COVID-19-related expenses or lost revenues;
- the expansion of CMS' Accelerated and Advance Payment Program; and
- waivers or temporary suspension of certain regulatory requirements.

#### ***Paycheck Protection Program and Health Care Enhancement Act***

On April 24, 2020, the New PPP Act was signed into law. Among other things, the New PPP Act allocates \$75 billion to Medicare and Medicaid participating hospitals and other health care providers to help offset COVID-19 related losses and expenses. The \$75 billion allocated under the New PPP Act is in addition to the \$100 billion allocated to health care providers for the same purposes in the CARES Act. The New PPP Act will likely be disbursed to providers under terms and conditions that are similar to the CARES Act funds.

#### ***Waivers or Temporary Suspension of Certain Regulatory Requirements***

In addition to the financial and other relief that has been provided by the federal government through the CARES Act and other legislation that has been passed by Congress, CMS and many state governments have also issued a number of waivers and temporary suspensions of

health care facility licensure, certification, and reimbursement requirements in order to provide hospitals, ambulatory surgery centers, physicians, and other health care providers with increased flexibility to meet the challenges presented by the COVID-19 public health emergency. For example, CMS has temporarily waived the enforcement of certain requirements of the Medicare conditions of participation and implemented a "hospitals without walls" program that would enable hospitals to treat patients in temporary locations and enable ASCs to temporarily enroll in Medicare as hospitals. CMS has also temporarily waived many provisions of the Stark law, including those provisions of the Stark law that prohibit our hospitals with physician ownership from expanding capacity. Many states have also suspended the enforcement of certain regulatory requirements to ensure that health care providers have sufficient capacity to treat COVID-19 patients. These regulatory changes are temporary, with most slated to expire at the end of the declared COVID-19 public health emergency.

## 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 and management services we provide to physician practices for which we are not required to provide capital or additional assets.

The following table summarizes our revenues by service type as a percentage of total revenues for the periods indicated:

	Three Months Ended March 31,	
	2020	2019
<b>Patient service revenues:</b>		
Surgical facilities revenues	94.7%	93.8%
Ancillary services revenues	3.9%	4.7%
	<u>98.6%</u>	<u>98.5%</u>
<b>Other service revenues:</b>		
Optical services revenues	0.2%	0.3%
Other	1.2%	1.2%
	<u>1.4%</u>	<u>1.5%</u>
<b>Total revenues</b>	<u>100.0%</u>	<u>100.0%</u>

## Payor Mix

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

	Three Months Ended March 31,	
	2020	2019
Private insurance payors	52.0%	52.4%
Government payors	40.5%	40.2%
Self-pay payors	2.9%	2.6%
Other payors <sup>(1)</sup>	4.6%	4.8%
<b>Total</b>	<u>100.0%</u>	<u>100.0%</u>

(1) Other is comprised of anesthesia service agreements, 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 which we consolidate for financial reporting purposes for the periods indicated:

	Three Months Ended March 31,	
	2020	2019
Orthopedic and pain management	38.7%	37.4%
Ophthalmology	25.8%	23.7%
Gastrointestinal	20.0%	21.1%
General surgery	3.1%	3.1%
Other	12.4%	14.7%
Total	100.0%	100.0%

### Critical Accounting Policies

A summary of significant accounting policies is disclosed in our 2019 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, 2019.

### Results of Operations

#### Three Months Ended March 31, 2020 Compared to Three Months Ended March 31, 2019

The following table summarizes certain results from the statements of operations for the three months ended March 31, 2020 and 2019 (dollars in millions):

	Three Months Ended March 31,	
	2020	2019
Revenues	\$ 441.0	\$ 416.8
Operating expenses:		
Cost of revenues	366.2	326.1
General and administrative expenses	22.8	21.7
Depreciation and amortization	21.8	18.8
Income from equity investments	(2.0)	(2.0)
Loss on disposals and deconsolidations, net	3.5	0.6
Transaction and integration costs	5.5	2.0
Litigation settlement	1.2	—
Other income	(1.5)	—
Total operating expenses	417.5	367.2
Operating income	23.5	49.6
Tax receivable agreement expense	—	(2.4)
Interest expense, net	(47.1)	(42.0)
(Loss) income before income taxes	(23.6)	5.2
Income tax (benefit) expense	(15.2)	1.7
Net (loss) income	(8.4)	3.5
Less: Net income attributable to non-controlling interests	(19.1)	(23.6)
Net loss attributable to Surgery Partners, Inc.	\$ (27.5)	\$ (20.1)

*Overview.* During the three months ended March 31, 2020, our revenues increased 5.8% to \$441.0 million compared to \$416.8 million for the three months ended March 31, 2019. We incurred a net loss attributable to Surgery Partners, Inc. of \$27.5 million for the 2020 period, compared to \$20.1 million for the 2019 period, primarily attributable to the decline in surgical case volume that began in mid-March due to COVID-19.

*Revenues.* Revenues for the three months ended March 31, 2020 compared to the three months ended March 31, 2019 were as follows (dollars in millions):

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
Patient service revenues	\$ 434.6	\$ 410.8
Optical service revenues	0.8	1.1
Other service revenues	5.6	4.9
Total revenues	<u>\$ 441.0</u>	<u>\$ 416.8</u>

Patient service revenues increased 5.8% to \$434.6 million for the three months ended March 31, 2020 compared to \$410.8 million for the three months ended March 31, 2019. The growth of 5.8% was primarily driven by same-facility revenue per case growth of 11.4% and was partially offset by a decrease in same-facility case volume primarily due to the impacts of COVID-19 that began in mid-March. Same-facility revenue per case growth was driven by a favorable surgical case mix as lower acuity cases were some of the first to decline as the COVID-19 crisis developed.

*Cost of Revenues.* Cost of revenues were \$366.2 million for the three months ended March 31, 2020 compared to \$326.1 million for the three months ended March 31, 2019. The increase in costs were primarily attributable to our 2020 and 2019 acquisitions and an increase in supply costs associated with higher acuity surgical case volumes. As a percentage of revenues, cost of revenues increased to 83.0% for the 2020 period compared to 78.2% for the 2019 period.

*General and Administrative Expenses.* General and administrative expenses were \$22.8 million for the three months ended March 31, 2020 compared to \$21.7 million for the three months ended March 31, 2019. As a percentage of revenues, general and administrative expenses was 5.2% for both the 2020 period and the 2019 period.

*Depreciation and Amortization.* Depreciation and amortization was \$21.8 million and \$18.8 million for the three months ended March 31, 2020 and 2019, respectively. As a percentage of revenues, depreciation and amortization expenses was 4.9% for the 2020 period compared to 4.5% for the 2019 period. The increase is primarily due to increased capital investments and integration of acquisitions and a de novo hospital completed in 2019.

*Loss on Disposals and Deconsolidations, Net.* The net loss on disposals and deconsolidations was \$3.5 million for the 2020 period, including a net loss of \$3.1 million on the sale of interests in surgical facilities and \$0.4 million on disposals of other long-lived assets. The net loss on disposals and deconsolidations was \$0.6 million for the 2019 period, related to disposals of other long-lived assets.

*Transaction and Integration Costs.* We incurred \$5.5 million of transaction and integration costs for the three months ended March 31, 2020 compared to \$2.0 million for the three months ended March 31, 2019. The increase primarily relates to costs for ongoing development initiatives, divestitures completed in 2020 and the integration of acquisitions we completed in 2020 and 2019.

*Litigation settlement.* Litigation settlement costs were \$1.2 million for the three months ended March 31, 2020 related to the resolution of the government investigation, as discussed in Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report.

*Interest Expense, Net.* Interest expense, net, increased to \$47.1 million for the three months ended March 31, 2020 compared to \$42.0 million for the three months ended March 31, 2019. The increase primarily relates to the issuance of \$430.0 million in senior unsecured notes effective April 11, 2019. As a percentage of revenues, interest expense, net was 10.7% for the 2020 period compared to 10.1% for the 2019 period.

*Income Tax (Benefit) Expense.* The income tax benefit was \$15.2 million and expense was \$1.7 million for the three months ended March 31, 2020 and 2019, respectively. The effective tax rate was 64.4% for the three months ended March 31, 2020 compared to 32.7% for the three months ended March 31, 2019. The higher effective tax rate for the 2020 period was primarily due to discrete tax benefits of approximately \$11.9 million attributable to (a) the release of federal and state valuation allowances on the Company's IRC Section 163(j) interest carryforwards as a result of the increase in deductible interest expense allowed under the CARES Act; and (b) the Settlement Agreement, as discussed in Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report, which provided that a portion of the final settlement amount was "restitution" for income tax purposes. 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.

*Net Income Attributable to Non-Controlling Interests.* Net income attributable to non-controlling interests was \$19.1 million for the three months ended March 31, 2020 compared to \$23.6 million for the three months ended March 31, 2019. As a percentage of revenues, net income attributable to non-controlling interests was 4.3% in the 2020 period and 5.7% for the 2019 period.

## Liquidity and Capital Resources

### Operating Activities

The primary source of our operating cash flow is the collection of accounts receivable from federal and state agencies (under the Medicare and Medicaid programs), private insurance companies and individuals. During the three months ended March 31, 2020, our cash flow provided by operating activities was \$29.2 million compared to \$20.5 million in the three months ended March 31, 2019 primarily due to the timing of certain payroll and trade payable payments.

### Investing Activities

Net cash used in investing activities during the three months ended March 31, 2020 was \$7.7 million, which included \$11.8 million related to purchases of property and equipment. We paid \$5.5 million in cash for acquisitions (net of cash acquired), which included a surgical facility in a new market and a surgical facility that was merged into an existing facility. Additionally, we received cash proceeds of \$9.4 million related to the sale of our interests in two surgery centers, one of which was previously accounted for as an equity method investment.

Net cash used in investing activities during the three months ended March 31, 2019 was \$18.4 million, which included \$11.8 million related to purchases of property and equipment. We additionally paid \$7.6 million in cash for acquisitions, which primarily included a physician practice.

### Financing Activities

Net cash provided by financing activities during the three months ended March 31, 2020 was \$80.4 million. During this period, we made distributions to non-controlling interest holders of \$24.0 million and payments related to ownership transactions with consolidated affiliates of \$0.4 million. Additionally, we made repayments on our long-term debt of \$52.8 million, which was offset by borrowings of \$158.4 million.

Net cash used in financing activities during the three months ended March 31, 2019 was \$43.9 million. During this period, we made distributions to non-controlling interest holders of \$33.8 million and received cash related to ownership transactions with consolidated affiliates of \$1.5 million. Additionally, we made repayments on our long-term debt of \$12.9 million, which was offset by borrowings of \$2.4 million.

### Debt

As of March 31, 2020, the carrying value of our total indebtedness was \$2.687 billion, which includes unamortized fair value discount of \$4.4 million and unamortized deferred financing costs of \$10.5 million.

#### Term Loan and Revolving Credit Facility

As of March 31, 2020, we had term loan borrowings with a carrying value of \$1.431 billion, consisting of outstanding aggregate principal of \$1.435 billion and unamortized fair value discount of \$4.4 million (the "Term Loan"). The Term Loan matures on August 31, 2024. The Term Loan amortizes in equal quarterly installments of 0.25% of the aggregate original principal amount of the Term Loan.

We have a Revolver providing for revolving borrowings of up to \$120.0 million. The Revolver will mature on August 31, 2022. On March 18, 2020, the Company drew down its available capacity under the Revolver, as a precautionary measure in order to increase liquidity and preserve financial flexibility in light of current uncertainty resulting from the COVID-19 pandemic. As of March 31, 2020, outstanding borrowing on the Revolver was \$112.9 million and our availability on the Revolver was \$0.1 million (including outstanding letters of credit of \$7.0 million).

The Revolver may be utilized for working capital, capital expenditures and general corporate purposes. Subject to certain conditions and requirements set forth in the credit agreement, we may request one or more additional incremental term loan facilities or one or more increases in the commitments on the Revolver.

The Revolver and the Term Loan, together the "Senior Secured Credit Facilities" bear interest at a rate per annum equal to (x) LIBOR plus a margin ranging from 3.00% to 3.25% per annum, depending on our first lien net leverage ratio or (y) an alternate base rate (which will be the highest of (i) the prime rate, (ii) 0.5% per annum above the federal funds effective rate and (iii) one-month LIBOR plus 1.00% per annum (solely with respect to the Term Loan, the alternate base rate shall not be less than 2.00% per annum)) plus a margin ranging from 2.00% to 2.25% per annum. In addition, we are required to pay a commitment fee of 0.50% per annum in respect of unused commitments on the Revolver.

On April 22, 2020, we entered into a second incremental term loan amendment, which amended and supplemented the existing credit agreement, to provide for an incremental borrowing of \$120.0 million. The incremental amounts were fully drawn on April 22, 2020. See Note 10, "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report for a further discussion of the second incremental term loan amendment.

On April 16, 2020, we entered into a third amendment to our credit agreement, which amended and supplemented financial covenants applicable to the Revolver under the credit agreement. Pursuant to the third amendment, the Company's requirement to comply with a maximum consolidated total net leverage ratio will be waived for the remainder of 2020. The third amendment became effective concurrently with the funding of the incremental term loans on April 22, 2020, discussed above.

### *Senior Unsecured Notes*

We have \$430.0 million aggregate principal amount of senior unsecured notes due April 15, 2027 (the "2027 Unsecured Notes"). The 2027 Unsecured Notes bear interest at the rate of 10.000% per year, payable semi-annually on April 15 and October 15 of each year.

We have \$370.0 million aggregate principal amount of senior unsecured notes due July 1, 2025 outstanding (the "2025 Unsecured Notes"). The 2025 Unsecured Notes bear interest at the rate of 6.750% per year, payable semi-annually on January 1 and July 1 of each year.

### *Other Debt*

We and certain of our subsidiaries have other debt consisting of outstanding bank indebtedness of \$108.5 million, which is collateralized by the real estate and equipment owned by the surgical facilities to which the loans were made, and right-of-use finance lease obligations of \$245.3 million for which we are liable to various vendors for several property and equipment leases classified as finance leases.

### *Capital Resources*

In addition to cash flows from operations and available cash, other sources of capital include funds we have received under the CARES Act as well as continued access to the capital markets.

As previously noted in Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report, as of the date of this filing, we received relief via the CARES Act, including approximately \$45 million in direct grant payments and approximately \$120 million of accelerated payments pursuant to the Medicare Accelerated and Advance Payment Program. The direct grant payments are not required to be repaid, subject to certain terms and conditions, while payments received under the Medicare Accelerated and Advance Payment Program are required to be repaid. Additionally, the CARES Act permits the deferral of payment of the social security payroll tax match for the remainder of 2020, with half of the deferred amount due December 2021 and the other half due December 2022. We believe that deferral of the social security payroll tax match, which we began doing in April 2020, along with the funds received under the CARES Act provisions noted above, will positively impact our cash flows from operations during 2020.

### *Summary*

The COVID-19 pandemic has resulted in, and may continue to result in, significant disruptions of financial and capital markets, which could reduce our ability to access capital and negatively affect our liquidity in the future. Additionally, while we have received grants and accelerated payments under the CARES Act, and we may receive additional amounts in the future under the CARES Act and the New PPP Act, as noted above, there is no assurance regarding the extent to which anticipated negative impacts on us arising from the COVID-19 pandemic will be offset by amounts and benefits received under the CARES Act, and which we may receive in the future under the CARES Act and the New PPP Act, or other legislation.

Broad economic factors resulting from the current COVID-19 pandemic, including increasing unemployment rates and reduced consumer spending, could also 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. Business closings and layoffs in the areas in which we operate may lead to increases in the uninsured and underinsured populations and adversely affect demand for our services, as well as the ability of patients and other payors to pay for services as rendered. 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 continue to deteriorate or remain uncertain for an extended period of time, our liquidity and ability to repay our outstanding debt may be harmed.

Based on our current level of operations, we believe cash flow from operations, available cash, the incremental term loan borrowings discussed above, funds we have received under the CARES Act, funds we may receive in the future and continued access to capital markets, together with the cost cutting steps taken in response to the impact of COVID-19, as discussed in Item 1A. "Risk Factors" elsewhere in this report, will be adequate to meet our short-term (i.e., 12 months) liquidity needs.

### **Certain Non-GAAP Metrics**

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.

When we use the term "Adjusted EBITDA," we are referring to income before income taxes, adjusted for net income attributable to non-controlling interests, depreciation and amortization, interest expense, net, equity-based compensation expense, transaction, integration and acquisition costs, net loss on disposals and deconsolidations, litigation settlement and other litigation costs, gain on escrow release and tax receivable agreement expense. 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 (loss) income before income taxes, the most directly comparable GAAP financial measure (in millions and unaudited):

	<b>Three Months Ended March 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Condensed Consolidated Statements of Operations Data:</b>		
<b>(Loss) income before income taxes</b>	\$ (23.6)	\$ 5.2
<i>Plus (minus):</i>		
Net income attributable to non-controlling interests	(19.1)	(23.6)
Depreciation and amortization	21.8	18.8
Interest expense, net	47.1	42.0
Equity-based compensation expense	3.5	1.9
Transaction, integration and acquisition costs <sup>(1)</sup>	12.6	3.4
Loss on disposals and deconsolidations, net	3.5	0.6
Litigation settlement and other litigation costs <sup>(2)</sup>	1.5	—
Gain on escrow release <sup>(3)</sup>	(0.8)	—
Tax receivable agreement expense	—	2.4
<b>Adjusted EBITDA</b>	<b>\$ 46.5</b>	<b>\$ 50.7</b>

(1) This amount includes transaction and integration costs of \$5.5 million and \$2.0 million for the three months ended March 31, 2020 and 2019, respectively. This amount further includes other acquisition costs and start-up costs related to a de novo surgical hospital of \$7.1 million and \$1.4 million for the three months ended March 31, 2020 and 2019, respectively.

(2) This amount includes litigation settlements of \$1.2 million and other litigation costs of \$0.3 million for the three months ended March 31, 2020, with no comparable costs in the same 2019 period.

(3) Included in other income in the condensed consolidated statement of operations for the three months ended March 31, 2020, with no comparable gain in the same 2019 period.

We use Credit Agreement EBITDA as a measure of liquidity and to determine our compliance under certain covenants pursuant to our credit facilities. 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 our 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):

	<b>Twelve Months Ended March 31, 2020</b>
<b>Cash flows from operating activities</b>	<b>\$ 138.2</b>
<i>Plus (minus):</i>	
Non-cash interest income, net	(4.1)
Non-cash lease expense	(39.3)
Deferred income taxes	8.3
Income from equity investments, net of distributions received	(0.6)
Changes in operating assets and liabilities, net of acquisitions and divestitures	40.1
Income tax expense	(7.4)
Net income attributable to non-controlling interests	(115.4)
Interest expense, net	184.0
Transaction, integration and acquisition costs	45.3
Litigation settlement and other litigation costs	6.1
Gain on escrow release	(0.8)
Acquisitions and synergies <sup>(1)</sup>	72.6
<b>Credit Agreement EBITDA</b>	<b>\$ 327.0</b>

(1) Represents impact of acquisitions as if each acquisition had occurred on April 1, 2019. Further this includes revenue synergies from other business initiatives, de novo facilities and an adjustment for the effects of adopting the new lease accounting standard, as defined in the credit agreement governing the Senior Secured Credit Facilities.

#### Recent Accounting Pronouncements

Please refer to Note 1. "Organization and Summary of Accounting Policies" to our condensed consolidated financial statements included elsewhere in this report for a discussion of the impact of the adoption of recently issued accounting standards.

#### 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 agreements to manage our exposure to interest rate fluctuations. Our interest rate swap 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 LIBOR. 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 effect of our interest rate swap agreements at March 31, 2020, a 100 basis point interest rate change would impact our net earnings and cash flow by approximately \$2.4 million annually. Although there can be no assurances that interest rates will not change significantly, we do not expect changes in interest rates to have a material effect on our net earnings or cash flows in 2020 based on our indebtedness at March 31, 2020.

#### 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 March 31, 2020. 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 March 31, 2020 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

**Stockholder Litigation.** On December 4, 2017, a purported Company stockholder filed an action in the Delaware Court of Chancery (the "Delaware Action"). That action is captioned Klein v. H.I.G. Capital, L.L.C., et al., C.A. No. 2017-0862. The plaintiff in the Delaware Action asserted claims against (i) certain current and former members of the Company's Board of Directors (together, the "Directors"); (ii) H.I.G. Capital, LLC and certain of its affiliates (collectively, "H.I.G."); and (iii) Bain Capital Private Equity, L.P. and certain of its affiliates (collectively, "Bain Capital" and, together with the Directors and H.I.G., the "Defendants"). The plaintiff asserted derivative claims on behalf of the Company, which is a nominal defendant in the Delaware Action, as well as putatively direct claims on behalf of a purported class of Company stockholders. The plaintiff in the Delaware Action asserted that the Defendants breached their fiduciary duties in connection with the transactions in which (i) the Company acquired National Surgical Healthcare; (ii) Bain Capital acquired preferred equity in the Company; and (iii) Bain Capital acquired H.I.G.'s equity stake in the Company, and that, in the alternative, Bain Capital aided and abetted those purported breaches. The plaintiff also asserted an unjust enrichment claim against Bain Capital.

On January 2, 2018, the Defendants moved to dismiss the plaintiff's complaint. On December 19, 2018, the Court of Chancery issued a decision on that motion. Following that decision, all of the Directors have been dismissed from the Delaware Action. The Court did not dismiss the plaintiff's breach of fiduciary duty claim against H.I.G. or the aiding and abetting claim asserted against Bain Capital. However, the Court dismissed the plaintiff's breach of fiduciary duty and unjust enrichment claims against Bain Capital. In addition, the Court dismissed all of the plaintiff's claims that were asserted on behalf of a putative class of Company stockholders. Accordingly, all of the plaintiff's remaining claims in the Delaware Action are asserted derivatively on the Company's behalf.

**Government Investigation.** On October 23, 2017, the Company received several CIDs from the federal government under the FCA for documents and information dating back to January 1, 2010 relating to the medical necessity of certain drug tests conducted by the Company's physicians and submitted to laboratories owned and operated by the Company. In addition, the Company was informed by the CMS that payments to Logan Labs were suspended for a period of time, pending further investigation by CMS. CMS lifted the suspension as of December 18, 2019. On January 23, 2020, the United States District Court for the Middle District of Florida unsealed the Complaint in the case of Cho et al. ex rel. United States v. Surgery Partners et al., which was related to the investigation that gave rise to the CIDs.

On April 14, 2020, Logan Labs and Tampa Pain entered into the Settlement Agreement with the United States of America. See Note 10. "Subsequent Events" to our condensed consolidated financial statements included elsewhere in this report for further discussion on the Settlement Agreement.

**Other Litigation.** In addition, 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.

See Note 8. "Commitments and Contingencies" for additional information regarding pending legal proceedings, which information is incorporated herein by reference.

### Item 1A. Risk Factors

There have been no material changes with respect to the risk factors discussed in our 2019 Annual Report on Form 10-K, except for the following:

**The COVID-19 global pandemic is significantly affecting our operations, business and financial condition, and our liquidity will be negatively impacted further if the United States economy remains unstable for a significant amount of time or it takes an extended period for patient volumes at our facilities to recover.**

The COVID-19 pandemic is significantly affecting our facilities, employees, patients, communities, business operations and financial performance, as well as the United States economy and financial markets. On March 18, 2020, we reported that we had withdrawn our previously announced full-year 2020 outlook and on April 15, 2020, we filed a Current Report on Form 8-K providing additional disclosure about the impact of the pandemic on our operations. The COVID-19 crisis is still rapidly evolving and much of its impact remains unknown and difficult to predict; however, it has adversely affected our business operations in recent weeks, is expected to materially impact our financial performance for the second quarter of 2020, and potentially could negatively impact our financial performance for the year ending December 31, 2020 or longer.

We are taking or supporting measures to try to slow the spread and minimize the impact of the virus. Many of these measures are adversely impacting our business and likely will have an adverse impact on our financial results that we are not currently able to quantify. For example, due in part to local, state and federal guidelines as well as recommendations from major medical societies, social distancing and self-quarantines in response to the COVID -19 pandemic, we have cancelled or postponed a substantial percentage of the elective procedures scheduled at our facilities and have reduced operating hours at a significant number of our facilities. As a result, our facilities are experiencing significantly lower surgical case volume. The impact on our surgical facilities varies based on the market in which the facility operates, the type of surgical

facility and the procedures that are typically performed. It is difficult to predict the duration of this lower surgical case volume and, while restrictions are starting to be eased, we cannot predict the timing of the potential recapture of cancelled or postponed procedures, if any.

Even after taking into account actions that we are taking intended to increase financial flexibility, the volume reductions we are experiencing will likely result in materially higher losses and material decreases in Adjusted EBITDA (potentially resulting in negative Adjusted EBITDA) during the second quarter of 2020 and potentially for subsequent quarters. We cannot predict if or when utilization may return to pre-pandemic levels. Additionally, some of our actions to increase liquidity could result in increased expenses, reduced employee morale, labor unrest and work stoppages or other workforce disruptions.

We are experiencing, and could continue to experience, supply chain disruptions, including shortages, delays, and could experience significant price increases, in equipment, pharmaceuticals and medical supplies, particularly personal protective equipment or PPE. Staffing, equipment, and pharmaceutical and medical supplies shortages may also impact our ability to serve patients at our facilities.

Broad economic factors resulting from the current COVID-19 pandemic, including increasing unemployment rates and reduced consumer spending, could also 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. Business closings and layoffs in the areas in which we operate may lead to increases in the uninsured and underinsured populations and adversely affect demand for our services, as well as the ability of patients and other payors to pay for services as rendered. 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 continue to deteriorate or remain uncertain for an extended period of time, our liquidity and ability to repay our outstanding debt may be harmed.

In addition, our results and financial condition may be further adversely affected by future federal or state laws, regulations, orders, or other governmental or regulatory actions addressing the current COVID-19 pandemic or the United States health care system, which, if adopted, could result in direct or indirect restrictions to our business, financial condition, results of operations and cash flow.

Furthermore, the COVID-19 pandemic has caused disruption in the financial markets and the businesses of financial institutions. These factors have caused a slowdown in the decision-making of these institutions, which may affect the timing on which we may obtain any additional funding. As a result of these factors, there can be no assurance that we will be able to access additional funds on terms acceptable to us, if at all.

The foregoing and other continued disruptions to our business as a result of the COVID-19 pandemic have had and are likely to continue to have a material adverse effect on our business and could have a material adverse effect on our results of operations, financial condition, cash flows and our ability to service our indebtedness. Additionally, the COVID-19 pandemic (including governmental responses, broad economic impacts and market disruptions) has heightened the materiality of certain other risk factors described in our 2019 Annual Report on Form 10-K.

Finally, although we have received grants and accelerated payments under the CARES Act, we are reviewing and intend to seek any additional available benefits in the future under the CARES Act and the New PPP Act. We cannot predict the manner in which such future benefits will be allocated or administered and we cannot assure you that we will be able to access such benefits in a timely manner or at all. Certain of the programs we seek to access under the CARES Act have not previously been administered on the present scale or at all. Government or third party program administrators may be unable to cope with the volume of applications in the near term and any future benefits we receive may impose additional conditions and restrictions on our operations or may otherwise provide less relief than we contemplate. Accessing these programs and our response to the COVID-19 pandemic have required our management team to devote extensive resources and is likely to continue to do so in the near future, which may negatively affect our ability to implement our business plan and respond to opportunities.

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

The following table presents information related to our repurchases of common stock for the periods indicated:

	Total Number of Shares Purchased (1)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Program
<i>(dollars in millions, except per share amounts)</i>				
January 1, 2020 to January 31, 2020	9,014	\$ 16.03	—	\$ 46.0
February 1, 2020 to February 29, 2020	773	\$ 17.74	—	\$ 46.0
March 1, 2020 to March 31, 2020	32,293	\$ 6.44	—	\$ 46.0
Total	42,080	\$ 8.70	—	\$ 46.0

(1) Shares delivered to or withheld by us in connection with employee payroll tax withholding upon exercise or vesting of stock awards.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

<b>No.</b>	<b>Description</b>
10.1	<a href="#">Amendment No. 1 to Employment Agreement and between Surgery Partners, Inc., Surgery Partners, LLC and Wayne DeVeydt, dated January 13, 2020 (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on form 8-K filed on January 13, 2020).</a>
10.2	<a href="#">Amendment No. 1 to Employment Agreement by and between Surgery Partners, Inc., Surgery Partners, LLC and J. Eric Evans dated January 13, 2020 (incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on form 8-K filed on January 13, 2020).</a>
10.3	<a href="#">First Amendment to the Surgery Partners, Inc. Cash Incentive Plan.</a>
10.4	<a href="#">Settlement Agreement regarding Logan Laboratories, LLC and Tampa Pain Relieve Centers, Inc., dated April 14, 2020.</a>
10.5	<a href="#">Third Amendment to the Credit Agreement, dated as of April 16, 2020, by and among SP Holdco I, Inc., Surgery Center Holdings, Inc., 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 April 22, 2020).</a>
10.6	<a href="#">Second Incremental Term Loan Amendment, dated as of April 22, 2020, by and among SP Holdco I, Inc., Surgery Center Holdings, Inc., Jefferies Finance LLC and the other guarantors and lenders party thereto (incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 22, 2020).</a>
31.1	<a href="#">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.</a>
31.2	<a href="#">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.</a>
32.1	<a href="#">Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

**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.

By: /s/ Thomas F. Cowhey  
Thomas F. Cowhey  
*Executive Vice President and Chief Financial Officer*  
*(Principal Financial and Accounting Officer)*

Date: May 11, 2020

**FIRST AMENDMENT TO THE  
SURGERY PARTNERS, INC. CASH INCENTIVE PLAN**

**THIS AMENDMENT** to the Surgery Partners, Inc. Cash Incentive Plan (the “Plan”) is made by Surgery Partners, Inc. (the “Company”) on this 18th day of March, 2020, but to be effective with respect to awards made beginning in 2019 and thereafter.

**RECITALS:**

**WHEREAS**, the Company established the Plan to provide incentive awards to selected officers of the Company that are paid in cash based on the achievement of performance goals that are identified by the compensation committee of the Company’s board of directors (the “Committee”);

**WHEREAS**, the Company also maintains the Surgery Partners, Inc. 2015 Omnibus Stock Incentive Plan (the “Stock Incentive Plan”) that provides for stock incentive awards to officers, directors and employees of the Company, and the Stock Incentive Plan permits the Committee to distribute common stock authorized thereunder in settlement of cash payments due under any other plan or program of the Company; and

**WHEREAS**, the Company desires to amend the Plan so that amounts due under the Plan can be paid out in the form of the Company’s common stock under an award authorized under the Stock Incentive Plan at the discretion of the Committee;

**NOW, THEREFOR**, based on the foregoing premises, the Company does hereby amend the Plan by restating Section 7 as follows:

**7. PAYMENT UNDER AWARDS**

Except as otherwise determined by the Administrator or as otherwise provided in this Section 7, all payments under the Plan will be made, if at all, not later than March 30<sup>th</sup> of the calendar year following the calendar year in which the Performance Period ends; provided, that the Administrator may authorize elective deferrals of any Cash Incentive Award payments in accordance with the deferral rules of Section 409A of the Code. Payments under the Plan will be made in cash or, at the sole discretion of the Administrator, in the form of an award under the Company’s 2015 Omnibus Stock Incentive Plan (including without limitation “Unrestricted Stock” as defined therein). Any such award under the Stock Incentive Plan is conditioned on action by the administrator thereof to authorize the award. Unless otherwise determined by the Administrator, a Cash Incentive Award payment will not be made unless a Participant has remained employed with the Company and its affiliates through the date of payment.

**IN WITNESS WHEREOF**, the undersigned authority has executed this instrument on the date first written above.

**SURGERY PARTNERS, INC.**

By: /s/ Jennifer Baldock

Its: Executive Vice President, Chief Administrative and Development Officer

**SETTLEMENT AGREEMENT**

This Settlement Agreement (Agreement) is entered into amongst the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS), the Defense Health Agency (DHA), acting on behalf of the TRICARE Program, the Office of Personnel Management (OPM), as the administrator of the Federal Employees Health Benefits Program (FEHBP), the Office of Workers Compensation Programs of the United States Department of Labor (DOL-OWCP), which administers federal workers compensation claims for federal employees, including the United States Postal Service (USPS), and the United States Department of Veterans Affairs (VA) (collectively, the “United States”); Defendants Logan Laboratories, LLC (Logan Labs), Tampa Pain Relief Centers, Inc. (Tampa Pain), Michael T. Doyle, and Christopher Utz Toepke (collectively, “Defendants”); and Relators Brad Ashton, Jasmine Lopez, Michelle McMahon, and Terry McNamara (collectively, the “Pennsylvania Relators”), and Relators Sheldon Cho, M.D. and Dawn Baker (together, the “Florida Relators,” and collectively with the United States, Defendants, and the Pennsylvania Relators, the “Parties”), through their authorized representatives.

**RECITALS**

A. Tampa Pain is a pain management medical practice based in Tampa, Florida, with offices throughout central and south Florida. Logan Labs is a toxicology laboratory based in Tampa, Florida that provides urine testing services. Both Tampa Pain and Logan Labs are wholly owned indirect subsidiaries of Surgery Partners, Inc. (Surgery Partners). Defendant Michael T. Doyle was the Chief Executive Officer of Logan Labs from September 2011 through September 2017, and the Chief Executive Officer of Surgery Partners during the same period. Defendant Christopher Utz Toepke was the Group President for Ancillary Services at Surgery Partners, with oversight of Logan

Labs, from August 2014 until January 2018. Toepke was also a Vice President at Tampa Pain during the same time period.

B. On August 22, 2016, the Pennsylvania Relators filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania, captioned *United States ex rel. Ashton v. Logan Laboratories, LLC, et al.*, Case No. 16-4583 (E.D. Pa.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Pennsylvania Civil Action”). On April 25, 2017, the Florida Relators filed a *qui tam* action in the United States District Court for the Middle District of Florida, captioned *United States ex rel. Cho v. Surgery Partners Inc., et al.*, Case No. 8:17-cv-983 (M.D. Fla.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Florida Civil Action”).

C. The United States contends that Defendants submitted or caused to be submitted false claims for payment to: the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll; the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5; the TRICARE program, 10 U.S.C. §§ 1071-1110b; FEHBP, 5 U.S.C. §§ 8901-8914; the Federal Employees’ Compensation Act (FECA), 5 U.S.C. § 8101 *et seq.*; and the Department of Veterans Affairs, Veterans Health Administration (VA), 38 U.S.C. Chapter 17 (collectively, the “Federal Payers”).

D. The United States contends that it has certain civil claims against Defendants because Defendants knowingly submitted or caused the submission of false claims to the Federal Payers for presumptive and definitive urine drug testing (UDT), in circumstances where such testing was not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (*i.e.*, not medically reasonable and necessary).<sup>1</sup>

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<sup>1</sup> The specific HCPCS codes at issue are: 80101, 80102, 80154, 80184, 80307, 81225, 81226, 81227, 81401, 82055, 82145, 82205, 82492, 82520, 82542, 82570, 83516, 83789, 83805, 83840,

The United States contends that Defendants developed and implemented a policy and practice of automatically ordering both presumptive and definitive UDT for all patients at every visit, without any physician making an individualized determination that either test was medically necessary for the particular patients for whom the tests were ordered. The medically unreasonable and unnecessary definitive UDT was performed at Logan Labs, and the resulting false claims were submitted to the Federal Payers by Logan Labs. The medically unreasonable and unnecessary presumptive UDT was performed at Tampa Pain, and the resulting false claims were submitted to the Federal Payers by Tampa Pain. Defendants submitted or caused to be submitted such claims for presumptive and definitive UDT to the Federal Payers from January 1, 2012 until December 31, 2017. The United States contends that these claims were false in light of Defendants' conduct. The conduct described in this paragraph is referred to below as the "Covered Conduct."

E. On November 8, 2017, the Centers for Medicare & Medicaid Services (CMS) suspended Medicare payments to Logan Labs, pursuant to 42 C.F.R. § 405.371(a)(2), based upon a determination by the United States that credible allegations of fraud existed. The amount of approved, paid claims held in suspense as of December 19, 2019 is \$7,497,496.77. This is the "Suspended Amount." All approved, paid claims held in suspense after December 19, 2019 are not included in the Suspended Amount and are not subject to this Settlement Agreement.

F. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded.

G. The Pennsylvania Relators and the Florida Relators (together the "Relators") claim entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of the U.S. Settlement Amount (as defined below) and to their reasonable expenses, attorney's fees and costs.

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83925, 83986, 83992, G0477, G0480, G0481, G0482, G0483, G6031, G6040, G6042, G6043, G6044, G6052, G6053, G6056, G6058, G0431, G0434, G0479, and J3490.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

**TERMS AND CONDITIONS**

1. Defendants shall pay to the United States and the states of Colorado, Florida, Georgia, North Carolina, and Virginia (the “States”) a total of \$41,000,000 (“Settlement Amount”), of which \$40,741,823.78 (the “U.S. Settlement Amount”) shall be paid to the United States, and \$258,176.22 (the “State Settlement Amount”) shall be paid to the States by Tampa Pain and Logan Labs. Specifically:

a. Tampa Pain and Logan Labs, collectively, shall pay to the United States a total of \$39,741,823.78, of which \$19,870,911.89 is identified as restitution solely for taxation purposes, plus interest accruing at a rate of 2.75% per annum from March 14, 2019, until the date before full payment is made (“TPLL Settlement Amount”), pursuant to written instructions to be provided by the Civil Division of the U.S. Department of Justice. Tampa Pain and Logan Labs shall satisfy payment of the TPLL Settlement Amount as follows:

(i) within ten (10) business days of the Effective Date of this Agreement, Tampa Pain and Logan Labs shall pay a total of \$19,741,832.78 (“Initial TPLL Settlement Payment”), plus all interest due on the TPLL Settlement Amount as of the Effective Date of this Agreement, using a combination of the Suspended Amount and an additional cash payment, in the following manner:

(A) Defendant Logan Labs hereby agrees that the United States shall retain the Suspended Amount forevermore. Defendants expressly relinquish any and all rights of any kind that they may have with respect to

the Suspended Amount, including, but not limited to: any and all claims or rights to have an overpayment determined under 42 C.F.R. § 405.372(c), any and all rights to payment of those Suspended Amount funds, and any and all rights to appeal, whether formally or informally and whether administratively or judicially, the right of the United States and/or CMS to retain those funds, and any other rights Defendants may have to challenge the Withholding or the Suspension in any respect.

(B) Defendants Tampa Pain and Logan Labs, collectively, shall pay the remaining difference between the Initial TPLL Settlement Payment and the Suspended Amount already forfeited, a total of \$12,244,336.01, plus interest, within then (10) business days of the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the U.S. Department of Justice.

(C) Pursuant to separate settlement agreement(s) between Tampa Pain and Logan Labs and the States, Tampa Pain and Logan Labs, collectively, shall pay the States a total of \$258,176.22, pursuant to terms agreed to by those parties.

(ii) Defendants Tampa Pain and Logan Labs, collectively, shall pay the remaining TPLL Settlement Amount, \$20,000,000, plus all unpaid interest, within eleven (11) months of the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the U.S. Department of Justice.

b. Doyle shall pay to the United States \$500,000, of which \$250,000 is identified as restitution solely for taxation purposes, plus interest on the settlement amount at a rate of 2.75% per annum from April 8, 2019 until the date before full payment is made (“Doyle Settlement Amount”), no later than ten (10) days from the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the U.S. Department of Justice.

c. Toepke shall pay to the United States \$500,000, of which \$250,000 is identified as restitution solely for taxation purposes, plus interest on the settlement amount at a rate of 2.75% per annum from April 5, 2019 until the date before full payment is made (“Toepke Settlement Amount”), no later than ten (10) days from the Effective Date of this Agreement, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the U.S. Department of Justice.

2. Conditioned upon the United States receiving the U.S. Settlement Amount identified in Paragraph 1 from Defendants and as soon as feasible after receipt of each payment by the United States, the United States agrees that it shall pay to the Relators by electronic funds transfer, pursuant to written instructions provided by Relators, nineteen (19) percent of each such payment, including the value of the Suspension Amount after those funds have been relinquished to the United States, and any interest paid to the United States by Defendants, as soon as feasible after the United States’ receipt of each payment.

3. Subject to the exceptions in Paragraph 13 (concerning excluded claims) and Paragraph 14 (concerning default) below, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Logan Labs and Tampa Pain, the United States releases Logan Labs and Tampa Pain, together with their current and former direct and indirect: parent

corporations; subsidiaries; brother or sister corporations; divisions; affiliated medical practices operated under a “friendly PC,” “captive PC,” or similar agreement; corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 13 (concerning excluded claims) below, and conditioned upon the full payment of the Doyle Settlement Amount in Paragraph 1(b) by Doyle, the United States releases Doyle from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 13 (concerning excluded claims) below, and conditioned upon the full payment of the Toepke Settlement Amount in Paragraph 1(c) by Toepke, the United States releases Toepke from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. In consideration of the obligations of Tampa Pain and Logan Labs set forth in this Agreement, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Tampa Pain and Logan Labs, the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, release all defendants in the Florida Civil Action and Pennsylvania

Civil Action, together with their current and former direct and indirect: parent corporations; subsidiaries; brother or sister corporations; divisions; affiliated medical practices operated under a “friendly PC,” “captive PC,” or similar agreement; corporate owners; and the corporate successors and assigns of any of them, and in turn any of their current and former directors, officers, affiliates, and employees, from all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, including but not limited to any liability to Relators arising from or relating to the claims Relators asserted or could have asserted in the Pennsylvania Civil Action or the Florida Civil Action. However, the release in this paragraph does not apply to: (1) Relators’ and Relators’ Counsel’s claims for reasonable costs and attorneys’ fees under 31 U.S.C. § 3730(d), which will be addressed in a separate agreement, (2) any surviving claims the Florida Relators may have against the H.I.G. Capital, Inc., H.I.G. Capital, LLC, and H.I.G. Surgery Centers, LLC (collectively, the “H.I.G. Entities”), all of which are named defendants in the Florida Civil Action, that are outside the scope of the release by the United States (as set out in Paragraph 3 of this Agreement, and subject to Paragraph 13(k) of this Agreement), or (3) any claims against Doyle and Toepke, which are addressed in Paragraphs 7 and 8, below.

7. In consideration of the obligations of Doyle set forth in this Agreement, and conditioned upon receipt of the payments described in Paragraph 2 above and conditioned upon the full payment of the Doyle Settlement Amount in Paragraph 1(b) by Doyle, the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, release Doyle from any from all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, including but not limited to any liability to Relators arising from or

relating to the claims Relators asserted or could have asserted in the Pennsylvania Civil Action or the Florida Civil Action.

8. In consideration of the obligations of Toepke set forth in this Agreement, and conditioned upon receipt of the payments described in Paragraph 2 above, and conditioned upon the full payment of the Toepke Settlement Amount in Paragraph 1(c) by Toepke, the Relators, for themselves and their heirs, successors, attorneys, agents, and assigns, release Toepke from all liability, claims, demands, actions, or causes of action whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or in tort, under any federal or state statute or regulation, or in common law, including but not limited to any liability to Relators arising from or relating to the claims Relators asserted or could have asserted in the Pennsylvania Civil Action or the Florida Civil Action.

9. In consideration of the obligations of Logan Labs and Tampa Pain in this Agreement, a separate Integrity Agreement with Logan Labs, and a separate Corporate Integrity Agreement with Tampa Pain (together, "CIAs"), entered into between OIG-HHS and Logan Labs and Tampa Pain respectively, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Logan Labs and Tampa Pain, OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Logan Labs and Tampa Pain under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 13 (concerning excluded claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Logan Labs or Tampa Pain from Medicare, Medicaid, and other Federal

health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 13, below.

10. In consideration of the obligations of Logan Labs and Tampa Pain set forth in this Agreement, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Logan Labs and Tampa Pain, DHA agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Logan Labs and Tampa Pain under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 13 (concerning excluded claims), below. DHA expressly reserves authority to exclude Logan Labs or Tampa Pain from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this Paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 13, below.

11. In consideration of the obligations of Logan Labs and Tampa Pain in this Agreement, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Logan Labs and Tampa Pain, OPM agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the FEHBP against Logan Labs and Tampa Pain under 5 U.S.C. § 8902a or 5 C.F.R. Part 890 Subpart J or Part 919 for the Covered Conduct, except as reserved in this Paragraph and in Paragraph 13 (concerning excluded claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7. OPM expressly reserves all rights to comply with any statutory obligation to debar Logan Labs or Tampa Pain from the FEHBP under 5 U.S.C. § 8902a(b) (mandatory exclusion) based upon the Covered Conduct. Nothing in this

Paragraph precludes OPM from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 13, below.

12. In consideration of the obligations of Logan Labs and Tampa Pain set forth in this Agreement, and conditioned upon the full payment of the TPLL Settlement Amount in Paragraph 1(a) by Logan Labs and Tampa Pain, DOL-OWCP agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion and debarment from the FECA program against Logan Labs and Tampa Pain under 20 C.F.R. §§ 10.815, 30.715 and 702.431 for the Covered Conduct, except as reserved in Paragraph 13 (concerning excluded claims), below, and except if excluded by the OIG-HHS pursuant to 42 U.S.C. § 1320a-7. Nothing in this Paragraph precludes the DOL-OWCP from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 13, below.

13. Notwithstanding the releases given in Paragraphs 3 through 5 and 9 through 12 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals except Doyle and Toepke;

- g. Mandatory and permissive exclusion from Federal health care programs for any individual, including Doyle and Toepke;
- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due;
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; and
- k. Any liability against the H.I.G. Entities, the former owners of Logan Labs and Tampa Pain, for their own independent conduct outside their status as investors in or owners of settling defendants Logan Labs or Tampa Pain.

14. In the event that Logan Labs and Tampa Pain fail to make any required payment pursuant to the schedule set forth in Paragraph 1(a), within ten (10) business days of the payment due date, Logan Labs and Tampa Pain shall be in "Payment Default" of this Agreement. In the event of a Payment Default, the United States will provide written notice of the Payment Default to Logan Labs and Tampa Pain, and Logan Labs and Tampa Pain shall have the opportunity to cure such Payment Default within five (5) business days from the date of their receipt of the notice. Notice of Payment Default will be delivered to Logan Labs and Tampa Pain or to such other representative as Logan Labs and Tampa Pain shall designate in advance in writing. If Logan Labs and Tampa Pain fail to cure such Payment Default within five (5) business days of receiving notice, the unpaid balance of the Settlement Amount, including interest accrued as of the date of Payment Default, shall become accelerated and immediately due and payable (the "Default Amount"). Interest shall accrue on the Default Amount at a rate of twelve percent (12%) per annum compounded

daily from the date of the Payment Default to the date of payment. In the event of a Payment Default that is not cured within the five-day period described in this Paragraph, there shall be an event of default (an “Event of Payment Default”). Upon an Event of Payment Default, the United States, at its sole discretion, may exercise any of the following options, either individually or in concert: (1) offset the Default Amount plus interest from any amounts due and owing to Logan Labs or Tampa Pain by any department, agency, or agent of the United States; (2) file the Consent Judgment attached hereto as Attachment A in the United States District Court for the Eastern District of Pennsylvania; and/or (3) exercise any other rights granted by law or equity, including the option of referring such matters for private collection. Alternatively, at its sole option, the United States may rescind this Agreement and pursue the Pennsylvania Civil Action and/or the Florida Civil Action or bring any civil and/or administrative claim, action, or proceeding against Logan Labs, Tampa Pain, Surgery Partners, and/or any other person or entity who received a release pursuant to Paragraphs 3 through 5 and 9 through 12 of this Agreement for the Covered Conduct. Logan Labs and Tampa Pain agree not to contest any offset imposed or any collection action undertaken by the United States or other department, agency, or agent of the United States pursuant to this Paragraph, either administratively or in any state or federal court, except to assert the defense of payment of amounts due under this Settlement Agreement. Logan Labs and Tampa Pain shall pay the United States all reasonable costs of collection and enforcement of this Agreement, including reasonable attorney’s fees and expenses and all amounts that are due and owing pursuant to the Agreement.

Notwithstanding the foregoing, if an Event of Payment Default that is not cured within ten (10) business days after there is an Event of Payment Default, OIG-HHS may exclude Tampa Pain and Logan Labs from participating in all Federal health care programs until Tampa Pain and Logan Labs pay the total Settlement Amount and reasonable costs as set forth above. OIG-HHS will

provide written notice of any such exclusion to Tampa Pain and Logan Labs. Tampa Pain and Logan Labs waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Tampa Pain and Logan Labs wish to apply for reinstatement, Tampa Pain and Logan Labs must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Tampa Pain and Logan Labs will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

15. The Relators, as well as their heirs, successors, attorneys, agents, and assigns, shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon the Relators' receipt of the payment described in Paragraph 2, the Relators and their heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Pennsylvania Civil Action or the Florida Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Pennsylvania Civil Action or the Florida Civil Action.

16. Conditioned upon Relators' receipt of the full payment described in Paragraph 2 and upon the payment of attorney's fees, costs, and expenses by Tampa Pain and Logan Labs pursuant to separate agreements between Relators and Tampa Pain and Logan Labs, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, release Logan Labs and Tampa Pain, and their officers, agents, and employees, as well as Doyle and Toepke, from any liability under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

17. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

18. Defendants fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

19. Defendants fully and finally release the Relators from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relators, related to the Pennsylvania Civil Action or the Florida Civil Action, and the investigation and prosecution of these actions by the Relators. However, notwithstanding anything in this paragraph, the Defendants reserve and do not waive or release any claims (whether asserted by Defendants or any other entity) under 31 U.S.C. § 3730(d)(4) with respect to any claims or litigation that the Relators file, pursue, litigate, or prosecute against the H.I.G. Entities.

20. The settlement amounts in Paragraph 1 shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier), the Medicaid program, the TRICARE program, any FEHBP carrier, the Veterans Health Administration or any other federal or state payer,

related to the Covered Conduct; and Defendants agree not to resubmit to any Medicare contractor, the Medicaid program, the TRICARE program, any FEHBP carrier, the VA or any other federal or state payer any previously denied claims related to Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

21. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Defendants, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payments Defendants make to the United States pursuant to this Agreement and any payments that Defendants may make to the Relators, including costs and attorney's fees; and
- (6) the negotiation of, and obligations undertaken pursuant to the CIA to: (i) retain an independent review organization to perform quarterly/annual

reviews as described in Section III of Logan Lab's IA and Tampa Pain's CIA; and (ii) prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, the Medicaid Program, the TRICARE Program, and FEHBP (hereinafter referred to as "Unallowable Costs"). However, nothing in Paragraph 21.a.(6) that may apply to the obligations undertaken pursuant to the IA or CIA affects the status of costs that are not allowable based on any other authority applicable to Defendants.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by Defendants or any of its subsidiaries or affiliates to the Medicare program, the Medicaid program, the TRICARE program, or FEHBP programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Defendants further agree that within ninety (90) days of the Effective Date of this Agreement they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Defendants or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the

effect of the inclusion of the Unallowable Costs. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the U.S. Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by Defendants or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Defendants or any of their subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine Defendants' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

22. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Surgery Partners, Logan Labs, and Tampa Pain shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals (including but not limited to individuals' rights to obtain advice from individual counsel). Additionally, upon reasonable notice, Doyle and Toepke agree to appear for interviews with government investigators and to appear and provide truthful testimony at any deposition, hearing, or trial in any action against any individual or entity not released in this Agreement. Defendants further agree to furnish to the United States,

upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalf, provided. However, nothing in this paragraph shall be understood to be a representation that there exist any non-privileged reports or memoranda of interviews. Nothing in this paragraph shall require Defendants to encourage employees to reject or decline to follow the advice of their individual counsel. Nor does anything in this paragraph require Defendants to waive any of their federal constitutional rights, including under the Fifth Amendment of the United States Constitution.

23. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in this Agreement.

24. Defendants agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payers based upon the claims defined as Covered Conduct.

25. Upon receipt of all of payments described in Paragraphs 1 and 2, above, the Parties shall promptly sign and file Joint Stipulations of Dismissal with respect to claims against all defendants (except the H.I.G. Entities, which will not be dismissed) in the Pennsylvania Civil Action and the Florida Civil Action pursuant to Rule 41(a)(1). The dismissal by the United States shall be with prejudice as to claims for the Covered Conduct and without prejudice as to all other claims. The dismissal of claims by the Relators shall be with prejudice as to all dismissed parties and claims. To the extent necessary, separate Joint Stipulations of Dismissal may be filed for each Defendant.

26. Except as provided in separate agreements that Surgery Partners, Tampa Pain, and Logan Labs have entered into respectively with the Pennsylvania Relators and the Florida Relators, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

27. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

28. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

29. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

30. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

31. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

32. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

33. This Agreement is binding on the successors, transferees, heirs, and assigns of the Pennsylvania Relators and the Florida Relators.

34. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

35. This Agreement is effective on the date of signature of the last signatory to the Agreement (the “Effective Date of this Agreement”). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

Dated: April 14, 2020

By: /s/ Augustine M. Ripa  
AUGUSTINE M. RIPA  
Trial Attorney  
Civil Division, Fraud Section  
United States Department of Justice

Dated: April 14, 2020

By: /s/ Jake M. Shields  
JAKE M. SHIELDS  
Trial Attorney  
Civil Division, Fraud Section  
United States Department of Justice

Dated: April 6, 2020

By: /s/ William M. McSwain  
WILLIAM M. McSWAIN  
United States Attorney  
Eastern District of Pennsylvania

Dated: April 6, 2020

By: /s/ Gregory B. David  
GREGORY B. DAVID  
Assistant United States Attorney  
Chief Civil Division  
U.S. Attorney’s Office for  
the Eastern District of Pennsylvania

Dated: April 6, 2020

By: /s/ Charlene Keller Fullmer  
CHARLENE KELLER FULLMER  
Assistant United States Attorney  
Deputy Chief, Civil Division  
U.S. Attorney’s Office for  
the Eastern District of Pennsylvania

Dated: April 6, 2020

By: /s/ David A. Degnan  
David A. DEGNAN  
Assistant United States Attorneys  
U.S. Attorney’s Office for  
the Eastern District of Pennsylvania

Dated: April 6, 2020

By: /s/ Kyle S. Cohen  
KYLE S. COHEN  
Assistant United States Attorney  
U.S. Attorney's Office for  
the Middle District of Florida

Dated: April 7, 2020

By: /s/ Lisa M. Re  
LISA M. RE  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

Dated: April 6, 2020

By: /s/ Bley Paul Nicholas  
BLEY PAUL NICHOLAS  
General Counsel  
Defense Health Agency  
United States Department of Defense

Dated: April 6, 2020

By: /s/ Edward Deharde  
EDWARD DEHARDE  
Assistant Director  
Insurance Operations  
United States Office of Personnel Management

Dated: April 6, 2020

By: /s/ Paul St. Hillaire  
PAUL ST. HILLAIRE  
Assistant Inspector General for Legal Affairs  
United States Office of Personnel Management

Dated: April 7, 2020

By: /s/ Jennifer Valdivieso  
JENNIFER VALDIVIESO  
Deputy Director DFEC  
Office of Workers' Compensation Programs  
United States Department of Labor

**DEFENDANTS**

Dated: April 6, 2020

By: /s/ Jennifer Baldock  
Logan Laboratories, LLC

Dated: April 6, 2020

By: /s/ Jennifer Baldock  
Tampa Pain Relief Centers, Inc.

Dated: April 6, 2020

BY: /s/ David S. Rosenbloom  
DAVID S. ROSENBLOOM, ESQ.  
McDermott Will & Emery LLP  
Counsel for Logan Laboratories, LLC and  
Tampa Pain Relief Centers, Inc.

Dated: April 9, 2020

By: /s/ Michael T. Doyle  
MICHAEL T. DOYLE

Dated: April 13, 2020

By: /s/ Alan Rosenthal  
ALAN ROSENTHAL, ESQ.  
Carlton Fields  
Counsel for Michael T. Doyle

Dated: April 9, 2020

By: /s/ Christopher Utz Toepke  
CHRISTOPHER UTZ TOEPKE

Dated: April 7, 2020

By: /s/ Jason D. Popp  
JASON D. POPP, ESQ.  
Alston & Bird LLP  
Counsel for Christopher Utz Toepke

**PENNSYLVANIA RELATORS**

Dated: April 6, 2020

By: /s/ Brad Ashton  
BRAD ASHTON

Dated: April 6, 2020

By: /s/ Jasmine Lopez  
JASMINE LOPEZ

Dated: April 6, 2020

By: /s/ Michelle McMahan  
MICHELLE MCMAHON

Dated: April 6, 2020

By: /s/ Terry McNamara  
TERRY MCNAMARA

Dated: April 6, 2020

By: /s/ Uriel Rabinovitz  
URIEL RABINOVITZ, ESQ.  
Counsel for Brad Ashton, Jasmine Lopez,  
Michelle McMahan, and Terry McNamara

**FLORIDA RELATORS**

Dated: April 6, 2020

By: /s/ Sheldon Cho  
SHELDON CHO, M.D.

Dated: April 6, 2020

By: /s/ Dawn Parker  
DAWN PAKER

Dated: April 6, 2020

By: /s/ Marc S. Raspanti  
MARC S. RASPANTI, ESQ.  
Pietragallo Gordon Alfano Bosick & Raspanti, LP  
Counsel for Sheldon Cho, M.D. and Dawn Baker

## 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: May 11, 2020

## CERTIFICATIONS

I, Thomas F. Cowhey, 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/ Thomas F. Cowhey  
Thomas F. Cowhey  
*Executive Vice President and Chief Financial Officer*

Date: May 11, 2020

**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 March 31, 2020, 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: May 11, 2020

By: /s/ Thomas F. Cowhey  
Thomas F. Cowhey  
*Executive Vice President and Chief Financial Officer*

Date: May 11, 2020