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JUN 26 2012

HEALTH FACILITIES &
SERVICES REVIEW BOARD

OUR FILE NUMBER:

25466.00100

June 25, 2012

VIA FEDERAL EXPRESS

Illinois Health Facilities and Services Review Board
525 Jefferson Street
Springfield, Illinois 62761
Ms. Courtney Avery, Administrator
Members of the Board

Re: Project Number 11-111
The IVF Center at RMI

Dear Honorable Members of the Review Board and Ms. Avery:

We are counsel to Oak Brook Surgical Centre, Inc. ("OBSC") and the beneficial owner (the "Owner") of the building (the "Building") upon which the proposed Project is located. These comments are presented on behalf of OBSC and the Owner.

OBSC currently operates a fully licensed Ambulatory Surgical Treatment Center in the Building with 4 surgical suites. One surgical suite is connected to the Applicant's suite. At times the OBSC facility is used by Applicant's physicians.

OBSC respectfully objects to the issuance of the Certificate of Need to Oak Brook Fertility Center Ltd. for its Facility known as "The IVF Center at RMI" located at 2425 W. 22nd Street, Suite 102, Oak Brook, Illinois (the "Premises"). OBSC and the Owner have expressed to the Applicant's representatives their objections to the Project and remain available to accommodate the Applicant in being able to provide services in OBSC's facility.

OBSC objects to the Application for the following reasons:

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1. Section 4 of the Lease for the Premises dated July 10, 2010 (between the Owner and Reproductive Medicine Institute, LLC) found at Pages 63 and 64 of the Application provides that the Tenant is prohibited from using or occupying the Premises for any purposes which competes with the services of the other tenants of the Building.

OBSC and the Owner contend that the operation of a licensed Ambulatory Surgical Treatment Center at the Premises is a direct violation of the Lease and the services rendered by OBSC. If the Applicant obtains the license contemplated by the Application, the Owner is contemplating legal action against the RMI for breach or default of the Lease, including a possible action to terminate the Lease.

In a letter dated October 31, 2011 (a copy of which is attached), the Owner notified Ms. Lisa Rinehart that the Project violates the terms of the Lease.

2. Second, according to the Application, the Applicant is Oak Brook Fertility Center, Ltd., an entity which is not a party to the Lease. We also understand that Reproductive Medicine Institute, LLC entered into a Sublease Agreement dated June 1, 2011 (copy attached on Pages 91 and 92 of the Application). However, Section 13 of the Lease (found at Pages 69 and 70 of the Application) prohibits the sublease, without the consent of the Owner.

Based upon many factors, including Section 4 of the Lease referred to above, the Owner does not and will not consent to the sublease.

Thus, the Applicant is without authority to occupy the Premises and the Lease is subject to termination.

3. Third, as was clearly presented to the Board during the April 17, 2012 Meeting, in order for the Facility to comply with the various standards set forth in Title 77, Chapter I, subchapter 6, Part 205 – Ambulatory Surgical Treatment Center Licensing Requirements, the Project will require substantial alterations to the Premises, many of which have been outlined in correspondence to the Board and at the April 17, 2012 Meeting.

Pursuant to Section 12 of the Lease (found at Pages 68 and 69 of the Application), the required alterations require the Owner's consent. The Owner has indicated to the Applicant that it will not consent to the required alterations.

The Applicant requested clarification from the Illinois Department of Public Health (IDPH) whether the facility would be exempt from meeting ALL of the requirements for licensure and thus be able to avoid making the required modifications to the Premises. On June 18, 2012, IDPH advised Applicant in a letter made available to the Board, that the Project

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would not be exempt from these requirements. Thus, it is Owner's strong belief that IDPH would not grant a license to operate as an ASTC without the required modifications.

4. The Building has an emergency generator. The Owner understands that an emergency generator is required to operate a licensed ASTC. The Owner has permitted the current occupant of the Premises to use the Building's emergency generator for its IVF refrigerator, but will not approve the use of the Building's emergency generator for the Premises and will not approve the installation of an emergency generator to serve the Premises.

5. The Applicant's affiliated medical practice is already performing office based surgical procedures without having obtained an ASTC license or a Certificate of Need. It is the Owner's belief that the granting of the requested Permit will increase costs, rather than decrease or control costs. This is contrary to one of the goals of the Certificate of Need process. During its presentation, the Applicant stated that it seeks a license to operate an ASTC in order to receive reimbursement from various payer sources for the costs related to this "facility". This reimbursement would not be permissible without the ASTC license. The Applicant also stated that the payers were increasingly demanding that providers demonstrate quality. While this is undoubtedly true, the Applicant should be able to demonstrate the quality demanded by the payers by seeking accreditation for its facility, rather than licensure. It is licensure that will increase the cost of delivering the services to the public.

For these and other reasons, we respectfully request that the Board deny the Application.

Very truly yours,



Paul A. Gilman

PAG/

1267934.1

October 31, 2011

Mrs. Lisa A. Rinehart
Chief Operating Officer
Reproductive Medicine Institute
2425 W. 22nd Street, Suite 102
Oak Brook, IL 60523

RE: Con for ASTC

Dear Lisa:

Thank you for your letter dated October 4, 2011 regarding your CON application. I also want to thank you for allowing me to review your application. Please be advised that section 4 of your office lease states:

"Use of Premises.

Tenant shall use and occupy the Premises for office practice of **Reproductive Medicine** and for no other use or purpose. Tenant shall not use or occupy the Premises or permit the use of occupancy of the Premises for any purpose or in any manner which (i) is unlawful or in violation of any applicable legal or governmental requirement, ordinance or rule; (ii) may be dangerous to persons or property; (iii) may invalidate or increase the amount of premiums for any policy of insurance affecting the Property, and if any additional amounts of insurance premiums are so incurred, Tenant shall pay to landlord the additional amounts on demand; or (iv) may create a nuisance, disturb any other tenant of the building or injure the reputation of the Building; or compete with the services of the other tenants of the building."

Furthermore, being adjacent to Oak Brook Surgical Center does not make you in conformance with the CON requirement.

As you know, I always would like to assist you in order to become more successful, but to protect our established rules is essential for every ones protection.

Very Truly,


Kianoosh Jafari, MD

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (this "Agreement") is entered into as of June 1, 2011 by and between Reproductive Medicine Institute ["Sublandlord"] and Oak Brook Fertility/Facility ("Subtenant").

RECITALS:

- A. Sublandlord entered into a certain lease, as "Tenant" thereunder, dated July 1, 2010 (the "Lease") with LaSalle National Trust, NA, as Trustee under trust number 113573, as "Landlord" thereunder, pursuant to which Sublandlord leased the "Premises" therein described in the office project commonly known as Oak Brook Surgical Center (the "OBSC") located at 2425 West 22nd Street, Suite 102, Oak Brook, Illinois.
- B. Sublandlord desires to sublease that portion of the Premises to Subtenant as identified on Exhibit A attached hereto (the "Sublease Portion"), and Subtenant desires to sublease the Sublease Portion from Sublandlord, on and subject to the terms and provisions herein contained.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Sublandlord and Subtenant agree as follows:

- 1. **Demise of Sublease Portion to Subtenant.** For value received, Sublandlord hereby sublets the Sublease Portion to Subtenant from October 1, 2010 through September 30, 2020, provided, however, that in no event shall this term exceed the expiration date of the Lease.
- 2. **Terms of Sublease.**
 - a. **General.** Except as hereinafter provided, the subleasing of the Sublease Portion by Subtenant shall be on and subject to the same terms and provisions of the Lease to the same extent as if all said provisions were specifically recited herein and Subtenant were to be the "tenant" thereunder and Sublandlord the "landlord" thereunder. To the extent of the terms and provisions hereof are inconsistent with the terms and the provisions of the Lease, as between Sublandlord and Subtenant, the terms and provisions hereof shall control.
 - b. **Rent.**

Subtenant shall pay to Sublandlord a rent payment, in the amount determined below, by the fifth (5th) day of each calendar month. Such rent payment shall include, but not be limited to: use of the premises, a designated office space, administrative services, support services, and such utilities and supplies necessary to support Subtenant's business purposes. In the event that Subtenant incurs expenses significantly over and above normal utilization, or specialized to Subtenant's needs, Sublandlord reserves the right to charge such expenses directly to Subtenant.

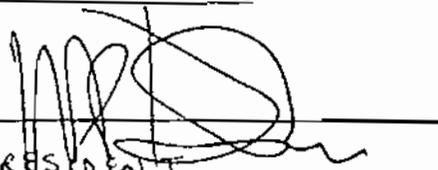
	Year	Rental Period	Monthly Base Rent
A portion of Suite #102	1	10/1/2010 to 9/30/2011	\$7754.07
	2	10/1/2011 to 9/30/2012	\$7754.07
	3	10/1/2012 to 9/30/2013	\$7986.69
	4	10/1/2013 to 9/30/2014	\$8226.29
	5	10/1/2014 to 9/30/2015	\$8473.08
	6	10/1/2015 to 9/30/2016	\$8727.27
	7	10/1/2016 to 9/30/2017	\$8989.09
	8	10/1/2017 to 9/30/2018	\$9258.76
	9	10/1/2018 to 9/30/2019	\$9536.53
	10	10/1/2019 to 9/30/2020	\$9822.62

3. **Acceptance of Sublease Portion.** Subtenant accepts the Sublease Portion in its present "as is" condition.
4. **No Assignment.** Subtenant shall not assign this Agreement or further sublet the Premises, in whole or in part. Any assignment or sublease in violation of this provision shall be null and void, but the attempt thereof shall be a default under this Agreement and shall allow Sublandlord to exercise any and all rights it may have pursuant hereto and/or as available under law.
5. **Assumption.** Subtenant, without release of Sublandlord, assumes all of the obligations of Sublandlord under the Lease. Sublandlord acknowledges and agrees that Landlord's consent hereby below given shall not constitute or operate as a release of Sublandlord of its obligations under the Lease, Sublandlord being and remaining fully liable for same.
6. **Acknowledgment.** Assignor and Assignee acknowledge and agree to all of the terms and provisions of the *Consent of Landlord* attached to this Assignment.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

SUBLANDLORD:

Reproductive Medicine Institute

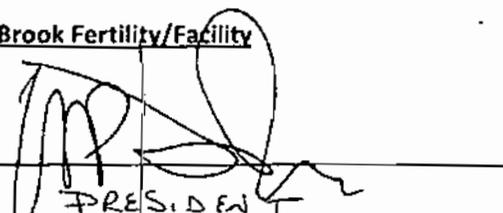
BY: 

ITS: PRESIDENT

NAME: W. Paul Dmowski, MD PhD

SUBTENANT:

Oak Brook Fertility/Facility

BY: 

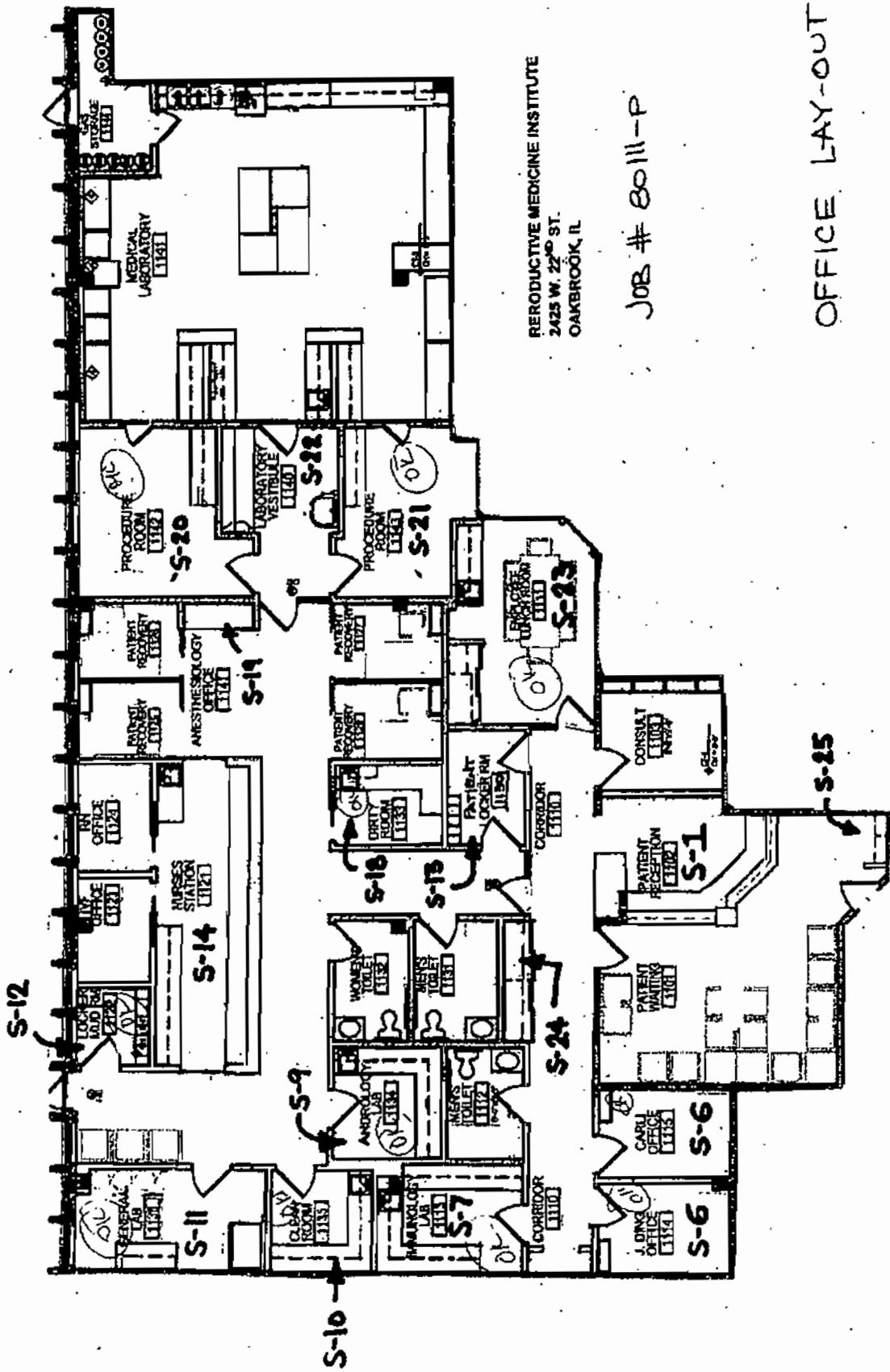
ITS: PRESIDENT

NAME: W. Paul Dmowski, MD PhD

Exhibit A

[See attached floor plan.]

The Subtenant shall occupy approximately eighty percent (80%) of the total floor space of Suite 102.



REPRODUCTIVE MEDICINE INSTITUTE
 2425 W. 22ND ST.
 OAKBROOK, IL

JOB # 80111-P

OFFICE LAY-OUT