

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM555202

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Peter N. Ponzini DC		03/16/2018	INDIVIDUAL: UNITED STATES
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	SMH Operations, LLC		
<b>Street Address:</b>	266 Harristown Road		
<b>City:</b>	Glen Rock		
<b>State/Country:</b>	NEW JERSEY		
<b>Postal Code:</b>	07417		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	87154050	SPORTSMED	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	6152446804		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	615-850-8741		
<b>Email:</b>	trademarkdocket@wallerlaw.com		
<b>Correspondent Name:</b>	Robert P. Felber, Jr.		
<b>Address Line 1:</b>	c/o Waller Lansden Dortch & Davis		
<b>Address Line 2:</b>	511 Union Street, Suite 2700		
<b>Address Line 4:</b>	Nashville, TENNESSEE 37219		
<b>ATTORNEY DOCKET NUMBER:</b>	033808.93812		
<b>NAME OF SUBMITTER:</b>	Robert P. Felber, Jr.		
<b>SIGNATURE:</b>	/ROBERT P. FELBER, JR./		
<b>DATE SIGNED:</b>	12/30/2019		
<b>Total Attachments: 9</b>			
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**ASSET PURCHASE AND CONTRIBUTION AGREEMENT**

by and among

**THE SPORTSMED ENTITIES,**

**THE OWNERS NAMED HEREIN,**

**THE SELLERS' REPRESENTATIVES,**

**SMH OPERATIONS, LLC,**

and

**SMH MANAGEMENT, LLC**

Dated as of March 16, 2018

**EXHIBIT A**  
**CERTAIN DEFINITIONS**

Except as otherwise provided in the Agreement, the capitalized terms set forth below (whether singular or plural) have the following meanings:

“2018 Earn-Out Conditions” mean, with respect to the calendar year ending December 31, 2018: (a) Net Revenue for such period shall have exceeded [REDACTED] and (b) EBITDA for such period shall have exceeded [REDACTED], in each case as determined by the Board of Managers of Parent within thirty (30) days following completion and delivery of the audit of Purchaser’s annual financial statements for such calendar year.

“2019 Earn-Out Conditions” mean, with respect to the calendar year ending December 31, 2019: (a) as of last day of such period, the New Practice Entity shall own and operate at least eleven (11) separate practice locations at which, for each such location, at least one (1) physical therapist provides Practice Services on a full-time basis for at least 32 hours per week on average solely at such location on behalf of New Practice Entity, (b) Net Revenue for such period shall have exceeded [REDACTED], and (c) EBITDA for such period shall have exceeded [REDACTED], in each case as determined by the Board of Managers of Parent within thirty (30) days following completion and delivery of the audit of Purchaser’s annual financial statements for such calendar year.

“Acquired Assets” means all of the assets, properties, rights and interests of the SportsMed Entities, whether real, personal or mixed, tangible or intangible, and all of Sellers’ rights, title and interest therein and thereto, other than and excluding the Excluded Assets, including but not limited to all of the following assets of the SportsMed Entities (other than the Excluded Assets):

(a) all tangible personal property, including all chiropractic medicine, physical therapy, sports rehabilitation and other equipment, machinery, tools, maintenance supplies, computers, furniture, fixtures, furnishings, leasehold improvements, devices, instruments, inventory, supplies, drugs and other disposables, consumables and similar materials, including those in transit as of the Closing;

(b) all intangible personal property, including all goodwill, Intellectual Property, trade secrets, proprietary or confidential information, trade names, fictitious names, assumed names, doing business as names and fictitious names (including “SportsMed Physical Therapy,” “Spine and Sports Med” and variants thereof), trademarks, service marks, logos, copyrights, patents and patent applications, customer lists, websites, web pages, social media and network profiles, accounts and pages (including for Facebook® and Twitter®), domain names (including “www.spineandsportsmed.com”), e-mail addresses, telephone numbers, software and all documentary evidence thereof, all rights under warranties, indemnities or other rights against third parties, and all goodwill associated with or related to the Management Business or the Practices;

(c) all accounts receivable and all notes receivable, negotiable instruments, chattel paper and other rights to receive payments from any Person, and the right to receive an amount equal to all Government Program Receivables, and all rights to funds deposited in or swept from any lockbox or depository account or accounts;

(d) all prepaid amounts, expenses, credits and security and other deposits; all books, records, files, lists, manuals, advertising, marketing and promotional materials, and, to the extent lawfully assignable to Purchaser, all licenses, permits, franchises and similar items;

(e) the Assigned Contracts; and

“Indebtedness” means, with respect to an applicable Person, the outstanding principal amount, together with any accrued and unpaid interest thereon, owed by such Person, and all penalties, fees and premiums, in respect of all (i) obligations of such Person for borrowed money, including indebtedness for borrowed money under any credit agreement or bank line of credit, (ii) obligations of such Person evidenced by bonds, notes, debentures or similar instruments, (iii) obligations of such Person with respect to any letters of credit, bankers’ acceptances or surety bonds, (iv) obligations under any lease which has been or should be, in accordance with GAAP, recorded as a capital lease in respect of which such Person is liable or responsible as lessee, (v) the deferred purchase price of property or services or deferred rent due by such Person, including the maximum potential amount payable with respect to earn-outs, purchase price adjustments or other similar payments related to acquisitions, (vi) obligations under any conditional sale agreement or other title retention property, (vii) obligations under any existing interest rate, commodity, currency or other swap, hedge or financial derivative agreement, (viii) any off-balance sheet financing, (ix) any prepayment, breakage, redemption, make-whole or other premiums, payments, fees, penalties, costs, expenses or other amounts required to be paid to fully discharge any of the Indebtedness described in any of the clauses above that is discharged at or prior to the Closing, and (x) any indebtedness, obligations or liabilities of the type described in clauses (i) through (ix) of any other Person, which are directly or indirectly guaranteed by such Person or secured by any Lien and Encumbrance on any assets of such Person. For the avoidance of doubt, “Indebtedness” shall not include any amount of Assumed Trade Payables that is actually included in the calculation of Net Working Capital for purposes of Sections 1.2 and 1.4.

“Intellectual Property” means, collectively, in the United States and all countries or jurisdictions foreign thereto, (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all Patents, (ii) all trademarks, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all moral rights and copyrights in any work of authorship (including but not limited to catalogues and related copy, databases, software, and mask works) and all applications, registrations, and renewals in connection therewith, (iv) all trade secrets and other Confidential Information, (v) all websites, computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation), (vi) all other intellectual property rights, (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), (viii) the exclusive right to display, reproduce, and create derivative works based on any of the items described in clauses (i), (ii) and (iii), and (ix) all income, royalties, damages and payments related to any of the items described in clauses (i), (ii) and (iii) (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue and recover for past, present or future infringements, misappropriations or other conflict with any such intellectual property.

“Law” means any federal, state, municipal, local or foreign statute, regulation, rule, code, ordinance, order, writ, verdict, injunction, decree, stipulation, ruling, determination, judgment, policy, guideline, licensing requirement, treaty, common law or other law, including those promulgated, interpreted or enforced by any Governmental Authority.

“Liabilities” means any direct or indirect, primary or secondary, liability, Indebtedness, obligation, penalty, cost or expense (including costs of investigation, collection and defense), claim, deficiency, guaranty or endorsement of or by any person or entity of any type, whether accrued, absolute or contingent, known or unknown, liquidated or unliquidated, matured or unmatured, or otherwise.

“Liens and Encumbrance” means any conditional sale agreement, restrictive covenant, default of title, easement, encroachment, encumbrance, hypothecation, infringement, lien, mortgage, pledge, reservation, restriction, right of way, security interest, title retention or other security arrangement, or any adverse right or interest, charge, or claim of any nature whatsoever of, on, or with respect to any right, title or interest in or to any right, asset or property.

Property Owner, including but not limited to all heating, lighting, plumbing, air conditioning, cooking and refrigerating equipment, drapes and floor coverings, and all easements, rights and privileges appurtenant thereto, all water, mineral and air rights and rights of way related thereto, and all development rights, allocations of development density and other similar rights allocated to or attributable thereto, and all of Real Property Owner's rights, title and interest therein and thereto.

"Patents" means all letters patent and pending applications for patents of the United States and all countries and jurisdictions foreign thereto and all reissues, reexaminations, divisions, continuations, continuations-in-part, revisions and extensions thereof.

"Payor" means any Government Program or any insurance company, managed care organization, health or medical plan or program or other third party payor, whether private, commercial, employer or governmental, or any fiscal intermediary or contractor of any of the foregoing.

"Permits" means, with respect to any Person, any license, registration, accreditation, bond, franchise, permit, consent, approval, right, privilege, certificate or other authorization issued by, or otherwise granted by, any Governmental Authority, Payor or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Person" means any natural person or any corporation, partnership, association, limited liability company, other legal entity or Governmental Authority.

"Professional Assets" mean all of the SportsMed Entities' (i) patient files, x-rays, charts, molds and other patient or medical records (in whatever form) which Sellers are prohibited from transferring to Purchaser under applicable Law, (ii) any employment, independent contractor, offer letters or similar Contracts with Providers in their professional capacity identified on Exhibit W-1, solely with respect to obligations arising following the Closing, (iii) controlled substances, including those in transit as of the Closing, (iv) patient contracts for the provision of healthcare goods or services after the Closing and all associated rights and interests of Sellers, (v) to the extent assignable, provider agreements, Payor agreements, participation agreements, management care agreements and similar Contracts with third party Payors relating to the provision after the Closing of healthcare goods or services to patients of the Practices and identified on Exhibit W-2 hereto and all associated rights and interests of Sellers, and (vi) goodwill relating solely to the clinical portion of the Practices.

"Providers" means, collectively, all physical therapists, physical therapy assistants, athletic trainers, chiropractors, acupuncturists, x-ray technicians and other healthcare professionals employed or engaged by or otherwise providing healthcare services to or on behalf of the SportsMed Entities.

"Purchased Assets" means all of the Acquired Assets other than the Contributed Assets.

"Real Property Owner" means 102 Engle St Englewood LLC.

"Sellers' Knowledge" means the knowledge of each Owner, Bryan Tiedemann and Carol Azar upon reasonable inquiry or investigation.

"Special Representations" means the representations and warranties in Sections 3.9 (Compliance with Laws; Permits), 3.15 (Employee Benefits), 3.16 (Taxes) and 3.19 (Environmental Matters).

"Target Net Working Capital" means [REDACTED].

## ASSET PURCHASE AND CONTRIBUTION AGREEMENT

**THIS ASSET PURCHASE AND CONTRIBUTION AGREEMENT** (“Agreement”) is dated as of March 16, 2018, by and among (i) SMH Operations, LLC, a Delaware limited liability company (“Purchaser”), (ii) SMH Management, LLC, a Delaware limited liability company (“Parent”), (iii) each of (A) SportsMed of Glen Rock PA, a New Jersey professional corporation (“Glen Rock Practice Entity”), (B) SportsMed of Englewood PA, a New Jersey professional corporation (“Englewood Practice Entity”), (C) SportsMed of Paramus PA, a New Jersey professional corporation (“Paramus Practice Entity”), (D) Spine and Sports Medicine of Hohokus, LLC, a New Jersey limited liability company (“Hohokus Practice Entity”), (E) Advanced Physical Therapy & Sports Rehab LLC, a New Jersey limited liability company (“Fair Lawn Practice Entity”), (F) Clifton Sports Medicine & Physical Therapy LLC, a New Jersey limited liability company (“Clifton Practice Entity”), (G) SportsMed Physical Therapy LLC, a New Jersey limited liability company (“Franklin Lakes Practice Entity” and, collectively with the Glen Rock Practice Entity, the Englewood Practice Entity, the Paramus Practice Entity, the Hohokus Practice Entity, the Fair Lawn Practice Entity and the Clifton Practice Entity, the “Practice Entities”), and (H) SportsMed Management LLC, a New Jersey limited liability company (“SportsMed Management” and, together with the Practice Entities, the “SportsMed Entities”), (iv) each of Albert Khalaf, D.C. (“Dr. Khalaf”) and Peter Ponzini, D.C. (“Dr. Ponzini”), each an individual residing in the State of New Jersey (“Owners” and, collectively with the SportsMed Entities, “Sellers”), and (v) Dr. Khalaf and Dr. Ponzini in their capacities as the representative of Sellers (each, individually, a “Sellers Representative” and, together, the “Sellers Representatives”). (The foregoing parties, each a “Party” and collectively, the “Parties”).

### RECITALS:

**A.** The Practice Entities own and operate chiropractic medicine, physical therapy and sports rehabilitation practices (the “Practices”) at various locations in the State of New Jersey, and SportsMed Management is engaged in the business of providing business, administrative and other management services (the “Management Business”) to one or more of the Practice Entities.

**B.** Dr. Khalaf and Dr. Ponzini collectively own and hold, either directly or indirectly through one or more of the other SportsMed Entities, 100% of the issued and outstanding shares of capital stock or membership interests in the SportsMed Entities.

**C.** The Parties desire to enter into a transaction whereby (i) the Hohokus Practice Entity and the Fair Lawn Practice Entity (together, the “Contributing Entities”) are to contribute the Contributed Assets to Parent in exchange for Parent’s issuance of the Rollover Units to the Contributing Entities, and (ii) Sellers are to sell and convey the Purchased Assets to Purchaser, each on the terms and conditions set forth herein. Such transaction is intended to be a Code Section 721(a) non-recognition transaction (capital contribution and issuance of membership interests) with respect to the Contributed Assets, and a purchase and sale transaction described in Code Section 1001 with respect to the Purchased Assets.

**D.** Certain terms used in this Agreement have the meaning ascribed to them in **Exhibit A** hereto (which is incorporated herein by reference).

**NOW, THEREFORE**, in consideration of the above and the mutual warranties, representations, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**ARTICLE 1**  
**PURCHASE AND SALE**

1.1 The Transactions.

(a) Contribution of Contributed Assets. In reliance upon the representations and warranties, and upon the terms and subject to the conditions, set forth herein, at the Closing, the Contributing Entities shall contribute, transfer and deliver to Parent, and Parent will accept from the Contributing Entities, all of the Contributed Assets and all of the Contributing Entities' rights, title and interest therein and thereto, free and clear of all Liens and Encumbrances and other Liabilities or claims. At the Closing, the Contributing Entities shall convey good and marketable title to such Contributed Assets, which shall be evidenced by (i) a rollover and subscription agreement in the form and substance of **Exhibit B** hereto (the "**Rollover Agreement**"), and (ii) a bill of sale in the form and substance of **Exhibit C** hereto (the "**Contributed Assets Bill of Sale**"), and such other recordable instruments of contribution, assignment, transfer and conveyance as Parent may request.

(b) Purchase and Sale of Purchased Assets. In reliance upon the representations and warranties, and upon the terms and subject to the conditions, set forth herein, at the Closing, Sellers shall sell, transfer and deliver to Purchaser, and Purchaser agrees to purchase from Sellers, all of the Purchased Assets and all of Sellers' rights, title and interest therein and thereto, free and clear of all Liens and Encumbrances and other Liabilities or claims. At the Closing, Sellers shall convey good and marketable title thereto, which shall be evidenced by a general bill of sale and assignment in substantially the form and substance of **Exhibit D** hereto (the "**Bill of Sale**"), and such other recordable instruments of sale, assignment, transfer and conveyance as Purchaser may request.

(c) Transfer of Professional Assets. Sellers shall transfer, convey and deliver to SportsMed PT, LLC, a New Jersey limited liability company (the "**New Practice Entity**"), and New Practice Entity will accept, all of the Professional Assets of the Practice Entities and Sellers' rights, title and interest therein and thereto, and Sellers shall convey to the New Practice Entity good and marketable title to the Professional Assets, free and clear of any Liens and Encumbrances and other Liabilities or claims, which shall be evidenced by the execution by Sellers and the New Practice Entity at the closing of the transactions contemplated in the professional assets transfer agreement in substantially the form and substance of **Exhibit E** hereto (the "**Professional Assets Transfer Agreement**"), and such other recordable instruments of assignment, transfer and conveyance as the New Practice Entity or Purchaser may request.

(d) Assignment and Assumption of Assumed Liabilities. At the Closing, the SportsMed Entities shall assign to Purchaser, and Purchaser shall assume and become responsible for, the future payment and performance of (i) the obligations of the SportsMed Entities arising after the Closing under the Assigned Contracts and Assigned Facility Leases (excluding (A) any uncured defaults or unpaid amounts that arise from or relate to any period prior to the Closing, (B) any obligations that arise from or relate to any breach by any Seller of any provision thereof, and (C) any obligations that are not ascertainable (in nature and amount) solely by reference to the express terms of such Assigned Contracts and Assigned Facility Leases) (the "**Assumed Contract Obligations**") and (ii) the trade payables incurred by the SportsMed Entities in the ordinary course of business and outstanding as of immediately prior to the Closing to the extent included as Current Liabilities in the Final Calculation of Net Working Capital (the "**Assumed Trade Payables**" and, together with the Assumed Contract Obligations, the "**Assumed Liabilities**"). Such assignment and assumption of the Assumed Liabilities shall be evidenced by the execution by the SportsMed Entities and by Purchaser at the Closing of (x) an assignment and assumption agreement in substantially the form and substance of **Exhibit F** hereto (the "**Assignment and Assumption Agreement**") and (y) written assignments of the Assigned Facility Leases, in form and substance satisfactory to Sellers and Purchaser (the "**Lease Assignments**").



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

THE SPORTSMED ENTITIES:

**SportsMed of Glen Rock PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**SportsMed of Englewood PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**SportsMed of Paramus PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**Spine and Sports Medicine of Hohokus, LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Manager

**Advanced Physical Therapy & Sports Rehab LLC**

By: \_\_\_\_\_  
Name: Dr. Albert Khalaf  
Title: Manager

**SportsMed Physical Therapy LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Manager

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

THE SPORTSMED ENTITIES: **SportsMed of Glen Rock PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**SportsMed of Englewood PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**SportsMed of Paramus PA**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: President

**Spine and Sports Medicine of Hohokus, LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Manager

**Advanced Physical Therapy & Sports Rehab LLC**

By: \_\_\_\_\_  
Name: Dr. Albert Khalaf  
Title: Manager

**SportsMed Physical Therapy LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Manager

*Signature Page to Asset Purchase and Contribution Agreement*

**Clifton Sports Medicine & Physical Therapy LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Manager

**SportsMed Management LLC**

By: \_\_\_\_\_  
Name: Dr. Peter N. Ponzini  
Title: Member

**OWNERS:**

**Dr. Albert Khalaf**

\_\_\_\_\_  
**Dr. Peter N. Ponzini**

**SELLERS' REPRESENTATIVES:**

\_\_\_\_\_  
**Dr. Albert Khalaf, solely in his capacity as a Sellers' Representative**

\_\_\_\_\_  
**Dr. Peter N. Ponzini, solely in his capacity as a Sellers' Representative**