

# BAKER DONELSON

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October 6, 2017

**VIA EMAIL & HAND DELIVERY**

Kevin McDonald, Chief  
Certificate of Need Division  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215

**Re: Thomas Johnson Surgery Center, LLC**  
**Certificate of Need Application**

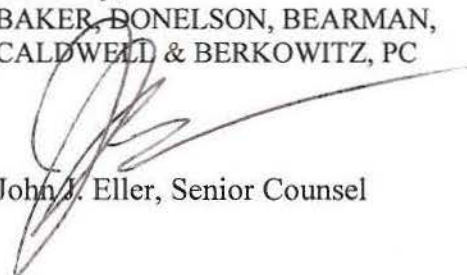
Dear Mr. McDonald:

Enclosed please find six copies of a Certificate of Need Application being filed on behalf of Thomas Johnson Surgery Center, LLC ("TJSC") regarding a capital renovation project at TJSC to convert the existing procedure room to a second operating room ("OR"), resulting in total capacity of two ORs. A full copy of the application will also be emailed to you in searchable PDF and Word forms. Enclosed is one set of full size project drawings.

I hereby certify that a copy of the CON application has been provided to the affected local health department.

If any further information is needed, please let us know.

Sincerely,  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC

  
John J. Eller, Senior Counsel

JJE/rgf  
Enclosures

cc: Barbara Brookmeyer, M.D., MPH, Health Officer, Frederick County  
Ms. Ruby Potter  
Health Facilities Coordination Office

One or more persons shall be officially authorized in writing by the applicant to sign for and act for the applicant for the project which is the subject of this application. Copies of this authorization shall be attached to the application. The undersigned is the owner(s), or Board-designated official of the proposed or existing facility.

I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information and belief.

10/24/2017  
Date

Naomi Allen  
Signature of Owner or Board-designated Official  
Chief Executive Officer  
Position/Title  
Naomi Allen  
Printed Name

Kevin McDonald, Chief  
Certificate of Need Division  
October 6, 2017  
Page 2

cc: Naomi Allen, CEO  
Kristine Lowther, Vice President, Operations  
Charles Ferguson, Esq.  
Andrew Solberg, CON Consultant  
A.L.S. Healthcare Consultant Services

Craig P. Tanio, M.D.  
CHAIR

STATE OF MARYLAND



Ben Steffen  
EXECUTIVE DIRECTOR

*For internal staff use:*

## MARYLAND HEALTH CARE COMMISSION

\_\_\_\_\_  
MATTER/DOCKET NO.

\_\_\_\_\_  
DATE DOCKETED

### INSTRUCTIONS: GENERIC APPLICATION FOR CERTIFICATE OF NEED (CON)

**Note:** Specific CON application forms exist for hospital, comprehensive care facility, home health, and hospice projects. This form is to be used for any other services requiring a CON.  
(ADAPTED FOR AMBULATORY SURGERY APPLICANTS)

**ALL APPLICATIONS MUST FOLLOW THE FORMATTING REQUIREMENTS DESCRIBED IMMEDIATELY BELOW. NOT FOLLOWING THESE FORMATTING INSTRUCTIONS WILL RESULT IN THE APPLICATION BEING RETURNED.**

#### Required Format:

**Table of Contents.** The application must include a Table of Contents referencing the location of application materials. Each section in the hard copy submission should be separated with tabbed dividers. Any exhibits, attachments, etc. should be similarly tabbed, and pages within each should be numbered independently and consecutively. **The Table of Contents must include:**

- Responses to PARTS I, II, III, and IV of the this application form
- Responses to PART IV must include responses to the standards in the State Health Plan chapter that apply to the project being proposed..
  - All Applicants must respond to the Review Criteria listed at 10.24.01.08G(3)(b) through 10.24.01.08G(3)(f) as detailed in the application form.
- Identification of each Attachment, Exhibit, or Supplement

Application pages must be consecutively numbered at the bottom of each page. Exhibits attached to subsequent correspondence during the completeness review process shall use a consecutive numbering scheme, continuing the sequencing from the original application. (For example, if the last exhibit in the application is Exhibit 5, any exhibits used in subsequent



responses should begin with Exhibit 6. However, a replacement exhibit that merely replaces an exhibit to the application should have the same number as the exhibit it is replacing, noted as a replacement.

### **SUBMISSION FORMATS:**

We require submission of application materials and the applicant's responses to completeness questions in three forms: hard copy; searchable PDF; and in Microsoft Word.

- **Hard copy:** Applicants must submit six (6) hard copies of the application to:  
Ruby Potter  
Health Facilities Coordinator  
Maryland Health Care Commission  
4160 Patterson Avenue  
Baltimore, Maryland 21215
- **PDF:** Applicants must also submit *searchable* PDF files of the application, supplements, attachments, and exhibits.<sup>1</sup> All subsequent correspondence should also be submitted both by paper copy and as *searchable PDFs*.
- **Microsoft Word:** Responses to the questions in the application and the applicant's responses to completeness questions should also be electronically submitted in Word. Applicants are strongly encouraged to submit any spreadsheets or other files used to create the original tables (the native format). This will expedite the review process.

Applicants are strongly encouraged to submit any spreadsheets or other files used to create the original tables (the native format). This will expedite the review process.

PDFs and spreadsheets should be submitted to [ruby.potter@maryland.gov](mailto:ruby.potter@maryland.gov) and [kevin.mcdonald@maryland.gov](mailto:kevin.mcdonald@maryland.gov).

**Note that there are certain actions that may be taken regarding either a health care facility or an entity that does not meet the definition of a health care facility where CON review and approval are not required. Most such instances are found in the Commission's procedural regulations at COMAR 10.24.01.03, .04, and .05. Instances listed in those regulations require the submission of specified information to the Commission and may require approval by the full Commission. Contact CON staff at (410) 764-3276 for more information.**

*A pre-application conference will be scheduled by Commission Staff to cover this and other topics. Applicants are encouraged to contact Staff with any questions regarding an application.*

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<sup>1</sup> PDFs may be created by saving the original document directly to PDF on a computer or by using advanced scanning technology

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## PART I - PROJECT IDENTIFICATION AND GENERAL INFORMATION

### 1. FACILITY

Name of Facility: \_\_\_\_\_ Thomas Johnson Surgery Center

Address:

<u>197 Thomas Johnson Drive</u>	<u>Frederick</u>	<u>21702</u>	<u>Frederick</u>
Street	City	Zip	County

### 2. NAME OF OWNER: Thomas Johnson Surgery Center, LLC

If Owner is a Corporation, Partnership, or Limited Liability Company, attach a description of the ownership structure identifying all individuals that have or will have at least a 5% ownership share in the applicant and any related parent entities. Attach a chart that completely delineates this ownership structure.

Exhibit 4 includes a list of owners.

### 3. APPLICANT. If the application has a co-applicant, provide the following information in an attachment.

Legal Name of Project Applicant (Licensee or Proposed Licensee): \_\_\_\_\_

Thomas Johnson Surgery  
Center

Address:

<u>197 Thomas Johnson Drive</u> Street	<u>Frederick</u>	<u>21702</u>	<u>MD</u>	<u>Frederick</u>
	City	Zip	State	County
Telephone:	<u>301-631-3881</u>			

### 4. NAME OF LICENSEE OR PROPOSED LICENSEE, if different from the applicant:

**5. LEGAL STRUCTURE OF APPLICANT (and LICENSEE, if different from applicant).**

Check ☒ or fill in applicable information below and attach an organizational chart showing the owners of applicant (and licensee, if different).

- A. Governmental ☐
- B. Corporation ☐
- (1) Non-profit ☐
- (2) For-profit ☒
- (3) Close ☐ State & Date of Incorporation
- C. Partnership ☐
- General ☐
- Limited ☐
- Limited Liability Partnership ☐
- Limited Liability Limited Partnership ☐
- Other (Specify): \_\_\_\_\_
- D. Limited Liability Company ☒ \_\_\_\_\_
- E. Other (Specify): \_\_\_\_\_
- To be formed: ☐
- Existing: ☒

**6. PERSON(S) TO WHOM QUESTIONS REGARDING THIS APPLICATION SHOULD BE DIRECTED**

**A. Lead or primary contact:**

Name and Title: Naomi Allen, RN, CNOR, CASC, Chief Executive Officer

Company Name Thomas Johnson Surgery Center

**Mailing Address:**

197 Thomas Johnson Dr Frederick 21702 MD  
Street City Zip State

Telephone: 301.631.3881 ext 304

E-mail Address (required): Naomi.Allen@scasurgery.com

Fax: 301.631.3883

If company name  
is different than  
applicant briefly  
describe the  
relationship

**B. Additional or alternate contact:**

**Name and Title:** Kristine Lowther, Vice President, Operations

**Company Name** Surgical Care Affiliates

**Mailing Address:**

2040 Harvest Drive

Street

Mechanicsburg

City

17055

Zip

PA

State

**Telephone:** 717-418-9091

**E-mail Address (required):** Kristine.Lowther@scasurgery.com

**Fax:** 866-998-0622

If company name  
is different than  
applicant briefly  
describe the  
relationship

SCA is a part owner in TJSC.

**C. Additional or alternate contact:**

**Name and Title:** John J. Eller, Atty

**Company Name** Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

**Mailing Address:**

100 Light Street

Street

Baltimore

City

21202

Zip

**Telephone:** 410-862-1162

**E-mail Address (required):** jeller@bakerdonelson.com

**Fax:** 443-263-7562

If company name is  
different than applicant  
briefly describe the  
relationship

Legal Counsel

**D. Additional or alternate contact:**

**Name and Title:** Andrew Solberg - Consultant

**Company Name:** A.L.S. Healthcare Consultant Services

**Mailing Address:**



5612 Thicket Lane

**Street**

Columbia

**City**

21044

**Zip**

MD

**State**

**Telephone:** 410-730-2664

**E-mail Address (required):** asolberg@earthlink.net

**Fax:**

**If company name is different than applicant briefly describe the relationship**     Consultant

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## 7. TYPE OF PROJECT

**The following list includes all project categories that require a CON pursuant to COMAR 10.24.01.02(A). Please mark all that apply in the list below.**

If approved, this CON would result in (check as many as apply):

- (1) A new health care facility built, developed, or established ☐
- (2) An existing health care facility moved to another site ☐
- (3) A change in the ~~bed~~ OR capacity of a health care facility ☒
- (4) A change in the type or scope of any health care service offered by a health care facility ☐
- (5) A health care facility making a capital expenditure that exceeds the current threshold for capital expenditures found at: ☐  
[http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs\\_con/documents/con\\_capital\\_threshold\\_20140301.pdf](http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/documents/con_capital_threshold_20140301.pdf)

## 8. PROJECT DESCRIPTION

**A. Executive Summary of the Project:** The purpose of this BRIEF executive summary is to convey to the reader a holistic understanding of the proposed project: what it is, why you need to do it, and what it will cost. A one-page response will suffice. Please include:

- (1) Brief Description of the project – what the applicant proposes to do
- (2) Rationale for the project – the need and/or business case for the proposed project
- (3) Cost – the total cost of implementing the proposed project

Conversion of an existing procedure room into an operating room in an existing 1 OR freestanding ambulatory surgery center because volumes exceed the optimal capacity of 1 OR. Total project costs will be \$183,031.

**B. Comprehensive Project Description:** The description should include details regarding:

- (1) Construction, renovation, and demolition plans
- (2) Changes in square footage of departments and units
- (3) Physical plant or location changes
- (4) Changes to affected services following completion of the project
- (5) Outline the project schedule.

Thomas Johnson Surgery Center (TJSC) was established in 2008 at 197 Thomas Johnson Drive Frederick, MD 21702. Prior to the establishment of our facility, this location housed Central Maryland Surgery Center (CMSC). CMSC was an ambulatory surgical center that been established pursuant to Certificate of Need approval for two operating rooms (ORs) and a procedure room (PR).

TJSC applied for and was granted a Letter of Exemption from CON on March 19, 2008. At that time, and as directed by the Maryland Health Care Commission, construction was performed to renovate the second operating room to convert it into a procedure room, to permit TJSC to qualify for the exemption. This was accomplished by constructing a wall closing the entranceway to the room that accessed the sterile corridor and moving it to a non-sterile hallway. A sink was also placed in the renovated room.

TJSC is now in need of converting the PR back to an OR for several reasons, most importantly because we are above capacity and our current patients are having to wait longer to get their cases scheduled. Our surgical volume has increased and is projected to continue increasing by at minimum 10% in the next three years. We also have been approached by some new physicians who would like to utilize the center and we are unable to currently accommodate them. The additional room will also allow for the timely scheduling of those more urgent cases that need to be performed without an extended wait. By having this 2nd OR, it will allow our center to contribute to the Triple Aim of Healthcare Reform (Quality care at a lower cost with high patient satisfaction) in Frederick, MD.

To convert the PR back to a sterile OR, the sink will need to be removed, and the door would need to be relocated to access the sterile core. This should require minimal construction, and an estimated cost of approximately \$112,411 has been obtained from the contractor.

## 9. CURRENT CAPACITY AND PROPOSED CHANGES:

Service	Unit Description	Currently Licensed/ Certified	Units to be Added or Reduced	Total Units if Project is Approved
ICF-MR	Beds	____/____		
ICF-C/D	Beds	____/____		
Residential Treatment	Beds	____/____		
Ambulatory Surgery	Operating Rooms	1	1	2
	Procedure Rooms	1	-1	0
Home Health Agency	Counties	____/____		
Hospice Program	Counties	____/____		
Other (Specify)				
TOTAL		2	0	2

## 10. IDENTIFY ANY COMMUNITY BASED SERVICES THAT ARE OR WILL BE OFFERED AT THE FACILITY AND EXPLAIN HOW EACH ONE WILL BE AFFECTED BY THE PROJECT.

## 11. REQUIRED APPROVALS AND SITE CONTROL

- A. Site size: 6,509 acres square feet
- B. Have all necessary State and local land use and environmental approvals, including zoning and site plan, for the project as proposed been obtained? YES \_\_\_\_\_ NO X (If NO, describe below the current status and timetable for receiving each of the necessary approvals.)

Once the Construction Documents are completed, they will be submitted to Frederick County for the permitting process. TJSC anticipates permitting to take three weeks in Frederick Co, approximately one and a half months after CON approval.

- C. Form of Site Control (Respond to the one that applies. If more than one, explain.):
- (1) Owned by: \_\_\_\_\_
- (2) Options to purchase held by: \_\_\_\_\_  
Please provide a copy of the purchase option as an attachment.
- (3) Land Lease held by: Thomas Johnson Surgery Center, LLC

Please provide a copy of the land lease as an attachment.  
A copy of the Lease is in Exhibit 6.

- (4) Option to lease held by: \_\_\_\_\_  
Please provide a copy of the option to lease as an attachment.
- (5) Other: \_\_\_\_\_  
Explain and provide legal documents as an attachment.

**12. PROJECT SCHEDULE (INSTRUCTION: IN COMPLETING THE APPLICABLE OF ITEMS 10, 11 or 12, PLEASE CONSULT THE PERFORMANCE REQUIREMENT TARGET DATES SET FORTH IN COMMISSION REGULATIONS, COMAR 10.24.01.12)**

**For new construction or renovation projects.**

Project Implementation Target Dates

- A. Obligation of Capital Expenditure 1 months from approval date.  
B. Beginning Construction 1 months from capital obligation.  
C. Pre-Licensure/First Use 3 months from capital obligation.  
D. Full Utilization 36 months from first use.

**For projects not involving construction or renovations.**

Project Implementation Target Dates

- A. Obligation or expenditure of 51% of Capital Expenditure \_\_\_\_\_ months from CON approval date.  
B. Pre-Licensure/First Use \_\_\_\_\_ months from capital obligation.  
C. Full Utilization \_\_\_\_\_ months from first use.

**For projects not involving capital expenditures.**

Project Implementation Target Dates

- A. Obligation or expenditure of 51% Project Budget \_\_\_\_\_ months from CON approval date.  
B. Pre-Licensure/First Use \_\_\_\_\_ months from CON approval.  
C. Full Utilization \_\_\_\_\_ months from first use.

**13. PROJECT DRAWINGS**

Projects involving new construction and/or renovations should include scalable schematic drawings of the facility at least a 1/16" scale. Drawings should be completely legible and include dates.

These drawings should include the following before (existing) and after (proposed), as applicable:

- A. Floor plans for each floor affected with all rooms labeled by purpose or function, number of beds, location of bath rooms, nursing stations, and any proposed space for future expansion to be constructed, but not finished at the completion of the project, labeled as "shell space".

- B. For projects involving new construction and/or site work a Plot Plan, showing the "footprint" and location of the facility before and after the project.
- C. Specify dimensions and square footage of patient rooms.

Exhibit 3 includes project drawings.

#### **14. FEATURES OF PROJECT CONSTRUCTION**

- A. If the project involves new construction or renovation, complete **Tables C and D of the Hospital CON Application Package**

Exhibit 1 includes the CON Application Table Package.

- B. Discuss the availability and adequacy of utilities (water, electricity, sewage, natural gas, etc.) for the proposed project and identify the provider of each utility. Specify the steps that will be necessary to obtain utilities.

All utilities exist on site.

## **PART II - PROJECT BUDGET**

### **Complete Table E of the Hospital CON Application Package**

**Note:** Applicant should include a list of all assumptions and specify what is included in each budget line, as well as the source of cost estimates and the manner in which all cost estimates are derived. Explain how the budgeted amount for contingencies was determined and why the amount budgeted is adequate for the project given the nature of the project and the current stage of design (i.e., schematic, working drawings, etc.).

Exhibit 1 includes the Project Budget.

Exhibit 2 includes the table of assumptions.



### **PART III - APPLICANT HISTORY, STATEMENT OF RESPONSIBILITY, AUTHORIZATION AND RELEASE OF INFORMATION, AND SIGNATURE**

1. List names and addresses of all owners and individuals responsible for the proposed project and its implementation.

Naomi Allen, RN, CNOR, CASC, Chief Executive Officer  
Mark Artusio, MD, Vice President  
Steven Brand, MD, President  
Mark Coyne, MD, Treasurer  
Cynthia Moorman, MD  
Janet Parnes, MD  
Bert Williams, MD, Medical Director  
Ravi Yalamanchili, MD  
SCA-Frederick, LLC

See also Exhibit 4.

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2. Are the applicant, owners, or the responsible persons listed in response to Part 1, questions 2, 3, 4, 7, and 9 above now involved, or have they ever been involved, in the ownership, development, or management of another health care facility? If yes, provide a listing of these facilities, including facility name, address, and dates of involvement.

Neither Ms. Allen, nor the physician owners, have ever been involved, in the ownership, development, or management of another health care facility. Exhibit 5 includes a list of facilities owned by SCA.

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3. Has the Maryland license or certification of the applicant facility, or any of the facilities listed in response to Question 2, above, been suspended or revoked, or been subject to any disciplinary action (such as a ban on admissions) in the last 5 years? If yes, provide a written explanation of the circumstances, including the date(s) of the actions and the disposition. If the applicant, owners or individuals responsible for implementation of the Project were not involved with the facility at the time a suspension, revocation, or disciplinary action took place, indicate in the explanation.

No

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4. Other than the licensure or certification actions described in the response to Question 3, above, has any facility with which any applicant is involved, or has any facility with which any applicant has in the past been involved (listed in response to Question 2, above) received inquiries in last from 10 years from any federal or state authority, the Joint Commission, or other regulatory body regarding possible non-compliance with any state, federal, or Joint Commission requirements for the provision of, the quality of, or the payment for health care services that have resulted in actions leading to the possibility of penalties, admission bans, probationary status, or other sanctions at the applicant facility or at any facility listed in response to Question 2? If yes, provide for each such instance, copies of any settlement reached, proposed findings or final findings of non-compliance and related documentation including reports of non-compliance, responses of the facility, and any final disposition or conclusions reached by the applicable authority.

No

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5. Have the applicant, owners or responsible individuals listed in response to Part 1, questions 2, 3, 4, 7, and 9, above, ever pled guilty to or been convicted of a criminal offense in any way connected with the ownership, development or management of the applicant facility or any of the health care facilities listed in response to Question 2, above? If yes, provide a written explanation of the circumstances, including as applicable the court, the date(s) of conviction(s), diversionary disposition(s) of any type, or guilty plea(s).

No

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One or more persons shall be officially authorized in writing by the applicant to sign for and act for the applicant for the project which is the subject of this application. Copies of this authorization shall be attached to the application. The undersigned is the owner(s), or Board-designated official of the proposed or existing facility.

I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information and belief.

10/24/2017  
Date

Naomi Allen  
Signature of Owner or Board-designated Official  
Chief Executive Officer  
Position/Title  
Naomi Allen  
Printed Name

## **PART IV - CONSISTENCY WITH GENERAL REVIEW CRITERIA AT COMAR 10.24.01.08G(3):**

**INSTRUCTION:** Each applicant must respond to all criteria included in COMAR 0.24.01.08G(3), listed below.

***An application for a Certificate of Need shall be evaluated according to all relevant State Health Plan standards and other review criteria.***

If a particular standard or criteria is covered in the response to a previous standard or criteria, the applicant may cite the specific location of those discussions in order to avoid duplication. When doing so, the applicant should ensure that the previous material directly pertains to the requirement and to the directions included in this application form. Incomplete responses to any requirement will result in an information request from Commission Staff to ensure adequacy of the response, which will prolong the application's review period.

### **10.24.01.08G(3)(a). The State Health Plan.**

Every applicant must address each applicable standard in the chapter of the State Health Plan for Facilities and Services<sup>2</sup>. Commission staff can help guide applicants to the chapter(s) that applies to a particular proposal.

**Please provide a direct, concise response explaining the project's consistency with each standard. Some standards require specific documentation (e.g., policies, certifications) which should be included within the application as an exhibit.**

## **SURGERY Standards**

### **10.24.11.05A. General Standards.**

The following general standards encompass Commission expectations for the delivery of surgical services by all health care facilities in Maryland, as defined in Health General §19-114 (d). Each applicant that seeks a Certificate of Need for a project or an exemption from Certificate of Need review for a project covered by this Chapter shall address and document its compliance with each of the following general standards as part of its application.

#### **Standard .05(A)(1) – Information Regarding Charges.**

**Information regarding charges for surgical services shall be available to the public. A hospital or an ambulatory surgical facility shall provide to the public, upon inquiry or as required by applicable regulations or law, information concerning charges for the full range of surgical services provided.**

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<sup>2</sup> [1] Copies of all applicable State Health Plan chapters are available from the Commission and are available on the Commission's web site here:[http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs\\_shp/hcfs\\_shp](http://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_shp/hcfs_shp)

***Applicant Response:***

TJSC provides to the public, upon inquiry, information concerning charges for and the range and types of services provided. Exhibit 7 includes TJSC's Facility Fee Schedule. Patients are provided with estimates of the actual charges, depending on the procedures they require. Please note that ASC reimbursement is set by payors, and that patients do not pay the fees that are listed on the Fee Schedule.

**Standard .05(A)(2) – Charity Care Policy.**

(a) Each hospital and ambulatory surgical facility shall have a written policy for the provision of charity care that ensures access to services regardless of an individual's ability to pay and shall provide ambulatory surgical services on a charitable basis to qualified indigent persons consistent with this policy. The policy shall have the following provisions:

(i) **Determination of Eligibility for Charity Care.** Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility shall make a determination of probable eligibility.

(ii) **Notice of Charity Care Policy.** Public notice and information regarding the facility's charity care policy shall be disseminated, on an annual basis, through methods designed to best reach the facility's service area population and in a format understandable by the service area population. Notices regarding the surgical facility's charity care policy shall be posted in the registration area and business office of the facility. Prior to a patient's arrival for surgery, facilities should address any financial concerns of patients, and individual notice regarding the facility's charity care policy shall be provided.

(iii) **Criteria for Eligibility.** Hospitals shall comply with applicable State statutes and HSCRC regulations regarding financial assistance policies and charity care eligibility. ASFs, at a minimum, must include the following eligibility criteria in charity care policies. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public program providing coverage for medical expenses shall be eligible for services free of charge. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. A health maintenance organization, acting as both the insurer and provider of health care services for members, shall have a financial assistance policy for its members that is consistent with the minimum eligibility criteria for charity care required of ASFs described in these regulations.

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***Applicant Response:***

TJSC has a written Policy for the provision of complete and partial charity care for indigent patients to promote access to all services regardless of an individual's ability to pay. The Policy on the provision of uncompensated care is included as Exhibit 8. As TJSC has never had a CON, TJSC has not been subject to the requirement that it must publish annual public notice and provide individual notice to patients regarding its charity care policy. If this CON application is approved, TJSC will:

- Publish notice of the availability of charity care in the *Frederick News Post* on an annual basis,
- Post notice of the availability of charity care in the Admissions Office and Business Office, and
- Provide to each person who seeks services in TJSC individual notice of the availability of charity care, the potential for Medicaid eligibility and the availability of assistance from other government funded programs. This information will be provided prior to arrival for the surgery.

**(b) A hospital with a level of charity care, defined as the percentage of total operating expenses that falls within the bottom quartile of all hospitals, as reported in the most recent Health Service Cost Review Commission Community Benefit Report, shall demonstrate that its level of charity care is appropriate to the needs of its service area population.**

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***Applicant Response:***

Not applicable.

**(c) A proposal to establish or expand an ASF for which third party reimbursement is available, shall commit to provide charitable surgical services to indigent patients that are equivalent to at least the average amount of charity care provided by ASFs in the most recent year reported, measured as a percentage of total operating expenses. The applicant shall demonstrate that:**

**(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and**

**(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.**

**(iii) If an existing ASF has not met the expected level of charity care for the two most recent years reported to MHCC, the applicant shall demonstrate that the historic level of charity care was appropriate to the needs of the service area population.**

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***Applicant Response:***

In a recent CON decision (Green Spring Surgery Center, Docket No. 15-03-2369, approved on September 20, 2016), the MHCC stated that the statewide average percent that charity care comprised of Total Operating Expenses was 0.46%.

TJSC commits to meeting or exceeding this percentage. In Table 3 (Revenues and Expenses), TJSC has projected Charity Care at 0.46% of Total Operating Expenses in future years, though if it turns out to be higher, TJSC will provide what is needed.

TJSC's internal financial records show that, in CY 2015, it provided \$687 in charity care (0.03%). In CY 2016, it provided \$240 in charity care (0.01%).

	<u>2015</u>	<u>2016</u>
Charity Care	\$687	\$240
Total Operating Expenses	\$2,494,456	\$2,656,849
Percent	0.03%	0.01%

Exhibit 9 includes a plan for assuring that TJSC meets its commitment.

**(d) A health maintenance organization, acting as both the insurer and provider of health care services for members, if applying for a Certificate of Need for a surgical facility project, shall commit to provide charitable services to indigent patients. Charitable services may be surgical or nonsurgical and may include charitable programs that subsidize health plan coverage. At a minimum, the amount of charitable services provided as a percentage of total operating expenses for the health maintenance organization will be equivalent to the average amount of charity care provided statewide by ASFs, measured as a percentage of total ASF expenses, in the most recent year reported. The applicant shall demonstrate that:**

**(i) Its track record in the provision of charitable health care facility services supports the credibility of its commitment; and**

**(ii) It has a specific plan for achieving the level of charitable care provision to which it is committed.**

**(iii) If the health maintenance organization's track record is not consistent with the expected level for the population in the proposed service area, the applicant shall demonstrate that the historic level of charity care was appropriate to the needs of the population in the proposed service area.**

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***Applicant Response:***

Not applicable.

**Standard .05(A)(3) – Quality of Care.**

**A facility providing surgical services shall provide high quality care.**

**(a) An existing hospital or ambulatory surgical facility shall document that it is licensed, in good standing, by the Maryland Department of Health and Mental Hygiene.**

**(b) A hospital shall document that it is accredited by the Joint Commission.**

**(c) An existing ambulatory surgical facility shall document that it is:**

**(i) In compliance with the conditions of participation of the Medicare and Medicaid programs; and**

**(ii) Accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, the American Association for Accreditation of Ambulatory Surgery Facilities, or another accreditation agency recognized by the Centers for Medicare and Medicaid as acceptable for obtaining Medicare certification.**

**(d) A person proposing the development of an ambulatory surgical facility shall demonstrate that the proposed facility will:**

**(i) Meet or exceed the minimum requirements for licensure in Maryland in the areas of administration, personnel, surgical services provision, anesthesia services provision, emergency services, hospitalization, pharmaceutical services, laboratory and radiologic services, medical records, and physical environment.**

**(ii) Obtain accreditation by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities within two years of initiating service at the facility or voluntarily suspend operation of the facility.**

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***Applicant Response:***

TJSC is fully licensed by the state of Maryland. A copy of TJSC's license letter is attached as Exhibit 10. Exhibit 10 also includes a letter from OHCCQ stating that TJSC's license is in good standing. TJSC is in compliance with all mandated federal, State, and local health and safety regulations. It is certified by the Health Care Financing Administration as a provider in the Medicare program. TJSC has also received certification by the Maryland Department of Health and Mental Hygiene to be a provider in the Medicaid program. The Medicare and Medicaid certifications are also included in Exhibit 10.

Similarly, TJSC received certification by the Accreditation Association for Ambulatory Health Care (AAAHC). A copy of the certification is included in Exhibit 10.

**Standard .05A(4) – Transfer Agreements.**

**(a) Each ASF and hospital shall have written transfer and referral agreements with hospitals capable of managing cases that exceed the capabilities of the ASF or hospital.**

**(b) Written transfer agreements between hospitals shall comply with the Department of Health and Mental Hygiene regulations implementing the requirements of Health-General Article §19-308.2.**

(c) Each ASF shall have procedures for emergency transfer to a hospital that meet or exceed the minimum requirements in COMAR 10.05.05.09.

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***Applicant Response:***

TJSC has a transfer agreement with Frederick Memorial Hospital. A copy is attached as Exhibit 11. Ambulance service is provided by the Emergency Medical System by calling 911.

**.05B. Project Review Standards.**

**Standard .05B(1) – Service Area.**

**An applicant proposing to establish a new hospital providing surgical services or a new ambulatory surgical facility shall identify its projected service area. An applicant proposing to expand the number of operating rooms at an existing hospital or ambulatory surgical facility shall document its existing service area, based on the origin of patients served.**

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***Applicant Response:***

TJSC's service area (Zip Codes that provide 85% of its cases during the time period August 1, 2016 – December 31, 2016<sup>3</sup>) includes the following Zip Codes:

Zip Code	County	Cases	%	Cumulative %
Primary Service Area				
21702	Frederick	96	13.2%	13.2%
21703	Frederick	75	10.3%	23.6%
21701	Frederick	72	9.9%	33.5%
21769	Frederick	37	5.1%	38.6%
21788	Frederick	35	4.8%	43.4%
21793	Frederick	33	4.5%	47.9%
21771	Frederick	32	4.4%	52.3%
21774	Frederick	28	3.9%	56.2%
21704	Frederick	21	2.9%	59.1%
21710	Frederick	20	2.8%	61.8%
Secondary Service Area				
21716	Frederick	16	2.2%	64.0%
21754	Frederick	15	2.1%	66.1%

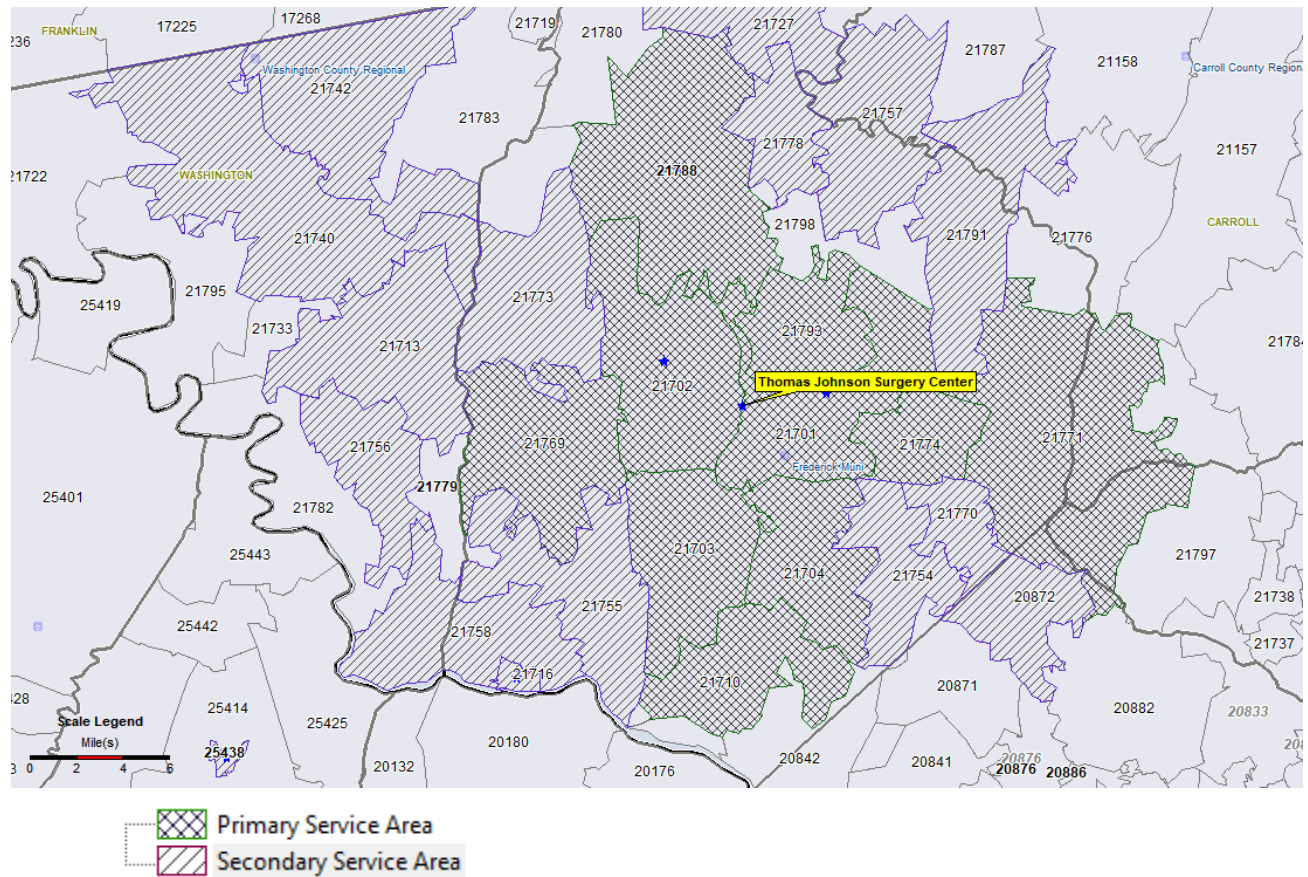
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<sup>3</sup> On August 1, 2016, TJSC changed and billing information systems. Hence the data period started at the beginning of the new system. TJSC believes that these data do accurately represent its historical service area.

<b>Zip Code</b>	<b>County</b>	<b>Cases</b>	<b>%</b>	<b>Cumulative %</b>
21740	Washington	14	1.9%	68.0%
21755	Frederick	14	1.9%	70.0%
21758	Frederick	14	1.9%	71.9%
21770	Frederick	12	1.7%	73.6%
21713	Washington	10	1.4%	74.9%
21773	Frederick	10	1.4%	76.3%
21727	Frederick	8	1.1%	77.4%
21742	Washington	8	1.1%	78.5%
21756	Washington	7	1.0%	79.5%
21757	Frederick	7	1.0%	80.4%
21778	Frederick	7	1.0%	81.4%
21791	Frederick	7	1.0%	82.4%
25405	WV	7	1.0%	83.3%
20872	Montgomery	6	0.8%	84.2%
25438	WV	6	0.8%	85.0%
Subtotal		617	23.1%	85.0%
58 Additional Zip Codes		109	15.0%	100.0%
Total		726	100%	100.0%

This area includes most of Frederick and Washington Counties. The Primary Service Area (top 60% of cases) and Secondary Service Area (next 25%) are shown in Figure 1.

**Figure 1**  
**TJSC Service Areas**



TJSC does not anticipate that its service area will change as a result of this project.

**Standard .05B(2) – Need- Minimum Utilization for Establishment of a New or Replacement Facility.**

An applicant proposing to establish or replace a hospital or ambulatory surgical facility shall demonstrate the need for the number of operating rooms proposed for the facility. This need demonstration shall utilize the operating room capacity assumptions and other guidance included in Regulation .06 of this Chapter. This needs assessment shall demonstrate that each proposed operating room is likely to be utilized at optimal capacity or higher levels within three years of the initiation of surgical services at the proposed facility.

(a) An applicant proposing the establishment or replacement of a hospital shall submit a needs assessment that includes the following:

(i) Historic trends in the use of surgical facilities for inpatient and outpatient surgical procedures by the new or replacement hospital's likely service area population;

(ii) The operating room time required for surgical cases projected at the proposed new or replacement hospital by surgical specialty or operating room category; and

(iii) In the case of a replacement hospital project involving relocation to a new site, an analysis of how surgical case volume is likely to change as a result of changes in the surgical practitioners using the hospital.

(b) An applicant proposing the establishment of a new ambulatory surgical facility shall submit a needs assessment that includes the following:

(i) Historic trends in the use of surgical facilities for outpatient surgical procedures by the proposed facility's likely service area population;

(ii) The operating room time required for surgical cases projected at the proposed facility by surgical specialty or, if approved by Commission staff, another set of categories; and

(iii) Documentation of the current surgical caseload of each physician likely to perform surgery at the proposed facility.

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***Applicant Response:***

Not applicable.

**Standard .05B(3) – Need - Minimum Utilization for Expansion of An Existing Facility.**

An applicant proposing to expand the number of operating rooms at an existing hospital or ambulatory surgical facility shall:

(a) Demonstrate the need for each proposed additional operating room, utilizing the operating room capacity assumptions and other guidance included at Regulation .06 of this Chapter;

(b) Demonstrate that its existing operating rooms were utilized at optimal capacity in the most recent 12-month period for which data has been reported to the Health Services Cost Review Commission or to the Maryland Health Care Commission; and

(c) Provide a needs assessment demonstrating that each proposed operating room is likely to be utilized at optimal capacity or higher levels within three years of the completion of the additional operating room capacity. The needs assessment shall include the following:

(i) Historic trends in the use of surgical facilities at the existing facility;

(ii) Operating room time required for surgical cases historically provided at the facility by surgical specialty or operating room category; and

(iii) Projected cases to be performed in each proposed additional operating room.



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**Applicant Response:**

TJSC needs the additional OR now. It has been operating at above the MHCC's definition of "optimal utilization" for one OR since, at least, 2015. This is shown in Table 1. TJSC expects this to continue.

**TABLE 1**  
**OR Cases, OR Minutes, and Needed ORs**  
**TJSC**  
**2012-2017**

	OR Cases	OR Minutes	TAT	Total Minutes	ORs @ 97,920/OR
2012	474	24,383	11,850	36,233	0.37
2013	866	43,572	21,650	65,222	0.67
2014	1,309	57,870	32,725	90,595	0.93
2015	1,780	73,429	44,500	117,929	1.20
2016	1,654	65,100	41,350	106,450	1.09
2017*	1,904	73,898	47,600	121,498	1.24

\* 2017 is annualized based on six months of data

Source: MHCC Public Use Data Bases 2012-2014, TJSC data for 2015, 2016, and 2017

TJSC has been able to operate at this volume by operating long hours and staff trained to work safely and efficiently.

As demonstrated in response to Standard .05B(1) – Service Area, TJSC's Primary and Secondary Service Area includes most of Frederick and Washington Counties. Table 2 shows the population in these counties, projected through 2020.

**TABLE 2**  
**Population for Counties in TJSC's Service Area**  
**2010-2020**

Frederick					
Age	2010	2015	% Change '10-'15	2020	% Change '15-'20
0-4	14,862	14,160	-4.7%	16,730	18.1%
5-19	50,293	50,010	-0.6%	49,200	-1.6%
20-44	75,528	76,070	0.7%	83,900	10.3%
45-64	66,788	72,160	8.0%	73,480	1.8%
65+	25,914	33,200	28.1%	42,340	27.5%
Total	233,385	245,600	5.2%	265,650	8.2%

<b>Washington</b>					
<b>Age</b>	<b>2010</b>	<b>2015</b>	<b>% Change '10-'15</b>	<b>2020</b>	<b>% Change '15-'20</b>
0-4	9,002	8,170	-9.2%	9,680	18.5%
5-19	28,311	28,820	1.8%	29,610	2.7%
20-44	48,185	47,430	-1.6%	49,790	5.0%
45-64	40,828	43,010	5.3%	43,790	1.8%
65+	21,104	23,780	12.7%	27,430	15.3%
<b>Total</b>	<b>147,430</b>	<b>151,200</b>	<b>2.6%</b>	<b>160,300</b>	<b>6.0%</b>
<b>Total</b>					
<b>Age</b>	<b>2010</b>	<b>2015</b>	<b>% Change '10-'15</b>	<b>2020</b>	<b>% Change '15-'20</b>
0-4	23,864	22,330	-6.4%	26,410	18.3%
5-19	78,604	78,830	0.3%	78,810	0.0%
20-44	123,713	123,500	-0.2%	133,690	8.3%
45-64	107,616	115,170	7.0%	117,270	1.8%
65+	47,018	56,980	21.2%	69,770	22.4%
<b>Total</b>	<b>380,815</b>	<b>396,800</b>	<b>4.2%</b>	<b>425,950</b>	<b>7.3%</b>

Sources: 2010, 2015, and 2020 Population from Maryland Department of Planning ([http://www.mdp.state.md.us/msdc/S3\\_Projection.shtml](http://www.mdp.state.md.us/msdc/S3_Projection.shtml)), accessed 9/14/17.

Table 3 shows TJSC's historical and projected volumes and minutes. Projected volumes are based on knowledge of the physicians' practices, conversations with them, and 4-5% growth.

In addition, Dr. Steinberg is an orthopedist who recently joined TJSC and will begin performing total joint replacements at TJSC. Two additional orthopedic surgeons will also be joining TJSC at the start of next year. The names of these two surgeons cannot be disclosed for confidentiality reasons at this point in time. All three surgeons practice at Frederick Memorial Hospital. All three surgeons' cases are projected to require significantly more average OR time than the existing surgeons' cases.

**Table 3**  
**Projected Cases at TJSC**  
**2014 - 2020**

<b>Surgeon</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Brand	305	439	424	457	472	492	517
Artusio	324	387	322	346	358	373	392
Coyne	265	361	316	296	306	319	335
Moorman	155	256	282	369	381	397	418
Williams	95	123	139	129	133	139	146

Surgeon	2014	2015	2016	2017	2018	2019	2020
Yalamanchili	78	78	103	157	162	169	178
Parnes	44	40	36	38	39	41	43
DeWitt	14	23	6	12	12	13	14
Ho	2	7	1	-	-	-	-
B Steinberg	18	20	13	7	7	8	8
J Steinberg	-	-	-	3	See Below	See Below	See Below
Terol	-	15	5	-	0	0	0
Yanes	8	30	13	13	13	14	15
Total	1,308	1,779	1,660	1,827	1,885	1,964	2,064
OR Minutes	57,811	73,375	65,100	73,898	74,292	77,412	81,341
Minutes/Case	44.2	41.2	39.2	40.4	39.4	39.4	39.4
<b>Physicians Joining Practice</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
J Steinberg	158	176	390	267	200	206	214
Additional Physician A	158	176	390	267	180	186	194
Additional Physician C	136	128	108	137	180	186	194
Subtotal	452	480	888	671	560	578	602
OR Minutes					40,800	43,349	46,674
Minutes/Case					73	75	78
Total Cases	1,308	1,779	1,660	1,827	2,445	2,542	2,666
Total OR Minutes	57,811	73,375	65,100	73,898	115,092	120,761	128,015
TAT Minutes/Case	25	25	25	25	25	25	25
TAT Minutes	32,700	44,475	41,500	45,675	61,128	63,558	66,641
Total Minutes	90,511	117,850	106,600	119,573	176,220	184,320	194,657
Minutes/OR	97,920	97,920	97,920	97,920	97,920	97,920	97,920
Needed ORs	0.9	1.2	1.1	1.2	1.8	1.9	2.0

The highlighted Additional Physicians' historical volumes are not included in TJSC's Facility historical volumes and are included for informational purposes only.

#### **Standard .05B(4) – Design Requirements.**

Floor plans submitted by an applicant must be consistent with the current FGI Guidelines.

(a) A hospital shall meet the requirements in Section 2.2 of the FGI Guidelines.

(b) An ASF shall meet the requirements in Section 3.7 of the FGI Guidelines.

(c) Design features of a hospital or ASF that are at variance with the current FGI Guidelines shall be justified. The Commission may consider the opinion of staff at the Facility Guidelines Institute, which publishes the FGI Guidelines, to help determine whether the proposed variance is acceptable.

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***Applicant Response:***

Please see Exhibit 12.

**Standard .05B(5) – Support Services.**

Each applicant shall agree to provide as needed, either directly or through contractual agreements, laboratory, radiology, and pathology services.

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***Applicant Response:***

The majority of TJSC's pathology specimens go to the lab at Frederick Memorial Hospital ("FMH") and they have a courier service that comes daily to pick up any specimens. If TJSC has a specimen that needs to go to a specific lab due to the type or the testing needed, we notify the Metamark Genetic and make arrangements for service.

TJSC uses FMH for laboratory services. TJSC does pregnancy and blood glucose testing at the facility.

TJSC has the ability to perform Radiology in-house.

**Standard .05B(6) – Patient Safety.**

The design of surgical facilities or changes to existing surgical facilities shall include features that enhance and improve patient safety. An applicant shall:

(a) Document the manner in which the planning of the project took patient safety into account; and

(b) Provide an analysis of patient safety features included in the design of proposed new, replacement, or renovated surgical facilities.

***Applicant Response:***

TJSC has been mindful of Patient Safety from the beginning of the design of this project. Patient safety will be addressed by maintaining the recommended clearances and space requirements as outlined in the FGI Guidelines, along with proper finish selections to maximize the ability to sanitize the space. TJSC will ensure the HVAC system meets/exceeds the required air changes in the room, as well as assuring that the medical gases, call systems, and power meet the requirements, which will also help assure a safe environment for the patient to receive their treatment. The new OR room

will be designed similarly to the existing OR, which will minimize training requirements and allow staff to move from one room to another with minimal chance of confusion, thus improving patient safety.

**Standard .05B(7) – Construction Costs.**

**The cost of constructing surgical facilities shall be reasonable and consistent with current industry cost experience.**

**(a) Hospital projects.**

**(i) The projected cost per square foot of a hospital construction or renovation project that includes surgical facilities shall be compared to the benchmark cost of good quality Class A hospital construction given in the Marshall Valuation Service® guide, updated using Marshall Valuation Service® update multipliers, and adjusted as shown in the Marshall Valuation Service® guide as necessary for site terrain, number of building levels, geographic locality, and other listed factors.**

**(ii) If the projected cost per square foot exceeds the Marshall Valuation Service® benchmark cost, any rate increase proposed by the hospital related to the capital cost of the project shall not include:**

**1. The amount of the projected construction cost and associated capitalized construction cost that exceeds the Marshall Valuation Service® benchmark; and**

**2. Those portions of the contingency allowance, inflation allowance, and capitalized construction interest expenditure that are based on the excess construction cost.**

**(b) Ambulatory Surgical Facilities.**

**(i) The projected cost per square foot of an ambulatory surgical facility construction or renovation project shall be compared to the benchmark cost of good quality Class A construction given in the Marshall Valuation Service® guide, updated using Marshall Valuation Service® update multipliers, and adjusted as shown in the Marshall Valuation Service® guide as necessary for site terrain, number of building levels, geographic locality, and other listed factors.**

**(ii) If the projected cost per square foot exceeds the Marshall Valuation Service® benchmark cost by 15% or more, then the applicant's project shall not be approved unless the applicant demonstrates the reasonableness of the construction costs. Additional independent construction cost estimates or information on the actual cost of recently constructed surgical facilities similar to the proposed facility may be provided to support an applicant's analysis of the reasonableness of the construction costs.**

***Applicant Response:***

Response to this standard will be forthcoming.

### **Standard .05B(8) – Financial Feasibility.**

**A surgical facility project shall be financially feasible. Financial projections filed as part of an application that includes the establishment or expansion of surgical facilities and services shall be accompanied by a statement containing each assumption used to develop the projections.**

**(a) An applicant shall document that:**

**(i) Utilization projections are consistent with observed historic trends in use of the applicable service(s) by the likely service area population of the facility;**

**(ii) Revenue estimates are consistent with utilization projections and are based on current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, and charity care provision, as experienced by the applicant facility or, if a new facility, the recent experience of similar facilities;**

**(iii) Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels and reasonably anticipated future staffing levels as experienced by the applicant facility, or, if a new facility, the recent experience of similar facilities; and**

**(iv) The facility will generate excess revenues over total expenses (including debt service expenses and plant and equipment depreciation), if utilization forecasts are achieved for the specific services affected by the project within five years of initiating operations.**

**(b) A project that does not generate excess revenues over total expenses even if utilization forecasts are achieved for the services affected by the project may be approved upon demonstration that overall facility financial performance will be positive and that the services will benefit the facility's primary service area population.**

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#### ***Applicant Response:***

TJSC is, and will continue to be, financially viable, as shown on CON Table Packet - Table G. The calculations are based on 2016 budgeted volumes by the surgeons who will be performing surgery at the center and marginal growth.

Revenue estimates are based on the utilization projections and current charge levels, rates of reimbursement, contractual adjustments and discounts, bad debt, as experienced by TJSC. Staffing and overall expense projections are consistent with utilization projections and are based on current expenditure levels at TJSC.

The facility will generate excess revenues over total expenses (including debt service expenses and plant and equipment depreciation), whether or not utilization forecasts are achieved within two years of initiating operations.

See Exhibit 2 for a list of assumptions below that were used in the revenue and expense projections.

### **Standard .05B(9) – Preference in Comparative Reviews.**

In the case of a comparative review of CON applications to establish an ambulatory surgical facility or provide surgical services, preference will be given to a project that commits to serve a larger proportion of charity care and Medicaid patients. Applicants' commitment to provide charity care will be evaluated based on their past record of providing such care and their proposed outreach strategies for meeting their projected levels of charity care.

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#### ***Applicant Response:***

Not applicable.

#### **10.24.01.08G(3)(b). Need.**

***The Commission shall consider the applicable need analysis in the State Health Plan. If no State Health Plan need analysis is applicable, the Commission shall consider whether the applicant has demonstrated unmet needs of the population to be served, and established that the proposed project meets those needs.***

**INSTRUCTIONS:** Please discuss the need of the population served or to be served by the Project.

Responses should include a quantitative analysis that, at a minimum, describes the Project's expected service area, population size, characteristics, and projected growth. If the relevant chapter of the State Health Plan includes a need standard or need projection methodology, please reference/address it in your response. For applications proposing to address the need of special population groups, please specifically identify those populations that are underserved and describe how this Project will address their needs.

If the project involves modernization of an existing facility through renovation and/or expansion, provide a detailed explanation of why such modernization is needed by the service area population. Identify and discuss relevant building or life safety code issues, age of physical plant issues, or standard of care issues that support the need for the proposed modernization.

Please assure that all sources of information used in the need analysis are identified. List all assumptions made in the need analysis regarding demand for services, utilization rate(s), and the relevant population, and provide information supporting the validity of the assumptions.

Complete Tables 1 and/or 2 below, as applies.

**[(INSTRUCTION: Complete Table 1 for the Entire Facility, including the proposed project, and Table 2 for the proposed project only using the space provided on the following pages. Only existing facility applicants should complete Table 1. All Applicants should complete Table 2. Please indicate on the Table if the reporting period is Calendar Year (CY) or Fiscal Year (FY)]**

***Applicant Response:***

TJSC currently operates one OR and is applying for approval to operate a second OR. This project is proposed in order to address the long hours of operation TJSC is currently operating to accommodate volumes that already exceed the MHCC's definition of "optimal utilization" for one OR.

Please see the response to SHP Standard .05B(3) – Need - Minimum Utilization for Expansion of An Existing Facility.

**TABLE 1: STATISTICAL PROJECTIONS - ENTIRE FACILITY**

	Two Most Actual Ended Recent Years		Current Year Frst	Projected Years		
CY or FY (Circle)	2015	2016	2017	2018	2019	2020
Ambulatory Surgical Facilities						
a. Number of operating rooms (ORs)	1	1	1	2	2	2
● Total Procedures in ORs	2,829	2,639	2,905	3,888	4,042	4,238
● Total Cases in ORs	1,779	1,660	1,827	2,445	2,542	2,666
● Total Surgical Minutes in ORs*	73,375	65,100	73,898	115,092	120,761	128,015
b. Number of Procedure Rooms (PRs)	1	1	1	0	0	0
● Total Procedures in PRs						
● Total Cases in PRs						
● Total Minutes in PRs*						

\*\*Do not include turnover time.

**TABLE 2: STATISTICAL PROJECTIONS - PROPOSED PROJECT**  
**(INSTRUCTION: All applicants should complete this table.)**

Based on instructions from MHCC Staff to TJSC's consultants in prior CON reviews, TJSC is not completing Table 2. TJSC recognizes that the MHCC has the right to request TJSC to complete the table.



#### **10.24.01.08G(3)(c). Availability of More Cost-Effective Alternatives.**

***The Commission shall compare the cost effectiveness of the proposed project with the cost effectiveness of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.***

**INSTRUCTIONS:** Please describe the planning process that was used to develop the proposed project. This should include a full explanation of the primary goals or objectives of the project or the problem(s) being addressed by the project. It should also identify the alternative approaches to achieving those goals or objectives or solving those problem(s) that were considered during the project planning process, including the alternative of the services being provided by existing facilities.

For all alternative approaches, provide information on the level of effectiveness in goal or objective achievement or problem resolution that each alternative would be likely to achieve and the costs of each alternative. The cost analysis should go beyond development cost to consider life cycle costs of project alternatives. This narrative should clearly convey the analytical findings and reasoning that supported the project choices made. It should demonstrate why the proposed project provides the most effective goal and objective achievement or the most effective solution to the identified problem(s) for the level of cost required to implement the project, when compared to the effectiveness and cost of alternatives including the alternative of providing the service through alternative existing facilities, or through an alternative facility that has submitted a competitive application as part of a comparative review.

#### ***Applicant Response:***

TJSC has grown over the past 9 years, and has made many adjustments to accommodate the patients in the community. The efforts include:

- Moving appropriate/ eligible cases to the procedure room to open time in the Operating room;
- Expanding hours of operation into the later evening hours;
- Meeting with the property manager on an annual basis to potentially acquire an adjacent suite - to no avail as adjacent spaces are currently under lease;
- Completely relocating the facility to another site. The costs of this were simply too great as it would require the cost of replicating the existing facility and paying rent on two sites during the renovation.

When TJSC opened in 2008, the center was only contracted with Medicare. Since that time, the center has successfully negotiated contracts with CareFirst BlueCross, UnitedHealthCare, Cigna, and Aetna. These contracts continue to increase our volume year after year, and we anticipate continued growth for years to come.

#### **10.24.01.08G(3)(d). Viability of the Proposal.**

***The Commission shall consider the availability of financial and nonfinancial resources, including community support, necessary to implement the project within the time frames set forth in the Commission's performance requirements, as well as the availability of resources necessary to sustain the project.***

**INSTRUCTIONS:** Please provide a complete description of the funding plan for the project, documenting the availability of equity, grant(s), or philanthropic sources of funds and demonstrating, to the extent possible, the ability of the applicant to obtain the debt financing proposed. Describe the alternative financing mechanisms considered in project planning and provide an explanation of why the proposed mix of funding sources was chosen.

- Complete Tables 3 and/or 4 below, as applicable. Attach additional pages as necessary detailing assumptions with respect to each revenue and expense line item.
- Complete Table L (Workforce) from the Hospital CON Application Table Package.
- Audited financial statements for the past two years should be provided by all applicant entities and parent companies to demonstrate the financial condition of the entities involved and the availability of the equity contribution. If audited financial statements are not available for the entity or individuals that will provide the equity contribution, submit documentation of the financial condition of the entities and/or individuals providing the funds and the availability of such funds. Acceptable documentation is a letter signed by an independent Certified Public Accountant. Such letter shall detail the financial information considered by the CPA in reaching the conclusion that adequate funds are available.
- If debt financing is required and/or grants or fund raising is proposed, detail the experience of the entities and/or individuals involved in obtaining such financing and grants and in raising funds for similar projects. If grant funding is proposed, identify the grant that has been or will be pursued and document the eligibility of the proposed project for the grant.
- Describe and document relevant community support for the proposed project.
- Identify the performance requirements applicable to the proposed project (see question 12, "Project Schedule") and explain how the applicant will be able to implement the project in compliance with those performance requirements. Explain the process for completing the project design, obtaining State and local land use, environmental, and design approvals, contracting and obligating the funds within the prescribed time frame. Describe the construction process or refer to a description elsewhere in the application that demonstrates that the project can be completed within the applicable time frame(s).

#### ***Applicant Response:***

TJSC does not have audited financial statements. The amount of cash to be provided by the applicant for this project (\$25,000) is de minimis, and for that reason a CPA letter attesting to the availability of those funds has not been secured. If such a

letter is required, it will be provided. The balance of project costs will be financed. Attached as Exhibit 13 is a bank letter indicating a willingness to finance costs to implement this project.

This project will not have any impact on charges at TJSC. As stated previously, reimbursement is set by the payors. The only impact that this project will have on TJSC's expenses is project related depreciation and amortization.

Nor will this project impact the costs or charges at any other facility. TJSC will not be taking cases from other facilities.

Exhibit 14 includes letters of support.

**TABLE 3: REVENUES AND EXPENSES - ENTIRE FACILITY**  
(including proposed project)

**(INSTRUCTION: ALL EXISTING FACILITY APPLICANTS MUST SUBMIT AUDITED FINANCIAL STATEMENTS)**

	Two Most Actual Ended Recent Years		Current Year Frct	Projected Years		
CY or FY (Circle)	2015	2016	2017	2018	2019	2020
Revenue						
a. Inpatient services						
b. Outpatient services	26,835,894	27,406,290	27,614,830	46,297,329	49,522,101	52,842,177
c. Gross Patient Service Revenue	26,835,894	27,406,290	27,614,830	46,297,329	49,522,101	52,842,177
d. Allowance for Bad Debt	-	60,246	7,862	28,226	30,192	32,216
e. Contractual Allowance	22,908,057	23,319,342	23,472,606	39,352,729	42,093,786	44,915,851
f. Charity Care	687	240	800	19,947	20,918	21,724
g. Net Patient Services Revenue	3,927,150	4,026,462	4,133,563	6,896,427	7,377,206	7,872,387
h. Other Operating Revenues (Specify)						
Expenses						
a. Salaries, Wages, and Professional Fees, (including fringe benefits)	713,513	756,476	855,080	977,531	1,001,094	1,026,407
b. Contractual Services	113,389	157,876	197,710	303,538	318,311	330,580
c. Interest on Current Debt	-	(1,136)	(442)	(442)	(442)	(442)
d. Interest on Project Debt	-	-	-	4,285	3,411	2,499
e. Current Depreciation	-	95,913	137,956	148,385	148,385	148,385
f. Project Depreciation	-	-	-	10,758	10,758	10,758
g. Current Amortization						

	Two Most Actual Ended Recent Years		Current Year Frst	Projected Years		
CY or FY (Circle)	2015	2016	2017	2018	2019	2020
	-	40,444	49,111	49,111	49,111	49,111
h. Project Amortization	-	-	-	-	-	-
i. Supplies	808,881	963,830	1,011,707	1,988,074	2,145,294	2,264,018
j. Other Expenses <sup>1</sup>	858,673	849,208	763,513	855,022	871,373	891,261
k. Total Operating Expenses	2,494,456	2,862,612	3,014,637	4,336,262	4,547,295	4,722,577
3. Income	1,432,694	1,163,850	1,118,926	2,560,165	2,829,911	3,149,810
a. Income from Operation	1,432,694	1,163,850	1,118,926	2,560,165	2,829,911	3,149,810
b. Non-Operating Income	-	-	-	-	-	-
c. Subtotal	1,432,694	1,163,850	1,118,926	2,560,165	2,829,911	3,149,810
d. Income Taxes	-	-	-	-	-	-
e. Net Income (Loss)	1,432,694	1,163,850	1,118,926	2,560,165	2,829,911	3,149,810
4. Patient Mix:						
A. Percent of Total Revenue						
1. Medicare	32.1%	33.8%	33.9%	33.9%	33.9%	33.9%
2. Medicaid	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%
3. Blue Cross	35.4%	34.0%	33.1%	33.1%	33.1%	33.1%
4. Commercial Insurance	26.0%	28.1%	28.7%	28.7%	28.7%	28.7%
5. Self-Pay	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
6. Other (Specify)	6.3%	3.9%	4.2%	4.2%	4.2%	4.2%
7. TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
B. Percent of Patient Procedures (as applicable)						
1. Medicare	32.2%	35.4%	33.9%	33.9%	33.9%	33.9%
2. Medicaid	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%
3. Blue Cross	28.9%	33.1%	31.5%	31.5%	31.5%	31.5%
4. Commercial Insurance	32.8%	30.3%	33.3%	33.3%	33.3%	33.3%
5. Self-Pay	0.1%	0.4%	0.1%	0.1%	0.1%	0.1%
6. Other (Specify)	5.9%	0.7%	1.2%	1.2%	1.2%	1.2%
7. TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

**TABLE 4: REVENUES AND EXPENSES - PROPOSED PROJECT**

**(INSTRUCTION: Each applicant should complete this table for the proposed project only)**

Based on instructions from MHCC Staff to TJSC's consultants in prior CON reviews, TJSC is not completing Table 4. TJSC recognizes that the MHCC has the right to request TJSC to complete the table.

**10.24.01.08G(3)(e). Compliance with Conditions of Previous Certificates of Need.**

***An applicant shall demonstrate compliance with all terms and conditions of each previous Certificate of Need granted to the applicant, and with all commitments made that earned preferences in obtaining each previous Certificate of Need, or provide the Commission with a written notice and explanation as to why the conditions or commitments were not met.***

**INSTRUCTIONS:** List all of the Maryland Certificates of Need that have been issued to the project applicant, its parent, or its affiliates or subsidiaries over the prior 15 years, including their terms and conditions, and any changes to approved Certificates that needed to be obtained. Document that these projects were or are being implemented in compliance with all of their terms and conditions or explain why this was not the case.

***Applicant Response:***

TJSC has no previous CONs.

**10.24.01.08G(3)(f). Impact on Existing Providers and the Health Care Delivery System.**

***An applicant shall provide information and analysis with respect to the impact of the proposed project on existing health care providers in the health planning region, including the impact on geographic and demographic access to services, on occupancy, on costs and charges of other providers, and on costs to the health care delivery system.***

**INSTRUCTIONS:** Please provide an analysis of the impact of the proposed project. Please assure that all sources of information used in the impact analysis are identified and identify all the assumptions made in the impact analysis with respect to demand for services, payer mix, access to service and cost to the health care delivery system including relevant populations considered in the analysis, and changes in market share, with information that supports the validity of these assumptions. Provide an analysis of the following impacts:

- a) On the volume of service provided by all other existing health care providers that are likely to experience some impact as a result of this project;
- b) On the payer mix of all other existing health care providers that are likely to experience some impact on payer mix as a result of this project. If an applicant for a new nursing home claims no impact on payer mix, the applicant must identify the likely source of any expected increase in patients by payer.

c) On access to health care services for the service area population that will be served by the project. (State and support the assumptions used in this analysis of the impact on access);

d) On costs to the health care delivery system.

If the applicant is an existing facility or program, provide a summary description of the impact of the proposed project on the applicant's costs and charges, consistent with the information provided in the Project Budget, the projections of revenues and expenses, and the work force information.

***Applicant Response:***

This project will have some impact on the surgical volume of Frederick Memorial Hospital ("FMH") because of the addition of three new surgeons. Based on the cases projected in Table 3, TJSC anticipates that, in 2018, the impact may be as high as 560 cases. Table 3 shows that these cases will take 40,800 minutes or OR time. This calculates to 54,800 minutes, when 25 minutes/case of turn around time is added.

Standard .06C(4)(a) of the Surgical Services Chapter provides the following definition of adverse impact on an affected hospital:

- (a) If the needs assessment includes surgical cases performed by one or more physicians who currently perform cases at a hospital within the defined service area of the proposed ambulatory surgical facility that, in the aggregate, account for 18 percent of the operating room capacity at a hospital, then the applicant shall include, as part of the impact assessment, a projection of the levels of use at the affected hospital for at least three years following the anticipated opening of the proposed ambulatory surgical facility; and
- (b) The operating room capacity assumptions in .06A of this Chapter and the operating room inventory rules in .06D of this Chapter shall be used in the impact assessment.

According to information gathered by TJSC, FMH has 9 general purpose ORs. Applying the rules regarding operating room capacity and needs assessment in the Surgical Services Chapter (Standard .06A), FMH's ORs demonstrate the following capacity:

FMH ORs	9
Capacity/OR	142,500
Total Capacity	1,282,500
Potential Minutes Impact	54,800
% Impact	4.3%

Hence, TJSC's project will not adversely impact FMH.

TJSC used 2018 because TJSC anticipates that future growth will come from population growth and other factors. However, even if all of the minutes based on the 2020 volumes in Table 3 come FMH, it still will not adversely impact the hospital.

FMH ORs	9
Capacity/OR	142,500
Total Capacity	1,282,500
Potential Minutes Impact	61,717
% Impact	4.8%

This will increase access for TJSC patients, enabling more scheduling flexibility for surgical cases.

It will have a minor impact on costs to the health care system (a small reduction in costs), as ASC reimbursement is set by payors irrespective of capital investment and are still lower than typical hospital charges.

TJSC will not have a problem meeting the modest staffing requirements posed by this project. Working in an Ambulatory Surgery Center often affords an opportunity for a surgical nurse who has taken a sabbatical from the field to re-enter. If needed, TJSC will advertise in the local newspapers and in professional journals and use employment agencies. TJSC's best source for recruitment has been from our physician members. As they are so well established in the community, they personally knew most of our current employees and can, and do, assist TJSC in filling any open positions.

## **EXHIBITS**

1. CON Table Packet
2. Statement of Assumptions
3. Project Drawings
4. Ownership List
5. SCA Facilities List
6. Lease
7. Charge Master
8. Charity Care Policy
9. Plan for Assuring that TJSC will meet its Charity Care Commitment
10. License, Letter on Good Standing, Medicare and Medicaid Certifications, and  
AAAHC Certification
11. Transfer Agreement
12. Architect Letter on FGI Guidelines
13. Bank Letter Regarding Project Financing
14. Letters of Support
15. Affirmations



Exhibit 1.

CON Table Packet

**TABLE E. PROJECT BUDGET**

<p><i><b>INSTRUCTION:</b> Estimates for Capital Costs (1.a-e), Financing Costs and Other Cash Requirements (2.a-g), and Working Capital Startup Costs (3) must reflect current costs as of the date of application and include all costs for construction and renovation. Explain the basis for construction cost estimates, renovation cost estimates, contingencies, interest during construction period, and inflation in an attachment to the application.</i></p>			
<p><i><b>NOTE:</b> Inflation should only be included in the Inflation allowance line A.1.e. The value of donated land for the project should be included on Line A.1.d as a use of funds and on line B.8 as a source of funds</i></p>			
		<b>ASF</b>	<b>Total</b>
<b>A. USE OF FUNDS</b>			
<b>1. CAPITAL COSTS</b>			
<b>a.</b>	<b>New Construction</b>		
(1)	Building		\$0
(2)	Fixed Equipment		\$0
(3)	Site and Infrastructure		\$0
(4)	Architect/Engineering Fees		\$0
(5)	Permits (Building, Utilities, Etc.)		\$0
<b>SUBTOTAL</b>		<b>\$0</b>	<b>\$0</b>
<b>b.</b>	<b>Renovations</b>		
(1)	Building	\$96,582	\$96,582
(2)	Fixed Equipment (not included in construction)		\$0
(3)	Architect/Engineering Fees	\$9,000	\$9,000
(4)	Permits (Building, Utilities, Etc.)	\$2,000	\$2,000
<b>SUBTOTAL</b>		<b>\$107,582</b>	<b>\$107,582</b>
<b>c.</b>	<b>Other Capital Costs</b>		
(1)	Movable Equipment		\$0
(2)	Contingency Allowance	\$4,829	\$4,829
(3)	Gross interest during construction period		\$0
(4)	Other (Specify/add rows if needed)		\$0
<b>SUBTOTAL</b>		<b>\$4,829</b>	<b>\$4,829</b>
<b>TOTAL CURRENT CAPITAL COSTS</b>		<b>\$112,411</b>	<b>\$112,411</b>
<b>d.</b>	<b>Land Purchase</b>		
<b>e.</b>	<b>Inflation Allowance</b>	\$5,620	\$5,620
<b>TOTAL CAPITAL COSTS</b>		<b>\$118,031</b>	<b>\$118,031</b>
<b>2. Financing Cost and Other Cash Requirements</b>			
a.	Loan Placement Fees		\$0
b.	Bond Discount		\$0
c	CON Application Assistance		
	c1. Legal Fees	\$40,000	\$40,000
	c2. Other (Specify/add rows if needed)	\$25,000	\$25,000
d.	Non-CON Consulting Fees		
	d1. Legal Fees		\$0

d2. Other (Specify/add rows if needed)			\$0
e.	Debt Service Reserve Fund		\$0
f.	Other (Specify/add rows if needed)		\$0
<b>SUBTOTAL</b>		<b>\$65,000</b>	<b>\$65,000</b>
<b>3.</b>	<b>Working Capital Startup Costs</b>		\$0
<b>TOTAL USES OF FUNDS</b>		<b>\$183,031</b>	<b>\$183,031</b>
<b>B. Sources of Funds</b>			
<b>1.</b>	<b>Cash</b>		\$25,000
<b>2.</b>	<b>Philanthropy (to date and expected)</b>		\$0
<b>3.</b>	<b>Authorized Bonds</b>		\$0
<b>4.</b>	<b>Interest Income from bond proceeds listed in #3</b>		\$0
<b>5.</b>	<b>Mortgage</b>		\$0
<b>6.</b>	<b>Working Capital Loans</b>		\$158,031
<b>7.</b>	<b>Grants or Appropriations</b>		
<b>a.</b>	<b>Federal</b>		\$0
<b>b.</b>	<b>State</b>		\$0
<b>c.</b>	<b>Local</b>		\$0
<b>8.</b>	<b>Other (Specify/add rows if needed)</b>		\$0
<b>TOTAL SOURCES OF FUNDS</b>			<b>\$183,031</b>
		<b>Hospital Building</b>	<b>Total</b>
<b>Annual Lease Costs (if applicable)</b>			
<b>1.</b>	<b>Land</b>		\$0
<b>2.</b>	<b>Building</b>		\$0
<b>3.</b>	<b>Major Movable Equipment</b>		\$0
<b>4.</b>	<b>Minor Movable Equipment</b>		\$0
<b>5.</b>	<b>Other (Specify/add rows if needed)</b>		\$0

\* Describe the terms of the lease(s) below, including information on the fair market value of the item(s), and the number of years, annual cost, and the interest rate for the lease.

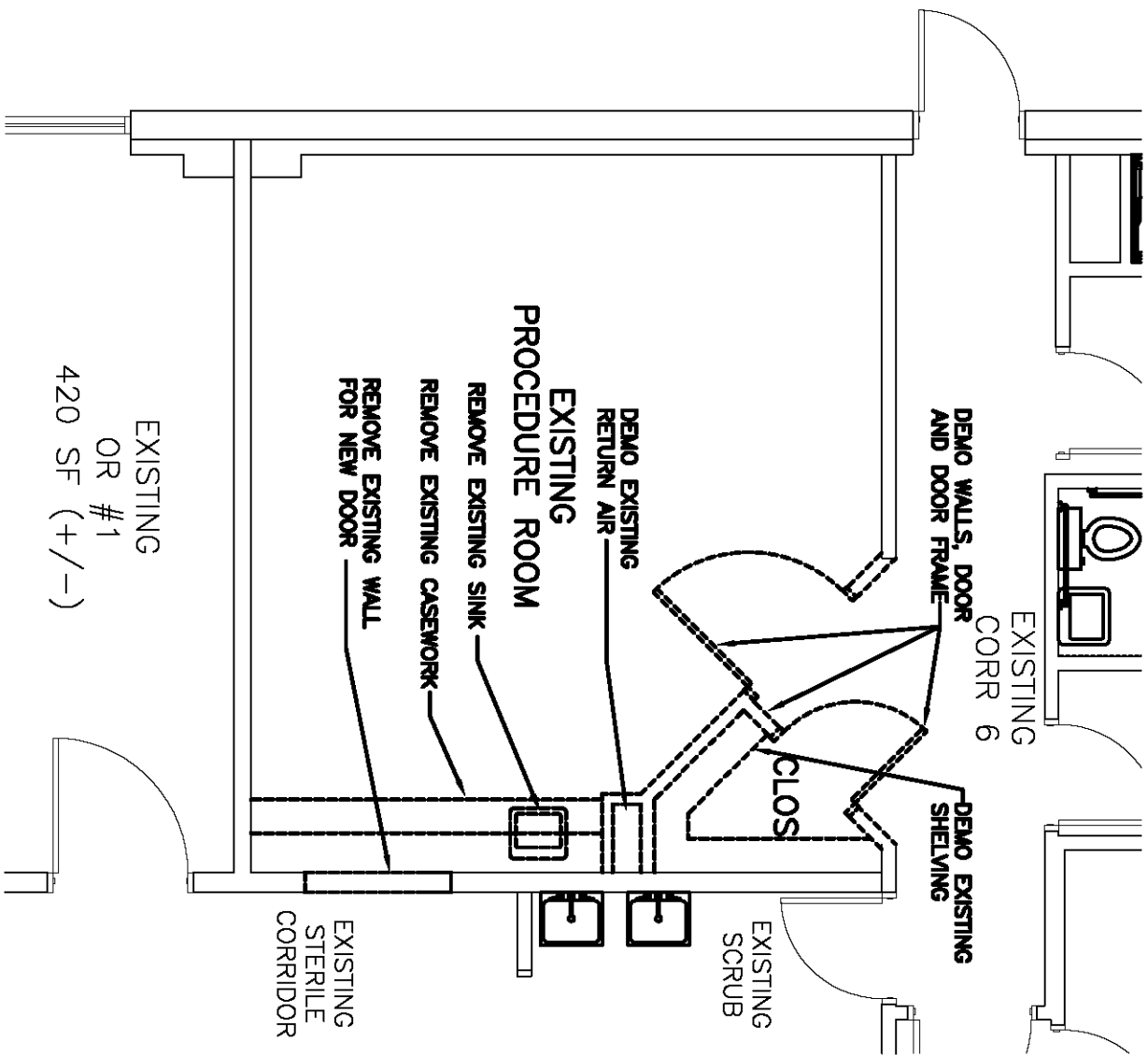
## Exhibit 2

### Statement of Assumptions

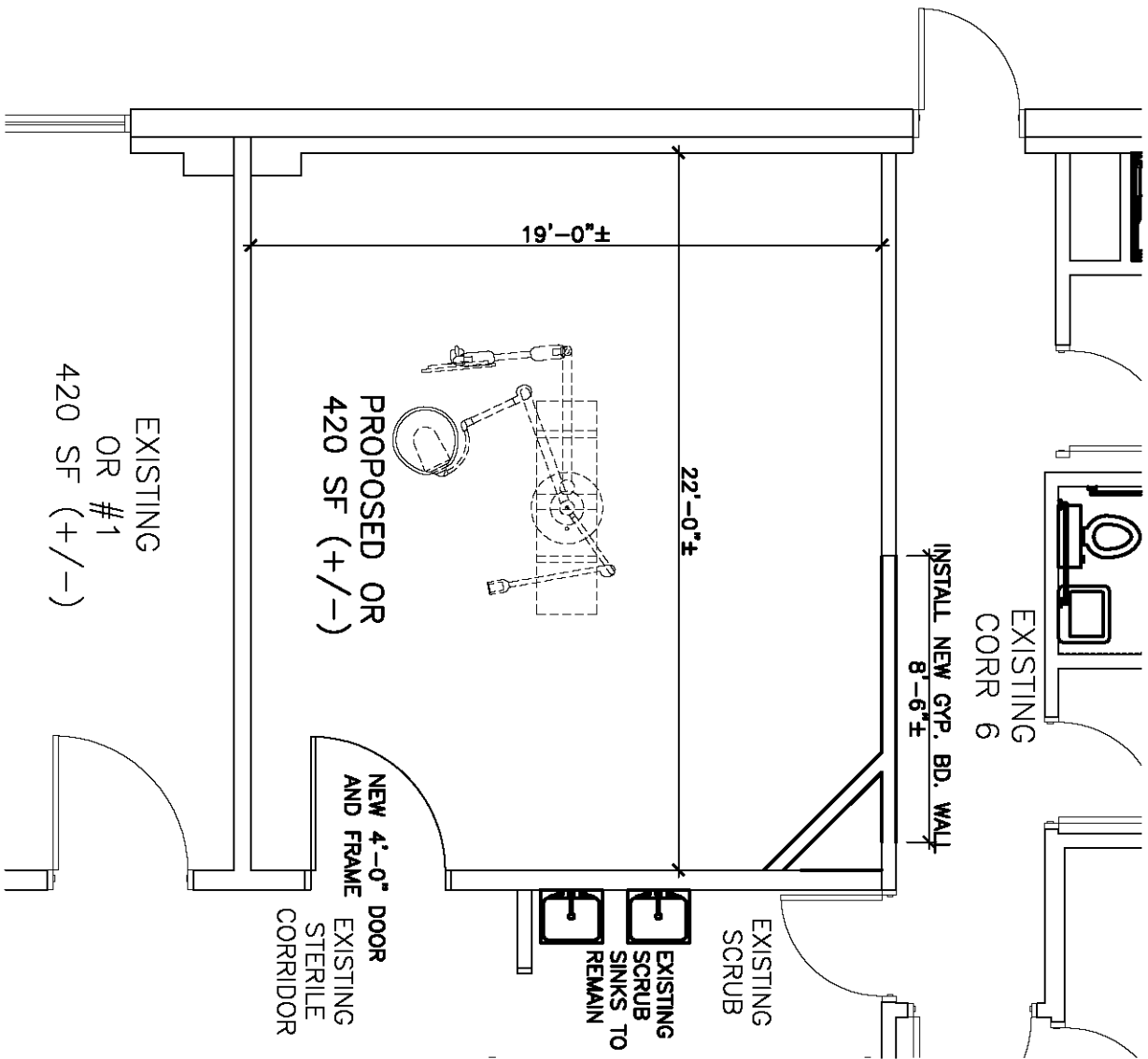
<u>P&amp;L Line</u>	<u>Reference</u>	<u>Assumptions</u>
Outpatient Services	1. b	Estimate proportionately based on projected increase in OR cases from new physicians and 2017 TTM actual data
Net Patient revenue	1. g	Based on C.Y. 2017 NPR/case by existing physician + yearly growth in payer reimbursement increases (based on historical trends). New physicians were calculated on expected contractual reimbursements for their + yearly growth in payer reimbursement increases (based on historical trends).
Charity Care	1. f	Estimated as a percentage of the estimated Operating Expenses for the center
Salaries & Wages	2. a	Based on actual employment data through July 31 2017 plus expected increases for second OR and additional case volume
Contractual services	2. b	Based on 2017 contractual service costs increasing for inflation (2% annually)
Interest on Project Debt	2. d	Assumes \$25K is paid with cash while the rest will be finance via a 5 year loan
Current Depreciation	2. e	Based on 2017 TTM and assumed continuous investments to replace aging/fully depreciated equipment
Project Depreciation	2. f	Estimated based upon the expected cost of the project and the applicable depreciation rates
Supplies	2. i	Based on 2017 TTM supplies per case costs increasing for yearly inflation (3%), new types cases brought in by new physicians, and the expected organic growth
Other Supplies	2. j	Estimated based upon the July 2017 TTM increasing yearly for inflation (1.5-2%)

## Exhibit 3

### Project Drawings



**1** PROPOSED DEMO FLOOR PLAN  
A1.01  
A1.02  
EXISTING PROCEDURE



**2** PROPOSED NEW CONSTRUCTION PLAN  
A1.01  
A1.02  
OPERATING ROOM #2  
420 SF (+/-)

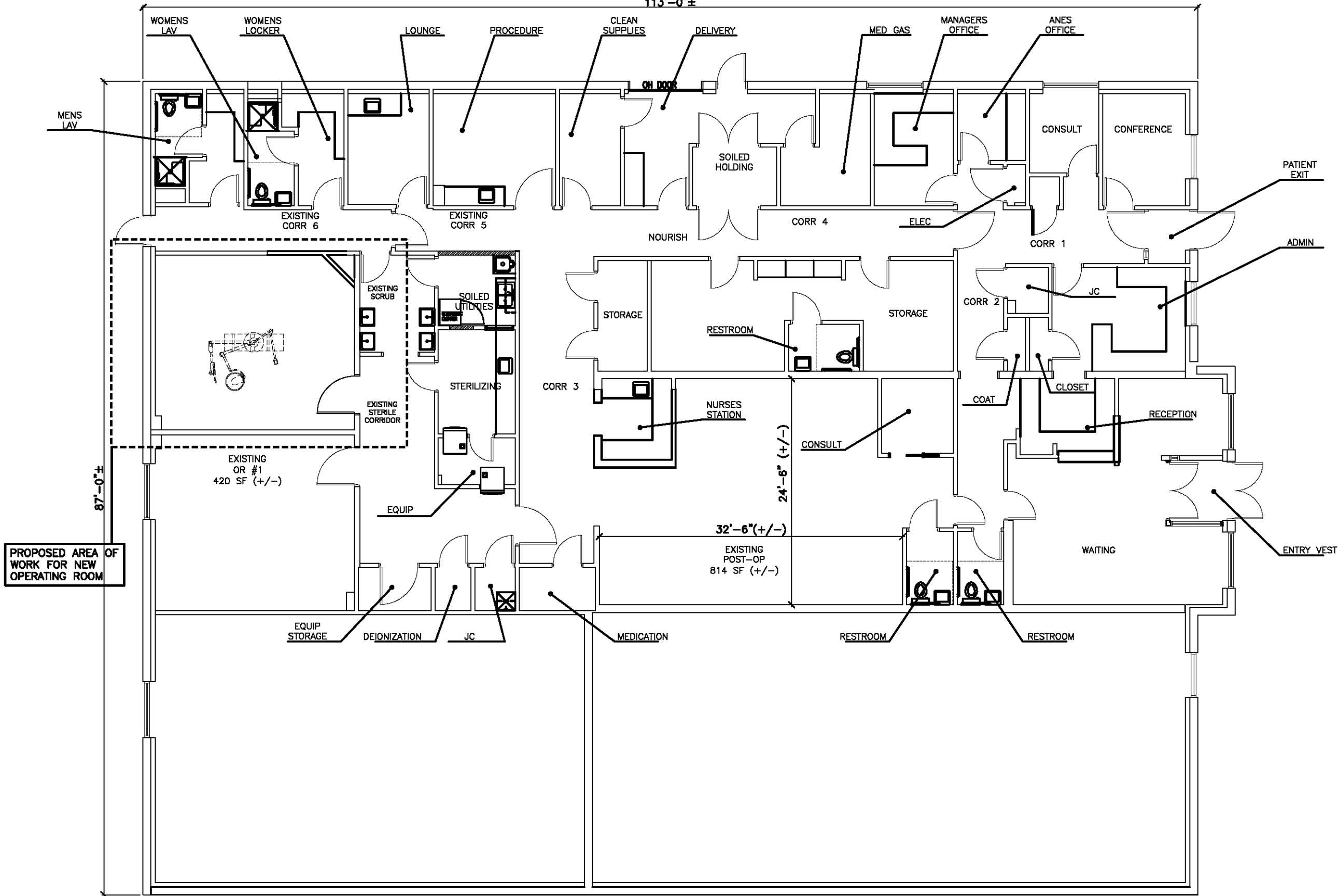
REVISIONS	

DATE:  
8/18/17

**the burell group, p.c.**  
architects ■ planners ■ interiors  
300 cahaba park circle, suite 111  
birmingham, alabama 35242



**THOMAS JOHNSON SURGERY CENTER**  
**PROPOSED OPERATING ROOM**  
197 THOMAS JOHNSON DRIVE  
FREDRICK, MARYLAND 20702  
17532/017-01551-00



PROPOSED AREA OF  
WORK FOR NEW  
OPERATING ROOM

1
A1.01
A1.01

EXISTING OVERALL FLOOR PLAN

10,000 SF (+/-)

REVISIONS

DATE:  
9/18/17

**the burell group, p.c.**  
architects ■ planners ■ interiors  
300 cahaba park circle, suite 111  
birmingham, alabama 35242



**THOMAS JOHNSON SURGERY CENTER**  
**PROPOSED OPERATING ROOM**  
197 THOMAS JOHNSON DRIVE  
FREDRICK, MARYLAND 20702  
17532017-01551-00

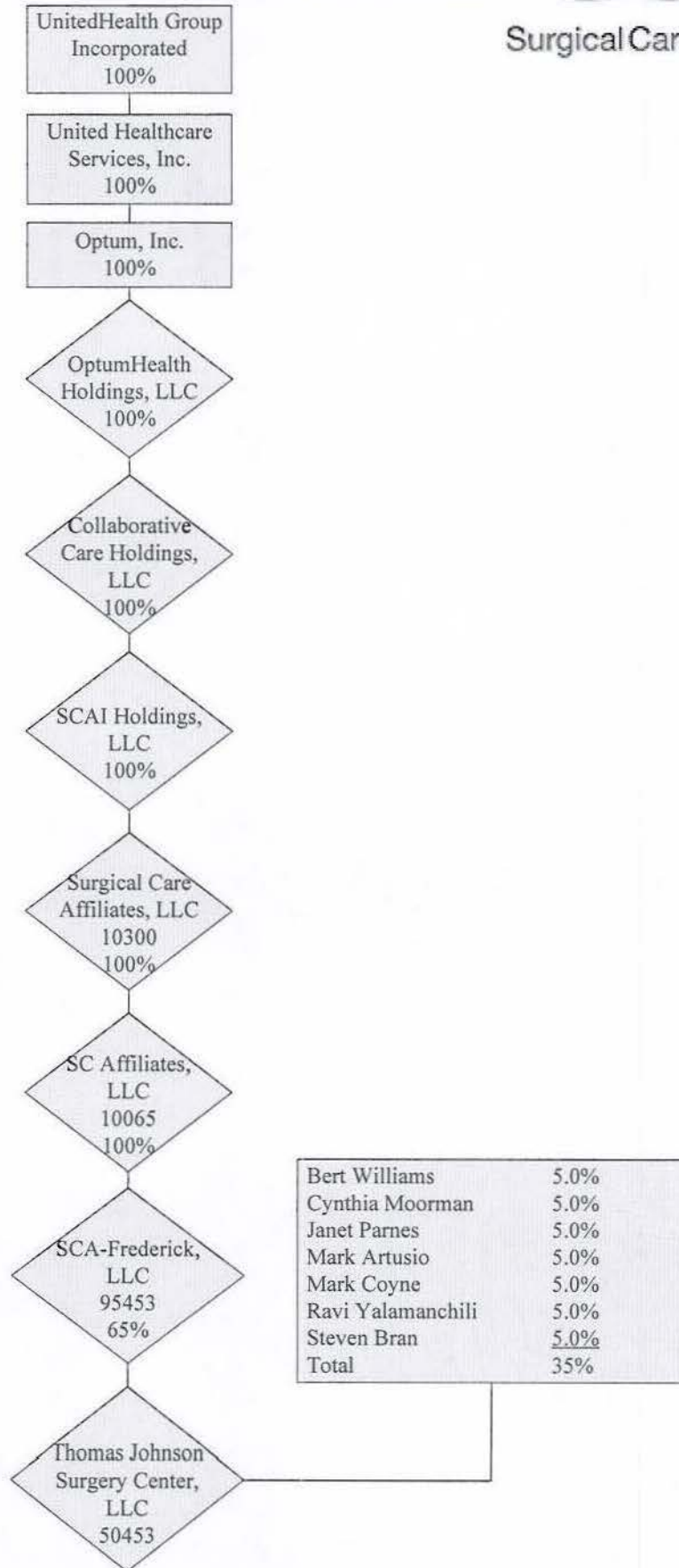
PROPOSED OVERALL FLOOR PLAN  
**A1.01**



Exhibit 4

Ownership List

**Facility #50453: Thomas Johnson Surgery Center, LLC**  
**197 Thomas Johnson Drive, Frederick, MD 21702**



THOMAS JOHNSON SURGERY CENTER, LLC

CENTER OPENING DATE: 07/09/2008

197 Thomas Johnson Drive

Billing/Shipping/Payment address: SAME AS PHYSICAL ADDRESS

Frederick, MD 21702

TEL 301.631.3881 FAX 301.631.3883

<u>% Owned</u>	<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	
5	Mark Artusio, MD	74 Thomas Johnson Drive	Frederick	MD	21702	Office
	Home- Artusio, MD	6327 Winpenny Drive	Frederick	MD	21702	Home
5	Steven Brand, MD	74 Thomas Johnson Drive	Frederick	MD	21702	Office
	Home-Brand, MD	8704 Marshall Circle	Frederick	MD	21702	Home
5	Mark Coyne, MD	186 Thomas Johnson Drive, Suite 104	Frederick	MD	21702	Office
	Coyne, MD	4419 Teen Barnes Rd	Jefferson	MD	21755	Home
5	Cynthia Moorman, MD	77 Thomas Johnson Drive	Frederick	MD	21702	Office
	Moorman, MD	8912 Danville Terrace	Frederick	MD	21701	Home
5	Janet Parnes, MD	75 Thomas Johnson Drive, Suite J	Frederick	MD	21702	Office
	Parnes, MD	10000 Prestwich Terrace	Ijamsville	MD	21754	Home
5	Bert Williams, MD	97 Thomas Johnson Drive, Suite 102	Frederick	MD	21702	Office
	Williams, MD	5632 Broadmoor Terrace North	Ijamsville	MD	21754	Home
5	Ravi Yalamanchili, MD	141 Thomas Johnson Drive, Suite 200	Frederick	MD	21702	Office
	Yalamanchili, MD	8902 Babak Run	Frederick	MD	21702	Home
65	SCA-Frederick, LLC	569 Brookwood Village Suite 901	Birmingham	AL	35209	Office
0	Naomi Allen	197 Thomas Johnson Dr	Frederick	MD	21702	Office
	Chief Executive Officer	330 Landis Rd	Hagerstown	MD	21740	Home
0	Kristine Lowther-VP Operations	2040 Harvest Dr	Mechanicsburg PA		17055	

### Ownership Interests in Thomas Johnson Surgery Center

<b>Member</b>	<b>Ownership Percentage in TJSC</b>
Mark Artusio, MD, Vice President	5%
Steven Brand, MD, President	5%
Mark Coyne, MD, Treasurer	5%
Cynthia Moorman, MD	5%
Janet Parnes, MD	5%
Bert Williams, MD, Medical Director	5%
Ravi Yalamanchili, MD	5%
SCA-Frederick, LLC	65%
	<b>100.00%</b>

## Exhibit 5

### SCA Facilities List



Facility Number	Current Legal Name	Current dba Name	Address	State
50002	Tuscaloosa Surgical Center, L.P.	Tuscaloosa Surgical Center	1400 McFarland Boulevard North, Tuscaloosa, AL 35406	AL
50003	Boca Raton Outpatient Surgery & Laser Center, LTD.	Boca Raton Outpatient Surgery Center	501 Glades Road, Boca Raton, FL 33432	FL
50006	Orlando Center for Outpatient Surgery, L.P.	Orlando Center For Outpatient Surgery	1405 S Orange Avenue, Suite 400, Orlando, FL 32806	FL
50013	Perimeter Center for Outpatient Surgery, L.P.	Perimeter Surgery Center of Atlanta	1140 Hammond Drive NE, Bldg F, Suite 6100, Atlanta, GA 30328	GA
50021	Hawthorn Place Outpatient Surgery Center, L.P.	Hawthorn Surgery Center	240 Center Drive, Vernon Hills, IL 60061	IL
50046	Austin Center For Outpatient Surgery, L.P.	Northwest Hills Surgical Hospital	6818 Austin Center Boulevard, Suite 100, Austin, TX 78731	TX
50049	Melbourne Surgery Center, LLC	Melbourne Surgery Center	95 Bulldog Boulevard, Suite 104, Melbourne, FL 32901	FL
50057	Treasure Valley Hospital Limited Partnership	Treasure Valley Hospital	8800 Emerald Street, Boise, ID 83704	ID
50060	Fort Sutter Surgery Center, a California Limited Partnership	Fort Sutter Surgery Center	2801 K Street, Suite 525, Sacramento, CA 95816	CA
50061	Golden Triangle Surgicenter, L.P.	Golden Triangle Surgicenter	25405 Hancock Avenue, Suite 103, Murrieta, CA 92562	CA
50070	Lexington Surgery Center, Ltd.	Lexington Surgery Center	1451 Harrodsburg Road, Suite 102, Lexington, KY 40504	KY
50071	Louisville S.C., Ltd.	Surgecenter of Louisville	4005 Dupont Circle, Louisville, KY 40207	KY
50072	Surgical Caregivers of Fort Worth, LLC	Fort Worth Surgery Center	2001 W Rosedale Street, Fort Worth, TX 76104	TX
50073	Mobile-SC, LTD	Mobile Surgery Center	6144 A Airport Boulevard, Mobile, AL 36608	AL
50079	Charlotte Surgery Center, Limited Partnership	Charlotte Surgery Center	2825 Randolph Road, Charlotte, NC 28211	NC
50085	Montgomery Surgery Center Limited Partnership	Montgomery Surgery Center	45 West Gude Drive, Rockville, MD 20850	MD
50086	Greenville Surgery Center, Ltd.	Texas Health Surgery Center Dallas	Greenville Surgery Center, LLC	TX
50089	Wauwatosa Surgery Center, Limited Partnership	Wauwatosa Surgery Center	10900 West Potter Road, Wauwatosa, WI 53226	WI
50090	Charleston Surgery Center, Limited Partnership	Charleston Surgery Center	2690 Lake Park Drive, North Charleston, SC 29406	SC
50091	Grandview Surgery Center, LTD.	Grandview Surgery Center	205 Grandview Avenue, Suite 101, Camp Hill, PA 17011	PA
50097	Inland Surgery Center, L.P.	Inland Surgery Center	1620 Laurel Avenue, Redlands, CA 92373	CA
50104	San Luis Obispo Surgery Center, LP		1304 Ella Street, Suite C, San Luis Obispo, CA 93401	CA
50107	Surgical Center of South Jersey, Limited Partnership	Surgical Center of South Jersey	130 Gaither Drive, Suite 160, Mount Laurel, NJ 08054	NJ
50109	Gadsden Surgery Center, L.P.	Gadsden Surgery Center	418 S. 5th Street, Gadsden, AL 35901	AL
50109	Gadsden Surgery Center, L.P.		418 S. 5th Street, Gadsden, AL 35901	AL
50116	Mt. Pleasant Surgery Center, Limited Partnership	Mt. Pleasant Surgery Center	200 Bessemer Road, Mt. Pleasant, PA 15666	PA
50116	Mt. Pleasant Surgery Center, Limited Partnership		200 Bessemer Road, Mt. Pleasant, PA 15666	PA
50117	Pueblo Ambulatory Surgery Center, LLC	Pueblo Surgery Center	25 Montebello Road, Pueblo, CO 81001	CO
50118	Honolulu Surgery Center, L.P.	Surgicare of Hawaii	500 Ala Moana Boulevard, Tower 1, Suite 1B, Honolulu, HI 96813	HI
50120	Blue Ridge Surgery Center	Blue Ridge Surgery Center	2308 Wesvill Court, Raleigh, NC 27607	NC
50122	Emerald Coast Surgery Center, LP		995 Mar Walt Drive, Fort Walton Beach, FL 32547	FL
50123	Winter Park Surgery Center, L.P.	Physician's Surgical Care Center	1245 Orange Avenue, Winter Park, FL 32789	FL
50125	Santa Rosa Surgery Center, LP		34 Mark West Springs Road, Suite 100, Santa Rosa, CA 95403	CA
50130	Citrus Regional Surgery Center, L.P.	Citrus Surgery Center	110 N Lecanto Highway, Lecanto, FL 34461	FL
50132	Florence Surgery Center, L.P.	Shoals Outpatient Surgery	103 Helton Court, Florence, AL 35630	AL
50134	Paoli Surgery Center, L.P.	Paoli Surgery Center	1 Industrial Boulevard, Paoli, PA 19301	PA
50135	Bakersfield Physicians Plaza Surgical Center, L.P.	Physicians Plaza Surgical Center	6000 Physicians Boulevard, Bakersfield, CA 93301	CA
50138	Glenwood Surgical Center LP	Glenwood Surgery Center	8945 Magnolia Avenue, Suite 200, Riverside, CA 92503	CA
50139	Alaska Surgery Center, Ltd., Alaska Limited Partnership	Alaska Surgery Center	4100 Lake Otis Parkway, Suite 104, Anchorage, AK 99508	AK
50140	Gainesville Surgery Center, L.P.	Gainesville Surgery Center	1945 Beverly Road, Gainesville, GA 30501	GA
50143	McKenzie Surgery Center, L.P.	McKenzie Surgery Center	940 Country Club Road, Eugene, OR 97401	OR
50157	Surgery Center of Easton, LP	The Surgery Center of Easton	510 Idlewild Avenue, Suite 110, Easton, MD 21601	MD
50164	Premier Surgery Center of Louisville, L.P.	Premier Surgery Center of Louisville	2511 Terra Crossing Boulevard, Louisville, KY 40245	KY
50168	Surgery Center of Fairfield County, LLC	Surgery Center of Fairfield County	112 Quarry Road, Trumbull, CT 06611	CT
50169	Danbury Surgical Center, L.P.	Danbury Surgical Center	73 Sandpit Road, Suite 101, Danbury, CT 06810	CT



Facility Number	Current Legal Name	Current dba Name	Address	State
50173	Loyola Ambulatory Surgery Center at Oakbrook, L.P.	Loyola Ambulatory Surgery Center	One South 224 Summit Avenue, Suite 201, Oakbrook Terrace, IL 60181	IL
50189	Pomerado Outpatient Surgical Center, L.P.	Rancho Bernardo Surgery Center	17190 Bernardo Center Drive, Suite 100, San Diego, CA 92128	CA
50203	Grossmont Surgery Center, L.P.	Grossmont Surgery Center	8881 Fletcher Parkway, Suite 100, La Mesa, CA 91942	CA
50209	Three Rivers Surgical Care, L.P.	Three Rivers Surgical Care	3800 West Okmulgee, Muskogee, OK 74401	OK
50209	Three Rivers Surgical Care, L.P.	Three Rivers Surgical Care	3800 West Okmulgee, Muskogee, OK 74401	OK
50211	Birmingham Outpatient Surgery Center, Ltd.	Outpatient Care Center	2720 University Boulevard, Birmingham, AL 35233	AL
50213	Surgicare of Mobile, Ltd.	Surgicare of Mobile	2890 Dauphin Street, Mobile, AL 36606	AL
50214	Arcadia Outpatient Surgery Center, L.P.	Arcadia Outpatient Surgery Center	614 Weast Duarte Road, Arcadia, CA 91007	CA
50217	North Coast Surgery Center, Ltd.	North Coast Surgery Center	3903 Waring Road, Oceanside, CA 92056	CA
50220	Belleville Surgical Center, Ltd.	Belleville Surgical Center	28 North 64th Street, Belleville, IL 62223	IL
50222	Surgery Centers of Des Moines, Ltd.	Surgery Center of Des Moines East	717 Lyon Street, Des Moines, IA 50309	IA
50223	Surgery Centers of Des Moines, Ltd.	Surgery Center of Des Moines West	5901 Westown Parkway, #100, West Des Moines, IA 50266	IA
50224	B.R.A.S.S. Partnership in Commendam	B.R.A.S.S. Surgery Center	5328 Didesse Drive, Baton Rouge, LA 70808	LA
50226	St. Cloud Outpatient Surgery, Ltd.	St. Cloud Surgical Center	1526 Northway Drive, St. Cloud, MN 56303	MN
50227	Surgicare of Minneapolis, Ltd.	Centennial Lakes Surgery Center	7373 France Avenue South, Suite 404, Edina, MN 55435	MN
50230	Surgicare of Jackson, Ltd.	Surgicare of Jackson	760 Lakeland Drive, Jackson, MS 39216	MS
50235	Eye Surgery Center of the Carolinas, L.P.	The Eye Surgery Center of the Carolinas	2170 Midland Road, Southern Pines, NC 28387	NC
50236	Salem Surgery Center, LLC	Northbank Surgical Center	700 Bellevue Street SE, Suite 300, Salem, OR 97301	OR
50241	Joliet Surgery Center Limited Partnership	Amsurg Surgery Center	998 129th Infantry Drive, Joliet, IL 60435	IL
50242	Northwest Surgicare, Ltd, an Illinois Limited Partnership	Northwest Surgicare	1100 West Central Road, Lower Level Basement/L4, Arlington Heights, IL 60005	IL
50244	Surgicare of La Veta, Ltd.	La Veta Surgical Center	681 S Parker Street, Suite 150, Orange, CA 92868	CA
50250	Antelope Valley Surgery Center, L.P.	Antelope Valley Surgery Center	44301 North Lorimer, Lancaster, CA 93534	CA
50251	Auburn Surgical Center, L.P.		3123 Professional Drive, Suite 100, Auburn, CA 95603	CA
50254	Channel Islands Surgicenter, L.P.	Channel Islands Surgicenter	2300 Wankel Way, Oxnard, CA 93030	CA
50255	Connecticut Surgery Center, L.P.	Connecticut Surgery Center	81 Gillett Street, Hartford, CT 06105	CT
50260	Fayetteville Ambulatory Surgery Center, L.P.	Fayetteville Ambulatory Surgery Center	1781 Metromedical Drive, Fayetteville, NC 28304	NC
50261	Fort Worth Endoscopy Center	Fort Worth Endoscopy Center	900 West Magnolia Avenue, #101, Fort Worth, TX 76104	TX
50262	GLBESC, LLC	Greater Long Beach Endoscopy Center	3833 Worsham Avenue, Suite 200, Long Beach, CA 90808	CA
50264	Greensboro Specialty Surgery Center, L.P.	Greensboro Specialty Surgical Center	3812 North Elm Street, Greensboro, NC 27455	NC
50273	Northern Rockies Surgery Center, L.P.	Northern Rockies Surgery Center	940 North 30th Street, Billings, MT 59101	MT
50277	San Diego Endoscopy Center	San Diego Endoscopy Center	4033 Third Avenue, Suite 106, San Diego, CA 92103	CA
50298	Upland Outpatient Surgical Center, L.P.	Upland Outpatient Surgical Center	1330 San Bernardino, Suite F, Upland, CA 91786	CA
50302	Aloha Surgical Center, LLC	Aloha Surgical Center	239 Ho'ohana Street, Kahului, HI 96732	HI
50303	Sutter Alhambra Surgery Center, LP		1201 Alhambra Boulevard, Suite 110, Sacramento, CA 95816	CA
50308	Surgical Center of Greensboro, LLC	Surgical Center of Greensboro	1211 Virginia Street, Greensboro, NC 27401	NC
50309	Surgery Center of Fort Collins, LLC		1100 E Prospect Road, Fort Collins, CO 80525	CO
50315	Fort Worth Endoscopy Center	Southwest Fort Worth Endoscopy Center	6317 Harris Parkway, Suite 100, Fort Worth, TX 76132	TX
50327	Surgery Center of Cullman, LLC	Surgery Center of Cullman	1403 Wall Street NE, Cullman, AL 35055	AL
50328	UCSD Ambulatory Surgery Center, LLC	University Ambulatory Surgery Center	8929 University Center Lane, Suite 103, San Diego, CA 92122	CA
50331	Marin Health Ventures, LLC	Marin Specialty Surgery Center	505 Sir Francis Drake Boulevard, Greenbrae, CA 94904	CA
50332	South County Surgical Center, LLC	South County Surgical Center	12345 West Bend Drive, Suite 201, St. Louis, MO 63128	MO
50333	Surgical Hospital of Oklahoma, LLC	Surgical Hospital of Oklahoma	100 S.E. 59th Street, Oklahoma City, OK 73129	OK
50333	Surgical Hospital of Oklahoma, LLC	Surgical Hospital of Oklahoma	100 S.E. 59th Street, Oklahoma City, OK 73129	OK
50337	E Street Endoscopy LLC	West Coast Endoscopy	616 E Street, Clearwater, FL 33756	FL
50338	Sacramento Surgery Center Associates, LP		1800 Tribute Road, Suite 100, Sacramento, CA 95815	CA



Facility Number	Current Legal Name	Current dba Name	Address	State
50339	Golden Gate Endoscopy Center, LLC		3370 Geary Boulevard, San Francisco, CA 94118	CA
50341	Walnut Creek Endoscopy Center, LLC		365 Lennon Lane, Suite 100, Walnut Creek, CA 94598	CA
50342	Santa Barbara Endoscopy Center, LLC		25 W Micheltorena Street, Santa Barbara, CA 93101	CA
50343	San Francisco Endoscopy Center LLC	San Francisco Endoscopy Center	3468 California Street, San Francisco, CA 94118	CA
50344	Corpus Christi Endoscopy Center	Corpus Christi Endoscopy Center	6421 Saratoga Boulevard, Corpus Christi, TX 78414	TX
50345	Mountain View Endoscopy Center LP	Mountain View Endoscopy Center	2490 Hospital Drive, Suite 211, Mountain View, CA 94040	CA
50348	Santa Cruz Endoscopy Center	Santa Cruz Endoscopy Center	1505 Soquel Drive, Suite #4, Santa Cruz, CA 95065	CA
50350	East Bay Endoscopy Center, LP		5858 Horton Street, Suite 100, Emeryville, CA 94608	CA
50352	South Placer Surgery Center, LP		8723 Sierra College Boulevard, Roseville, CA 95661	CA
50356	Denton Surgery Center, LLC	Denton Surgery Center	207 North Bonnie Brae Street, Denton, TX 76201	TX
50357	Texas Health Flower Mound Orthopedic Surgery Center LLC		5000 Long Prairie Road, Flower Mound, TX 75028	TX
50358	Peninsula Eye Surgery Center, LLC		1128 W El Camino Real, Mountain View, CA 94040	CA
50359	MemorialCare Surgical Center at Saddleback, LLC	MemorialCare Surgical Center Saddleback Memorial	24411 Health Center Drive, Suite 104, Laguna Hills, CA 92653	CA
50360	MemorialCare Surgical Center at Saddleback, LLC	MemorialCare Surgical Center Laguna Woods	24331 El Toro Road, Suite 150, Laguna Hills, CA 92637	CA
50361	Digestive Disease Center, L.P.	Digestive Disease Center	MemorialCare Digestive Care Center Saddleback Memorial	CA
50362	Lackawanna Physicians Ambulatory Surgery Center, LLC	North East Surgery Center	423 Scranton Carbondale Highway, Dickson City, PA 18508	PA
50362	Lackawanna Physicians Ambulatory Surgery Center, LLC	North East Surgery Center	423 Scranton Carbondale Highway, Dickson City, PA 18508	PA
50363	Redding Surgery Center, LLC	Apogee Surgery Center	1238 West Street, Redding, CA 96001	CA
50364	Texas Health Craig Ranch Surgery Center, LLC	Texas Health Surgery Center Craig Ranch	8080 State Highway 121, Suite 100, McKinney, TX 75050	TX
50367	MemorialCare Surgery Center Orange Coast	Orange Coast Center for Surgical Care	18111 Brookhurst Street, Suite 3200, Fountain Valley, CA 92708	CA
50370	Clinton Partners, LLC	Premier Surgical Center of Michigan	43475 Dalcama Drive, Clinton Township, MI 48038	MI
50371	East Brunswick Surgery Center, LLC	University SurgiCenter	561 Cranbury Road, East Brunswick, NJ 08816	NJ
50372	Cleburne Surgical Center, LLC	Texas Health Surgical Center Cleburne	2010 W Katherine P. Raines Blvd, Suite 100, Cleburne, TX 76033	TX
50373	Surgicare of La Veta, Ltd.	Barranca Surgery Center	3500 Barranca Parkway, Suite 130, Irvine, CA 92606	CA
50376	PS Center, LLC	MemorialCare Surgical Center Newport-Mesa	1640 Newport Boulevard, Suite 260, Costa Mesa, CA 92627	CA
50377	Alaska Spine Center LLC	Alaska Spine Center	4100 Lake Otis Parkway, Suite 212, Anchorage, AK 99508	AK
50380	MemorialCare Surgical Center at Saddleback, LLC	MemorialCare Surgical Center Laguna Niguel	27882 Forbes Road, Suite 203, Laguna Niguel, CA 92677	CA
50381	North Dallas Surgical Center, LLC	Texas Health Surgery Center Addison	17980 Dallas Parkway, Suite 100, Dallas, TX 75287	TX
50382	Sand Lake SurgiCenter, LLC	Sand Lake Surgery Center	7477 Sand Lake Commons Boulevard, Orlando, FL 32819	FL
50383	Children's Surgery Center	Maitland Surgery Center	790 Concourse Parkway South, Suite 100, Maitland, FL 32751	FL
50384	Pocono Ambulatory Surgery Center, Limited		1 Storm Street, Stroudsburg, PA 18360	PA
50385	Surgery Center of Rockville, LLC		2 Choke Cherry Road, Suite 125, Rockville, MD 20850	MD
50386	Belleville Surgical Center, Ltd.	Physicians' Surgical Center	311 West Lincoln, Suite 300, Belleville, IL 62220	IL
50387	DISC Surgery Center at Newport Beach, LLC		3501 Jamboree Road, Suite 1200, Newport Beach, CA 92660	CA
50388	Diagnostic and Interventional Surgical Center, LLC	Diagnostic & Interventional Surgical Center	13160 Mindanao Way, Suite 150, Marina Del Rey, CA 90292	CA
50391	Surgical Specialty Hospital of Arizona, LLC	The CORE Institute Specialty Hospital	6501 N 19th Avenue, Phoenix, AZ 85015	AZ
50392	Wilson Creek Surgical Center, LLC	Stonebridge Surgery Center	8855 Synergy Drive, McKinney, TX 75070	TX
50395	Alliance Surgical Center, LLC	Alliance Surgery Center	917 Rinehart Road, Suite 1001, Lake Mary, FL 32746	FL
50396	Specialty Surgical Center, LLC		380 Lafayette Road, Sparta Township, NJ 07871	NJ
50396	Specialty Surgical Center, LLC		380 Lafayette Road, Sparta Township, NJ 07871	NJ
50397	Surgery Center of Wilson, LLC	Eastern Regional Surgical Center	1709 Medical Park Drive West, Wilson, NC 27893	NC
50398	Texas Health Surgery Center Preston Plaza, LLC	Texas Health Surgery Center Preston Plaza	17950 Preston Road, Dallas, TX 75252	TX
50399	Seashore Surgical Insititue, L.L.C.		495 Jack Martin Boulevard, Suite 1, Brick, NJ 08724	NJ
50400	Surgicare of Central Jersey, LLC	Surgicare of Central Jersey	40 Stirling Road, Watchung, NJ 07069	NJ
50400	Surgicare of Central Jersey, LLC	Surgicare of Central Jersey	40 Stirling Road, Watchung, NJ 07069	NJ



Facility Number	Current Legal Name	Current dba Name	Address	State
50401	Specialists in Urology Surgery Center, LLC	Sunergy Outpatient Surgery Center - Naples	990 Tamiami Trail North, Naples, FL 34102	FL
50402	Specialists in Urology Surgery Center, LLC	Sunergy Outpatient Surgery Center - Bonita Springs	28930 Trails Edge Boulevard, Bonita Springs, FL 34134	FL
50403	Specialists in Urology Surgery Center, LLC	Sunergy Outpatient Surgery Center - Ft. Myers	4571 Colonial Boulevard, Fort Myers, FL 33966	FL
50405	Advocate Condell Ambulatory Surgery Center, LLC	Advocate Surgery Center - Libertyville	825 S Milwaukee Avenue, Libertyville, IL 60048	IL
50407	Parkway Surgery Center, LLC		17 Western Maryland Parkway, Suite 102, Hagerstown, MD 21740	MD
50408	Franklin Surgical Center, LLC	Franklin Surgery Center	175 Morristown Road, Suite 102, Basking Ridge, NJ 07920	NJ
50409	Audubon Ambulatory Surgery Center, LLC		3030 North Circle Drive, Suite 101, Colorado Springs, CO 80909	CO
50410	Audubon Ambulatory Surgery Center, LLC	Audubon Ambulatory Surgery Center at St. Francis	6011 East Woodmen Road, Suite 200, Colorado Springs, CO 80923	CO
50415	Arise Healthcare System, LLC	Arise Austin Medical Center	3003 Bee Cave Road, Austin, TX 78746	TX
50416	Cedar Park Surgery Center, LLC		351 Cypress Creek Road, Suite 102, Cedar Park, TX 78613	TX
50417	Stonegate Surgery Center, LP		2501 W William Cannon Drive, Suite 301, Austin, TX 78745	TX
50418	Hays Surgery Center, LLC	Hays Surgery Center	135 Bunton Creek Road, Kyle, TX 78640	TX
50419	Advanced Surgical Hospital	Advanced Surgical Hospital	100 Trich Drive, Suite 1, Washington, PA 15301	AZ
50420	Surgical Center of San Diego, LLC		4910 Director's Place, Suite 100, San Diego, CA 92121	CA
50427	Southwest Surgery Center, LLC	Center for Minimally Invasive Surgery	19110 Darwin Drive, Mokena, IL 60448	IL
50435	The Outpatient Surgery Center of Hilton Head, LLC	Outpatient Surgery Center of Hilton Head	190 Pembroke Drive, Hilton Head Island, SC 29926	SC
50436	Surgery Center of Athens, LLC	Surgery Center of Athens	2142 W Broad Street, Building 100, Suite 100, Athens, GA 30606	GA
50437	Winchester Endoscopy, LLC	Winchester Endoscopy	1870 W. Winchester Road, Suite 146, Libertyville, IL 60048	IL
50438	Space Coast Surgery Center, Ltd.	Merritt Island Surgery Center	220 North Sykes Creek Parkway, Suite 101, Merritt Island, FL 32953	FL
50440	Dublin Surgery Center, LLC	N/A	5005 Parkcenter Avenue, Dublin, OH 43017	OH
50441	Center for Surgery of North Coast, LP		477 N El Camino Real, Building C, Suite 100, Encinitas, CA 92024	CA
50442	Ophthalmology Surgery Center of Dallas, LLC		10740 N Central Expressway, Suite 400, Dallas, TX 75231	TX
50444	Gladiolus Surgery Center, LLC		7431 Gladiolus Drive, Fort Myers, FL 33908	FL
50447	Midwest Center for Day Surgery, LLC		3811 Highland Avenue, Downers Grove, IL 60515	IL
50447	Midwest Center for Day Surgery, LLC		3811 Highland Avenue, Downers Grove, IL 60515	IL
50448	Naperville Surgical Centre, LLC	N/A	1263 Rickert Drive, Naperville, IL 60540	IL
50452	Somerset Outpatient Surgery, LLC	Raritan Valley Surgery Center	100 Franklin Drive, Suite 100, Somerset, NJ 08873	NJ
50453	Thomas Johnson Surgery Center, LLC		197 Thomas Johnson Drive, Frederick, MD 21702	MD
50454	Bergen-Passaic Cataract Laser and Surgery Center, LLC	Bergen-Passaic Eye Surgery Center	18-01 Pollitt Drive, Suite 4, Fair Lawn, NJ 07410	NJ
50456	Grove Place Surgery Center, LLC		1325 36th Street, Vero Beach, FL 32960	FL
50460	Arlington Surgery Center, LLC		918 N Davis Drive, Arlington, TX 76012	TX
50462	Executive Surgery Center, LLC		13603 Michel Road, Suite 100, Tomball, TX 77375	TX
50463	Metropolitan Medical Partners, LLC	Surgery Center of Chevy Chase	5530 Wisconsin Avenue, Suite 1620, Chevy Chase, MD 20815	MD
50467	Miami Surgery Center, LLC	The Surgery Center at Doral	3650 NW 831 St, #101, Miami, FL 33166	FL
50468	Grants Pass Surgery Center, LLC		1601 NW Hawthorne Avenue, Grants Pass, OR 97526	OR
50469	Surgicare, LLC		2907 S McIntire Drive #C, Bloomington, IN 47403	IN
50470	The Surgical Center of Connecticut, LLC		4920 North Main Street, Bridgeport, CT 06606	CT
50471	River Valley ASC, LLC		45 Salem Turnpike, Norwich, CT 06360	CT
50472	Western Connecticut Orthopedic Surgical Center, LLC		226 White Street, Danbury, CT 06810	CT
50476	Texas Health Surgery Center Bedford, LLC		1605 Airport Freeway, Suite 100, Bedford, TX 76021	TX
50479	Park Hill Surgery Center, LLC	Texas Health Surgery Center Park Hill	3455 Locke Avenue, Fort Worth, TX 76107	TX
55218	Owensboro Ambulatory Surgical Facility, Ltd.	Owensboro Ambulatory Surgical Facility	1000 Breckenridge Street, Suite 100, Owensboro, KY 42303	KY
60001	Eagle Highlands Surgery Center, LLC	IU Health Eagle Highlands Surgery Center	6850 Parkdale Place, Indianapolis, IN 46254	IN
60002	Ball Outpatient Surgery Center, LLC		2401 W University Avenue, Muncie, IN 47303	IN
60003	Beltway Surgery Centers, L.L.C.	IU Health Beltway Surgery Centers	151 Pennsylvania Parkway, Indianapolis, IN 46280	IN

Facility Number	Current Legal Name	Current dba Name	Address	State
60004	Beltway Surgery Centers, L.L.C.	Beltway Surgery Center, GI	200 West 103rd Street, Suite 2400, Indianapolis, IN 46290	IN
60005	Indiana Endoscopy Centers, LLC	Indiana Endoscopy, Avon	1115 North Ronald Reagan Parkway, Suite 347, Avon, IN 46123	IN
60006	Indiana Endoscopy Centers, LLC		1801 North Senate Boulevard, Suite 410, Indianapolis, IN 46202	IN
60007	Indiana Endoscopy Centers, LLC		10967 Allisonville Road, Suite 100, Fishers, Indiana 46038	IN
60008	ROC Surgery Center LLC	Riley Outpatient Surgery Center at Indiana University Health	575 West Drive, Indianapolis, IN 46202	IN
60009	Senate Street Surgery Center	IU Senate Street Surgery Center	1801 North Senate Boulevard, Indianapolis, IN 46202	IN
60010	Indiana University Health Saxony Surgery Center, LLC	Saxony Surgery Center	13100 East 136th Street, Suite 1100, Fishers, IN 46037	IN
60011	Beltway Surgery Centers, L.L.C.	Glen Lehman Endoscopy Suite	550 North University Boulevard, Suite 4100, Indianapolis, IN 46202	IN
60012	Eagle Highlands Surgery Center, LLC	Meridian South Surgery Center	8830 South Meridian Street, Indianapolis, IN 46217	IN
60013	Beltway Surgery Centers, L.L.C.	Indiana Hand to Shoulder Beltway Surgery Center	8501 Harcourt Road, Indianapolis, IN 46240	IN
60015	Beltway Surgery Centers, L.L.C.	Multi-Specialty Surgery Center	10601 North Meridian Street, Indianapolis, IN	IN
60016	IU Health East Washington Ambulatory Surgery Center, LLC		9660 East Washington Street, Indianapolis, IN 46229	IN
70001	Castle Ambulatory Surgery Center, LLC	Windward Surgery Center	642 Ulukahiki Street, Suite 200, Kailua, HI 96734	HI
70003	Bergan Mercy Surgery Center, LLC		7500 Mercy Road, Suite 4300, Omaha, NE 68124	NE
70005	Nebraska Spine Hospital, LLC		6901 North 72nd Street, Suite 20300, Omaha, NE 68122	NE

## Exhibit 6

### Lease



#### AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement is made this 24<sup>th</sup> day of April, 2017 by and between Gutenberg Properties, LLC ("Landlord") and Thomas Johnson Surgery Center, LLC ("Tenant").

#### WITNESSETH:

WIIEREAS, Landlord and Tenant have heretofore entered into that certain Lease Agreement dated the 1<sup>st</sup> day of October, 2007 ("Lease"); and

WHEREAS, Landlord and Tenant mutually desire to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), paid by Landlord and Tenant, each to the other, and the mutual covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Unless otherwise set forth in this Amendment to Lease Agreement, all capitalized terms shall have the same meaning as set forth in the Lease.
2. The Tenant hereby exercises its first option term of ten (10) years identified in 4.2 of the Lease, commencing on December 1<sup>st</sup>, 2017 and ending on November 30<sup>th</sup>, 2027.
3. The Basic Rent for the first year of the Option Term shall be established by the Parties at \$25.00 per square foot or \$162,500 per year with monthly payments of \$13,541.67.
4. Beginning with the second year of the Option Term the Basic Rent established in paragraph 3 herein shall escalate consistent with the terms and conditions of the Lease identified in 1.2. and 5.3. as Basic Rent Adjustment.
5. Within Ten (10) days of the execution of this Amendment to Lease Agreement by both Parties, the Landlord agrees to pay the Tenant the sum of Fifty Thousand Dollars (\$50,000) to be used by the Tenant in their sole discretion.
6. All other terms, covenants and conditions of the Lease shall remain the same and continue in full force and effect and shall be deemed unchanged, except as such terms, covenants and conditions of the Lease have been amended or modified by this Amendment to Lease Agreement and this Amendment to Lease Agreement shall, by this reference, constitute a part of the Lease.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease Agreement as of the date first written above.

**LANDLORD:**

**Gutenberg Properties, LLC**

By: [Signature]

Name: DANIEL K. MCGINLEY

Its: PR / MANAGING MEMBER

**TENANT:**

**Thomas Johnson Surgery Center, LLC**

By: [Signature]

Name: Richard L. Sharff, Jr.

Its: \_\_\_\_\_



## LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made as of this 1<sup>st</sup> day of October, 2007 ("Effective Date"), by and between Gutenberg Properties, LLC, a Maryland limited liability company, as Landlord and Thomas Johnson Surgery Center, LLC, a Maryland limited liability company, as Tenant. For purposes of this Lease, the term "Party" shall mean either Landlord and/or the Tenant, and "Parties" shall collectively refer to the Landlord and Tenant.

### EXPLANATORY NOTE:

Landlord is the owner of certain hereinafter described real property, which is improved with a single-story, masonry constructed office/retail Building containing approximately 10,050 square feet on the first floor level and approximately 1,295 square feet on the lower/basement level. Tenant desires to lease and rent from Landlord a portion of such Building, and Landlord wishes to lease and rent such portion unto Tenant, all in accordance with the terms and conditions hereof. The Parties have reached an agreement regarding the rental and leasing of the Premises and now wish to commit such agreements to writing. Landlord and Tenant, intending legally to be bound, covenant and agree as set forth below.

**NOW, THEREFORE, WITNESSETH:** That in reliance upon and in consideration of the representations, warranties, covenants, conditions and limitations herein contained on the part of Tenant (the full and exact performance and observance of each, every and all thereof being agreed by Tenant to be conditions precedent and subsequent to the covenants herein to the continuation of this Lease), Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, the herein described Premises upon the following terms and conditions:

1. **Summary of Lease Terms.** The following is a summary of certain of the terms, defined words and phrases of this Lease. Further explanation, definition, embellishment and application shall be obtained by further reference to those provisions in the Lease following this Section and the Exhibits, Schedules and/or Attachments that are annexed to this Lease.

### Specifics

**1.1. Interim Rent and Basic Rent:** In order to defray the cost and expense of Landlord prior to the Commencement Date, Tenant shall pay to Landlord interim rent ("Interim Rent") in the amount of Five Thousand Dollars (\$5,000.00) per month for October, 2007, and November, 2007, with the first payment of Interim Rent being due and payable on the Effective Date and the second payment of Interim Rent being due and payable on November 1, 2007. Following the payment of Interim Rent as aforesaid, Tenant shall pay to Landlord basic rent ("Basic Rent") during the first Lease Year of One Hundred Fifty-Nine Thousand Four Hundred Seventy Dollars and Fifty Cents (\$159,470.50), which shall be payable in equal monthly installments of Basic Rent in the amount of Thirteen Thousand Two Hundred Eighty-Nine Dollars and Twenty-One Cents (\$13,289.21) during such first Lease Year of the Initial Term, with the first monthly installment being due and payable on the Effective Date (but attributable to the December, 2007 calendar month) and the second monthly installment being due and payable on January 1, 2008 and all subsequent installments being due and payable on the first day of each calendar month thereafter.

**1.2. Basic Rent Adjustment:** On December 1, 2008, and on December 1<sup>st</sup> of each Lease Year thereafter (with each such December 1<sup>st</sup> being referred to herein as the "Adjustment Date") during the Term, the annual Basic Rent herein provided shall be adjusted by use of the Index for All U.S. Cities, known as "United States Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, United States and Selected Area (1982-84=100), All Items" for the month of October (the "CPI") in the Lease Year immediately preceding the then current Adjustment Date (the CPI for October, 2008 shall be used for calculating the Basic Rent adjustment due and payable on December 1, 2008). The Basic Rent adjustment shall be effective from the Adjustment Date and will be exactly equal to the greater of: (i) the change in the cost of living as determined by



the CPI; or (ii) two percent (2%) per annum; PROVIDED, HOWEVER, in no event shall the Basic Rent adjustment between any two successive Lease Years be greater than three percent (3%). Each Basic Rent adjustment shall be accomplished by multiplying the last established annual Basic Rent (adjusted each Lease Year commencing on December 1, 2008, as aforesaid) by a fraction, the numerator of which shall be the CPI for the month of October during the Lease Year immediately prior to the Adjustment Date and the denominator of which shall be the CPI for the month of October in the previous Lease Year. In no event shall the annual Basic Rent be reduced as a result of the Basic Rent adjustment below the annual Basic Rent payable for the immediately preceding Lease Year, it being understood and agreed that the minimum Basic Rent adjustment shall be two percent (2%), and the increased annual Basic Rent resulting from the Basic Rent adjustment shall continue in effect as the annual Basic Rent until the next Adjustment Date as provided herein. If such CPI should be terminated or revised, then the cost of living shall be determined by such similar index published by an agency of the United States Government, or in the event there shall be no similar index so published, any index or measure reasonably calculated so as to measure the change in the cost of living in a manner consistent with the CPI. By way of example, in the event the CPI between October, 2007 and October, 2008, increases by 3%, then the annual Basic Rent from December 1, 2008, through November 30, 2009 shall be \$164,255, which shall be payable in equal, monthly installments of \$13,688 during the second Lease Year. If the CPI during the same period increases by 1.5%, then the annual Basic Rent during the second Lease Year shall be \$162,660 (representing the 2% minimum increase required between each Lease Year from the annual Basic Rent payable during the preceding Lease Year).

**1.3. Building:** The building currently located upon the Center containing 10,026 square feet on the first floor level and approximately 1,295 square feet on the basement level. For purposes of establishing the Proportionate Share, it is understood and agreed that only the square footage of the first floor shall be utilized and the area contained within the basement shall be excluded from such calculation. The basement level shall be part of the Common Areas and shall be available to Tenant on a non-exclusive basis with Landlord and other tenants of the Building for the limited installation and/or storage of equipment servicing the Building, and in all cases, subject to the reasonable rules and regulations established by Landlord from time to time hereunder. Without limiting the foregoing, Tenant shall be entitled to use the storage room in the basement and also to use the basement space for the equipment which is already in place including its water heater and such equipment as it intends to install, including a vacuum pump and its electrical equipment, free from interference from Landlord or other tenants.

**1.4. Center:** All that real property owned by Landlord which is further described in a deed dated May 2, 1983, and recorded at Liber 1197, folio 550, among the Land Records of Frederick County, Maryland, which shall include the Building and all other improvements now existing thereon, all generally as shown on **Exhibit A**.

**1.5. Commencement Date:** December 1, 2007.

**1.6. Deposit:** An amount equal to the first monthly installment of Basic Rent which shall be held and disbursed by Landlord in accordance with the provisions of this Lease.

**1.7. Initial Term:** A period of one hundred twenty (120) calendar months beginning on the Commencement Date and ending, if not sooner terminated, on November 30, 2017 (as may be extended in accordance herewith).

**1.8. Landlord's Notice Address:**

Paul K. Huber, Jr.  
8529 Edgewood Church Road  
Frederick, Maryland 21702.



**1.9. Landlord's Rental Payment Address:** 8529 Edgewood Church Road, Frederick, Maryland 21702, with all checks to be drawn payable to "Gutenberg Properties, LLC".

**1.10. Lease Expiration Date:** November 30, 2017 (as may be extended or such earlier date as this Lease may terminate in accordance with the terms and conditions hereof).

**1.11. Named Broker:** Kenneth Breen of Mackintosh, Inc. and Christopher T. Kline of Kline, Scott, Visco Real Estate.

**1.12. Option Term:** shall mean and refer to the two (2), ten (10)-year periods extending the Initial Term (or the first Option Term, as applicable), which if properly exercised by Tenant, shall commence immediately upon the expiration of the Initial Term (or the first Option Term, as applicable).

**1.13. Permitted Use:** The Premises shall be used for the establishment and operation of an ambulatory surgical center and general medical office uses in connection therewith, and for no other purpose, without the prior written consent of Landlord in accordance with Section 6.

**1.14. Premises; Rentable Area of the Premises:** That portion of the Building leased by Tenant from Landlord and shown outlined on Exhibit A, containing the agreed-upon equivalent of Six Thousand Five Hundred Nine (6,509) square feet (the "Rentable Area of the Premises").

**1.15. Proportionate Share:** shall be equal to sixty-five percent (65%), which is determined by dividing the Rentable Area of the Premises by the Rentable Area of the Building.

**1.16. Tenant's Notice Address:** The term Tenant's Notice Address means the address set forth in Section 23.10.

**1.17. Term:** shall mean and refer to the Initial Term and Option Term, if properly exercised by Tenant.

**1.18. Description and Location of Premises:** In addition to the Premises described above, Tenant shall have the right to the non-exclusive use of the Common Areas in common with other tenants of the Building. Notwithstanding anything herein to the contrary, it is understood and agreed that the use of the Common Areas by Tenant shall be limited to vehicular and pedestrian ingress, egress and deliveries, parking, the performance of any required maintenance or other obligations of Tenant hereunder, and other uses incident to Tenant's use of the Building for the purposes set forth above, and in no event shall Tenant have the right to undertake any Alterations and/or other uses of the Common Areas without the express written consent of Landlord. Tenant shall be entitled to the use of its Proportionate Share of the 44 parking spaces provided for the Center without additional charge. Tenant acknowledges that prior to the Commencement Date, Tenant will have the opportunity to inspect the Premises and that Tenant will be afforded the opportunity to have the Premises inspected by Tenant's agents and/or contractors, and therefore, the agreements and waivers set forth in this Subsection 1.18 have been knowingly and voluntarily accepted by the Parties hereto. In consideration of the foregoing, Tenant understands, agrees and acknowledges that, except as expressly set forth in this Lease, Landlord makes no representations and/or warranties of any kind or any nature whatsoever, either expressed or implied (including, but not limited to, implied warranties of marketability and/or fitness for a particular use and/or purpose) with respect to the Premises. Tenant agrees that the Premises shall be leased and rented to Tenant as of the Commencement Date in an "AS IS, WHERE IS" condition, "WITH ALL EXISTING

<sup>1</sup> The square footages for calculating Basic Rent shall be measured from the outside surface of all exterior perimetrical walls of the Building and to the middle of any interior demising walls separating the finished space from the unfinished space, such that the total square footage upon which the Basic Rent will be calculated shall be the entire square footage contained within the Building as measured from the exterior surface of the exterior walls thereof.



FAULTS", except that Landlord shall be obligated to correct and/or repair any building code violations and/or deficiencies which exist as of September 14, 2007, and are not the result of any Alterations undertaken by Tenant in accordance herewith.

2. **Lease of Premises.** Landlord agrees to lease the Premises to the Tenant and Tenant agrees to rent and accept the same from the Landlord, subject to the provisions of this Lease and the provisions of the Exhibits and any Rider and Addenda to the Lease.

3. **Quiet Possession.** Following the Commencement Date, Tenant shall peaceably and quietly have, hold and enjoy the Premises without hindrance, ejection or molestation by Landlord or any person lawfully claiming through or under Landlord. This covenant is subject to the provisions of this Lease and to any Superior Mortgage and shall apply if and so long as Tenant pays all Rent due hereunder, performs and observes the other terms and covenants to be performed and kept by it as provided in this Lease, and complies with Legal Requirements. This covenant shall be construed as a covenant running with the land, and is not a personal covenant of Landlord, except to the extent of Landlord's interest in this Lease and only so long as such interest shall continue, and thereafter this covenant shall be binding only upon subsequent successors in interest of Landlord's interest in this Lease, to the extent of their respective interests, as and when they shall acquire the same, and so long as they shall retain such interest.

4. **Term.**

4.1. **Initial Term:** The Term of this Lease shall commence upon the Commencement Date, continue for a period of one hundred twenty (120) calendar months and shall end on the last day of the last calendar month of the Initial Term (unless sooner terminated pursuant to the provisions of this Lease). Beginning with the Effective Date, Tenant shall have the right to enter the Premises in order to prepare the interior for Tenant's occupancy (the "Pre-Commencement Occupancy Period"). In the event Tenant enters the Premises during the Pre-Commencement Occupancy Period, then Tenant shall be subject to all of the terms and provisions of this Lease. It is further agreed that Tenant, at Tenant's expense prior to or after the Commencement Date, shall be allowed to request and make alterations, modifications and improvements to the Premises, provided that (i) plans for such work are submitted to, and approved by, Landlord within fifteen (15) days prior to the commencement of such work; and (ii) the work represented by such changes shall be performed by a contractor(s) approved by Landlord, all such approvals not to be unreasonably withheld, conditioned or delayed; PROVIDED, HOWEVER, any such alterations and/or improvements which are visible from the exterior of the Premises shall not materially alter the exterior appearance of the Building and shall include appropriate screening and/or similar obligations to minimize the change in the exterior appearance of the Building. Tenant's work to be performed in accordance with this subsection shall be completed in a good and workmanlike manner. If prior to the Commencement Date, Tenant enters the Premises for any reason (including the entry of Tenant's contractors and agents), then Tenant shall bear all risk of theft, loss, damage or other casualty to its fixtures, equipment and/or other personal property from whatever cause, it being intended by the Parties that it shall be a condition to Landlord's permission for such entry that if Tenant enters the Premises prior to the Lease Commencement Date, that it shall do so at its own peril. During such period of entry, the Premises shall be deemed to be in the possession of Tenant and Tenant shall be responsible for any loss or damage to the Premises or to its personal property to the same extent that Tenant would be responsible therefor during the Term and shall during such period be bound by all of the provisions of this Lease. Landlord shall not be liable for the failure to give possession of the Premises to Tenant if such failure is due to the fact that the Premises, in Landlord's opinion, are not ready for occupancy and/or available for any other reason beyond the reasonable control of the parties. The Rent payable under this Lease shall be abated during the time Tenant is not in possession and such abatement shall be accepted by Tenant as full settlement for any damages which may be caused by the delay in possession. Notwithstanding anything herein to the contrary, if the Term of this Lease shall not have commenced on or before the one hundred twentieth (120<sup>th</sup>) day following the Effective Date, for any reason other than the default of either party, then either party shall have the right to declare this Lease null and void by sending written notice to the other party, at which time this Lease shall thereupon be and become entirely cancelled and of no further effect, time being of the essence.



**4.2. Option Term.** Additionally, subject to the satisfaction of the conditions precedent set forth below, Tenant shall have the right, at Tenant's option, to extend the Initial Term for two (2), additional periods of ten (10) years by sending written notice of such election to Landlord. The option granted herein ("**Option Term**" or "**Option**") shall be exercisable by Tenant giving written notice to Landlord of the exercise of the Option at least six (6) months prior to the expiration of the Initial Term (or the first Option Term as the case may be); and, upon the exercise of such Option(s), the Lease Expiration Date shall automatically be extended for the period of such Option(s). The Option Term(s) shall be subject to the same terms, covenants and conditions as set forth in this Lease with respect to the Initial Term, except that: (i) all references to this Option shall be deleted, and (ii) the Basic Rent payable hereunder shall be determined in accordance with Section 1.2. In no event shall Tenant be entitled to extend the Initial Term for more than the two (2), additional ten (10)-year Option Terms described above. With respect to the Option Term, in the event that (i) Tenant shall fail to exercise the same strictly in the manner set forth above, and/or at the time hereinabove specified for the exercise of such Option, and/or (ii) all of the conditions precedent set forth below shall not have been satisfied, then such Option shall automatically expire and be absolutely void and of no force or effect. The Option granted to Tenant as set forth above shall be void and of no force and effect unless, at the time above specified for exercising such Option, each and every one of the following conditions precedent shall have been fully satisfied: (i) this Lease shall be in full force and effect; (ii) Tenant or its Permitted Transferee (as herein defined) shall be in possession of the Premises and shall be regularly conducting its normal business operation thereon; and (iii) there shall be no Event of Default (hereinafter defined) by Tenant (beyond any grace period granted in this Lease for curing the same) in the performance or observance of any of the terms, provisions, covenants and conditions of this Lease.

## **5. Rent.**

Tenant covenants and agrees to pay to Landlord during the Term, as Rent for the Premises, the aggregate of all Basic Rent and Additional Rent due hereunder, as provided in this Section.

**5.1. Basic Rent.** The Basic Rent shall be payable in equal monthly installments of Basic Rent in advance on the first day of each full calendar month during the Term (except for the first three monthly payments which shall be paid in accordance with Section 1.1, above, without any deduction or setoff whatsoever, and without demand, and shall be adjusted following the first Lease Year in accordance with Section 5.3 below. Notwithstanding anything in this Lease to the contrary, it is understood and agreed that the provisions for payment of Basic Rent on a monthly basis represents an accommodation to Tenant and no such provisions shall, in anyway, be construed to relieve Tenant of its obligation to pay the entire Rent described herein or the entire Term.

**5.2. Interim Rent.** Tenant shall pay the Interim Rent concurrently with the signing of this Lease and on November 1, 2007, as set forth above.

**5.3. Basic Rent Adjustment.** Commencing with the second Lease Year and continuing each Lease Year thereafter for the remainder of the Term, the Basic Rent shall be increased by an amount equal to the product of Basic Rent Adjustment as defined in Subsection 1.2 above multiplied by the Basic Rent paid by Tenant during the Lease Year preceding each annual increase. The Basic Rent Adjustment shall apply during the original Term and any extended or renewal term of this Lease unless otherwise expressly provided in any Attachment or amendment to this Lease. The increase in Basic Rent as set forth herein shall be due and payable automatically without further notice or action by Landlord on the first day of each Lease Year herein.

**5.4. Additional Rent.** Tenant shall pay all elements of Additional Rent due under this Lease at the times and in the manner prescribed below.

**5.5. Late Charge For Failure to Pay Rent and Additional Rent.** All sums payable as Basic Rent or Additional Rent shall be paid by Tenant to Landlord's Rental Payment Address, or at such other address as Landlord may from time to time designate by Notice (hereinafter defined) given to Tenant care of



Tenant's Notice Address. If any check tendered by Tenant in payment of Rent is dishonored upon presentment for payment, then Landlord, in addition to all other rights and remedies contained in this Lease, may assess a dishonor charge of Fifty Dollars (\$50.00); and in the event that more than one check is dishonored in a twelve month period, Landlord shall thereafter have the right to insist that all of Tenant's further payments be made by certified check or electronic funds transfer. If Tenant fails to pay any Basic Rent or any Additional Rent within seven (7) days of the time it is due and payable (including deemed failure to pay due to dishonor of Tenant's check upon presentation for payment), then Landlord, in addition to all other rights and remedies contained in this Lease, may assess a late charge against Tenant in the amount of Five Hundred Dollars (\$500.00). Additionally, if Tenant fails to pay any Basic Rent or any Additional Rent when due and payable, then such unpaid amounts shall bear interest from the due date thereof to the date of payment at the Reimbursement Rate together with Landlord's Fees and Costs incurred in collecting any delinquent Rent due hereunder.

**5.6. All Charges Constitute Rent.** Every amount payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as Basic Rent or Additional Rent, and including all Fees and Costs, shall constitute and shall be referred to as "Rent" for the purposes of this Lease as well as Section 502(b)(6) of the Bankruptcy Code, 11 U.S.C. § 502(b)(6).

**5.7. Adjustment of Proportionate Share.** If Landlord elects to alter the Rentable Area of the Center (as, for example, by constructing one or more additional buildings within the Center, or reconfiguring Common Areas into Rentable Area, or reconfiguring Rentable Area into Common Areas, or removing all or part of any building from the Center), then Landlord shall adjust Tenant's Proportionate Share. Appropriate proration shall be made for any partial period of a Lease Year resulting from such adjustment. If Landlord were to make such alterations, such alterations shall not materially impact Tenant's usage of the Common Areas and Tenant shall be entitled to have the same number of parking spaces as it is currently is allotted.

**5.8. Deposit.** The Deposit shall be held by Landlord as security for the performance of Tenant's obligations under this Lease. It may not be considered a measure of liquidated damages. Landlord may apply all or any part of the Deposit in total or partial satisfaction of any default by Tenant. The application of all or any part of the Deposit to any obligation or default of Tenant under this Lease shall not deprive Landlord of any other rights or remedies Landlord may have, nor shall such application by Landlord constitute a waiver by Landlord. If all or any part of the Deposit is applied to an obligation of Tenant under this Lease, then Landlord shall have the right to call upon Tenant to restore the Deposit to its original amount in cash by giving notice to Tenant, in which case Tenant shall immediately restore the Deposit. The Deposit shall be held by Landlord without liability for interest; Landlord shall be entitled to the full use of the Deposit and shall not be required to keep it in a segregated account or escrow. If Landlord conveys its interest under this Lease, the Deposit, to the extent not previously applied to the cure of a Tenant Default, will be turned over by Landlord to Landlord's grantee or transferee, and upon any such delivery of the Deposit, the Landlord herein named shall be released of any and all liability with respect to the Deposit, its application and return, and Tenant agrees to look solely to such grantee or transferee. This provision shall also apply to subsequent grantees and transferees. Landlord will return the balance of the Deposit not previously applied as provided herein, within thirty (30) days after expiration of the Term.

## **6. Permitted Use; Compliance with Legal Requirements; Hazardous Materials.**

**6.1. Permitted Use.** The Premises shall be used and occupied by the Tenant for the Permitted Use and for no other use or purpose. Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may unreasonably disturb the quiet enjoyment of any other tenant in the Building, or in the Center, or which may unreasonably disturb the quiet enjoyment of any person outside the Building or in the Center in contravention of such person's legal rights, or which will subject Landlord to any liability for injury to persons or damages to property. Furthermore, except as specifically and expressly described within the definition of the Permitted Use, no use of the Premises shall be made or be permitted to be made that shall result in any use of the Premises deemed by Landlord to be improper, unlawful or objectionable, specifically including the storage and/or use of materials generating an unreasonable odor on



the Premises, or any other use generating unreasonable noises or vibrations that may disturb the Landlord or other tenants of the Center. Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or which will prevent Landlord from procuring such policies in companies acceptable to Landlord, or which will cause the rate of fire or other insurance on the Premises or on other property of Landlord or others within the Property to be increased beyond the rates otherwise in effect.

**6.2. Acceptability of the Premises for Permitted Use.** By its entry into this Lease, Tenant acknowledges to Landlord that Tenant has satisfied itself that the Premises can be used by Tenant for the Permitted Use in accordance with Legal Requirements and that the Premises will be acceptable to Tenant for the Permitted Use pursuant to this Lease. Tenant agrees that Landlord has made no express or implied warranty, representation or covenant to or with Tenant with respect to these matters. Landlord makes no representation that any license, permit or approval of any Appropriate Authority will be granted for Tenant's use at the Premises, or, if granted, will be continued in effect or renewed, and any failure to obtain such license or licenses, permit or permits, or any revocation thereof or failure to renew the same, shall not release the Tenant from its obligations under this Lease.

**6.3. Compliance with Rules, Ordinances, Etc.** Tenant shall, throughout the Term, at Tenant's sole cost and expense, promptly comply with the provisions of the Rules and Regulations and all Legal Requirements; PROVIDED, HOWEVER, Tenant's obligation hereunder shall expressly exclude any obligations to make any structural changes in and to the Premises and/or the Common Areas unless such structural changes are required as a result of Tenant's specific use of the Premises.

**6.4. Hazardous Material.**

**6.4.1 Tenant's Agreements.** Except as otherwise specified in this Lease and except for normal medical and cleaning supplies and waste products relating to surgery center operations, Tenant warrants and agrees that Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord (which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business and will be used, kept and stored in a manner that complies with all Environmental Laws regulating any such Hazardous Materials so brought upon or used or kept in or about the Premises). Tenant shall provide Landlord a list of any and all such Hazardous Materials and/or other information relating thereto, including, without limitation, handling and storage procedures undertaken by Tenant as may be necessary and/or appropriate for Landlord to adequately insure against liabilities which may be incurred in connection therewith. If Tenant breaches the obligations stated in this Section 6.4, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any Appropriate Authority because of Hazardous Material present in the soil or ground water on or under the Premises or the Center generally. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant results in any contamination of the Premises or the Center generally, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises and/or the Center to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or the Center generally. It shall not be unreasonable for Landlord to withhold its consent to any proposed Transfer otherwise permitted pursuant to Section 7 of this Lease if (i) the proposed Transferee's anticipated use of the Premises involves the generation, storage, use, treatment or disposal of Hazardous Material other than what Tenant currently generates or uses; (ii) the proposed Transferee has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Material contaminating a property if the contamination



resulted from such Transferee's actions or use of the property in question; or (iii) the proposed Transferee is subject to an enforcement order issued by any Appropriate Authority in connection with the use, disposal or storage of a Hazardous Material.

**6.4.2 Landlord's Agreement.** Landlord represents that it has no actual knowledge concerning any current or previous use of the Center which would lead a reasonable person to suspect that Hazardous Materials were deposited, stored, disposed of or placed upon, about or under the Building or Center. Landlord further represents that Landlord has no actual knowledge that the Building and/or the Premises contain any asbestos or other Hazardous Materials. Landlord agrees that any costs incurred to comply with applicable laws with respect to the cleanup, removal, investigation and/or remediation of any Hazardous Substances in, on or under the Center shall not be included in the Operating Costs to the extent such Hazardous Substances are in existence as of the date of execution of this Lease and in violation of applicable laws in effect as of such date. For purposes of this Section 6.4.2, the representations set forth herein shall be limited to the actual knowledge of Paul K. Huber, Jr. For purposes hereof, the term "actual knowledge" shall mean the direct, clear and personal knowledge (as distinguished from constructive and/or imputed knowledge) of Paul K. Huber, Jr., and shall not include an obligation of further study, diligence and/or inquiry of any nature or any kind (including, without limitation, the review of any records) with respect to any matter by such individual other than those facts to which such individual has actual notice as of the date of the representation and/or warranty. The reference to Paul K. Huber, Jr. herein is only intended to quantify the knowledge of the representations given herein and shall not imply or infer any personal liability on such individual.

**6.4.3 Annual Disclosure.** At the commencement of this Lease and thereafter, on request by Landlord, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, used, or disposed of on the Premises, or which Tenant intends to store, use, or dispose of on the Premises.

## **7. Transfer of Lease by Tenant.**

**7.1. Transfer.** Except as otherwise provided in this Lease, no Transfer shall be permitted of this Lease without the prior written consent of Landlord in each instance first obtained. Any consent given to any one Transfer shall not constitute consent to any subsequent Transfer. Any attempted Transfer in violation of this Lease shall be null and void and shall not confer any rights upon any purported Transferee. No Transfer, regardless of whether Landlord's consent has been granted or withheld, shall be deemed to release Tenant from any of its obligations hereunder or to alter, impair or release the obligations of any person guaranteeing the obligations of Tenant hereunder unless otherwise specified in a written agreement by and between Landlord and Tenant. Landlord agrees that its consent to a Transfer will not be unreasonably withheld, conditioned or delayed. Landlord will give Tenant prompt Notice of any denial of a request for Transfer approval, stating the reason or reasons for such denial.

**7.2. Transfer Approval Conditions.** The Parties agree that Landlord may reasonably withhold its consent to a proposed Transfer unless all of the following conditions are satisfied. The following list of conditions is non-exclusive:

**7.2.1** Tenant shall submit to Landlord (i) in writing, the name and address of the proposed Transferee, a reasonably detailed statement of the proposed Transferee's business, and reasonably detailed information as to the character, reputation and business experience of the proposed Transferee, as well as reasonably detailed financial references and information concerning the financial condition of the proposed Transferee (including, at Tenant's expense, a current Dun & Bradstreet, TRW, Equifax or other similar report and a financial statement certified as being true and correct by the chief financial executive of the proposed Transferee); (ii) a fully executed copy of the proposed Transfer document, in Landlord's standard form or in form and content reasonably acceptable to Landlord, the effective date of which shall be at least thirty (30) days after the date on which Tenant shall have furnished Landlord with all of the information required pursuant to (i) above and which shall be conditioned on Landlord's consent thereto; and (iii) an agreement in form and



substance satisfactory to Landlord by Tenant to indemnify Landlord against liability resulting from any claim made against Landlord by the proposed Transferee or by any broker claiming a commission in connection with the proposed Transfer. Tenant's written request for consent to Transfer will be accompanied by a nonrefundable Transfer Review Fee of Two Thousand Dollars (\$2,000.00), which is imposed in order to reimburse Landlord for all of its internal costs and expenses incurred with respect to Landlord's review of the request for the Transfer (and not intended as consideration for the consent to Transfer, it being understood that such payment shall not obligate the Landlord to consent to any requested Transfer).

7.2.2 No Event of Default can exist at the time of the consent request and at the effective Transfer date;

7.2.3 Any Transfer will be upon and subject to all terms and conditions of this Lease, including those regarding the Permitted Use of the Premises;

7.2.4 Any assignment must specifically state (and, if it does not, it will be deemed to specifically state) that the assignee assumes and agrees to be bound by all terms and conditions of this Lease, and any sublease must specifically state (and, if it does not, it will be deemed to specifically state) that at Landlord's election the subtenant will attorn to Landlord and recognize Landlord as Tenant's successor under the sublease for the balance of the sublease term if this Lease is surrendered by Tenant or terminated by reason of an Event of Default;

7.2.5 Tenant will promptly reimburse Landlord for all Fees and Costs actually and reasonably incurred by Landlord in connection with the review and approval of the proposed Transfer and any Transfer instrument;

7.2.6 Except in the case of a Permitted Transferee (as herein defined), upon request, the assignee (in the case of a proposed assignment) or tenant (in the case of a proposed subletting) will deliver an additional security deposit in an amount not to exceed two months Basic Rent which shall be added to the Deposit;

7.2.7 The Transfer must be approved in writing by any Superior Mortgagee of Landlord having the right to approve it; and

7.2.8 The Transferee (i) is not a Federal, State or local governmental entity, or agency or instrumentality thereof; (ii) will not perform governmental or quasi-governmental functions or dispense medical, relief or social welfare services; and (iii) will not operate an employment service, a messenger or an answering service, or any business that in Landlord's reasonable opinion is unsuitable for the then tenant mix and character of the Center.

### **7.3. Entity Transfers.**

7.3.1 Notwithstanding anything to the contrary contained herein, Tenant may Transfer this Lease, at any time during the Term of this Lease, to any parent, subsidiary or affiliated entity of Tenant or to the surviving entity in connection with a merger, consolidation or acquisition between Tenant and any of its subsidiaries or any other corporation or business entity, or in connection with the sale of all or substantially all of the property and assets of the Tenant (a "Permitted Transferee"), upon prior Notice to Landlord but without the necessity of Landlord's prior written consent, provided, in the case of any assignment or sublease, (i) the net worth of the assignee or subtenant shall be not less than the current net worth of Tenant; (ii) such assignee or subtenant continues to operate the business conducted in the Premises for the Permitted Use and in the same manner as Tenant and pursuant to all of the provisions of this Lease; (iii) such assignee or subtenant shall assume in writing in a form reasonably satisfactory to Landlord all of Tenant's obligations hereunder; (iv) Landlord shall be furnished with a copy of such assignment or sublease within ten (10) days prior to the effective date of the proposed assignment or other transfer thereof; and (v) Tenant to which the



Premises were initially leased shall continue to remain liable on this Lease for the performance of all terms including, but not limited to, payment of all rentals and other sums due under this Lease.

**7.4. Excess Rent.** In the case of any Transfer made in violation of the provisions of this Lease, Landlord may nevertheless collect Rent from the Transferee and apply the net amount collected to the Rents herein reserved. The acceptance by Landlord of the payment of Rent following any Transfer not expressly consented to by Landlord pursuant to this Section shall not be deemed to be a consent by Landlord to such Transfer nor shall the same be deemed to be a waiver of any right or remedy of Landlord hereunder, nor constitute a release of Tenant or any guarantor of Tenant's obligations from the further performance by Tenant and such guarantor of the terms and provisions of this Lease and any such guaranty.

**7.5. Right to Sublet to Physicians.** Notwithstanding the terms of Section 7 of this Lease, Tenant shall have the right from time to time upon prior written notice to the Landlord, but without the Landlord's consent, to sublet individual offices and other spaces within the Premises to physicians and their related medical groups, subject, however to all of the terms and conditions of this Lease, and provided that: (i) Tenant shall at all times remain primarily liable for any and all obligations under this Lease, including without limitation, the payment of Basic Rent and any and all Additional Rent; and (ii) Tenant shall remain the primary occupant of the Premises.

## **8. Abandonment of Premises or Tenant's Personal Property; Surrender of Premises.**

**8.1. Abandonment.** Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. If Tenant does vacate or abandon the Premises or is dispossessed by process of law then any of Tenant's Personal Property left on the Premises may, at the option of the Landlord, be deemed to have been abandoned by Tenant, in which case the provisions of Section 8.3 shall apply.

**8.2. Surrender.** Unless sooner terminated, this Lease shall expire absolutely upon the expiration of the Term without the necessity of any notice or other action from or by either Party. At the expiration or earlier termination of the Term of this Lease, Tenant shall peaceably surrender the Premises in broom clean condition and good order and repair and otherwise in the same condition as the Premises were upon the Commencement Date, except (i) ordinary wear and tear, (ii) to the extent that the Premises are not required to be repaired or maintained by Tenant and (iii) damage by Casualty. Tenant shall surrender to Landlord all keys for the Premises to Landlord's Notice Address and shall notify Landlord in writing of all combinations or codes for any other locks, vaults or alarm systems, if any, installed in the Premises. Landlord shall inspect the Premises to determine whether they are returned in the condition called for under this Section. Tenant shall be afforded a reasonable opportunity to be present at such inspection. Tenant's obligations to observe and perform the covenants set forth in this Subsection shall survive the expiration or earlier termination of this Lease.

**8.3. Removal of Tenant's Personal Property, Trade Fixtures.** At the expiration or earlier termination of the Term of this Lease, Tenant shall immediately remove all of Tenant's Personal Property and trade fixtures installed by Tenant ("Trade Fixtures") from the Premises and, failing to do so, Landlord at its option may either: (i) cause Tenant's Personal Property and Trade Fixtures to be removed at Tenant's risk and expense (both as to loss and damage) in which case Tenant hereby agrees to pay all Fees and Costs incurred by Landlord, including sums paid to store the property elsewhere, together with the costs of any repairs to the Premises caused by the removal of Tenant's Personal Property and Trade Fixtures; and (ii) upon five (5) days Notice to Tenant, which the Parties agree is commercially reasonable, sell at public or private sale any or all of such Tenant's Personal Property and/or Trade Fixtures, whether exempt or not from sale under execution or attachment (such property being deemed charged with a lien in favor of Landlord for all sums due hereunder), or (iii) at Landlord's option, title shall pass to Landlord. Landlord's rights under subsections (ii) and (iii) shall be limited and subject to the superior rights of equipment lessors and lenders (collectively, "Tenant's Lenders") providing financing to Tenant secured by liens upon Tenant's Personal Property and Trade Fixtures as described in Section 24.5. As a condition to Tenant's right to remove the Personal Property and Trade Fixtures described herein, Tenant and Tenant's Lenders shall fully repair any and all damage occasioned the removal of Tenant's



Personal Property and Trade Fixtures, which shall include the obligation to repair and/or restore any damage paint any damage or destruction caused as a result thereof. Tenant's obligation to observe and perform this covenant shall survive the termination of this Lease.

## **9. Repairs and Alterations.**

### **9.1. Repairs to be Made by Landlord.**

**9.1.1** Except as otherwise provided in this Section, Landlord shall maintain the roof, Common Areas, and exterior walls of the Building, including the structural columns and floors, primary electrical, primary plumbing and/or other primary mechanical systems of the Building, but excluding floor coverings such as carpet and floor tile, and excluding all doors and locks, door frames, storefronts, windows and glass within the Premises; except that if Landlord is required to make any repairs to such portions of the Premises or Building by reason, in whole or in part, of the negligent act or the negligent failure to act by Tenant or Tenant's contractors or subcontractors or its or their agents or employees, then Landlord may collect the cost of such repairs, as Additional Rent, upon demand. The term "primary electrical, primary plumbing and/or primary mechanical systems" shall mean and refer to the primary trunk lines entering the Building to the junction box and/or similar location and shall specifically exclude any lateral components thereof which serve only the Premises and/or any other single tenant of the Building. By way of example, the electrical lines servicing the Premises from the primary electrical panel and all other components of the electrical system located within the Premises shall be the sole and exclusive responsibility of Tenant.

**9.1.2** If, without Landlord's prior consent, Tenant performs or permits to be performed any Alterations which affect the structural portions of the Premises and/or the roof of the Building or which affect the structural integrity of the Building, such action by Tenant shall release and discharge Landlord as of the commencement of such Alteration from such repair obligation to the extent the same shall be adversely affected by such unauthorized Alterations. Thereafter, Tenant agrees to be solely responsible under Landlord's supervision for the maintenance, repair, and replacement of any or all such structural portions and/or roof which have been adversely affected as aforesaid, and Tenant shall commence promptly after demand by Landlord to make any such repairs and replacements and proceed diligently to complete them. If Tenant fails in the performance of such responsibilities, to Landlord's reasonable satisfaction, then, in addition to Landlord's other remedies under this Lease Landlord may (but shall not be obligated to) cure such failure on behalf of Tenant without any liability to Tenant for damage to Tenant's business operation or its fixtures or other personal property, except in the case of Landlord's gross negligence and/or willful misconduct. In such case Tenant shall reimburse Landlord, as Additional Rent, upon demand, for any Fees and Costs incurred in curing such failure, together with interest at the Reimbursement Rate accounting from the date of demand until payment is made. If Tenant performs or permits to be performed any Alterations materially inconsistent with Landlord's prior consent then such work shall be deemed to have been performed without Landlord's consent.

**9.2. Repairs to be Made by Tenant.** All repairs to the Premises or to any Alterations therein, other than those repairs required to be made by Landlord pursuant to this Lease, including Alterations required by Legal Requirements (but subject to the provisions of Subsection 9.5) shall be made by Tenant at its expense and in a professional manner. Tenant shall at all times at its own expense keep and maintain the Premises (including any and all electrical, plumbing and/or other mechanical systems serving the Premises exclusively) in good order and repair, and in a neat, safe, clean, and orderly condition, including, but not limited to, reasonable periodic painting and making all nonstructural ordinary and extraordinary (subject to the casualty provisions of this Lease), foreseen and unforeseen repairs and replacements to the Premises. These include, without limitation, repairs and replacements: to the plumbing and electrical apparatus located within the Premises and/or serving the Premises exclusively; to the other mechanical installations therein; to the heating, ventilating and air conditioning system installed in or with respect to the Premises; the back-up electrical generator located at the rear of the Building servicing the Premises; and to all doors and locks, door frames, storefronts, windows and glass within the Premises. Tenant shall keep all of the same in good order and repair and will make all replacements from time to time required thereto at its expense. Tenant shall not overload the



electrical wiring serving the Premises or within the Premises, and will install at its own expense under Landlord's supervision, but only after obtaining Landlord's written approval, any additional electrical wiring which may be required in connection with the Premises. Tenant shall be responsible for storage of Tenant's trash or refuse in proper receptacles furnished within the Center by Landlord. Tenant shall not install or use additional dumpsters or other trash containers in the Center without Landlord's prior written consent. If such consent be given by Landlord, the type, size, and location of such containers shall be only as approved by Landlord and shall be maintained by Tenant in a clean sanitary manner, and in good repair at all times.

**9.3. Damage to Premises, Building, Center.** Except as, and to the extent, otherwise provided in Subsection 14.5, Tenant will be liable for the cost and expense of the repair of any damage to the Premises, however caused, and regardless of fault (unless caused or created by Landlord, its agents, employees or contractors); upon advance written notice to the Tenant, the Landlord shall make such repairs at the cost of Tenant if Tenant fails to promptly to make the same, which Tenant shall pay promptly upon receipt of an invoice, as Additional Rent. Tenant shall also reimburse Landlord, upon demand (as Additional Rent), for the cost of the repair of any damage to or dangerous condition caused or created elsewhere in the Center, if caused or created by Tenant, its employees, agents or contractors; PROVIDED, that Landlord first provide the Tenant the opportunity to cure such condition. If Tenant fails to commence such repair or remediation within thirty (30) days after Landlord's written notice to do so, then Tenant agrees to pay Landlord for its repair or remediation promptly upon Landlord's demand, as Additional Rent. Tenant's obligations for Additional Rent hereunder shall accrue interest thereon at the Reimbursement Rate until paid; and its payment and performance obligations hereunder shall survive the termination of this Lease. Tenant's obligations under this Section do not apply in the case of remediation following a Casualty.

**9.4. Alterations by Tenant.**

**9.4.1** Tenant may make Alterations to the Premises consisting solely of decorations, painting, plastering, carpeting, and other similar Alterations. Tenant shall be required to obtain the prior written approval of Landlord for any other Alterations. Landlord shall grant its consent to such Alterations if all of the following conditions are satisfied: (i) the proposed Alterations are to be located wholly within the Premises and are not visible from the exterior of the Premises or the Building; (ii) the proposed Alterations will not decrease the value of the Building or Center; (iii) the proposed Alterations will not adversely affect the structural integrity of the Building; (iv) the proposed Alterations do not require a material modification to, or adversely affect the operation of any part of, the HVAC, plumbing, electricity, fire suppression or water and sewer systems service of the Building or Center. In all other cases, Tenant shall be required to obtain the prior written approval of Landlord before making Alterations, which approval shall not be unreasonably withheld, conditioned or delayed.

**9.4.2** If Landlord's consent is required for the making of an Alteration, then Tenant's request for consent will be accompanied by reasonably complete plans and specifications for the proposed Alterations. If such approval is granted, Tenant shall cause the Alterations described in such plans and specifications to be performed, at its expense, promptly, efficiently, competently and in a good and workmanlike manner by duly qualified and licensed persons or entities, without material interference with or disruption to the operations of tenants or other occupants of the Building or the Center. Alterations shall only be made after Tenant has obtained any necessary permits from governmental authorities for the Alterations. Tenant shall notify Landlord of the date on which work on Alterations is scheduled to begin and shall arrange for periodic inspections by Landlord of the job progress to insure compliance with the approved plans and specifications. All such work shall comply with all Legal Requirements and shall be performed by contractors who are approved by Landlord and who carry the insurance coverage required in Section 15. Tenant shall obtain all appropriate lien waivers and releases from all contractors, subcontractors and suppliers. If Tenant makes any Alterations without Landlord's prior consent then, in addition to Landlord's other remedies, Landlord may correct or remove such Alterations and Tenant shall, on demand, pay the cost thereof (plus fifteen percent (15%) of such cost as a supervisory fee) as Additional Rent. If any mechanic's lien is filed against the Premises or the Building or the Center for work or materials furnished to Tenant (other than by Landlord) the lien shall be



discharged by Tenant within thirty (30) days thereafter, solely at Tenant's expense, by either paying off or bonding the lien. Should Tenant fail to discharge any lien within thirty (30) days of its filing, then, in addition to Landlord's other remedies, Landlord shall have the right, but not the obligation, to discharge said lien at Tenant's expense, in which case Tenant shall reimburse Landlord for the same upon demand, as Additional Rent, together with interest accounting from the date of demand until payment is made.

#### **9.5. Alterations to Comply with Legal Requirements.**

**9.5.1** If any Alterations are required to be made to the Premises due to Legal Requirements because the same were in actual violation of any Legal Requirements on September 14, 2007, then Landlord shall make such Alterations at its sole cost and expense (and such expenses shall not be included within Operating Costs or charged as Additional Rent to Tenant); and Landlord shall take all reasonable steps to minimize disruption to Tenant while making such Alterations.

**9.5.2** Subject to Landlord's obligations set forth in the previous Subsection if any Alterations are required to be made to the Premises: (i) with regard to any Legal Requirements following September 14, 2007; or (ii) due to a change in, or change in the interpretation of, or more stringent enforcement of, Legal Requirements occurring on or after September 14, 2007, then Tenant shall make such Alterations in accordance herewith.

**9.5.3** If (i) any Alterations are required to be made to the Premises or to all or any part of the Center other than the Premises due to Legal Requirements and as a consequence of any Alterations made by Tenant within the Premises, or (ii) any Alterations are required to be made to all or any part of the Center, including the Premises, at any time during the Term pursuant to any Legal Requirements relating to accessibility by persons with disabilities or otherwise pursuant to the ADA (collectively, the "Accessibility Alterations"), because the Premises, as used by Tenant, is deemed to be a "place of public accommodation" under the ADA, then all such required Alterations shall be made by Tenant at its sole cost and expense; PROVIDED, HOWEVER, in the event it is determined that the four (4) existing handicapped accessible parking spaces located upon the Common Areas (the "Existing Handicapped Spaces") are determined by the Appropriate Authority to violate existing building code requirements, then Landlord shall undertake to repair, replace and/or modify such Existing Handicapped Spaces at Landlord's sole cost and expense and such costs and expenses shall not be deemed and/or considered an Operating Cost hereunder; PROVIDED, FURTHER, HOWEVER, the maximum obligation of Landlord for the repair, replacement and/or modification of such Existing Handicapped Spaces shall not exceed Five Thousand Dollars (\$5,000.00) in the aggregate [One Thousand Two Hundred Fifty Dollar (\$1,250.00) for each parking space] and any amounts payable for the repair, replacement and/or modification of such Existing Handicapped Spaces in excess of the maximum obligation of Landlord hereunder shall be deemed an Operating Cost.

**9.5.4** Within fifteen (15) days after receipt, Tenant shall advise Landlord in writing, and provide Landlord with a copy of (as applicable), any notices alleging violation of Legal Requirements relating to any portion of the Center or of the Premises; any claims made or threatened in writing regarding noncompliance with Legal Requirements and relating to any portion of the Center or of the Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Center or the Premises.

**9.6. Mechanics Liens.** Tenant shall pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, and for all materials furnished for or in connection with the work. Tenant shall indemnify Landlord against and hold Landlord harmless from all liabilities, liens, claims, costs, and demands on account of the work. If any lien is filed against the Premises, Tenant shall cause the lien to be bonded or discharged of record within thirty (30) days after it is filed. If Tenant desires to contest the lien, it shall either post a bond in accordance with legal procedures applying to the same or furnish Landlord, within the thirty day period, security reasonably satisfactory to Landlord of at least one hundred fifty percent (150%) of the amount of the lien, plus estimated costs and interest. If a final nonappealable judgment



establishing the validity or existence of the lien for any amount is entered, Tenant shall satisfy it within thirty (30) days unless Tenant is appealing the same, in which case it shall post a bond (if such bond has not otherwise been posted). If Tenant fails to pay any charge for which a lien has been filed, does not post bond, or does not give Landlord such security, or does not so satisfy any such judgment in accordance with the terms set forth herein, Landlord may, at its option, pay the charge and related costs and interest (and may apply any security given by Tenant), and the amount so paid, together with reasonable attorneys' fees incurred in connection with it, shall be immediately due from Tenant to Landlord as Additional Rent. Nothing contained in this Lease is the consent or agreement of Landlord to subject Landlord's interest in the Premises to liability under any lien law. If either Landlord or Tenant receives notice that a lien has been or is about to be filed against the Premises, or that any action affecting title to the Premises has been commenced on account of work done by or for Tenant or labor or materials furnished to or for Tenant, it shall immediately give the other written notice of the notice. At least fifteen (15) days prior to the commencement of any work (including without limitation any maintenance, repairs, alterations, additions, improvements, or installations) in or to the Premises, by or for Tenant, Tenant shall give Landlord written notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Landlord shall have the right to post notices of non-responsibility or similar notices on the Premises in order to protect the Premises against liens.

#### **10. Common Areas/Roof.**

Tenant, its agents, employees and invitees, shall have a non-exclusive license to use the Common Areas in the Center in common with others during the Term. Tenant shall have the right: (i) to install on the roof of the Building one (1) dish for the purpose of satellite or other communication; (ii) to run cables from the roof to the Premises; and (iii) to install and operate any and all related equipment necessary to permit the dish to function properly, but, in all cases, subject to, and in accordance with, the provisions of this Section 10. Tenant shall construct, install, maintain and use the dish, cables and related equipment in accordance with all laws and governmental rules and regulations and in a manner that is safe and does not interfere with any other use of or equipment on or in the building or elsewhere in the Center. Tenant shall make reasonable efforts to eliminate any electromagnetic interference with the equipment of Landlord or other tenants of the Building caused by Tenant's dish, cables or other related equipment, and if Tenant is unable to eliminate such interference, Tenant shall cease to operate such dish, cables or other related equipment. Landlord may retain a consultant to study Tenant's specifications and plans for the installation of the dish, cables and other related equipment, and Tenant shall be obligated to pay the cost and expense thereof as Additional Rent, which must be paid by Tenant within thirty (30) days of an invoice therefor from Landlord. Tenant shall not make any penetrations through the walls of the Building or through the roof surface without the prior written consent of Landlord, which consent shall not be unreasonably withheld, provided Tenant undertakes any such penetration with contractors reasonably approved by Landlord and provided that such contractor provides adequate assurance that the structural integrity of the roof shall be maintained. Tenant shall install a dense, waterproof protection board between the roof membrane and the steel frame of the satellite dish and perform the installation of the dish, cables and related equipment in accordance with installation specifications approved in writing by Landlord. Landlord shall have the sole and exclusive right to specify the size and location of the dish and may require that the dish be properly screened from view. Plans for the placement and installation of the dish, cables and other related equipment shall be submitted to Landlord for Landlord's approval, which approval shall not be unreasonably withheld so long as Landlord's engineer and/or architect confirm that the satellite dish and its installation shall not cause undue stress to the roof and/or other structural systems of the Building. In all other respects, the installation of the satellite dish shall be subject to the terms, conditions, provisions and obligations of Tenant for any other alteration as set forth in Section 9.2.

#### **11. Operating Costs.**

**11.1. Tenant's Proportionate Share of Operating Costs.** Tenant shall pay, as Additional Rent, its Proportionate Share of the Operating Costs. The Additional Rent shall commence to accrue upon the Commencement Date. Tenant's Proportionate Share of Operating Costs payable hereunder for the Lease Years in which the Term begins and ends shall be prorated to correspond to that portion of said Lease Years occurring



within the Term. In addition to the Estimated Additional Rent (hereinafter defined) described below, Tenant shall, within thirty (30) days following the Effective Date, pay its Proportionate Share of any and all prepaid Operating Costs attributable to the first Lease Year which have been previously paid by Landlord as of the Effective Date. By way of example, but not limitation, the Taxes attributable to the Center for the July 1, 2007 to June 30, 2008 tax year have been previously paid by Landlord and Tenant shall reimburse Landlord in a lump sum payment for Tenant's Proportionate Share of such tax bill (attributable from the Commencement Date until June 30, 2008) within thirty (30) days following the Effective Date. In addition, Tenant shall pay the Estimated Additional Rent during each calendar month of the first Lease Year, such that Landlord shall have collected the anticipated Taxes due and payable on July 1, 2008. Tenant's Proportionate Share of Operating Costs and any other sums due and payable under this Lease shall be adjusted upon receipt of the actual bills therefor and the obligations of this Section shall survive the termination or expiration of this Lease. It is the intent of the Parties hereunder that Tenant shall be responsible for Tenant's Proportionate Share of all charges, costs and expenses of every nature and every type incurred with respect to the Premises, including any and all maintenance thereof and a management fee in an amount not to exceed four percent (4%) of the gross receipts collected in connection with the Center, it being understood and agreed that the Basic Rent described above shall be "net, net, net" to Landlord, except for the specific amounts reserved to be paid by Landlord hereunder. Landlord shall have the right to reasonably estimate the Operating Costs for each calendar year ("Operating Year") and collect a portion of such amounts in anticipation of the subsequent payment thereof. Upon Landlord's or any managing agent's notice to Tenant of such estimated amount, Tenant shall pay, on the first day of each month during that Operating Year, an amount (the "Estimated Additional Rent") equal to the estimate of Tenant's Proportionate Share of Operating Costs divided by 12 (or the fractional portion of the Operating Year remaining at the time Landlord delivers its notice of estimated Operating Costs due from Tenant for that Operating Year). If the aggregate amount of Estimated Additional Rent actually paid by Tenant during any Operating Year is less than Tenant's actual ultimate liability for Operating Costs for that particular Operating Year, Tenant shall pay the deficiency within thirty (30) days of Landlord's written demand therefor. If the aggregate amount of Estimated Additional Rent actually paid by Tenant during a given Operating Year exceeds Tenant's actual liability for such Operating Year, the excess shall be credited against the Estimated Additional Rent next due from Tenant during the immediately subsequent Operating Year, except that in the event that such excess is paid by Tenant during the final Operating Year, then upon the expiration of the Term, Landlord or any managing agent shall pay Tenant the then-applicable excess promptly after determination thereof. No interest shall be payable to Tenant on account of such payments of Estimated Additional Rent and such payments may be commingled.

**11.2. Expense Statement; Accounting.** Promptly following the close of each Operating Year Landlord shall deliver to Tenant a statement of Operating Costs (the "Expense Statement") for such Operating Year and the monthly installments paid or payable shall be adjusted between Landlord and Tenant, and Tenant shall pay Landlord or Landlord shall credit Tenant's account (or, if such adjustment is at the end of the Term, Landlord shall pay Tenant), as the case may be, within fifteen (15) days of receipt of such statement, the amount of any excess or deficiency in Tenant's Proportionate Share of Operating Costs paid by Tenant to Landlord during such Operating Year.

**11.3. Tenant Right to Audit.** Following receipt of an Expense Statement Tenant shall have the right to conduct a reasonable review of Landlord's records relating to Operating Costs for the Operating Year just ended, and to which the Expense Statement relates, provided that Tenant strictly complies with the provisions of this Subsection. No review shall be permitted at any time in which a Default exists under this Lease (including a Default arising by virtue of Tenant's failure to pay any sum deemed Additional Rent, regardless of dispute as to the propriety Landlord's claim for payment). If a Default occurs at any time during the pendency of a review of records then the review right shall immediately cease, and the matters set forth in the Expense Statement under review shall be conclusively deemed correct. No subtenant shall have the right to conduct any such review; and no assignee of Tenant shall have the right to conduct any review with respect to a period antedating the assignment. Tenant shall exercise its right upon not less than fifteen (15) days' prior Notice, given at any time within ninety (90) days following Tenant's receipt of an Expense Statement (time being of the essence). Any such review shall be conducted by Tenant or by an independent certified public accountant of Tenant's choosing that is not being compensated by Tenant on a contingency fee basis. If Tenant



employs such a third party reviewer then as a condition precedent to such review Tenant shall deliver to Landlord a copy of Tenant's written agreement with such accountant which shall include provisions which state that (i) Landlord is an intended third-party beneficiary of the agreement, (ii) the accountant will not in any manner solicit or agree to represent any other tenant of the Center with respect to a review of Landlord's accounting records at the Center, and (iii) the accountant will maintain in strict confidence any and all information obtained in connection with the review and will not disclose the fact of the review or any results of it to any person or entity other than to the Tenant. Any such review shall be conducted at Landlord's office at the Center or at Landlord's principal offices, or at such other location as Landlord may reasonably designate. Landlord will provide Tenant with reasonable accommodation for the review and reasonable use of available office equipment, but may make a reasonable charge for Tenant's telephone calls and photocopies. Tenant shall deliver to Landlord a copy of the results of any such review within fifteen (15) days following its completion or receipt by Tenant and will maintain in strict confidence any and all information obtained in connection with the review and will not disclose the fact of the review or any results of it to any person or entity. A dispute over the Expense Statement or any error by Landlord in interpreting or applying the provisions of this Lease respecting Operating Costs or in calculating the amounts in the Expense Statement shall not be a breach of this Lease by Landlord, and even if any legal proceeding over the Expense Statement is resolved against Landlord this Lease shall remain in full force and effect and Landlord shall not be liable for any consequential damages. Pending the determination of any such dispute Tenant shall pay amounts billed with respect to such Expense Statement as Additional Rent, without prejudice to Tenant's position, and subject to rebate of any amounts subsequently found to have been charged to Tenant in error. If the dispute shall be determined in Tenant's favor then Landlord shall promptly pay to Tenant the amount of Tenant's overpayment of Rent resulting from compliance with the Expense Statement together with interest from the time of such overpayment at the Reimbursement Rate, together with all of Tenant's attorney fees, costs and expenses incurred in contesting the Expense Statement.

## **12. Taxes.**

**12.1. Tenant's Proportionate Share of Taxes.** Landlord shall pay all Taxes levied upon or assessed against the land and improvements comprising the Center and the appurtenances thereto during the Term of this Lease, in the first instance. Tenant shall pay to Landlord, as Additional Rent Tenant's Proportionate Share of any and all Taxes.

**12.2. Payment of Taxes.** Tenant's Proportionate Share of Taxes shall be paid by Tenant, at Landlord's election (i) in advance, in equal monthly installments in such amounts as are estimated and billed for each Tax Year by Landlord at the commencement of the Term and at the beginning of each successive Tax Year during the Term, each such installment being due on the first day of each calendar month or (ii) in lump sum, following Landlord's receipt of the tax bill for the Tax Year in question, and calculation of Tenant's Proportionate Share of Taxes with respect thereto. If Landlord has elected that Tenant pay its Proportionate Share of Taxes in installments, in advance, then, at any time during a Tax Year, Landlord may re-estimate Tenant's Proportionate Share of Taxes and thereafter adjust Tenant's monthly installments payable during the Tax Year to reflect more accurately Tenant's Proportionate Share of Taxes. Promptly following Landlord's receipt of tax bills for each Tax Year Landlord will notify Tenant of the amount of Taxes for the Tax Year in question and the amount of Tenant's Proportionate Share of Taxes thereof. Any overpayment or deficiency in Tenant's payment of Tenant's Proportionate Share of Taxes for each Tax Year shall be adjusted between Landlord and Tenant; Tenant shall pay Landlord or Landlord shall credit to Tenant's account (or, if such adjustment is at the end of the Term, Landlord shall pay Tenant), as the case may be, within fifteen (15) days of the aforesaid notice to Tenant, such amount necessary to effect such adjustment. Landlord's failure to provide such notice within the time prescribed above shall not relieve Tenant of any of its obligations hereunder.

## **13. Utilities.**

**13.1. Tenant's Utilities.** Tenant shall promptly pay when due the charges for all utility services rendered or furnished to or for the Premises, including, without limitation, water (whether by meter or



submeter), electricity, telephone, cable and telecommunications services sanitary sewer service, and any other public utility service now or hereafter provided to the Premises, together with all taxes, levies and other charges on such utilities. If Tenant defaults in the payment of any such charges or taxes, Landlord may, at its option, pay the same for and on Tenant's account, in which event Tenant shall promptly reimburse Landlord therefor. If any of such utility charges are billed directly to Landlord then Tenant will reimburse Landlord for such charges, as Additional Rent, promptly upon demand therefor. If utility charges for water are charged to Tenant as an element of Operating Costs Landlord reserves the right to arrange at Tenant's expense for the installation of a submeter exclusively for the Premises to measure the consumption of water by Tenant and upon the installation of such submeter Tenant shall promptly pay when due the charges for all water service furnished to the Premises. The Parties acknowledge that as of the Effective Date: (i) Tenant is anticipated to be the sole occupant of the Building, and (ii) the utilities have not been separately metered. Therefore, notwithstanding anything herein to the contrary regarding Tenant's Proportionate Share, it is understood and agreed that Tenant shall be solely responsible for the payment of utility costs, fees, charges and expenses attributable to the Building until such time as one or more additional tenants occupy the balance of the Building.

**13.2. Discontinuances and Interruptions of Utility Services.** Landlord shall not be in default hereunder or be liable for any damages by, or indirectly resulting from, nor shall the Rent be abated by reason of, (i) the installation, use or interruption of use of any equipment in connection with the furnishing of the foregoing utilities and services; (ii) failure to furnish or delay in furnishing any such utilities or service when such failure or delay due to Unavoidable Delays, or by the making of repairs or improvements to the Premises or the Building or the Center generally; or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Building. Neither shall the same be deemed a termination of this Lease or an eviction of Tenant. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state or local governmental agencies or utilities suppliers in reducing energy or other resource consumption provided such cooperation does not unreasonably interfere with Tenant's use of the Premises.

#### **14. Indemnifications and Waiver of Claims.**

**14.1. Indemnity by Tenant.** To the maximum extent permitted by law, but subject to the provisions of Subsection 14.5, Tenant indemnifies Landlord and agrees to save it harmless and defend Landlord from and against any and all claims, actions, damages, liabilities and actual expenses (including reasonable attorneys' and other professional fees) judgments, settlement payments, and fines paid, incurred or suffered by Landlord (hereinafter, collectively "Claims") in connection with loss of life or personal injury, or damage to property or to the environment, suffered by third parties, or in connection with any accident, injury or damages whatever in the Premises, and arising from or out of the conduct or management of the Premises or of any business therein, or any work or thing whatsoever done, or any condition created in or about the Premises during the Term of this Lease or during the Pre-Commencement Occupancy Period, if applicable; PROVIDED, HOWEVER, that the foregoing indemnity shall not apply to any Claims caused by the gross negligence or willful misconduct of the Landlord, and its respective agents, directors, officers, employees, contractors, and related representatives.

**14.2. Indemnity by Landlord.** To the maximum extent permitted by law, but subject to the provisions of Section 14.4, Landlord shall and does hereby indemnify Tenant and agrees to save it harmless from and against any and all claims, actions, damages, liabilities and expenses (including reasonable attorneys' and other professional fees) in connection with bodily injury including loss of life, personal injury and/or damage to property suffered by third parties arising from or out of the use, management, and operation of any portion of the Common Areas or other portions of the Building and Center Facilities by Landlord, to the extent occasioned by the gross negligence or willful misconduct of Landlord, and its respective agents, directors, officers, employees, contractors, and related representatives.



**14.3. Survival of Indemnities.** The Landlord's and Tenant's respective obligations pursuant to Subsection 14.1 and 14.2 shall survive any termination of this Lease for a period of thirty-seven (37) months with respect to any act, omission or occurrence which took place prior to such termination.

**14.4. Limitation on Landlord's Liability for Loss, Damage and Injury.** To the maximum extent permitted by law, and except as otherwise provided in this Lease, Tenant shall occupy and use the Premises, the Building and the Common Areas at Tenant's own risk. All property of Tenant shall be and remain at the sole risk of Tenant. Tenant hereby expressly agrees that Landlord and its agents, servants and employees shall not be liable or responsible for any damage or injury to the person or property of Tenant directly or indirectly caused by any source, circumstance or cause whatsoever, except in the event caused by the gross negligence or willful misconduct of Landlord and its representatives, agents, officers, directors, employees and/or contractors..

**14.5. Waiver of Right of Recovery.** Except as provided in Subsection 6.4, neither Party, nor its officers, directors, employees, agents or invitees, nor, in case of Tenant, its subtenants, shall be liable to the other Party or to any insurance company (by way of subrogation or otherwise) insuring the other Party for any loss or damage to any building, structure or other tangible property, when such loss is caused by any of the perils which are or could be insured against under a standard policy of full replacement cost insurance for fire, theft and all risk coverage, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such Party, its agents or employees (this clause shall not apply, however, to any damage caused by intentionally wrongful actions or omissions); provided, however, that if, by reason of the foregoing waiver, either Party shall be unable to obtain any such insurance, such waiver shall be deemed not to have been made by such Party and, provided, further, that if either Party shall be unable to obtain any such insurance without the payment of an additional premium therefor, then, unless the Party claiming the benefit of such waiver shall agree to pay such Party for the cost of such additional premium within thirty (30) days after notice setting forth such requirement and the amount of the additional premium, such waiver shall be of no force and effect between such Party and such claiming Party. Each Party shall use reasonable efforts to obtain such insurance from a company that does not charge an additional premium or, if that is not possible, one that charges the lowest additional premium. Each Party shall give the other Party notice at any time when it is unable to obtain insurance with such a waiver of subrogation without the payment of an additional premium and the foregoing waiver shall be effective until thirty (30) days after notice is given. Each Party represents that its current insurance policies allow such waiver. The provisions of this Section shall not limit the indemnification for liability to third parties pursuant to Subsections 14.1, 14.2 and 14.3.

## **15. Insurance.**

**15.1. Tenant's Insurance.** Tenant, at its expense, shall obtain and maintain in effect as long as this Lease remains in effect and during such other time as Tenant occupies the Premises or any part thereof, insurance policies providing at least the following coverage:

**15.1.1** commercial general liability insurance written on an occurrence basis with respect to the Premises and the business operated by Tenant and any subtenants, concessionaires or licensees of Tenant, to afford insurance against personal injury, death and property damage, and including insurance against assumed or contractual liability under this Lease, specifically including the liability of Tenant arising out of the indemnities described in this Lease, with minimum combined single limits of Three Million Dollars (\$3,000,000) per occurrence and in the aggregate;

**15.1.2** all-risk property and casualty insurance, including theft coverage, written at full replacement cost value and with full replacement cost endorsement, covering all of Tenant's Personal Property and Tenant's interest in all Alterations installed in the Premises by or on behalf of Tenant;

**15.1.3** comprehensive boiler and machinery equipment insurance, including electrical apparatus, if applicable; and,



15.1.4 if and to the extent required by law, workers' compensation or similar insurance in form and amounts required by law.

**15.2. Tenant's Contractor's Insurance.** Tenant shall require any contractor of Tenant performing work on or about the Premises to carry and maintain, at no expense to Landlord:

15.2.1 commercial general liability insurance written on an occurrence basis with respect to the Premises and the business operated by Tenant and any subtenants, concessionaires or licensees of Tenant, to afford insurance against personal injury, death and property damage, and including insurance against assumed or contractual liability under this Lease, with minimum combined single limits of One Million Dollars (\$1,000,000) per occurrence and in the aggregate;

15.2.2 comprehensive automobile liability insurance with limits for each occurrence of not less than One Million Dollars (\$1,000,000) with respect to personal injury or death and Five Hundred Thousand Dollars (\$500,000) with respect to property damage; and

15.2.3 workers' compensation or similar insurance in form and amounts required by law.

**15.3. Policy Requirements.** The company or companies writing any insurance which Tenant or Tenant's contractor is required to carry and maintain or cause to be carried or maintained pursuant to Subsections 15.1 and 15.2 shall be licensed to do business in the State of Maryland and have an A. M. Best rating of at least A/VIII. The form of such insurance shall at all times be subject to Landlord's approval. Public liability policies shall name Landlord and/or its designee(s) as additional insured, shall be primary and non-contributory, and shall also contain a provision by which the insurer agrees that such policy shall not be canceled, materially changed or not renewed without at least thirty (30) days advance notice to Landlord, at Landlord's Notice Address, by certified mail, return receipt requested, or to its designee. Each such policy, or a certificate thereof, shall be deposited with Landlord by Tenant promptly upon commencement of Tenant's obligation to procure the same. Provided that the requirements of this Section 15 are met, the insurance coverages provided by Tenant hereunder may be a part of a "blanket policy" obtained by Tenant.

**15.4. Tenant's Failure to Insure.** If Tenant fails to obtain insurance as required under this Section then Landlord may upon ten (10) days advance written notice to Tenant, but shall not be obligated to, obtain such insurance, and in such event, Tenant agrees to pay, as Additional Rent, the premium for such insurance upon demand by Landlord.

**15.5. Landlord's Insurance Coverage.** During each Operating Year, Landlord shall maintain in force, under one or more policies, property insurance coverage with respect to the Building and the Center generally, including, without limitation, commercial general liability insurance, insurance against fire, all-risk coverage including earthquake and flood, theft or other casualties and such other liability and property insurance coverage deemed appropriate by Landlord with such coverage limits, deductible amounts and companies as Landlord may determine. Tenant shall pay as Additional Rent its proportionate share of the costs of obtaining such insurance. Provided however, in the event Tenant shall suffer to be done, or keep or suffer to be kept anything in, upon or about the Premises that shall contravene Landlord's policies insuring against loss or damage by fire or other hazards (including, but not limited to, public liability), or that shall prevent Landlord from procuring such policies in companies acceptable to Landlord; or if anything done, omitted to be done or suffered to be done by Tenant shall cause the rate of fire or other insurance on the Premises, or the Center, in companies acceptable to Landlord, to be increased beyond the minimum rate from time to time applicable to the Premises or to buildings of similar construction as the building of which the Premises are a part, Tenant shall pay the whole amount of such increase promptly upon Landlord's demand.



## **16. Casualty and Condemnation.**

**16.1. Landlord's Obligation to Repair and Reconstruct.** If the Premises shall be damaged by a Casualty but the Premises shall not be thereby rendered wholly or partially untenable, then, Landlord shall promptly cause such damage to be repaired and there shall be no abatement of Rent. If, as the result of such Casualty, the Premises shall be rendered wholly or partially untenable, then, subject to the provisions of Subsection 16.2, Landlord shall cause such damage to be repaired and all Rent shall be abated proportionately as to the portion of the Premises rendered untenable during the period of such untenability. All such repairs shall be made at the expense of Landlord, but Landlord shall not be required to perform any work within the Premises beyond that described and constructed by Landlord prior to the Commencement Date as Leasehold Improvements. Landlord shall not be liable for interruption to Tenant's business or for damage to or replacement or repair of Tenant's Personal Property or to any Alterations, all of which damage, replacement or repair shall be undertaken and completed by Tenant promptly.

## **16.2. Landlord's, Tenant's Options to Terminate Lease.**

**16.2.1** If the Premises are (a) rendered wholly untenable, or (b) damaged as a result of any cause which is not covered by Landlord's insurance, or if the Building is damaged to the extent of fifty percent (50%) or more of the Rentable Area of the Premises, for reasons beyond Landlord's control or by virtue of the terms of any financing of the Building, sufficient insurance proceeds are not available for the reconstruction or restoration of the Building or Premises, then, in any such events, Landlord may elect to terminate this Lease by giving to Tenant notice of such election within ninety (90) days after the occurrence of such event, or after the insufficiency of such proceeds becomes known to Landlord, whichever is applicable. If such notice is given, the rights and obligations of the Parties shall cease as of the date set forth in such notice, and the Basic Rent and Additional Rent (other than any Additional Rent due Landlord either by reason of Tenant's failure to perform any of its obligations hereunder or by reason of Landlord's having provided Tenant with additional services hereunder) shall be adjusted as of the date of such termination.

**16.2.2** If, within the 90 day period set forth above, Landlord shall not have made an election to rebuild or to terminate this Lease as provided in the preceding paragraph, then Tenant may elect to terminate this Lease by giving to Landlord notice of such election within thirty (30) days following the expiration of such ninety (90) day period. If the Premises have not been fully restored within one hundred eighty (180) days following the occurrence of a Casualty then Tenant may elect to terminate this Lease by giving to Landlord notice of such election within thirty (30) days following the expiration of such one hundred eighty (180)-day period. In such case, if such notice is given, the rights and obligations of the Parties shall cease as of the date set forth in such notice, and the Basic Rent and Additional Rent (other than any Additional Rent due Landlord either by reason of Tenant's failure to perform any of its obligations hereunder or by reason of Landlord's having provided Tenant with additional services hereunder) shall be adjusted as of the date of such termination.

## **16.3. Insurance Proceeds.**

If neither Party elects to terminate this Lease pursuant to Subsection 16.2, Landlord shall, subject to the rights of any Superior Mortgagee, disburse and apply any insurance proceeds received by Landlord to the restoration and rebuilding of the Building in accordance with Subsection 16.1 hereof. All insurance proceeds payable with respect to the Premises (excluding proceeds payable to Tenant pursuant to Subsection 15.1), shall belong to and shall be payable to Landlord.

## **16.4. Condemnation.**

If the whole or any part of the Premises is taken under the power of eminent domain, then this Lease shall terminate on the date Tenant can no longer use the Premises for its intended uses. All compensation awarded for any taking of the fee and the leasehold shall belong to and be the property of Landlord; provided,



however, that Tenant, and not Landlord, shall be entitled to any portion of the award attributable to compensation for Tenant's trade fixtures, Tenant's equipment and/or any improvements installed by Tenant and/or any and all other rights of Tenant, including, relocation expenses as distinguished from the rights and properties of Landlord, which, in all cases, does not serve to reduce Landlord's award. If a single award is made to Landlord which includes amounts payable to Tenant in accordance herewith, Tenant shall be entitled to compensation from Landlord for the aforesaid items which shall be paid by Landlord to Tenant within thirty (30) days following the receipt by Landlord thereof.

**17. Signs.**

Tenant shall neither erect, maintain or replace any sign within the Premises visible from outside the Building, nor erect or maintain any sign upon the exterior of the Building or anywhere else upon the Center, without first obtaining Landlord's written approval as to the size, design, location, type of composition or material and lighting thereof. Design shall be in accordance with the guidelines established by Landlord from time to time and all applicable laws and regulations. Any such sign shall be inscribed, painted or affixed by Landlord, or a company approved by Landlord, but the entire cost thereof shall be borne by Tenant. Tenant shall maintain any such sign or signs in good condition and repair at all times, and pay any taxes imposed thereon. Notwithstanding anything in this Lease to the contrary, Landlord may place, at Landlord's expense, from time to time during the Term, signs and/or banners advertising the Center (or any part thereof) "For Sale" and/or "For Rent" in reasonable locations upon the Center, provided that such signage shall not be placed upon the exterior of the Premises portion of the Building or upon Tenant's signage.

**18. Right of Entry for Inspection, Exhibition, Repair.**

Landlord and its representatives shall have the right at all reasonable times during normal business hours with prior Notice to enter the Premises for the purposes of inspecting them and exhibiting them for sale, lease or financing; and Landlord shall not be liable in any manner for any entry into the Premises for such purposes. If Landlord's inspection discloses a violation of the provisions of this Lease then all Fees and Costs incurred by Landlord in connection with the inspection shall be due and payable by Tenant to Landlord, as Additional Rent, on demand by Landlord. Landlord reserves and shall at all times have the right to re-enter the Premises upon 24 hours prior notice to Tenant (except in an emergency) to maintain, repair and replace the Premises and any portion of the Building of which the Premises are a part, without abatement of Rent. Landlord may for the purpose of such work erect, use and maintain scaffolding, pipes, conduits and other necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that entrance to the Premises shall not be blocked and all such work shall be scheduled and conducted in a manner which will as much as reasonably possible minimize the inconvenience and interruption of Tenant's business operations. Tenant waives any claim for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss occasioned by any such maintenance, repair or replacement work, provided that such work is conducted in accordance with the provisions hereof. Landlord acknowledges that its right of access to the Premises is limited by Tenant's need to maintain sterile conditions, protect patient privacy and maintain security of its medical supplies. To that end, Landlord will provide reasonable notice of its need to access the Premises and will provide Tenant's representatives with a reasonable opportunity to accompany Landlord and Landlord's representatives at such times as they have a need to inspect or have access to the Premises.

**19. Subordination and Attornment.**

Subject in all cases to the Tenant's receipt of the Non-Disturbance Agreement (the "Non-Disturbance Agreement") in form substantially as that Non-Disturbance Agreement set forth on **Exhibit C**, this Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to all Superior Mortgages, including each advance made or to be made under any Superior Mortgage and all renewals, modifications, replacements, supplements, substitutions and extensions of the Superior Mortgage and all spreaders and consolidations of the Superior Mortgage. The provisions of this Section shall be self-operative and no further



instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute and deliver, at its own cost and expense, any instrument, in recordable form if requested, that Landlord or the Superior Mortgagee may reasonably request to evidence such subordination (subject to the terms of the Non-Disturbance Agreement). The Superior Mortgagee may elect that this Lease shall have priority over its Superior Mortgage and, upon notification by the Superior Mortgagee to Tenant, this Lease shall be deemed to have priority over such Superior Mortgage, whether this Lease is dated prior to or subsequent to the date of such Superior Mortgage. If, at any time prior to the termination of this Lease, the Superior Mortgagee or any person, or the Superior Mortgagee's or such person's successors or assigns (the Superior Mortgagee and any such person or successor or assign being herein collectively referred to as "Successor Landlord") shall succeed to the rights of Landlord under this Lease through possession or foreclosure or delivery of a new lease or deed or otherwise, Tenant agrees, at the election and upon request of any such Successor Landlord, to fully and completely attorn to and recognize any such Successor Landlord, as Tenant's landlord under this Lease upon the then-executory terms of this Lease; provided such Successor Landlord shall agree in writing to accept Tenant's attornment and execute a Non-Disturbance Agreement. The foregoing provisions of this Section shall: (i) inure to the benefit and burden of any such Successor Landlord; (ii) be self-operative upon any such demand; and (iii) require no further instrument to give effect to said provisions. Tenant, however, upon demand of any such Successor Landlord agrees to execute, from time to time, instruments to evidence and confirm the foregoing provisions of this Section, satisfactory to any such Successor Landlord, acknowledging such attornment and setting forth the terms and conditions, of its tenancy, subject to the terms of the Non-Disturbance Agreement. Upon such attornment this Lease shall continue in full force and effect as a direct lease between such Successor Landlord and Tenant upon all of the then-executory terms of this Lease except that such Successor Landlord shall not be: (i) liable for any previous act or omission or negligence of Landlord under this Lease; (ii) subject to any counterclaim, defense or offset, not expressly provided for in this Lease and asserted with reasonable promptness, which theretofore shall have accrued to Tenant against Landlord; (iii) obligated to perform any Leasehold Improvements or other work with respect to the Premises, except with respect to ongoing maintenance and repair obligations belonging to the then current Landlord as provided herein; (iv) bound by any previous modification or amendment of this Lease or by any previous prepayment of more than one month's Rent, unless such modification or prepayment shall have been approved in writing by the Superior Mortgagee through or by reason of which the Successor Landlord shall have succeeded to the rights of Landlord under this Lease; (v) obligated to repair the Premises or the Building or any part thereof, in the event of total or substantial total damage beyond such repair as can reasonably be accomplished from the net proceeds of insurance actually made available to Successor Landlord; or (vi) obligated to repair the Premises or the Building or any part thereof, in the event of partial condemnation beyond such repair as can reasonably be accomplished from the net proceeds of any award actually made available to Successor Landlord, as consequential damages allocable to the part of the Premises or the Building not taken. Nothing contained in this Section shall be construed to impair any right otherwise exercisable by any such owner, holder or lessee. Within thirty (30) days after the Effective Date and, as appropriate, after the placement of all future mortgages and/or leases, Landlord shall obtain a Non-Disturbance Agreement from all Superior Mortgagees. Notwithstanding anything herein to the contrary, Landlord shall undertake good-faith, due diligent efforts to obtain the consent of any Superior Mortgagee with respect to any amendment and/or modification of this Lease executed by the Parties.

## **20. Defaults by the Tenant.**

**20.1. Events of Default Defined.** Each of the following shall be deemed an "Event of Default" under this Lease:

**20.1.1** The failure by Tenant to pay Basic Rent, Additional Rent, or any other sum required to be paid under the terms of this Lease, when and as due hereunder which remains unpaid more than seven (7) days following Notice;

**20.1.2** The failure by Tenant to perform or observe any other term, covenant, agreement or condition of this Lease on the part of Tenant to be performed, for a period of thirty (30) days following Notice;



**20.1.3** Tenant or any guarantor of any of Tenant's obligations hereunder shall cease doing business as a going concern, make an assignment for the benefit of creditors, generally not pay its debts as they become due or admit in writing its inability to pay its debts when they become due, be adjudicated an insolvent, file a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law, rule or regulation, or file an answer admitting the material allegations of a petition filed against it in any such proceeding, or consent to the filing of such a petition or acquiesce in the appointment of a trustee, receiver, custodian or other similar official for it of all or any substantial part of its assets or properties, or take any action looking to its dissolution or liquidation; file a voluntary or involuntary petition proposing the adjudication of Tenant or any guarantor of Tenant's obligations hereunder as a debtor under the Bankruptcy Code, or the reorganization of Tenant or any such guarantor under the Bankruptcy Code, unless such a petition is filed by a party other than Tenant or any such guarantor and is withdrawn or dismissed within sixty (60) days after the date of filing;

**20.1.4** A Transfer in violation of the prohibition contained in Section 7;

**20.1.5** The failure of Tenant to vacate the Premises upon the expiration of the Term, or earlier termination thereof pursuant to other provisions of this Lease.

**20.2. Landlord's Remedies for Default.** Upon the occurrence of an Event of Default, Landlord shall have the right, at its election, immediately upon such Event of Default or at any time thereafter and while any such Event of Default shall continue, to exercise one or more of the following remedies.

**20.2.1** Landlord may terminate this Lease, as well as all right, title and interest of Tenant hereunder, by giving Notice of Landlord's intention to terminate this Lease on the date of such given notice or on any later date specified therein, whereupon, on the date specified in such notice, Tenant's right to possession of the Premises shall cease and this Lease shall thereupon be terminated, except as to Tenant's liability for damages as hereafter set forth, as if the expiration of the term fixed in such notice were the end of the Term originally set forth in this Lease.

**20.2.2** Landlord may re-enter the Premises, with or without legal process and using such force for such purposes as may be reasonably necessary, without being liable for prosecution thereof, and without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of Rent or preceding breach of covenants or conditions and, upon such reentry, Landlord may remove any and all of Tenant's property at the Premises;

**20.2.3** Landlord may exercise any other remedy available to it at law, in equity, by statute or otherwise; and, for such purposes, Landlord shall be entitled to the benefit of all provisions of applicable city or county ordinances and public local laws and of the public general laws of the State of Maryland dealing with the speedy recovery of lands and tenements held over by tenants or proceedings in forcible entry and detainer;

**20.2.4** In addition to any other rights it may have in law or equity, Landlord shall be entitled (but shall not be obligated) to cure such Event of Default upon thirty (30) days advance written notice to Tenant, in which case Tenant shall reimburse Landlord for any reasonable and actual Fees and Costs incurred in curing such Event of Default, plus interest thereon at the Reimbursement Rate, all of which shall be payable by Tenant upon demand by Landlord. In the Event of Default, should Landlord employ attorneys or incur other expenses for the collection of Rent or the enforcement of performance or observance of the terms and conditions of this Lease, Tenant, on demand, shall pay to Landlord such reasonable attorneys' fees and such other expenses so incurred, with interest at the Reimbursement Rate as Additional Rent hereunder. Such attorneys' fees and other expenses so incurred shall be due and payable by Tenant upon the referral of such matter to an attorney, even if any litigation has not yet been commenced. If Landlord shall, without fault on the part of Landlord, be made a party to any litigation commenced against Tenant, and if Tenant shall fail to provide Landlord with legal counsel approved by Landlord (such approval not to be unreasonably withheld or delayed), Tenant shall pay,



upon demand, all costs and attorneys' fees incurred or paid by Landlord in connection with such litigation, with interest at the Reimbursement Rate.

**20.3. Landlord's Right to Re-let Premises.** Upon an Event of Default and any entry or re-entry by Landlord, with or without legal process, Landlord shall also have the right (but not the obligation) to re-let all or any part of the Premises, from time to time, at the risk and expense of Tenant. No re-entry by Landlord with or without a declaration of termination shall be deemed to be an acceptance or a surrender of this Lease or as a release of Tenant's liability for damages under the provisions of this Section. Landlord shall have the right to let or re-let the Premises for a longer or shorter term than that remaining after an Event of Default, to lease more or less area than that contained in the Premises, to lease the Premises together with other premises or property owned or controlled by Landlord, and to change the character or use of the Premises. Landlord shall be entitled to deduct from any amounts received from any such letting or re-letting all Fees and Costs incurred in connection with an Event of Default. No entry or re-entry by Landlord, whether resulting from summary proceedings or otherwise, nor any letting or re-letting shall absolve or discharge Tenant from liability hereunder. Tenant's liability hereunder, even if there be no letting or re-letting, shall survive the issuance of any dispossession warrant, order of court terminating this Lease or any other termination based upon an Event of Default. The words "enter", "re-enter", and "re-entry" as used in this Section and elsewhere in this Lease are not restricted to their technical legal meanings.

**20.4. Damages.** Tenant further agrees (i) notwithstanding re-entry by Landlord with or without termination pursuant to the provisions of the previous Subsection, or (ii) if this Lease is otherwise terminated by reason of an Event of Default, or (iii) if Landlord retakes possession with or without process of law, or re-enters with or without a declaration of termination or (iv) if Landlord following any of the foregoing events, elects to let or re-let the Premises as provided in the previous Subsection, then Tenant shall, nevertheless, in each instance, be and remain obligated to, and shall pay to Landlord as damages, upon demand, all reasonable and actual Fees and Costs incurred in connection with Tenant's breach of this Lease, plus, at the election of the Landlord, either:

**20.4.1** Liquidated damages determined as of the date of termination of the Lease, in an amount equal to the excess, if any, of the sum of the aggregate Basic Rent and the aggregate Additional Rent which would have been paid over the remaining Term had this Lease not been terminated, discounted to present worth, over the then-current rental value of the Premises, for such remaining Term, as determined by Landlord, discounted to present worth, and in determining such liquidated damages, the Additional Rent for each year of such remaining Term shall be assumed to equal the Additional Rent payable for the Lease Year immediately preceding the Lease Year in which the Event of Default occurs, annualized in the event that such preceding Lease Year is less than twelve (12) months, and in determining present worth, a discount rate equal to one percentage point above the discount rate then in effect at the Federal Reserve Bank in Baltimore shall be used; or

**20.4.2** Damages (payable in monthly installments, in advance, on the first day of each calendar month following such termination and continuing until the date originally fixed herein for the expiration of the Term of this Lease) in amounts equal to the sum of (i) an amount equal to the installment of Basic Rent which would have been payable by Tenant for such calendar month had this Lease not been terminated plus (ii) an amount equal to one-twelfth (1/12) of the total Additional Rent payable for the Lease Year immediately preceding the Lease Year in which the Event of Default occurred, annualized to the extent that such preceding Lease Year is less than twelve (12) months, minus the Rent, if any, collected by Landlord in respect to such calendar month pursuant either to re-leasing the Premises or portion thereof or from any existing subleases permitted under the terms of this Lease (after deduction from such Rent of the sum of Landlord's costs and expenses as set forth in this Section 20). Landlord shall be entitled immediately to bring a separate suit, action or proceeding to collect any amount due from Tenant under this Subsection for any calendar month and any such suit, action, or proceeding shall not prejudice in any way the right of Landlord to collect such amount due on account of any subsequent calendar month by similar proceeding.



**20.5. Rent During Holdover.** If Tenant fails to vacate the Premises at any time after termination of this Lease, then Landlord shall be entitled to the benefit of all summary proceedings to recover possession of the Premises at the end of the Term, as if statutory notice had been given. If Tenant remains in possession of the Premises after the expiration of the Term, such action shall not renew the Lease by operation of law and nothing herein shall be deemed as a consent by Landlord to Tenant's remaining in the Premises. If Tenant fails to vacate the Premises as required, Landlord may consider Tenant as either (i) a "Tenant-at-Will" liable for the payment of one and one-half (1-1/2) times the Basic Rent payable at the end of the Term or (ii) as a "Tenant-Holding-Over" liable for an amount equal to the damages incurred by Landlord as a result of Tenant's holding over and all reasonable and actual Fees and Costs, but in no event shall such amount be less than the amounts of (a) one and one-half times the Basic Rent payable at the end of the Term, and (b) the Additional Rent reserved hereunder applicable to the period of the holdover. In either event, all other covenants of this Lease shall remain in full force and effect.

**20.6. No Implied Waiver of Landlord's Rights.** The failure of Landlord to insist in any one or more instances upon the performance of any of the covenants or conditions of this Lease, or to exercise any right or privilege herein conferred shall not be construed as thereafter waiving or relinquishing Landlord's right to the performance of any such covenants, conditions, rights or privileges, and the same shall continue and remain in full force and effect, and the waiver of one Event of Default or right shall not constitute waiver of any other Event of Default, and the receipt of any Rent by Landlord from Tenant or any assignee or subtenant of Tenant, whether the same be Rent that originally was reserved or that which may become payable under any covenants herein contained, or of any portion thereof, shall not operate as a waiver of Landlord's right to enforce the payment of the Rent or of any of the other obligations of this Lease by such remedies as may be appropriate, and shall not waive or avoid Landlord's right at any time thereafter to elect to terminate this Lease, on account of such assignment, sub-letting, transferring of this Lease or any other breach of any covenant or condition herein contained, unless evidenced by Landlord's written waiver thereof. The acceptance of Rent or any other consideration by Landlord at any time shall not be deemed an accord and satisfaction, and Landlord shall have absolute discretion to apply same against any sum for any period or reason due hereunder without the same constituting a release of any other sums remaining due and unpaid.

**20.7. Waiver of Jury Trial.** THE PARTIES HERETO SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE. IN THE EVENT LANDLORD COMMENCES PROCEEDINGS FOR NONPAYMENT OF RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDING EXCEPT AS SUCH MAY BE REQUIRED BY LAW TO BE INTERPOSED OR FOREVER LOST. THIS SHALL NOT, HOWEVER, BE CONSTRUED IN ANY WAY AS A WAIVER OF TENANT'S RIGHT TO ASSERT SUCH CLAIMS IN ANY SEPARATE ACTION OR ACTIONS BROUGHT BY TENANT. TENANT HEREBY EXPRESSLY WAIVES ANY AND ALL RIGHTS OF REDEMPTION GRANTED BY OR UNDER ANY PRESENT OR FUTURE LAWS IN THE EVENT OF TENANT BEING EVICTED OR DISPOSSESSED FOR ANY CAUSE, OR IN THE EVENT OF LANDLORD OBTAINING POSSESSION OF THE PREMISES BY REASON OF THE VIOLATION OF TENANT OF ANY OF THE COVENANTS OR CONDITIONS OF THIS LEASE, OR OTHERWISE. Landlord and Tenant make this waiver knowingly, willingly and voluntarily. Each Party represents that no representations of fact or opinion have been made by any individual to induce this mutual waiver of trial by jury or to in any way modify or nullify its effect. If landlord commences any summary proceeding for nonpayment of Rent or for possession of the Premises Tenant will not interpose and hereby waives any counterclaim of whatever nature or description in any such proceeding. Tenant further waives the right to remove said summary proceeding to any other court or to consolidate said summary proceeding with any other action, whether brought prior or subsequent to such summary proceeding. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in any separate action or actions brought by Tenant.



**20.8. Venue and Jurisdiction.** This Lease was made in the State of Maryland, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Maryland. All suits, proceedings and other actions relating to, arising out of or in connection with this Lease shall be submitted to the in personam jurisdiction of the courts of the State of Maryland, and venue for all such suits, proceedings and other actions shall be in Frederick County, Maryland. The Parties, jointly and severally, hereby waive any claim or objection to in personam jurisdiction and venue in the courts of Frederick County, Maryland. The Parties further acknowledge that this Lease represent a "commercial" transaction as defined by any and all federal, state or local statutes, and therefore, is not subject to the requirements of the Maryland Consumer Protection Act and/or any other similar federal or state consumer protection law, statute or ordinance.

**20.9. Cure Period.** In the event Landlord reasonably determines that an Event of Default has occurred, Landlord shall be required to give written notice thereof to Tenant. Tenant shall have thirty (30) days following the receipt of such written notice to cure any non-monetary Event of Default described in such notice, unless Landlord shall agree in writing to any extension of such period; provided, however, that if such Event of Default is of such nature that it cannot be cured within such thirty (30)-day period, so long as Tenant shall commence the curing of the default within such thirty (30)-day period and shall thereafter diligently prosecute the curing of same, then such thirty (30)-day period shall be extended to such a period of time as may be required, in Landlord's reasonable discretion, to cure such listed non-monetary Event of Defaults while proceeding with due diligence. Tenant shall have seven (7) days following the receipt of such written Notice to cure any monetary Event of Default described in such notice; PROVIDED, HOWEVER, in the event Tenant fails to pay any Rent hereunder and Landlord sends written notice of such monetary Event of Default to Tenant two (2) times during any twelve (12)-month period hereunder, then Landlord shall be under no further obligation to send notice of a monetary Event of Default to Tenant hereunder. Notwithstanding anything to the contrary contained herein, Tenant shall be considered in "Habitual Default" of this Lease upon (a) Tenant's failure, on two (2) or more occasions during any twelve month period to pay [within the seven (7)-day Notice period provided for the payment of Basic Rent] any installment of Basic Rent, Additional Rent or any other sum required by the terms of this Lease, or upon (b) Tenant's failure, on two (2) or more occasions during any twelve month period to comply with any term, covenant or condition of this Lease after written notice by Landlord to Tenant. Upon the occurrence of an event of Habitual Default on the part of Tenant, then without limiting any other rights or remedies to which Landlord may be entitled as a result of such defaults, Tenant shall thereafter pay all Basic Rent and Additional Rent and other sums whatsoever due under this Lease in cash, by money order or by certified check or cashier's check or by electronic funds transfer.

**20.10. Continued Business Operation.** Tenant shall: (i) open for business within a reasonable period of time following the Commencement Date and the issuance of all permits and licenses necessary for the operation of the surgery center; and (ii) continuously, actively and diligently use and occupy the entire Premises solely for the Permitted Use under this Lease throughout the entire Term. In the event Tenant vacates or abandons the Premises, or otherwise suspends Tenant's business operation at the Premises at any time during the Term hereof, for a period of sixty (60) or more consecutive days (except in the event of repairs, renovations, alterations or improvements which are being carried out with reasonable diligence or in the event that Tenant's license to operate a surgery center is suspended or non-renewed and Tenant is actively seeking the reissuance or renewal of the same), then Landlord shall have the right to: (i) permit such abandonment (provided that Tenant continues to satisfy all of the remaining covenants and conditions set forth in this Lease, including the obligation to pay Basic Rent and Additional Rent hereunder), in which event this Lease shall remain in full force and effect; or (ii) terminate this Lease at any time during such period of abandonment or following sixty (60) days of nonuse, except as otherwise provided above, by sending sixty (60) day's prior written notice to Tenant of Landlord's election to terminate this Lease. In the event Landlord exercises its right to terminate this Lease as aforesaid, then Tenant shall surrender the Premises to Landlord on the sixtieth (60th) day following receipt of such termination notice in the same manner as if the Term were scheduled to expire on sixtieth (60<sup>th</sup>) day.



## **21. Condominium.**

Tenant does hereby consent in advance to subdivision and/or development of the Center, and to the formation of individual and separately saleable units (in the nature of condominium units, cooperative units or otherwise). It does hereby consent in advance to the creation of such condominium regimes, cooperative associations and other organizations in connection with such subdivision and/or development of the Center as Landlord shall determine appropriate, as long as the rights of Tenant pursuant to the terms of this Lease are not thereby adversely affected; and Tenant further agrees to pay all or any portion of the Additional Rents required to be paid under this Lease to such regime, association or organization as may be directed by Landlord, as long as such Additional Rent shall not be increased over and above those required to be paid hereunder by Tenant. Further, in the event Landlord hereunder should so subdivide and/or develop the building and improvements within the Center into separately saleable and/or transferable units, Tenant does hereby agree in advance to attorn to any purchaser of any unit which shall consist of the Premises and recognizes such purchaser as Landlord under the terms and provisions of this Lease and no further consent of Tenant shall be required, as long as the purchaser of any unit consisting of the Premises agrees in writing with Tenant to honor the rights and privileges of Tenant under this Lease. Additionally, Tenant does hereby agree in advance that should the Center as a whole be sold by Landlord, then without further consent being necessary, it shall attorn to the purchaser of the Center and shall recognize such purchaser as Landlord under this Lease, as long as such purchaser shall agree in writing with Tenant to honor the rights and privileges of Tenant under the terms and provisions of this Lease.

## **22. Definitions.**

In addition to the terms defined in the Lease, the following definitions shall apply in these General Terms and Conditions to Lease and in any Exhibits, Riders or other addenda to the Lease:

**22.1. Additional Rent:** All sums of money or charges required to be paid by Tenant under this Lease other than Basic Rent, whether or not such sums or charges are so designated.

**22.2. Alterations:** Any of the following, made or proposed to be made to the Premises or any other part of the Building or Center following the Commencement Date: (i) any alteration, modification, substitution or other change of any nature to the structural, mechanical, electrical, plumbing, HVAC and fire suppression systems within or serving the Premises or the Building; (ii) any renovations, improvements or other installations in, on or to any part of the Premises or Building or Center generally (including, without limitation, any alterations of the exterior of the Premises, signs, structural alterations, or any cutting or drilling into any part of the Premises or Building or Center or any securing of any fixture, apparatus, or equipment of any kind to any part of the Premises); (iii) any installation or modification of carpeting, walls, partitions, counters, doors, shelves, lighting fixtures, hardware, locks, ceiling, window and wall coverings within the Premises.

**22.3. Appropriate Authorities:** All Federal, state or county governmental officer, agency or department, having jurisdiction over the administration and enforcement of Legal Requirements, and also including any public authority which is required to issue any permits, licenses, consents, waivers or other approvals needed in connection with the construction, occupation or use of the Premises or the Center generally.

**22.4. Casualty:** Damage to all or any part of the Center, including the Building and the Premises, caused by fire, the elements, accident, act of God or the like.

**22.5. Common Areas:** Those areas and facilities designated as Common Elements and as so designated within the Center for the general common use of tenants and other occupants of the Center, their officers, agents, employees and invitees, including (without limitation) all parking areas, access areas (other than public streets), employee parking areas, truckways, driveways, loading docks and areas, sidewalks, ramps, roofs, sprinkler systems, landscaped and planted areas, retaining walls, stairways, lighting systems and facilities, common utility and telecommunications facilities, drainage areas, roads, the common use elements of the



Building (including, without limitation, all stairs, landings, roofs, utility and mechanical rooms and equipment, service closets, corridors, elevators, lobbies, lavatories and other public areas of the Building and all other buildings located within the Center), and other similar areas, facilities or improvements.

**22.6. Environmental Laws:** shall mean: (i) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq.*; (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801; (iii) the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.*, and (iv) any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any pollutants, hazardous, toxic, controlled and/or or dangerous waste, substance and/or materials of any nature and any kind, as all such statutes, laws, regulations, ordinances and/or requirements may be amended from time to time.

**22.7. Exhibits.** The following Exhibits are attached to this Lease, and such documents, as well as all drawings and documents prepared pursuant thereto, shall be deemed to be a part hereof:

Exhibit A:	Site Plan/Floor Plan of Center
Exhibit B:	Rules & Regulations to Lease
Exhibit C:	Form Non-Disturbance Agreement
Exhibit D:	Form Waiver and Assents

**22.8. Fees and Costs:** Any and all advances, charges, costs or fees actually and reasonably incurred by Landlord in collecting any sums due from Tenant hereunder, or otherwise in preserving the rights of Landlord hereunder or in enforcing the rights and obligations of Landlord and Tenant hereunder; (and specifically including actual legal expenses and management fees reasonably incurred by Landlord hereunder).

**22.9. Hazardous Materials:** Asbestos; "oil, petroleum products and their by-products"; "hazardous substances"; "hazardous wastes" or "toxic substances", as those terms are used in Environmental Laws; or any substances or materials listed as hazardous or toxic by any Appropriate Authority.

**22.10. Insurance Costs:** For any Operating Year, Landlord's costs for maintaining, under one or more policies, property insurance coverage with respect to the Premises, including, without limitation, commercial general liability insurance; insurance against fire and "all-risk" coverage, including earthquake and flood, theft or other casualties; insurance against loss of Rent and other income; workers' compensation insurance or similar insurance covering personnel; fidelity bonds for personnel; insurance against liability for defamation and claims of false arrest occurring on and about the Center; and such other insurance coverages deemed appropriate by Landlord with such coverage limits, deductible amounts and companies as Landlord may reasonably determine.

**22.11. Landlord's Rental Payment Address:** Any and all payments of Rent shall be deemed to have been duly given (i) on the date of actual delivery thereof if transmitted by hand delivery with receipt therefor, (ii) on the date following the date it is delivered to a recognized overnight courier for delivery on the next business day (no signature required). Each payment of Rent shall be addressed as follows (or to such new address as the Landlord may notify the Tenant thereof):

Gutenberg Properties, LLC  
8529 Edgewood Church Road  
Frederick, Maryland 21702

**22.12. Lease Year:** Generally a period of twelve (12) consecutive full calendar months except that: (i) the first Lease Year shall begin on the Commencement Date and shall end on the last day of the twelfth full calendar month thereafter; (ii) each successive Lease Year shall commence upon the first day of the calendar month next following the end of the first Lease Year and shall consist of twelve (12) consecutive full



calendar months and (iii) if the Term is not equally divisible into twelve (12)-month segments, then the last Lease Year shall consist of the number of full calendar months, less than twelve (12), remaining in the Term after accounting for the first Lease Year and all previous twelve (12)-month Lease Years.

**22.13. Legal Requirements:** (i) all laws, ordinances, notices, orders, rules, regulations and requirements of any and all Federal, state or municipal governments, and of the appropriate departments, commissions, boards and officers thereof which impose any duties on a Party respecting the use, operation, care, repair, replacement or alteration of the Premises generally, and including but not limited to The Americans with Disabilities Act, 42 U.S.C. § 12101, *et. seq.*, and the ADA Disability Guidelines promulgated with respect thereto; (ii) all Environmental Laws; (iii) all zoning and other land use matters and utility availability regulations or directives; (iv) any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant respecting the use, operation, care, repair, replacement or alteration of the Premises; and (v) all notices, orders, rules and regulations of the National Board of Fire Underwriters, or any other body now or hereafter constituted and exercising similar functions, relating to all or any part of the Premises, regardless of when they became effective; (vi) all covenants, conditions, restrictions, reciprocal easement agreements and the like which are recorded among the land records of the jurisdiction in which the Center is located and which are applicable to the Center generally.

**22.14. Operating Costs:** In each Operating Year, all costs and expenses incurred by or on behalf of Landlord in performing its obligations under this Lease with respect to operating, managing, insuring, securing and maintaining the Premises (excepting Taxes), including, without limitation, Landlord's share of expenses under any declaration, covenant, condition, restriction or other agreement recorded among the land records of the county in which the Center is located and applicable to the Center. Any of the foregoing expenses required to be capitalized for federal income tax purposes shall be amortized on a straight-line basis over a period equal to the lesser of the useful life thereof for federal income tax purposes or ten years. The term "Operating Costs" shall not include costs or expenses or depreciation or amortization for capital repairs and capital replacements required to be made by Landlord pursuant to Subsection 9.5; debt service under any financing provided to Landlord secured by the Building or Center; costs associated with leasing space in the Building or the sale of any interest in the Building or Center, including, without limitation, advertising and marketing, leasing commissions or any amounts paid for or on behalf of Tenants such as space planning, moving costs, rental and other tenant concessions; costs of renovating or otherwise improving space for new tenants or in renovating space vacated by any tenant; any amounts paid to any person, firm or corporation related or otherwise affiliated with Landlord or any manager, officer or director of Landlord or any of its general partners, to the extent same exceeds arms-length competitive prices paid in the metropolitan Frederick area for the services or goods provided; legal expenses for disputes with tenants; legal and auditing fees, other than those legal and auditing fees necessarily and reasonably incurred in connection with the maintenance and operation of the Center; and legal or accounting fees incurred in connection with any debt or equity financing of the Center or in connection with any reports performed exclusively for the benefit of investors, partners, or affiliates of Landlord; ground rent; Landlord's net income, transfer, excise, capital stock, estate, succession and franchise taxes unless the foregoing are paid in lieu of real estate taxes; fines, penalties or interest for failure to make any tax payment in a timely fashion provided that Tenant has paid to Landlord all obligations of Tenant hereunder; expenditures for which Landlord is reimbursed by any insurance carrier, or from any other source; or cost of repairs or replacements incurred by reason of Casualty or condemnation.

**22.15. Operating Year:** Each successive calendar year or part thereof during the Term of this Lease or any renewal thereof, or, at Landlord's option, each successive fiscal year of Landlord or part thereof, during the Term.

**22.16. Reimbursement Rate:** 12% per annum.

**22.17. Rent:** All Basic Rent and Additional Rent as defined herein.



**22.18. Superior Mortgage; Superior Mortgagee:** "Superior Mortgage" means all mortgages and building loan agreements, including leasehold mortgages and spreader and consolidation agreements, which may now or hereafter affect the Premises, and "Superior Mortgagee" means the party then exercising the rights of mortgagee, beneficiary or secured party thereunder.

**22.19. Taxes:** (i) all real estate and other *ad valorem* taxes, including, without limitation, real estate rental, receipt or gross receipt tax or any other tax on Landlord (excluding Landlord's income taxes), now or hereafter imposed by any Appropriate Authority and whether as a substitution for or in addition to the present method of real property taxation currently in use; (ii) charges or assessments imposed under the authority of any applicable parks and recreation association or the like, which appear on the Tax bill furnished by the Appropriate Authority; and (iii) Fees and Costs, if necessary, incurred in connection with any negotiation, contest or appeal pursued by Landlord in an effort to reduce Taxes, and (iv) any metropolitan district water and sewer charges and other governmental charges which customarily are part of the real estate tax bill issued by Appropriate Authorities charged with said responsibility.

**22.20. Tax Year:** The twelve (12) month period beginning July 1 of each year or such other twelve (12) month period (deemed to have 365 days) established as a real estate tax year by the taxing authorities having lawful jurisdiction over the Center.

**22.21. Tenant's Personal Property:** All equipment, machinery, furniture, furnishings and/or other property now or hereafter installed or placed in or on the Premises by and at the sole expense of Tenant with respect to which Tenant has not been granted any credit or allowance by Landlord and which (a) is not used, or was not procured for use, in connection with the operation, maintenance or protection of the Premises or the Building; (b) is removable without damage to the Premises or the Building, and (c) is not a replacement of any property of Landlord, whether such replacement is made at Tenant's expense or otherwise. Notwithstanding any other provision of this Lease, Tenant's Personal Property shall not include any Leasehold Improvements or Alterations, whether or not any of the same were installed at Tenant's expense.

**22.22. Transfer; Transferee:** (i) an assignment or other transfer, mortgage or other encumbrance of Tenant's interest in this Lease or any of its rights under it; (ii) a sublease of all or part of the Premises or the occupancy or use of any part of the Premises by any person other than Tenant; or (iii) an assignment or other transfer of Tenant's interest in this Lease by operation of law, including any levy or sale in execution of a judgment or any assignment or sale in bankruptcy, or insolvency, or the appointment of a receiver or trustee by any state or federal court; and a Transferee means any transferee, assignee, mortgagee, sublessee or occupant with respect to such a Transfer.

**22.23. Unavoidable Delay:** Any delay caused by fire, earthquake, or other acts of God, acts of the public enemy, riot, insurrection, governmental regulations, the sales of materials and supplies, or strikes directly affecting the work of construction or shortages of materials or labor resulting from governmental control or diversions. Other than Tenant's obligation to pay Rent or any other payment to cure a Default and except as otherwise provided in this Lease, either Party shall be excused for the period of any delay in the performance of any obligation when the delay is due to Unavoidable Delays. Neither Party shall be entitled to rely upon this Section unless it shall give to the other Party notice of the existence of the Unavoidable Delay within five (5) days after the commencement of the Unavoidable Delay.

## **23. Miscellaneous Provisions.**

**23.1. The Landlord.** As used herein, the term "Landlord" means the Landlord originally so named as well as its successors and assigns, and any other subsequent owner of the leasehold estate or reversion in the Center, as well as the heirs, personal representatives, successors and assigns of any such subsequent owner, each of whom shall have the same rights, remedies, powers, authorities and privileges as he would have had if he had originally signed this Lease as Landlord, but any such person, whether or not named herein, shall have no liability hereunder after he shall cease to hold the title to or a leasehold interest in the said real estate,



except for obligations which may have theretofore accrued. Neither Landlord nor any principal of Landlord, whether disclosed or undisclosed, shall have any personal liability with respect to this Lease, the Premises and the Center. After Tenant has accepted and taken occupancy of the Premises, Tenant shall look only to Landlord's estate and property in the Center (or the proceeds thereof) for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or its partners or principals, disclosed or undisclosed shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises.

**23.2. The Tenant.** As used herein, the term "Tenant" means the Tenant named in this Lease as well as its heirs, personal representatives, successors and assigns, each of which shall be under the same obligations, liabilities, and disabilities and have only such rights, privileges and powers as it would have possessed had it originally signed this Lease as Tenant. However, no such rights, privileges or powers shall inure to the benefit of any assignee of Tenant, immediate or removed, unless the assignment to such assignee shall have been consented to in writing by the Landlord, as aforesaid. Any person or entity, to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such Assignee shall upon demand execute and deliver unto Landlord an instrument confirming such assumption. If Tenant is a corporation, general partnership, limited partnership or limited liability company, each person executing this Lease on behalf of Tenant, whether as officer, partner, manager or the like, jointly and severally covenants and warrants that Tenant has the requisite organizational approval to enter into and execute this Lease and that, on request such person shall be bound to provide to Landlord a copy of an appropriate organizational directive authorizing the execution of this Lease and authorizing the individual executing this Lease to execute said Agreement on behalf of and in the name of the Tenant.

**23.3. Tenant's Certificate.** Tenant agrees at any time, and from time to time, within ten (10) days after Landlord's written request, to execute, acknowledge and deliver to Landlord a written instrument in recordable form certifying or stating: (i) that this Lease is unmodified and in full force and effect (or if there shall then have been modifications, that the same is in full force and effect as so modified, and setting forth such modifications); (ii) that Tenant has accepted possession of the Premises, the date upon which the Term has commenced and the date of the expiration of the Term of this Lease; (iii) the dates to which Rent and other charges have been paid in advance, if any; (iv) whether or not, to the best knowledge of the signer of such certificate, Landlord is then in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying in detail each such default of which the signer may have knowledge; (v) as to any other matters as may be reasonably so requested; and (vi) that it is understood that such instrument may be relied upon by any prospective purchaser, mortgagee, assignee or lessee of Landlord's interest in this Lease, in the Center, or any portion or part thereof.

**23.4. Brokerage.** Tenant warrants that it has had no dealings with any broker or agent in connection with this Lease other than the Named Broker, whose commission Landlord covenants and agrees to pay in the amount agreed between Landlord and such Named Broker. Tenant covenants to pay, hold harmless and indemnify Landlord from and against any and all costs, expense or liability for any compensation, commissions or charges claimed by any broker other than those stated above or any other agent with respect to this Lease or the negotiation thereof.

**23.5. Entire Agreement.** The Lease, including these General Terms and Conditions to Lease, and any and all Exhibits and Riders hereto, as well as any other schedules or attachments hereto, set forth all the promises, agreements, conditions and understandings between Landlord and Tenant with respect to the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed and delivered by each of them.



**23.6. Effect of Delivery.** Landlord has delivered a copy of this Lease to Tenant for Tenant's review only, and the delivery does not constitute an irrevocable offer to Tenant or an option to lease. Because the Premises are on the open market and are presently being shown, this Lease should be treated as a revocable offer, with the Premises being subject to prior lease, and such offer is subject to withdrawal or non-acceptance by Landlord or to other use of the Premises at any time and without notice. This Lease shall not be valid or binding unless and until signed by Tenant, delivered to Landlord, and accepted and signed by Landlord.

**23.7. Delay in Delivery of Premises; Rule Against Perpetuities.** To avoid application of the Rule Against Perpetuities, if the Commencement Date has not occurred within one (1) year following the date of this Lease for any reason other than the default of either Party hereto then, unless the Parties otherwise agree in writing, this Lease shall terminate, in which case, all rights and obligations of the Parties with respect to this Lease shall terminate. Tenant shall have no rights or claims under this Lease at law.

**23.8. Recording.** Neither this Lease, nor any memorandum, affidavit, or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant, and the recording thereof in violation of this provision, shall (i) be deemed an Event of Default and, (ii) at Landlord's election, make this Lease null and void.

**23.9. Time.** Time is of the essence of this Lease.

**23.10. Notice:** Any and all notices, requests or other communications hereunder shall be deemed to have been duly given (i) on the date of actual delivery thereof if in writing and if transmitted by hand delivery with receipt therefor, (ii) on the date following the date it is delivered to a recognized overnight courier for delivery on the next business day (no signature required), or (iii) on the date transmission thereof is verified, if given on a business day by facsimile or e-mail (in which event an original of such notice shall be delivered within three business days thereafter by one of the other methods of giving notice set forth above). Each of such notices shall be addressed as follows (or to such new address as the addressee of such a communication may have notified the sender thereof):

With respect to Landlord:

Gutenberg Properties, LLC  
8529 Edgewood Church Road  
Frederick, Maryland 21702  
Facsimile: (301) 694-0538  
E-mail: SwissManMD@aol.com

With a copy to:

Gregory M. Burgee, Esquire  
Miles & Stockbridge P.C.  
30 West Patrick Street, Suite 600  
Frederick, Maryland 21701  
Facsimile: (301) 696-5785  
E-mail: gburgee@milesstockbridge.com

With respect to Tenant:

Ambulatory Surgical Centers of America  
195 Hanover Street, Suite 2  
Hanover, MA 02339  
Attn: Rob Westergard, CFO  
Facsimile: (781) 826-6613  
E-mail: rwestergard@ascoa.com

With a copy to:

Mason & Martin, LLP  
65 William Street  
Wellesley, MA 02481  
Attn.: Clair A. Carlson, Jr.



**23.11. Consents:** Except as otherwise set forth in this Lease, no consent required of either Party hereunder will be unreasonably withheld or delayed, nor will any additional consideration, premium or payment be required in connection therewith. Each Party shall act reasonably at all times in the exercise of its respective rights pursuant to this Lease.

**23.12. Rules and Regulations.** Tenant will comply with all rules and regulations established by the Landlord pertaining to the Premises, and will conduct its business in the Premises in all respects in a dignified, clean, orderly and efficient manner and in accordance with high standards, keeping in mind the fact of the operation and existence of offices located in the Building which the Premises are a part. The Landlord may revise and amend the rules and regulations attached hereto as **Exhibit B**, in its sole reasonable discretion, from time-to-time upon written notice to Tenant. Landlord covenants that Landlord will not adopt any rules and regulations pursuant to any reserved rights contained in the Lease, which unreasonably limits or adversely affects the Permitted Use and the Common Areas or which materially increases Tenant's obligations under the Lease.

**24. Additional Agreements:**

**24.1. Negative Covenant.** During the Term, Landlord agrees that Landlord will not, and agrees not to permit any other tenant or occupant of the Building to operate an ambulatory surgical and treatment center similar in scope or purpose to Tenant's facility in any other portion of the Center; PROVIDED, HOWEVER, it is understood and agreed that the balance of the building may be leased and/or sold to tenants and/or occupants operating any other medical use (i.e., other than an ambulatory surgical and treatment center).

**24.2. Landlord Authority.** Landlord covenants that Landlord is seized of good and sufficient title and interest to the Premises, and has full authority to enter into and execute this Lease. Landlord further covenants that there are no other liens, judgments or impediments affecting Landlord's title to the Premises and that there are no covenants, easements or restrictions which prevent, limit or unreasonably restrict the Permitted Use in the manner described herein

**24.3. Provision of Services/Tenant Access to Premises.** Landlord acknowledges that Tenant will use and operate the Premises on weekdays during the hours of 7:00 a.m. to 7:00 p.m. and on Saturdays during the hours of 8:00 a.m. to 1:00 p.m. (the "Business Hours") and that all building services, including HVAC services, shall be operated and provided so that the Premises are habitable and reasonably comfortable during Business Hours. Landlord agrees that Tenant shall have access to the Premises at all times during Business Hours and reasonable access to the Premises after Business Hours for cleaning, limited business activities, maintenance and repair work.

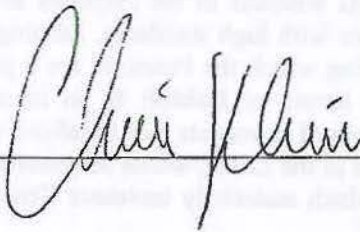
**24.4. Execution of Landlord's Waiver.** Landlord agrees to execute upon request a Landlord's Waiver, Collateral Assignment or similar document allowing Citicorp Vendor Finance, Inc., Banknorth, N.A., MarCap Corporation, LaSalle Bank Midwest National Association or any other entity providing financing to Tenant (the "Lender") access to the Premises to remove Tenant's equipment and trade fixtures in the event of a default by Tenant under its financing arrangements; PROVIDED, HOWEVER, such entry and removal shall be conducted and/or undertaken by the lenders in accordance with the provisions of this Lease and in the same manner as Tenant would be entitled upon the termination of this Lease, including, by way of example, the repair of any damage or destruction caused by such removal but providing such Lender with adequate time to accomplish such removal as provided in the requested documents. Landlord further agrees to use its good-faith, due diligent efforts to obtain a Mortgagee Waiver of Liens from any Superior Mortgagee authorizing such Lender to remove Tenant's equipment and trade fixtures in the event of default by Tenant under its financing arrangements, provided that such removal is nonetheless undertaken in accordance with this subsection. Such Landlord's Waiver, Collateral Assignment, Mortgagee Waiver of Lien, Non-Disturbance,



Attornment and Subordination Agreement or similar document shall be substantially in the form of the documents attached hereto as Exhibits D-1, D-2, D-3, D-4, D-5, D-6 and D-7.

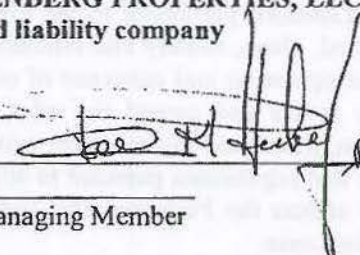
IN WITNESS WHEREOF, the Parties hereto have executed this Lease, or have caused the same to be executed on their respective behalves by their duly authorized representatives, the date and year first above written.

**WITNESS:**

  
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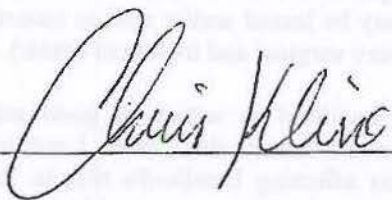
**LANDLORD:**

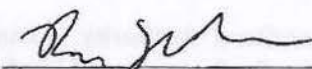
**GUTENBERG PROPERTIES, LLC, a Maryland  
limited liability company**

By:  (SEAL)  
\_\_\_\_\_  
Managing Member

**TENANT:**

**THOMAS JOHNSON SURGERY CENTER, LLC**

  
\_\_\_\_\_

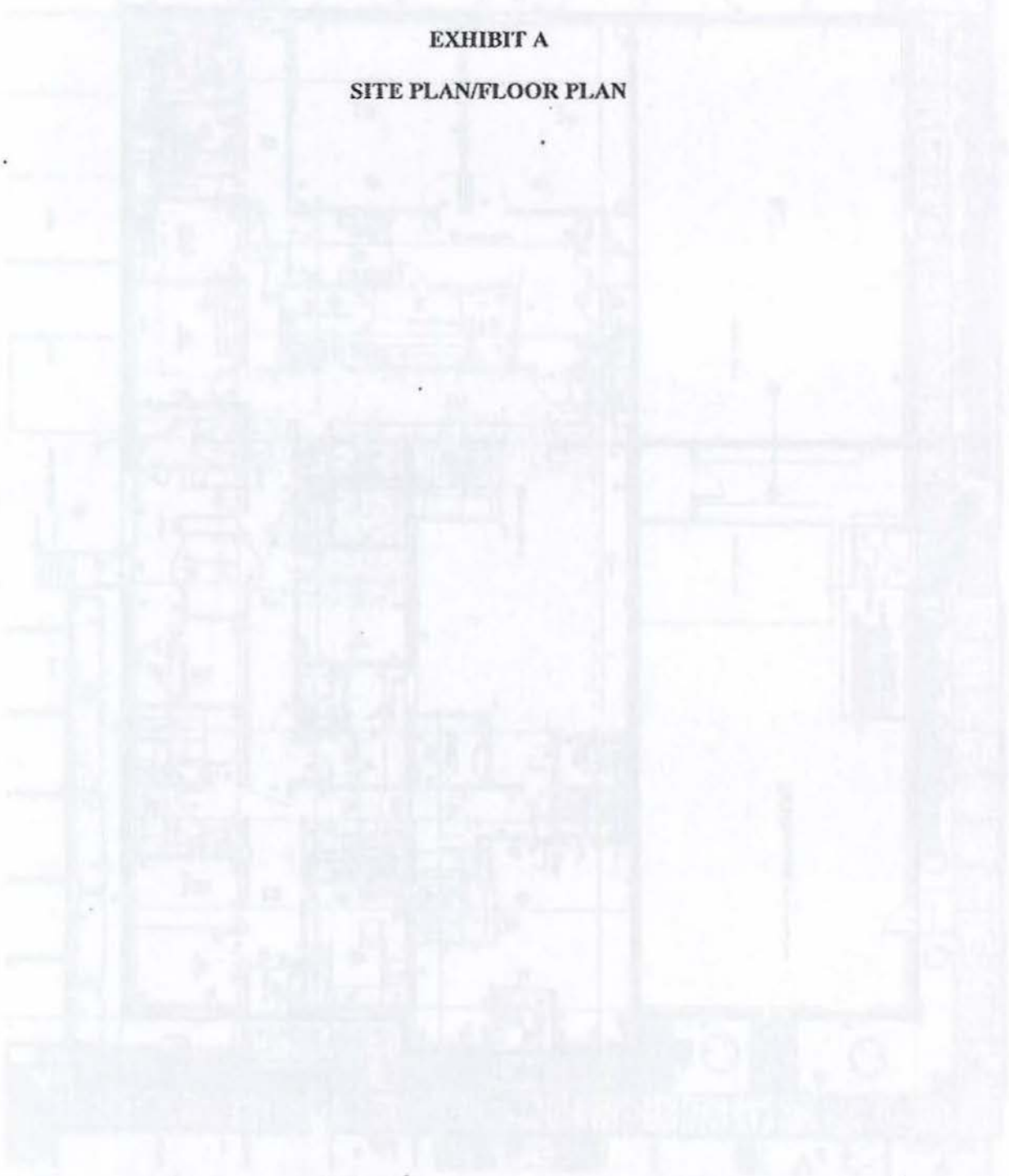
By:  (SEAL)  
Name: David Johnson  
Title: President



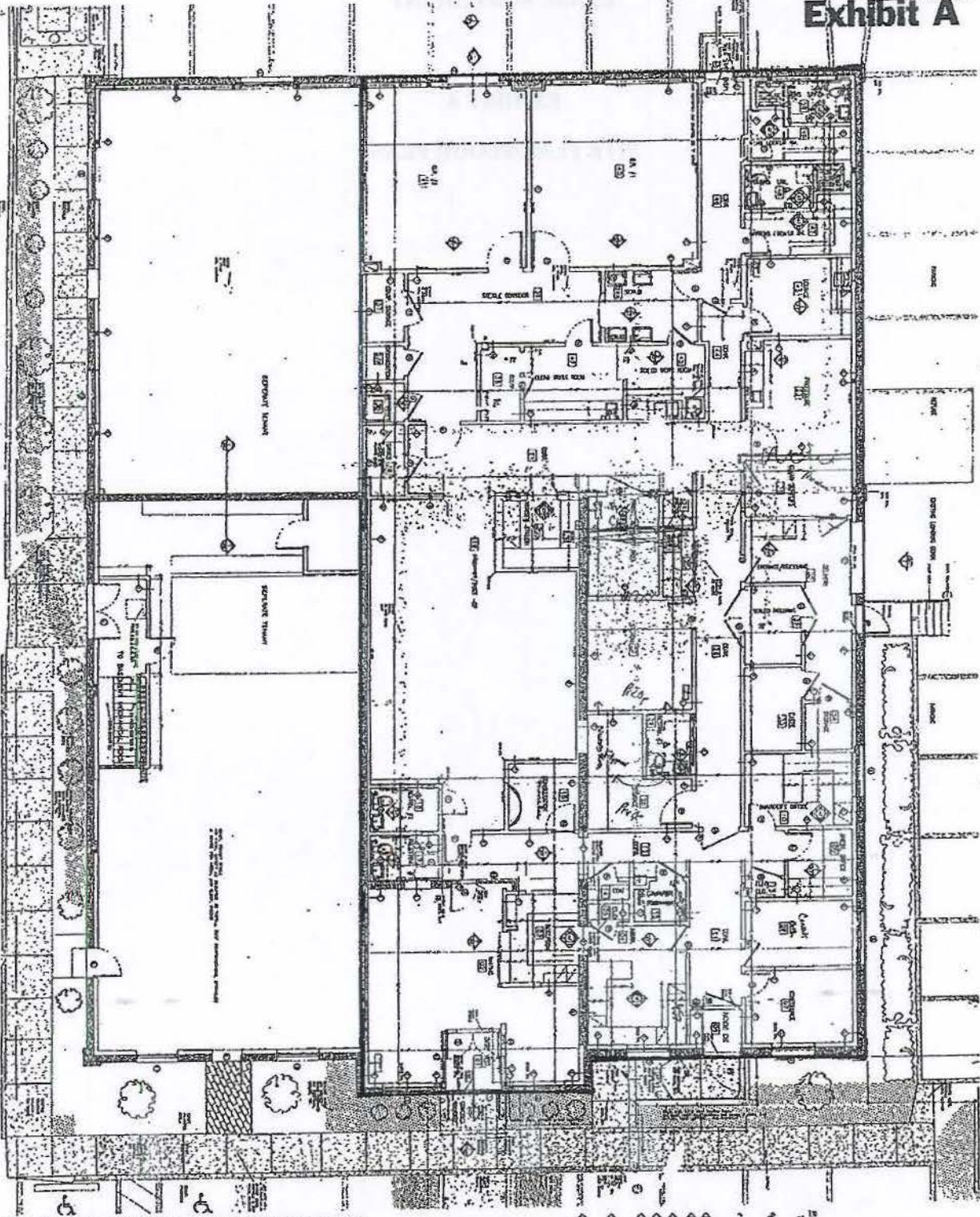
**LEASE AGREEMENT**

**EXHIBIT A**

**SITE PLAN/FLOOR PLAN**



# Exhibit A



- EXHIBIT A - FLOOR PLAN**
- 1. CAFETERIA
  - 2. CLASSROOMS
  - 3. OFFICES
  - 4. HALL
  - 5. STAIRS
  - 6. RESTROOMS
  - 7. ENTRY
  - 8. STORAGE
  - 9. JANETRY
  - 10. MECHANICAL
  - 11. GYMNASIUM
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  - 575. ART ROOM
  - 576. MUSIC ROOM
  - 577. SCIENCE ROOM
  - 578. COMPUTER LAB
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  - 583. SECRETARY'S OFFICE
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  - 586. STORAGE ROOM
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  - 886. NURSE'S OFFICE
  - 887. PRINCIPAL'S OFF





Exhibit 7

Charge Master



## 2017 Charge Master

CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
10060	\$1,000.00	11471	\$7,294.00	12054	\$1,600.00
10061	\$1,500.00	11600	\$3,768.00	12055	\$2,006.00
10080	\$1,000.00	11601	\$1,923.00	12056	\$2,693.00
10081	\$3,883.00	11602	\$1,923.00	12057	\$2,707.00
10120	\$1,132.00	11603	\$3,768.00	13100	\$5,645.00
10121	\$5,657.00	11604	\$3,768.00	13101	\$2,000.00
10140	\$3,883.00	11606	\$5,657.00	13102	\$1,500.00
10160	\$1,000.00	11620	\$3,768.00	13120	\$1,715.00
10180	\$6,541.00	11622	\$3,768.00	13121	\$2,030.00
11010	\$3,768.00	11624	\$5,657.00	13122	\$1,500.00
11011	\$1,600.00	11626	\$7,294.00	13131	\$1,806.00
11012	\$5,657.00	11642	\$3,305.00	13132	\$2,000.00
11041	\$650.00	11643	\$3,768.00	13150	\$1,670.00
11042	\$1,600.00	11644	\$5,364.00	13151	\$2,000.00
11043	\$1,715.00	11646	\$7,294.00	13152	\$2,740.00
11044	\$3,768.00	11730	\$1,000.00	13160	\$8,550.00
11045	\$1,500.00	11732	\$1,000.00	14000	\$5,645.00
11100	\$1,100.00	11750	\$1,514.00	14001	\$5,645.00
11200	\$1,000.00	11770	\$7,294.00	14020	\$5,645.00
11201	\$1,000.00	11771	\$7,294.00	14021	\$5,645.00
11300	\$1,000.00	11772	\$7,294.00	14040	\$5,645.00
11301	\$1,000.00	11960	\$9,203.00	14041	\$5,645.00
11306	\$1,000.00	11970	\$19,877.00	14060	\$5,645.00
11400	\$1,923.00	11971	\$7,294.00	14061	\$5,645.00
11401	\$1,923.00	12005	\$1,600.00	14300	\$6,146.00
11402	\$1,923.00	12006	\$1,600.00	14301	\$9,203.00
11403	\$3,768.00	12007	\$1,796.00	14302	\$7,626.00
11404	\$5,364.00	12016	\$1,684.00	14350	\$8,550.00
11406	\$5,657.00	12017	\$1,600.00	15000	\$1,263.00
11420	\$3,768.00	12018	\$1,798.00	15050	\$1,720.00
11421	\$3,768.00	12020	\$1,720.00	15100	\$9,203.00
11422	\$3,768.00	12021	\$1,715.00	15101	\$7,626.00
11423	\$5,364.00	12031	\$1,400.00	15120	\$9,203.00
11424	\$5,657.00	12032	\$1,390.00	15121	\$7,626.00
11426	\$7,294.00	12034	\$1,600.00	15200	\$9,203.00
11441	\$1,923.00	12035	\$1,929.00	15201	\$5,236.00
11442	\$3,768.00	12036	\$2,170.00	15220	\$5,645.00
11443	\$3,768.00	12037	\$5,645.00	15221	\$1,670.00
11444	\$3,768.00	12041	\$1,400.00	15240	\$5,645.00
11446	\$7,294.00	12042	\$1,400.00	15241	\$2,000.00
11450	\$7,294.00	12044	\$1,600.00	15260	\$5,645.00
11451	\$7,294.00	12045	\$1,993.00	15261	\$5,236.00
11462	\$7,294.00	12046	\$2,413.00	15350	\$960.00
11463	\$7,294.00	12047	\$2,477.00	15351	\$2,878.00
11470	\$7,294.00	12051	\$1,400.00	15400	\$1,412.00

<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>
15401	\$1,412.00	15936	\$5,645.00	19371	\$12,046.00
15570	\$9,342.00	15937	\$8,550.00	19380	\$16,595.00
15572	\$8,550.00	15940	\$7,294.00	20005	\$6,624.00
15574	\$9,324.00	15941	\$7,294.00	20200	\$5,657.00
15576	\$8,281.00	15944	\$9,298.00	20205	\$5,657.00
15600	\$9,203.00	15945	\$8,550.00	20206	\$4,209.00
15610	\$9,203.00	15946	\$9,203.00	20220	\$3,768.00
15620	\$8,550.00	15950	\$7,294.00	20225	\$5,657.00
15630	\$7,626.00	15951	\$7,294.00	20240	\$7,294.00
15650	\$8,550.00	15952	\$9,203.00	20245	\$7,294.00
15732	\$8,550.00	15953	\$9,203.00	20250	\$10,404.00
15734	\$9,203.00	15956	\$5,645.00	20251	\$10,404.00
15736	\$7,908.00	15958	\$9,203.00	20525	\$7,294.00
15738	\$9,203.00	16015	\$2,973.00	20550	\$2,009.00
15740	\$5,645.00	17110	\$1,000.00	20650	\$10,404.00
15750	\$9,367.00	19020	\$6,541.00	20670	\$5,657.00
15760	\$8,550.00	19100	\$3,768.00	20680	\$7,294.00
15770	\$9,203.00	19101	\$8,752.00	20690	\$19,877.00
15775	\$1,825.00	19102	\$2,654.00	20692	\$28,256.00
15776	\$2,000.00	19103	\$4,748.00	20693	\$10,404.00
15777	\$5,085.00	19110	\$8,752.00	20694	\$6,988.00
15820	\$8,221.00	19112	\$8,752.00	20900	\$10,404.00
15821	\$7,626.00	19120	\$8,752.00	20902	\$28,256.00
15822	\$7,626.00	19125	\$8,752.00	20910	\$7,626.00
15823	\$7,626.00	19126	\$7,907.00	20912	\$9,203.00
15824	\$8,550.00	19140	\$4,626.00	20920	\$9,203.00
15825	\$8,550.00	19160	\$4,626.00	20922	\$9,203.00
15826	\$9,203.00	19162	\$10,067.00	20924	\$10,404.00
15828	\$9,203.00	19180	\$7,494.00	20926	\$9,203.00
15829	\$9,203.00	19182	\$7,494.00	20930	\$12,255.00
15831	\$4,659.00	19260	\$5,657.00	20931	\$9,000.00
15832	\$7,294.00	19290	\$1,000.00	20975	\$1,400.00
15833	\$7,294.00	19291	\$1,000.00	21010	\$15,824.00
15834	\$7,294.00	19300	\$8,752.00	21011	\$3,768.00
15835	\$7,294.00	19301	\$8,752.00	21012	\$5,657.00
15840	\$9,203.00	19303	\$14,588.00	21013	\$3,768.00
15841	\$9,203.00	19316	\$14,588.00	21014	\$5,657.00
15845	\$9,203.00	19318	\$16,595.00	21015	\$5,657.00
15852	\$1,000.00	19324	\$16,595.00	21025	\$15,824.00
15876	\$9,203.00	19325	\$25,106.00	21026	\$13,653.00
15877	\$9,203.00	19328	\$12,046.00	21029	\$13,653.00
15878	\$9,203.00	19330	\$12,046.00	21034	\$15,824.00
15879	\$9,203.00	19340	\$16,595.00	21040	\$7,782.00
15920	\$5,657.00	19342	\$25,106.00	21044	\$15,824.00
15922	\$7,939.00	19350	\$8,752.00	21046	\$15,824.00
15931	\$7,294.00	19355	\$12,046.00	21047	\$15,824.00
15933	\$7,294.00	19357	\$25,106.00	21050	\$15,824.00
15934	\$9,203.00	19366	\$14,588.00	21060	\$15,824.00
15935	\$9,203.00	19370	\$14,588.00	21070	\$15,824.00



CPT Code	Charge	CPT Code	Charge	CPT Code	Charge
21100	\$15,824.00	21452	\$6,468.00	22830	\$21,500.00
21121	\$7,782.00	21453	\$15,824.00	22845	\$10,920.00
21122	\$7,782.00	21454	\$15,824.00	22846	\$8,912.00
21123	\$7,782.00	21461	\$15,824.00	22851	\$15,000.00
21127	\$15,824.00	21462	\$15,824.00	22853	\$15,000.00
21181	\$15,824.00	21465	\$15,824.00	22855	\$12,087.00
21206	\$15,824.00	21480	\$1,500.00	22899	\$10,404.00
21208	\$15,824.00	21485	\$7,782.00	22900	\$7,294.00
21209	\$15,824.00	21490	\$15,824.00	22901	\$7,294.00
21210	\$15,824.00	21493	\$1,114.00	22902	\$5,657.00
21215	\$15,824.00	21494	\$1,114.00	22903	\$7,294.00
21230	\$15,824.00	21497	\$5,273.00	22999	\$6,988.00
21235	\$7,801.00	21501	\$6,541.00	23000	\$5,657.00
21240	\$15,824.00	21502	\$6,988.00	23020	\$14,394.00
21242	\$15,824.00	21552	\$7,294.00	23030	\$6,541.00
21243	\$25,126.00	21554	\$7,294.00	23031	\$6,541.00
21244	\$15,824.00	21555	\$6,874.00	23035	\$6,988.00
21245	\$15,824.00	21556	\$7,294.00	23040	\$10,404.00
21246	\$15,824.00	21600	\$10,404.00	23044	\$10,404.00
21248	\$15,824.00	21610	\$10,404.00	23066	\$7,294.00
21249	\$15,824.00	21700	\$6,988.00	23071	\$7,294.00
21267	\$15,824.00	21720	\$6,988.00	23073	\$7,294.00
21270	\$15,824.00	21725	\$2,000.00	23075	\$5,657.00
21275	\$15,824.00	21800	\$1,500.00	23076	\$6,874.00
21280	\$15,824.00	21805	\$10,467.00	23077	\$7,321.00
21282	\$6,468.00	21820	\$1,500.00	23100	\$6,988.00
21295	\$2,759.00	21899	\$1,825.00	23101	\$10,404.00
21296	\$7,782.00	21925	\$7,294.00	23105	\$10,404.00
21300	\$3,826.00	21930	\$6,874.00	23106	\$10,404.00
21310	\$2,100.00	21931	\$7,294.00	23107	\$10,404.00
21315	\$6,468.00	21932	\$5,657.00	23120	\$10,404.00
21320	\$6,468.00	21933	\$7,294.00	23125	\$10,404.00
21325	\$7,782.00	21935	\$7,321.00	23130	\$15,739.00
21330	\$7,782.00	22305	\$1,500.00	23140	\$6,988.00
21335	\$7,782.00	22310	\$1,884.00	23145	\$10,404.00
21336	\$10,467.00	22315	\$6,338.00	23146	\$19,877.00
21337	\$6,468.00	22505	\$4,804.00	23150	\$10,404.00
21338	\$15,824.00	22513	\$28,256.00	23155	\$10,404.00
21339	\$7,782.00	22514	\$28,256.00	23156	\$19,877.00
21340	\$15,824.00	22515	\$13,203.00	23170	\$10,404.00
21345	\$7,782.00	22521	\$10,720.00	23172	\$10,404.00
21355	\$15,824.00	22522	\$9,792.00	23174	\$10,404.00
21400	\$2,759.00	22523	\$27,080.00	23180	\$10,404.00
21401	\$5,273.00	22524	\$27,080.00	23182	\$10,404.00
21421	\$15,824.00	22525	\$26,934.00	23184	\$10,404.00
21440	\$7,782.00	22551	\$31,614.00	23190	\$10,404.00
21445	\$15,824.00	22552	\$52,945.00	23195	\$19,877.00
21450	\$2,000.00	22554	\$25,126.00	23330	\$3,768.00
21451	\$6,468.00	22585	\$36,794.00	23331	\$33,199.00

<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>
23395	\$28,256.00	23700	\$4,804.00	24354	\$5,698.00
23397	\$26,934.00	23800	\$28,256.00	24356	\$5,698.00
23400	\$19,877.00	23802	\$28,256.00	24360	\$19,877.00
23405	\$10,404.00	23921	\$9,203.00	24361	\$25,126.00
23406	\$10,404.00	23930	\$6,541.00	24362	\$25,126.00
23410	\$19,877.00	23931	\$6,230.00	24363	\$25,126.00
23412	\$19,877.00	23935	\$6,988.00	24365	\$28,256.00
23415	\$15,739.00	24000	\$10,404.00	24366	\$25,126.00
23420	\$19,877.00	24006	\$10,404.00	24400	\$26,934.00
23430	\$19,877.00	24066	\$5,657.00	24410	\$25,126.00
23440	\$14,394.00	24071	\$7,294.00	24420	\$15,739.00
23450	\$27,080.00	24073	\$7,294.00	24430	\$28,256.00
23455	\$27,080.00	24075	\$5,657.00	24435	\$25,126.00
23460	\$29,770.00	24076	\$6,874.00	24470	\$15,739.00
23462	\$19,877.00	24077	\$7,321.00	24495	\$10,404.00
23465	\$28,256.00	24100	\$6,988.00	24498	\$28,256.00
23466	\$19,877.00	24101	\$10,404.00	24500	\$1,500.00
23480	\$15,739.00	24102	\$10,404.00	24505	\$4,386.00
23485	\$28,256.00	24105	\$6,988.00	24515	\$28,256.00
23490	\$28,256.00	24110	\$9,582.00	24516	\$28,256.00
23491	\$28,256.00	24115	\$10,404.00	24530	\$1,500.00
23500	\$1,500.00	24116	\$10,404.00	24535	\$4,386.00
23505	\$6,338.00	24120	\$6,988.00	24538	\$10,467.00
23515	\$21,966.00	24125	\$10,404.00	24545	\$25,126.00
23520	\$5,247.00	24126	\$10,404.00	24546	\$25,126.00
23525	\$1,838.00	24130	\$10,404.00	24560	\$1,500.00
23530	\$16,907.00	24134	\$19,877.00	24565	\$4,386.00
23532	\$19,877.00	24136	\$10,404.00	24566	\$10,467.00
23540	\$1,500.00	24138	\$10,404.00	24575	\$28,256.00
23545	\$2,504.00	24140	\$10,404.00	24576	\$1,500.00
23550	\$19,877.00	24145	\$10,404.00	24577	\$4,386.00
23552	\$28,256.00	24147	\$10,404.00	24579	\$28,256.00
23570	\$1,500.00	24155	\$14,394.00	24582	\$10,467.00
23575	\$4,386.00	24160	\$10,404.00	24586	\$28,256.00
23585	\$28,256.00	24164	\$10,404.00	24587	\$25,126.00
23600	\$1,500.00	24201	\$5,657.00	24600	\$1,500.00
23605	\$6,641.00	24301	\$10,404.00	24605	\$4,804.00
23615	\$28,256.00	24305	\$10,404.00	24615	\$21,966.00
23616	\$25,126.00	24310	\$9,582.00	24620	\$6,338.00
23620	\$1,500.00	24320	\$14,394.00	24635	\$28,256.00
23625	\$6,338.00	24330	\$27,080.00	24655	\$4,386.00
23630	\$21,966.00	24331	\$15,739.00	24665	\$19,877.00
23650	\$1,500.00	24340	\$19,877.00	24666	\$28,256.00
23655	\$4,804.00	24341	\$15,739.00	24670	\$1,500.00
23660	\$16,907.00	24342	\$15,739.00	24675	\$4,386.00
23665	\$4,386.00	24345	\$10,404.00	24685	\$19,877.00
23670	\$21,966.00	24350	\$5,698.00	24800	\$19,877.00
23675	\$4,386.00	24351	\$5,698.00	24802	\$28,256.00
23680	\$28,256.00	24352	\$5,698.00	24925	\$9,582.00



<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>	<b>CPT Code</b>	<b>Charge</b>
25000	\$6,988.00	25280	\$10,404.00	25545	\$19,877.00
25020	\$10,404.00	25290	\$10,404.00	25565	\$4,386.00
25023	\$10,404.00	25295	\$6,988.00	25574	\$21,966.00
25024	\$10,404.00	25300	\$10,404.00	25575	\$28,256.00
25025	\$10,404.00	25301	\$10,404.00	25605	\$4,386.00
25028	\$6,988.00	25310	\$14,394.00	25611	\$9,018.00
25031	\$6,988.00	25312	\$15,739.00	25620	\$9,018.00
25035	\$9,582.00	25315	\$14,394.00	25624	\$4,386.00
25040	\$10,404.00	25316	\$27,080.00	25628	\$16,907.00
25066	\$7,294.00	25320	\$15,739.00	25635	\$4,386.00
25071	\$7,294.00	25332	\$31,590.00	25645	\$16,907.00
25075	\$5,657.00	25335	\$15,739.00	25660	\$1,500.00
25076	\$6,514.00	25337	\$15,739.00	25670	\$10,467.00
25077	\$7,321.00	25350	\$28,256.00	25671	\$10,467.00
25085	\$9,582.00	25355	\$15,739.00	25675	\$1,500.00
25100	\$9,582.00	25360	\$19,877.00	25676	\$19,877.00
25101	\$10,404.00	25365	\$28,256.00	25680	\$2,458.00
25105	\$10,404.00	25370	\$15,739.00	25685	\$10,467.00
25107	\$10,404.00	25375	\$15,739.00	25690	\$6,338.00
25110	\$6,988.00	25390	\$19,877.00	25695	\$10,467.00
25111	\$6,988.00	25391	\$28,256.00	25800	\$28,256.00
25112	\$6,988.00	25392	\$10,404.00	25805	\$28,256.00
25115	\$6,988.00	25393	\$15,739.00	25810	\$28,256.00
25116	\$6,988.00	25400	\$26,934.00	25820	\$19,877.00
25118	\$10,404.00	25405	\$28,256.00	25825	\$27,080.00
25119	\$10,404.00	25415	\$27,080.00	25830	\$26,934.00
25120	\$10,404.00	25420	\$28,256.00	25907	\$6,988.00
25125	\$10,404.00	25425	\$26,934.00	25922	\$6,988.00
25126	\$10,404.00	25426	\$15,739.00	25929	\$5,645.00
25130	\$10,404.00	25440	\$26,934.00	26011	\$3,883.00
25135	\$10,404.00	25441	\$25,126.00	26020	\$5,821.00
25136	\$10,404.00	25442	\$25,126.00	26025	\$5,821.00
25145	\$10,404.00	25443	\$31,910.00	26030	\$5,821.00
25150	\$10,404.00	25444	\$25,126.00	26034	\$5,821.00
25151	\$10,404.00	25445	\$31,910.00	26040	\$8,468.00
25210	\$10,404.00	25446	\$25,126.00	26045	\$9,275.00
25215	\$10,404.00	25447	\$29,770.00	26055	\$5,821.00
25230	\$10,404.00	25449	\$19,877.00	26060	\$5,821.00
25240	\$10,404.00	25450	\$15,739.00	26070	\$5,821.00
25248	\$6,988.00	25455	\$15,739.00	26075	\$5,821.00
25250	\$10,404.00	25490	\$15,739.00	26080	\$5,821.00
25251	\$10,404.00	25491	\$28,256.00	26100	\$9,582.00
25260	\$10,404.00	25492	\$15,739.00	26105	\$5,821.00
25263	\$10,404.00	25505	\$4,386.00	26110	\$5,821.00
25265	\$10,404.00	25515	\$19,877.00	26115	\$7,321.00
25270	\$10,404.00	25520	\$4,386.00	26116	\$6,874.00
25272	\$10,404.00	25525	\$19,877.00	26117	\$7,226.00
25274	\$10,404.00	25526	\$28,256.00	26121	\$9,275.00
25275	\$10,404.00	25535	\$1,500.00	26123	\$9,582.00

<b>CPT Code</b>	<b>Charge</b>
26125	\$5,211.00
26130	\$5,821.00
26135	\$9,275.00
26140	\$5,821.00
26145	\$5,821.00
26160	\$5,821.00
26170	\$5,821.00
26180	\$5,821.00
26185	\$5,821.00
26200	\$5,821.00
26205	\$9,582.00
26210	\$5,821.00
26215	\$9,582.00
26230	\$5,821.00
26235	\$5,821.00
26236	\$5,821.00
26250	\$5,821.00
26255	\$8,168.00
26260	\$9,582.00
26261	\$4,846.00
26262	\$5,821.00
26320	\$5,657.00



## Exhibit 8

### Charity Care Policy

<b>Chapter 1 Patient Rights and Responsibilities</b>	<b>Thomas Johnson Surgery Center</b>
<b>Charity Care</b>	<b>1.07</b>

**PURPOSE:** To define facility policy related to provision of Charity Care at the facility.

**POLICY:**

Thomas Johnson Surgery Center ("TJSC") will provide services free or at a reduced fee to all patients who meet criteria. Each applicant for financial assistance or reduced fee arrangements must meet criteria as set by TJSC. TJSC financial aid is not a substitute for employer-sponsored, public or individually purchased insurance. TJSC will make an effort to provide Financial Assistance application, policies, procedures, and information available in English, Spanish, and/or any other language that will be understandable to target populations of patients utilizing TJSC services.

**PROCEDURE:**

1. Notice of the availability of charity care shall be published in the *Washington Post* on an annual basis. Notice will also be posted on the TJSC website and in the Admissions and Business Offices.
2. Individual notice of the availability of charity care, the potential for Medicaid eligibility and the availability of assistance from other government funded programs shall be provided to each person who seeks services in TJSC prior to the patient's arrival for surgery . Prior to a patient's arrival for surgery, TJSC should address any financial concerns of patients.
3. Request for charity or reduced fee arrangements must be made prior to service being rendered by TJSC.
4. Determination of Probable Eligibility for Charity Care: Within two business days following a patient's request for charity care services, application for medical assistance, or both, the facility (TJSC) shall make a determination of probable eligibility.
5. If the patient is eligible for Medical Assistance, but has not yet applied for Medical Assistance, TJSC staff will assist the patient with the application.
6. TJSC will review the patient's request for charity care and/or application (whether or not the patient has completed the entire application) for the following:
  - a. Persons with family income below 100 percent of the current federal poverty guideline who have no health insurance coverage and are not eligible for any public program providing coverage for medical expenses shall be eligible for services free of charge. These guidelines may be found on the web site for the US Department of Health and Human Services - <http://aspe.hhs.gov/poverty/>. If yes, then charity will be given and the patient will not be responsible for payment on services rendered.
  - b. At a minimum, persons with family income above 100 percent of the federal poverty guideline but below 200 percent of the federal poverty guideline shall be eligible for services at a discounted charge, based on a sliding scale of discounts for family income bands. The Family Income Bands table below shows the discount on the amount for which the patient will be responsible after insurance payments, if any.

Family Income Bands

<b>Income % of Poverty Guideline</b>	<b>Discount</b>
100% - 150%	65%
151% - 200%	50%



<b>Chapter 1 Patient Rights and Responsibilities</b>	Thomas Johnson Surgery Center	
<b>Charity Care</b>		<b>1.07</b>

c. Extended payment plans are available. Payments may be spread evenly over a period of six months for patients who qualify for charity care.

7. Final Determination of Eligibility for Charity Care. If the patient provides supporting documentation consistent with the information provided before TJSC made a determination that the patient is probably eligible for charity care or provides documentation that otherwise shows that the patient is eligible for charity care, a final determination of eligibility will be made in accordance with item 6.

## Exhibit 9

Plan for Assuring that TJSC will meet its Charity Care Commitment

## THOMAS JOHNSON SURGERY CENTER, LLC.

MANUAL: Policy & Procedure  
SECTION: General Administrative  
POLICY: Charity Care Compliance Plan

Effective Date:  
Reviewed Date:  
Revised Date: 00/00/000

**PURPOSE:** TJSC has a history of providing charity care. As part of its Certificate of Need application to obtain a second operating room, TJSC committed to providing, at a minimum, annual charity care that is equivalent to 0.046% of its annual Total Operating Revenue. This policy is intended to assure that Thomas Johnson Surgery Center (TJSC) meets its commitment to providing charity care.

**POLICY:** TJSC will monitor the amount of charity care it provides on an ongoing basis. In addition to advertising in the media and posting notices about the availability of charity care, TJSC will annually remind referring physicians, surgeons, and TJSC staff about the availability of charity care.

### **PROCEDURE:**

1. When scheduling patients for surgery, TJSC will not use ability to pay a consideration.
2. Consistent with TJSC's Charity Care Policy, TJSC will publish annual notice of the availability of charity care in the Frederick News Post and post notice of it on its website. Individual notice of the availability of charity care, the potential for Medicaid eligibility and the availability of assistance from other government funded programs shall be provided to each person who seeks services in TJSC at the time of admission.
3. TJSC will annually remind referring physicians and surgeons that TJSC accepts patients who need charity care.
4. TJSC will annually remind TJSC staff who interact with patients that charity care is available so that they may enable patients who request information about it or suggest it to patients who voice concerns about the ability to pay for services.
5. TJSC Chief Executive Officer will develop a monthly report that will show the Year-to-Date cumulative number of charity care patients and their equivalent charges as well as the cumulative annual Total Operating Costs. S/he will provide this report to the Board of Directors. This report will be a regular item on the agenda of TJSC's monthly management meetings.
6. Should this report show that TJSC's charity care equivalent charges are not consistent with its commitment, TJSC will take every action possible to meet its commitment, including:
  - a. Notifying all referring physicians and surgeons, reminding them of the availability of charity care.
  - b. Reminding staff who interact with patients that charity care is available.



Exhibit 10

License, Letter on Good Standing, Medicare and Medicaid Certifications,  
and AAAHC Certification



**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
OFFICE OF HEALTH CARE QUALITY**

SPRING GROVE CENTER  
BLAND BRYANT BUILDING  
55 WADE AVENUE  
CATONSVILLE, MARYLAND 21228

License No. AI465

Issued to: Thomas Johnson Surgery Center, LLC  
197 Thomas Johnson Drive  
Frederick, MD 21702

Type of Facility or Community Program: **AMBULATORY SURGICAL CENTER**

Date Issued: JULY 7, 2017

**SPECIALTIES: General, Neurological, OB/GYN, Orthopedic, Podiatric,  
Thoracic, and Urology**

Authority to operate in this State is granted to the above entity pursuant to The Health-General Article, Title 19 Annotated Code of Maryland, including all applicable rules and regulations promulgated there under. This document is not transferable.

Expiration Date: JULY 7, 2020

*Patricia Tomsko May, MD*

Director

*Falsification of a license shall subject the perpetrator to criminal prosecution and the imposition of civil fines.*





ACCREDITATION  
ASSOCIATION  
for AMBULATORY HEALTH CARE, INC.

**Congratulations!**

You have been awarded a three year term of accreditation!

Your AAAHC accreditation is a significant achievement. Seeking accreditation implies a commitment to ongoing self-evaluation and continuous improvement. The dedication and effort required is substantial and I commend your staff for this approach to high-quality patient care and business practices.

Granting accreditation reflects confidence, based on evidence from this recent survey, that you meet AAAHC Standards and will continue to demonstrate the attributes of an accreditable organization. Each year of your term of accreditation, you will receive notification of release of the updated Standards. It is vital that your organization has an up-to-date copy of the *Handbook*, whether through the purchase of the annual binder, or by taking advantage of the window of opportunity to download an electronic copy free of charge.

I hope the survey experience was beneficial to your organization in identifying strengths as well as opportunities to improve, and that you found your surveyor(s) to be consultative and educational in approach.

Enclosed is your Accreditation Notification with additional details describing your award and the next steps for your organization. Your Survey Report is also enclosed. Review and use it as a periodic reference throughout your term of accreditation.

Your organization has been added to our communications mailing list. Soon you will receive our quarterly newsletter, *Triangle Times*. This publication includes news items, announcements of policy changes, review of individual Standards, and other information relevant to our accredited organizations. It will be mailed to the primary contact for your organization. You may request additional copies by providing additional names via e-mail to [marketing@aaahc.org](mailto:marketing@aaahc.org). Our e-newsletter, *Connection*, requires a subscription. It is published every other month and usually focuses on a single topic. Request a free subscription by e-mailing [marketing@aaahc.org](mailto:marketing@aaahc.org).

Again, please accept my sincere congratulations on your achievement.

Best regards,

Stephen A. Martin, Jr., Ph.D., M.P.H.

President & CEO





ACCREDITATION ASSOCIATION  
for AMBULATORY HEALTH CARE, INC.

## ACCREDITATION NOTIFICATION

November 20, 2015

Organization #	82305		
Organization Name	Thomas Johnson Surgery Center, LLC		
Address	197 Thomas Johnson Drive		
City   State   Zip	Frederick	MD	21702-4314
Decision Recipient	Ms. Naomi Allen, RN		
Survey Date	10/19/2015-10/20/2015	Type of Survey	Re-Accreditation
Accreditation Type	Full Accreditation		
Accreditation Term Begins	12/6/2015	Accreditation Term Expires	12/5/2018
Accreditation Renewal Code		F2FF36F582305	
Complimentary AAAHC Institute study participation code		82305FREEIQI	

As an ambulatory health care organization that has undergone the AAAHC Accreditation Survey, your organization has demonstrated its substantial compliance with AAAHC Standards. The AAAHC Accreditation Committee recommends your organization for accreditation.

### Next Steps

- Members of your organization should take time to thoroughly review your Survey Report.
  - Any Standard marked "PC" (Partially Compliant) or "NC" (Non-compliant) must be corrected promptly. Subsequent surveys by AAAHC will seek evidence that deficiencies from this survey were addressed without delay.
  - The Summary Table provides an overview of compliance for each chapter applicable to your organization.
- AAAHC Standards, policies and procedures are reviewed and revised annually. You are invited to participate in the review through the public comment process each fall. Your organization will be notified when the proposed changes are available for review. You may also check the AAAHC website in late summer for details.
- Accredited organizations are required to maintain operations in compliance with the current AAAHC Standards and policies. Updates are published annually in the AAAHC *Handbooks*. Mid-year updates are announced and posted to the AAAHC website, [www.aaahc.org](http://www.aaahc.org).

Organization # 82305

Organization: Thomas Johnson Surgery Center, LLC

November 20, 2015

Page 2

4. In order to ensure uninterrupted accreditation, your organization should submit the *Application for Survey* approximately five months prior to the expiration of your term of accreditation. In states for which accreditation is mandated by law, the *Application* should be submitted six months in advance to ensure adequate time for scoping and scheduling the survey.

**NOTE:** You will need the Accreditation Renewal Code found in the table at the beginning of this document to submit your renewal application.

### Additional Information

The complimentary AAAHC Institute study participation code on the first page of this document may be used to register for one six-month, AAAHC Institute for Quality Improvement benchmarking study. Please visit [www.aaahc.org/institute](http://www.aaahc.org/institute) for more information or contact Michelle Chappell at 847.324.7747 or [mchappell@aaahc.org](mailto:mchappell@aaahc.org).

The packet of brochures and the marketing kit in this mailing are designed to help you use your accreditation to educate and inform multiple audiences—your current and prospective patients, your payers, and your community—about AAAHC accreditation and the quality of care you deliver. Please remember that these are suggestions; tailored marketing activities with specific objectives will be most effective.

Throughout your term of accreditation, AAAHC will communicate announcements via e-mail to the primary contact for your organization. Please be sure to notify us ([notify@aaahc.org](mailto:notify@aaahc.org)) should this individual or his/her contact information change.

If you have questions or comments about the accreditation process, please contact AAAHC Accreditation Services at 847.853.6060. We look forward to continuing to partner with you to deliver safe, high-quality health care.



ACCREDITATION ASSOCIATION  
for AMBULATORY HEALTH CARE, INC.





STATE OF MARYLAND

DHMH

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**Maryland Department of Health and Mental Hygiene**

**Office of Health Care Quality**

Spring Grove Center • Bland Bryant Building

55 Wade Avenue • Catonsville, Maryland 21228-4663

*Larry Hogan, Governor - Boyd K. Rutherford, Lt. Governor - Dennis R. Schrader, Secretary*

September 28, 2017

To Whom It May Concern

**Subject: Thomas Johnson Surgery Center**

Dear Sir or Madam:

Our records indicate that **Thomas Johnson Surgery Center, located at 197 Thomas Johnson Drive Frederick, Maryland 21702, License Number A1465, Expiration Date: July 7, 2020**, is in compliance with State and Federal Conditions for Participation in the Medicare program at this time.

Sincerely,

Verlean Connor

Office Secretary III

Office of Health Care Quality

Ambulatory Care Programs

410 402 8270 (Phone)

410 402 8277 (Fax)







STATE OF MARYLAND

**DHMH**

**Maryland Department of Health and Mental Hygiene**

201 W. Preston Street Baltimore, Maryland 21201

Martin O'Malley, Governor - Anthony G. Brown, Lt. Governor - John M. Colmers, Secretary

DATE OF ISSUE: 04/20/09

THOMAS JOHNSON SURGERY CENTER LLC  
197 THOMAS JOHNSON DRIVE  
FREDERICK MD 21702-0000

Provider Type: 39 AMBUL SURG  
Primary Speciality:

Welcome to the Maryland Medicaid Program.

The enrollment application you submitted has been approved. Your Maryland Medicaid provider number is 4163478 00. Your service begin date is 07/08/08. Please use this number when corresponding with this agency or whenever you bill Medicaid for service beginning 07/08/08.

Please refer to the information packet that was initially sent to you with your enrollment application for billing instructions, preauthorization requirements, time limitations, coverage and information sources.

If any of the information you supplied on your application changes, (mailing address, practice locations, speciality, tax I.D., etc.) you must notify the Provider Enrollment Section immediately in writing.

Thank you for participating in the Maryland Medical Assistance Program.

Sincerely,

Provider Enrollment Section



## Medicare Part B

October 3, 2008

Thomas Johnson Surgery Center, LLC  
197 Thomas Johnson Dr  
Frederick, MD 21702-4314

Attention: Cathy L. Rudisill

Dear Thomas Johnson Surgery Center, LLC:

We are pleased to inform you that your Medicare enrollment application 855B is approved. Below is the information reflected in your Medicare enrollment record, including your National Provider Identifier (NPI) and Provider Transaction Access Number (PTAN).

Your NPI is now approved to bill the Medicare program. You must use your NPI on all Medicare claim submissions. Your PTAN is also activated for use and is required to access the interactive voice response (IVR) system for inquiries concerning claims status, beneficiary eligibility, check status or other supplier related transactions.

### Medicare Enrollment Information

Provider/Supplier Name:	Thomas Johnson Surgery Center, LLC
Practice location:	197 Thomas Johnson Dr Frederick, MD 21702-4314
National Provider Identifier (NPI)	1679757959
Provider Transaction Access Number (PTAN)	132603
Specialty:	Ambulatory Surgical Center
You are a:	Participating Provider
Effective date:	July 7, 2008
Electronic Funds Transfer Effective Date	October 19, 2008

Please be advised of the following information regarding the Medicare fee-for-service NPI contingency and key Medicare NPI implementation dates:

**March 3, 2008** - Medicare fee-for-service CMS-1500 claims must include an NPI in the primary fields on the claim (i.e., the billing, pay-to, and rendering fields). You may continue to submit NPI/legacy pairs, or only the NPI, in these fields on the claim. You may not submit claims containing only a legacy identifier (PIN) in the primary fields. Failure to submit an NPI in the primary fields will result in your claim being rejected or returned as unprocessable beginning March 1, 2008. Until further notice, you may continue to include legacy identifiers only for the secondary fields.

**HIGHMARK.**  
MEDICARE SERVICES

A CMS CONTRACTOR  
ISO 9001:2000 CERTIFIED  
Camp Hill, PA 17089  
[www.highmarkmedicare.com](http://www.highmarkmedicare.com)  
LH055 (5-06)

Exhibit 11

Transfer Agreement



## Transfer Agreement

THIS AGREEMENT is made as of August 16, 2017, by and between Thomas Johnson Surgery Center, LLC (herein called "Center"), located at 197 Thomas Johnson Drive, Frederick, Maryland 21702 and Frederick Memorial Hospital (herein called "Hospital"), located at 400 West Seventh Street, Frederick, Maryland 21701.

WHEREAS, both Center and Hospital desire, by means of this Agreement, to ensure continuity of care and treatment appropriate to the needs of patients of the Center and at the Hospital, utilizing the knowledge and resources of both facilities in a coordinated and cooperative fashion to improve the care of patients;

NOW, THEREFORE, in consideration of the mutual advantages accruing to the parties hereto, Center and Hospital hereby covenant and agree with each other as follows:

1. This shall be effective from August 16, 2017 and shall continue in effect for one year and must be renewed at that time except that either party may withdraw by giving sixty (60) days notice in writing to the other party of its intention to withdraw from this Agreement, whereupon withdrawals shall be effective at the expiration of the sixty (60) day period. However, this Agreement shall terminate immediately if either party shall have its license to operate revoked by the State of Maryland or its ability to participate in the Medicare and/or Medicaid programs is terminated.
2. Center's Responsibilities under this Agreement:
  - a. The Center shall be responsible for appropriate and safe transfer of the patient to Hospital. The mode of transportation will depend upon the circumstances and condition of the patient, and the physician's order, if applicable.
  - b. The Center shall be responsible for providing emergency care and stabilizing treatment within the bounds of its capability to its patients until safe transfer from the Center can be accomplished.
  - c. The Center shall be responsible for the security of the patient's property, including personal effects, money, and any other items brought with the patient to the Center, and for keeping appropriate records of same.
  - d. The Center shall be responsible for obtaining the informed consent of the patient or his/her medical decision maker for the transfer, including discussion of the risks, benefits, and alternatives to transfer, if any.
  - e. The Center agrees to send with each patient at the time of transfer, or as promptly as possible, such pertinent medical information necessary to continue the patient's treatment without interruption and to provide essential identifying information on referral forms, as well as health insurance information. Pertinent medical information may include, but is not limited to medical history, allergies, results of examinations, treatment records, and medication records.
  - f. The Center agrees to provide Hospital's Emergency Department as much advance notice of a transfer as reasonably possible.
  - g. The Center is responsible for notifying the patient's next of kin or responsible person regarding the transfer.
3. Hospital's Responsibilities under this Agreement:
  - a. The Hospital shall be responsible to provide an appropriate medical screening examination, including any appropriate testing, and stabilizing care and treatment to a transferred patient.



- b. The Hospital shall be responsible for admitting a transferred patient who meets admission/observation standards, assuming the availability of a hospital bed and that the needed care falls within the capabilities of the Hospital.
  - c. If the medical needs of a transferred patient are beyond the capabilities of the Hospital or a Hospital bed is not available, then the Hospital shall be responsible for a proper transfer to another facility capable of caring for the patient.
- 4. All bills incurred with respect to services performed by the Hospital for patients transferred pursuant to this Agreement, shall be collected by the institution rendering such services directly from the patient, responsible party representative, third party insurance coverage or other sources normally billed by the institution, and neither Hospital nor Center shall have any liability to the other for such charges.
- 5. Any dispute, which might arise under this Agreement, shall be discussed directly by the department of the Hospital that is directly involved and the Director of the Center.
- 6. The governing bodies of Center and Hospital shall have exclusive control of the policies, management, assets and affairs of their respective institutions. Neither party assumes any liability, by virtue of this Agreement, for any debts or other obligations for other party's actions. Nothing in this Agreement shall be construed as limiting the rights of either party to affiliate or contract with any other hospital or other health care provider, while this Agreement is in effect.
- 7. Neither party shall use the name of the other party in any promotion or advertising unless prior written approval of the intended use is obtained from the party whose name is to be used.
- 8. Miscellaneous.
  - a. Omnibus Budget Reconciliation Act of 1980 (herein called "the Act"). Pursuant to Section 952 of the Act, until the expiration of four (4) years after the furnishing of the services provided under this Agreement, the parties will each make available to the U.S. Secretary of Health and Human Services, the U.S. Comptroller General, and their representatives this contract and all books, documents, and records necessary to certify the nature and extent of the costs of those services. If any party carries out a portion of its duties, worth \$10,000 or more over a 12-month period, under this Agreement through a subcontract with a related organization, the subcontract will also contain an access clause to permit access by the Secretary, Comptroller General, and their representatives to the related organization's books and records.
  - b. Amendments. This Agreement may be altered, revised, or amended only by means of a written instrument signed by an authorized official of each party.
  - c. Notices. Any notices given pursuant to this Agreement will be in writing and will be delivered by hand or by certified mail. Notices will be sent to the attention of each party's President or Medical Director at the addresses set forth above.
  - d. Assignment. This Agreement may not be assigned without the prior written consent of all parties.
  - e. Governing Law. This Agreement will be governed and construed according to Maryland law.
  - f. Waiver. Failure of any party to assert any right, benefit, obligation, or relief under this Agreement will not constitute a waiver thereof.
  - g. Medical Staff Privileges. The parties to this Agreement acknowledge that all physicians performing surgery or other diagnostic procedures at Center shall

maintain active medical staff privileges, including all rights and obligations thereto, at Hospital.

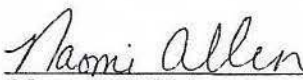
- h. Severability. The provisions of this Agreement will be severable, and in the event that any term or condition is held to be invalid or unenforceable, the remaining terms and conditions of this Agreement will continue in full force and effect.
- i. Complete Agreement. This Agreement sets forth the complete agreement of the parties regarding its subject matter, and supersedes any prior agreements between the parties. This Agreement may be modified or amended from time to time by mutual agreement of the parties and such modifications or amendments shall be attached to and become part of this Agreement.

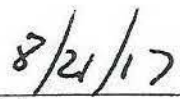
IN WITNESS WHEREOF, the authorized representatives of the parties to this Agreement have caused their respective principal's name to be subscribed to this Agreement.

For Frederick Memorial Hospital:

For (Center):

  
\_\_\_\_\_  
Craig F. Rosendale, VP/CCO

 Administrator  
\_\_\_\_\_  
(Name and Title)

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date



## Exhibit 12

Architect Letter on FGI Guidelines



September 18, 2017

**THOMAS JOHNSON SURGERY CENTER  
PROPOSED OPERATING ROOM CONVERSION  
197 THOMAS JOHNSON DRIVE  
FREDERICK, MARYLAND**

**PROGRAM NARRATIVE**

**TBG PROJECT #17532/0.3**

**General Building Information:**

The proposed project will be to convert an existing procedure room located in the existing Thomas Johnson Surgery Center located at 197 Thomas Johnson Drive, Frederick, MD into operating room that will be approximately four hundred twenty square feet [420 SF (+/-)]. The proposed operating room size will meet the minimum square footage requirements set by the State of Maryland for ambulatory surgery facilities. Nurse call system and medical gas system will be modified as required to comply with code. The existing Center is fully sprinkler and meets current building codes.

**Applicable Standards:**

The construction documents will be designed in compliance with following applicable codes:

**Maryland Department of Health:**

COMAR Title 10 Freestanding Ambulatory Care Facilities  
2014 Guidelines for Design and Construction of Healthcare Facilities – The Facilities Guidelines Institute  
2015 International Building Code  
2012 National Standard Plumbing Code  
2012 National Fuel Gas Code  
2015 International Mechanical Code  
2015 International Energy Conservation Code (IECC)  
2014 National Electrical Code (NFPA 70)  
2012 Life Safety Code (NFPA 101)  
2015 Life Safety Code (NFPA 101 – amendments)  
Maryland State Accessibility Code

**Programmed Spaces: Per 2014 Guidelines for Design and Construction of Healthcare Facilities**

The only new program spaces will be the conversion of an existing Procedure Room into Operating room.

Operating Rooms:	One (1) Existing	
Pre-Op:	Existing	
Post-Op Phase I Recovery:	Existing	
Post-Op Phase II Recovery:	Existing	
Support Areas for Pre-O and Post-Op:		All Existing
Support Areas for Patients, Families and Visitors:		All Existing
Support Areas General:	All Existing	
Nurses Station:	Existing	
Supervisor Office:	Existing	
Hand Scrub Facilities:	Existing	
Med Room:	Existing	
Nourishment:	Existing	
Soiled Hold:	Existing	
Clean Hold:	Existing	
Equipment Storage:	Existing	
Environmental Services:	Existing	
Support Areas for Surgical Suite Staff:		All Existing
Staff Lounge:	Existing	
Staff Changing Areas:	Existing	
Staff Toilet:	Existing	

#### **HVAC SYSTEMS:**

The existing HVAC system will support the proposed conversion. Mechanical work will be limited to re-routing existing ductwork to match the new floor plan. Modifications will be minimum and will not affect the existing life safety systems. The mechanical system will be balanced at the completion of the project. During construction, all areas within the construction area will be maintained under negative pressure.



**PLUMBING SYSTEMS:**

Medical gas work should it be required (outlets and piping) will be done per 2012 NFPA 99.

**FIRE PROTECTION SYSTEMS:**

The existing sprinkler system will remain without modifications.

**ELECTRICAL SYSTEMS:**

The existing electrical system will be modified as required to meet current electrical code.

The modification to existing nurse call system will be performed as required.

Exhibit 13.

Bank Letter Regarding Project Financing

September 25, 2017

Thomas Johnson Surgery Center, LLC  
ATTN: Jim Budney, CFA  
197 Thomas Johnson Drive  
Frederick, MD 21702

RE: Commitment Letter

Mr. Budney:

Based on the information provided to Physicians Capital / Evolve Bank & Trust ("Bank"), please accept this letter as formal notification of Bank's commitment to lend Thomas Johnson Surgery Center, LLC the following:

Funds: Not to exceed \$350,000  
Purpose: Funds may be used for costs associated with planned improvements at the center.

The commitment letter is dependent on the information presented and is subject to review in the event of material changes to the presented plan.

Please let me know if you have any questions.

Thank you,



President



Exhibit 14

Letters of Support

**Allen, Naomi**

---

**From:** Steve Heine <SHeine@woodsborobank.com>  
**Sent:** Tuesday, September 12, 2017 9:43 PM  
**To:** Allen, Naomi  
**Subject:** Letter of Support for Thomas Johnson Surgery Center

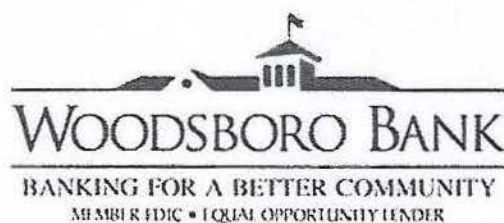
To the Maryland Health Commission:

As a longtime member and banker in the Frederick community I have experienced the growth of our community from a personal and business perspective. A key growth area is in health care. We are fortunate to have a vibrant, skilled and growing medical community in Frederick. This reflects the growing health care needs of our community and the desire by residents to stay local for health care. The growing population in central Maryland has created travel congestion issues on the major highways intersecting Frederick which has also prompted residents to look for health care close to home. These facts are the basis for my support of expanding the Thomas Johnson Surgery Center. Expanding the surgery center will improve healthcare for Frederick residents and the overall quality of care in the county. Last, expanding the surgery center will also help to retain quality doctors in Frederick thus also contributing to the quality of care in Frederick. I strongly support expanding the Surgery Center and hope you will do the same.

Kindest regards,

Steve Heine

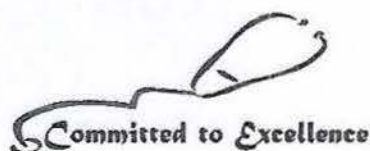
Stephen K. Heine  
President and CEO  
Woodsboro Bank  
O 301-898-4785  
C 301-471-7475



Please consider the environment before printing this e-mail.

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Steven J. Brand, MD, FACS

Mark E. Artusio, MD, FACS

45 Thomas Johnson Drive, Suite 211  
Frederick, MD 21702

Phone: (301) 694-3200 Fax: (301) 662-5288  
www.forisgroup.com

August 29, 2017

To Whom It May Concern:

During my professional career I have worked with many surgical facilities and their administrators and I can state without hesitation that the Thomas Johnson Surgery Center is by far the best in every aspect. The Thomas Johnson Surgery Center staff and administrator conduct themselves in a professional manner at all times. The total care that they provide to our patients is superior to other facilities.

The initial scheduling process is handled with cooperation and accommodation to both our needs and the patient's needs. The pre-operative coordination is closely monitored to ensure that all needs and requirements, both administrative and clinical, are met. The clinical care provided by the center's nursing and surgical staff is exceptional. There is an open communication with the facility during the entire course of care. Patients have consistently expressed to me their gratitude for the care that they have received at the Thomas Johnson Surgery Center. The patients are treated with respect and dignity throughout the entire episode of care. This type of outstanding care and service is a direct reflection on the quality administration of the center.

The Thomas Johnson Surgery Center's administrator and staff's commitment to excellent care and service to our patients provides our office and surgeons with complete confidence. Because of the quality of care centered service, my preference for all of our patients is to have their surgical care performed at the Thomas Johnson Surgery Center.

Sincerely,

  
Johanna Castle, C.M.M.  
Office Manager



Alicia James  
79 Hillcrest Drive  
Kearneysville, WV 25430

August 28, 2018

Thomas Johnson Surgery Center  
197 Thomas Johnson Drive  
Frederick, MD 21702

To Whom It May Concern:

I would like to express my appreciation for the staff at the Thomas Johnson Surgery Center. The care that was provided to me was outstanding. From the initial pre-registration to the after-surgery follow-up, my experience was exceptional.

The on-line registration process was fast and easy. All needed instructions were provided in a thorough and clear manner. The staff was professional, attentive, and caring on the day of my procedure. They ensured that I was comfortable and relaxed at all times. The surgeon and anesthesiologist met with me prior to surgery to explain everything and answered all of my questions. The day after surgery, the follow-up phone call was helpful and greatly appreciated.

While surgery can be taxing, the staff at the Thomas Johnson Surgery Center made the whole experience less stressful. I would certainly without hesitation recommend the Thomas Johnson Surgery Center.

Sincerely,

  
Alicia James

August 30, 2017

Thomas Johnson Surgery Center  
197 Thomas Johnson Drive  
Frederick, MD 21702

To whom it may concern,


I just wanted to express my experience with the Thomas Johnson Surgery Center.

I enjoyed coming to the center vs the hospital for several reasons. The time you have to arrive to the hospital is a lot earlier than the center. At the hospital we have experienced extended delays with surgery times. At the center the surgery was on time. The staff is all very friendly, efficient and attentive.

The surgery center is smaller than the hospital and the atmosphere feels more comfortable. I have recommended the center to friends and relatives.

Again, thank you for all for the caring.

Sincerely,

A handwritten signature in cursive script that reads "Cora Mae Cool". The signature is written in dark ink and is positioned below the word "Sincerely,".

Cora Mae Cool  
1004 Flat Run Court  
Emmitsburg, MD 21727

October 2, 2017

Thomas Johnson Surgery Center  
197 Thomas Johnson Road  
Frederick, Maryland  
21702

To Whom It May Concern,

I am writing this letter to express my complete satisfaction in working with the physicians and staff at Thomas Johnson Surgery Center. I have been working closely with TJSC for several years now and I am continually impressed with the top-notch level of professionalism. All while achieving their number one goal of the highest possible patient care. The daily positive attitude from a knowledgeable staff makes working alongside them a pleasure.

Thomas Johnson Surgery Center offers patients an affordable option for their outpatient procedures while maintaining the highest level of excellent patient care and integrity. I feel this is a true benefit to the community and look forward to supporting and working with the management and staff in the future as they continue to grow.

Regards,

A handwritten signature in black ink that reads "Paul Burick". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Paul Burick  
Medtronic Spinal & Biologics



Keeney & Basford P.A. Funeral Home  
106 East Church Street  
Frederick, Maryland 21701-5404  
(301) 662-2175  
[www.keeneybasford.com](http://www.keeneybasford.com)

September 20<sup>th</sup>, 2017

To Whom it may concern,

I wanted to offer our support to the Thomas Johnson Surgery Center as a tremendous asset to Frederick County and those seeking affordable options to the normal in-hospital/in-patient based procedures.

It is a true benefit to the community for your center to operate here in Frederick County and afford these health care options for those seeking outpatient procedures.

I know with the competent staff of nurses and physicians these patients received the highest level of care and we support fully the operation of the center and future increased services.

Most Sincerely,



Keith L. Roberson  
VP & Co-Owner



*Compassion ~ Dignity ~ Respect*

## Exhibit 15

### Affirmations

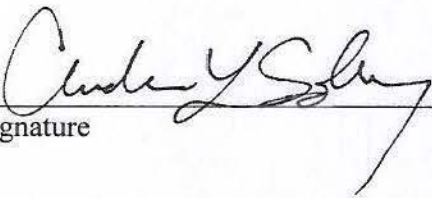
I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information, and belief.

Naomi Allen  
Signature

10/04/2017  
Date



I hereby declare and affirm under the penalties of perjury that the facts stated in this application and its attachments are true and correct to the best of my knowledge, information, and belief.

  
Signature

10/4/2017  
Date