

**ORIGINAL**

13-030

**ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
APPLICATION FOR PERMIT**

**RECEIVED**

**SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION**

MAY 28 2013

**This Section must be completed for all projects.**

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

**Facility/Project Identification**

Facility Name: Elmwood Park Same Day Surgery Center		
Street Address: 1614 North Harlem Avenue		
City and Zip Code: Elmwood Park, Illinois 60707		
County: Cook	Health Service Area: 007	Health Planning Area: 031

**Applicant /Co-Applicant Identification**

**[Provide for each co-applicant [refer to Part 1130.220].**

Exact Legal Name: Elmwood Park Surgery Center Acquisition & Development LLC
Address: 1614 North Harlem Avenue, Elmwood Park, Illinois 60707
Name of Registered Agent: Edward J. Green, Esq., Foley & Lardner LLP
Name of Chief Executive Officer: Scott Borre
CEO Address: 1800 Lake Avenue, Highland Park, Illinois 60035
Telephone Number: 312-287-0158

**Type of Ownership of Applicant/Co-Applicant**

<input type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental
<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other

- o Corporations and limited liability companies must provide an **Illinois certificate of good standing.**
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**Facility/Project Identification**

Facility Name: Elmwood Park Same Day Surgery Center		
Street Address: 1614 North Harlem Avenue		
City and Zip Code: Elmwood Park, Illinois 60707		
County: Cook	Health Service Area: 007	Health Planning Area: 031

**Applicant /Co-Applicant Identification**

[Provide for each co-applicant [refer to Part 1130.220].

Exact Legal Name: Scott Borre
Address: 1800 Lake Avenue, Highland Park, Illinois 60035
Name of Registered Agent: N/A
Name of Chief Executive Officer: N/A
CEO Address: N/A
Telephone Number: 312-287-0158

**Type of Ownership of Applicant/Co-Applicant**

<input type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership	
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental	
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship	<input checked="" type="checkbox"/> Other
<ul style="list-style-type: none"> <li>o Corporations and limited liability companies must provide an <b>Illinois certificate of good standing.</b></li> <li>o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.</li> </ul>		
<b>APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</b>		

**Primary Contact**

[Person to receive all correspondence or inquiries during the review period]

Name: Edward J. Green, Esq.
Title: Attorney
Company Name: Foley & Lardner LLP
Address: 321 North Clark Street, Suite 2800, Chicago, Illinois 60654
Telephone Number: (312) 832-4375
E-mail Address: egreen@foley.com
Fax Number: (312) 832-4700

**Additional Contact**

[Person who is also authorized to discuss the application for permit]

Name: Scott Borre
Title: Chief Executive Officer
Company Name: Elmwood Park Surgery Center Acquisition & Development LLC
Address: 1614 North Harlem Avenue, Elmwood Park, Illinois 60707
Telephone Number: (312) 287-0158
E-mail Address: scottlabor1@aol.com
Fax Number: (847) 681-1090

**Post Permit Contact**

[Person to receive all correspondence subsequent to permit issuance-**THIS PERSON MUST BE EMPLOYED BY THE LICENSED HEALTH CARE FACILITY AS DEFINED AT 20 ILCS 3960**

Name: Scott Borre
Title: Chief Executive Officer
Company Name: Elmwood Park Surgery Center Acquisition & Development LLC
Address: 1614 North Harlem Avenue, Elmwood Park, Illinois 60707
Telephone Number: (312) 832-4375
E-mail Address: scottlabor1@aol.com
Fax Number: (847) 681-1090

**Site Ownership**

[Provide this information for each applicable site]

Exact Legal Name of Site Owner: Chicago Title Land Trust Company, Successor Trustee to LaSalle National Bank and Trust of Chicago, As Trustee Under a Trust Agreement Dated April 1, 1971 and Known as Trust No. 22-75583-00-9
Address of Site Owner: Chicago Title Land Trust Company, 10 South LaSalle Street, Suite 2750, Chicago, Illinois 60603
Street Address or Legal Description of Site: 1614 North Harlem Avenue, Elmwood Park, Illinois 60707 Proof of ownership or control of the site is to be provided as Attachment 2. Examples of proof of ownership are property tax statement, tax assessor's documentation, deed, notarized statement of the corporation attesting to ownership, an option to lease, a letter of intent to lease or a lease.
<b>APPEND DOCUMENTATION AS ATTACHMENT-2, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</b>

**Operating Identity/Licensee (Post Permit)**

[Provide this information for each applicable facility, and insert after this page.]

Exact Legal Name: Elmwood Park Surgery Center Acquisition & Development LLC
Address: 1614 North Harlem Avenue, Elmwood Park, Illinois 60707
<input type="checkbox"/> Non-profit Corporation <input type="checkbox"/> For-profit Corporation <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Governmental <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other
<ul style="list-style-type: none"> <li>o Corporations and limited liability companies must provide an Illinois Certificate of Good Standing.</li> <li>o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.</li> <li>o <b>Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership.</b></li> </ul>
<b>APPEND DOCUMENTATION AS ATTACHMENT-3, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</b>

**Organizational Relationships**

Provide (for each co-applicant) an organizational chart containing the name and relationship of any person or entity who is related (as defined in Part 1130.140). If the related person or entity is participating in the development or funding of the project, describe the interest and the amount and type of any financial contribution.
<b>APPEND DOCUMENTATION AS ATTACHMENT-4, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.</b>

**Flood Plain Requirements**

[Refer to application instructions.]

Provide documentation that the project complies with the requirements of Illinois Executive Order #2005-5 pertaining to construction activities in special flood hazard areas. As part of the flood plain requirements please provide a map of the proposed project location showing any identified floodplain areas. Floodplain maps can be printed at [www.FEMA.gov](http://www.FEMA.gov) or [www.illinoisfloodmaps.org](http://www.illinoisfloodmaps.org). **This map must be in a readable format.** In addition please provide a statement attesting that the project complies with the requirements of Illinois Executive Order #2005-5 (<http://www.hfsrb.illinois.gov>). **(NOT APPLICABLE)**

APPEND DOCUMENTATION AS **ATTACHMENT -5**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Historic Resources Preservation Act Requirements**

[Refer to application instructions.]

Provide documentation regarding compliance with the requirements of the Historic Resources Preservation Act. **(NOT APPLICABLE)**

APPEND DOCUMENTATION AS **ATTACHMENT-6**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**DESCRIPTION OF PROJECT**

**1. Project Classification**

[Check those applicable - refer to Part 1110.40 and Part 1120.20(b)]

Part 1110 Classification:

- Substantive
- Non-substantive

Part 1120 Applicability or Classification:

[Check one only.]

- Part 1120 Not Applicable
- Category A Project
- Category B Project
- DHS or DVA Project

## 2. Narrative Description

Provide in the space below, a brief narrative description of the project. Explain **WHAT** is to be done in **State Board defined terms**, **NOT WHY** it is being done. If the project site does NOT have a street address, include a legal description of the site. Include the rationale regarding the project's classification as substantive or non-substantive.

Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") and Mr. Scott Borre, the sole member and 100% owner of the Purchaser ("Borre," and collectively with the Purchaser, the "Applicants"), hereby seek a Certificate of Need ("CON") from the Illinois Health Facilities and Services Review Board (the "Review Board") to allow consummation of a proposed transaction (the "Transaction") between the Purchaser and Elmwood Park Same Day Surgery LLC (the "Seller"), whereby the Purchaser would acquire (the "Project") the Elmwood Park Same Day Surgery Center (the "Surgery Center") pursuant to that certain Asset Purchase Agreement (the "APA"), a copy of which is attached at Attachment 19, for One Million, Four Hundred Thousand Dollars (\$1,400,000).

The proposed Transaction contemplates a 100% change in the ownership of the Surgery Center, a multi-specialty ambulatory surgical treatment center located at 1614 North Harlem Avenue, Elmwood Park, Illinois, 60707.

The proposed Transaction is projected to be completed by June 30, 2013, with an outside date of August 31, 2013.

The Project has been classified as non-substantive because it proposes a change of ownership which constitutes a facility conversion pursuant to 77 Ill. Admin. Code 1110.40(b).

**Project Costs and Sources of Funds**

Complete the following table listing all costs (refer to Part 1120.110) associated with the project. When a project or any component of a project is to be accomplished by lease, donation, gift, or other means, the fair market or dollar value (refer to Part 1130.140) of the component must be included in the estimated project cost. If the project contains non-reviewable components that are not related to the provision of health care, complete the second column of the table below. Note, the use and sources of funds must equal.

<b>Project Costs and Sources of Funds</b>			
<b>USE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Preplanning Costs			
Site Survey and Soil Investigation			
Site Preparation			
Off Site Work			
New Construction Contracts			
Modernization Contracts			
Contingencies			
Architectural/Engineering Fees			
Consulting and Other Fees			
Movable or Other Equipment (not in construction contracts)			
Bond Issuance Expense (project related)			
Net Interest Expense During Construction (project related)			
Fair Market Value of Leased Space or Equipment			
Other Costs To Be Capitalized	\$1,400,000		\$1,400,000
Acquisition of Building or Other Property (excluding land)			
<b>TOTAL USES OF FUNDS</b>	<b>\$1,400,000</b>		<b>\$1,400,000</b>
<b>SOURCE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Cash and Securities	\$400,000		\$400,000
Pledges			
Gifts and Bequests			
Bond Issues (project related)			
Mortgages/Loans	\$1,000,000		\$1,000,000
Leases (fair market value)			
Governmental Appropriations			
Grants			
Other Funds and Sources			
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$1,400,000</b>		<b>\$1,400,000</b>

**NOTE: ITEMIZATION OF EACH LINE ITEM MUST BE PROVIDED AT ATTACHMENT-7, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**Related Project Costs**

Provide the following information, as applicable, with respect to any land related to the project that will be or has been acquired during the last two calendar years:

Land acquisition is related to project	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Purchase Price: \$	_____	
Fair Market Value: \$	_____	

The project involves the establishment of a new facility or a new category of service  
 Yes  No

If yes, provide the dollar amount of all **non-capitalized** operating start-up costs (including operating deficits) through the first full fiscal year when the project achieves or exceeds the target utilization specified in Part 1100.

Estimated start-up costs and operating deficit cost is \$ \_\_\_\_\_.

**Project Status and Completion Schedules**

Indicate the stage of the project's architectural drawings:

None or not applicable  Preliminary  
 Schematics  Final Working

Anticipated project completion date (refer to Part 1130.140): June 30, 2013, with an outside date of August 31, 2013.

Indicate the following with respect to project expenditures or to obligation (refer to Part 1130.140):

Purchase orders, leases or contracts pertaining to the project have been executed.  
 Project obligation is contingent upon permit issuance. Provide a copy of the contingent "certification of obligation" document, highlighting any language related to CON Contingencies  
 Project obligation will occur after permit issuance.

**APPEND DOCUMENTATION AS ATTACHMENT-8, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**State Agency Submittals**

Are the following submittals up to date as applicable:

Cancer Registry (**NOT APPLICABLE**)  
 APORS (**NOT APPLICABLE**)  
 All formal document requests such as IDPH Questionnaires and Annual Bed Reports been submitted  
 All reports regarding outstanding permits

**Failure to be up to date with these requirements will result in the application for permit being deemed incomplete.**

**Cost Space Requirements**

Provide in the following format, the department/area **DGSF** or the building/area **BGSF** and cost. The type of gross square footage either **DGSF** or **BGSF** must be identified. The sum of the department costs **MUST** equal the total estimated project costs. Indicate if any space is being reallocated for a different purpose. Include outside wall measurements plus the department's or area's portion of the surrounding circulation space. **Explain the use of any vacated space. (NOT APPLICABLE)**

Dept. / Area	Cost	Gross Square Feet		Amount of Proposed Total Gross Square Feet That Is:			
		Existing	Proposed	New Const.	Modernized	As Is	Vacated Space
<b>REVIEWABLE</b>							
Medical Surgical							
Intensive Care							
Diagnostic Radiology							
MRI							
Total Clinical							
<b>NON REVIEWABLE</b>							
Administrative							
Parking							
Gift Shop							
Total Non-clinical							
<b>TOTAL</b>							

APPEND DOCUMENTATION AS **ATTACHMENT-9**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Facility Bed Capacity and Utilization**

Complete the following chart, as applicable. Complete a separate chart for each facility that is a part of the project and insert following this page. Provide the existing bed capacity and utilization data for the latest **Calendar Year for which the data are available**. Include **observation days in the patient day totals for each bed service**. Any bed capacity discrepancy from the Inventory will result in the application being deemed **incomplete**.

<b>FACILITY NAME: Elmwood Park Same Day Surgery Center</b>		<b>CITY: Elmwood Park, Illinois</b>			
<b>REPORTING PERIOD DATES: From: 1/1/2011 to: 12/31/2011</b>					
<b>Category of Service</b>	<b>Authorized Beds</b>	<b>Admissions</b>	<b>Patient Days</b>	<b>Bed Changes</b>	<b>Proposed Beds</b>
Medical/Surgical					
Obstetrics					
Pediatrics					
Intensive Care					
Comprehensive Physical Rehabilitation					
Acute/Chronic Mental Illness					
Neonatal Intensive Care					
General Long Term Care					
Specialized Long Term Care					
Long Term Acute Care					
Other (identify) -- ASTC	3 Operating Rooms	797 Total Surgeries			3 Operating Rooms
<b>TOTALS:</b>	<b>3 Operating Rooms</b>	<b>797 Total Surgeries</b>			<b>3 Operating Rooms</b>

**CERTIFICATION**

The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:

- in the case of a corporation, any two of its officers or members of its Board of Directors;
- in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
- in the case of a partnership, two of its general partners (or the sole general partner, when two or more general partners do not exist);
- in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of Scott Borre, an Illinois resident\* in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.

*Scott Borre*  
SIGNATURE

\_\_\_\_\_  
SIGNATURE

Scott Borre  
PRINTED NAME

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
PRINTED TITLE

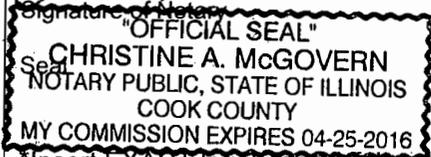
\_\_\_\_\_  
PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this 6<sup>th</sup> day of May

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

*Christine A. McGovern*

\_\_\_\_\_  
Signature of Notary



Seal

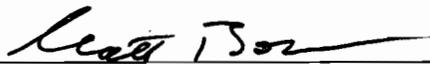
\*Insert EXACT legal name of the applicant

**CERTIFICATION**

The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:

- in the case of a corporation, any two of its officers or members of its Board of Directors;
- in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
- in the case of a partnership, two of its general partners (or the sole general partner, when two or more general partners do not exist);
- in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- in the case of a sole proprietor, the individual that is the proprietor.

**This Application for Permit is filed on the behalf of Elmwood Park Surgery Center Acquisition & Development LLC\* in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.**

  
SIGNATURE

**Scott Borre**  
PRINTED NAME

**Sole Member and Manager**  
PRINTED TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
PRINTED TITLE

Notarization:  
Subscribed and sworn to before me  
this 10<sup>th</sup> day of May

Notarization:  
Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_



\_\_\_\_\_  
Signature of Notary



Seal

\*Insert EXACT legal name of the applicant

### SECTION III – BACKGROUND, PURPOSE OF THE PROJECT, AND ALTERNATIVES - INFORMATION REQUIREMENTS

This Section is applicable to all projects except those that are solely for discontinuation with no project costs.

#### Criterion 1110.230 – Background, Purpose of the Project, and Alternatives

READ THE REVIEW CRITERION and provide the following required information:

##### BACKGROUND OF APPLICANT

1. A listing of all health care facilities owned or operated by the applicant, including licensing, and certification if applicable.
2. A certified listing of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application.
3. Authorization permitting HFSRB and DPH access to any documents necessary to verify the information submitted, including, but not limited to: official records of DPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. **Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by HFSRB.**
4. If, during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior applications may be utilized to fulfill the information requirements of this criterion. In such instances, the applicant shall attest the information has been previously provided, cite the project number of the prior application, and certify that no changes have occurred regarding the information that has been previously provided. The applicant is able to submit amendments to previously submitted information, as needed, to update and/or clarify data.

**APPEND DOCUMENTATION AS ATTACHMENT-11, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM. EACH ITEM (1-4) MUST BE IDENTIFIED IN ATTACHMENT 11.**

##### PURPOSE OF PROJECT

1. Document that the project will provide health services that improve the health care or well-being of the market area population to be served.
2. Define the planning area or market area, or other, per the applicant's definition.
3. Identify the existing problems or issues that need to be addressed, as applicable and appropriate for the project. [See 1110.230(b) for examples of documentation.]
4. Cite the sources of the information provided as documentation.
5. Detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being.
6. Provide goals with quantified and measurable objectives, with specific timeframes that relate to achieving the stated goals **as appropriate.**

For projects involving modernization, describe the conditions being upgraded if any. For facility projects, include statements of age and condition and regulatory citations if any. For equipment being replaced, include repair and maintenance records.

**NOTE: Information regarding the "Purpose of the Project" will be included in the State Agency Report.**

**APPEND DOCUMENTATION AS ATTACHMENT-12, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM. EACH ITEM (1-6) MUST BE IDENTIFIED IN ATTACHMENT 12.**

**ALTERNATIVES**

- 1) Identify **ALL** of the alternatives to the proposed project:

Alternative options **must** include:

- A) Proposing a project of greater or lesser scope and cost;
  - B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes; developing alternative settings to meet all or a portion of the project's intended purposes;
  - C) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and
  - D) Provide the reasons why the chosen alternative was selected.
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of total costs, patient access, quality and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation. **FOR EVERY ALTERNATIVE IDENTIFIED THE TOTAL PROJECT COST AND THE REASONS WHY THE ALTERNATIVE WAS REJECTED MUST BE PROVIDED.**
- 3) The applicant shall provide empirical evidence, including quantified outcome data that verifies improved quality of care, as available.

**APPEND DOCUMENTATION AS ATTACHMENT-13, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**SECTION VI - MERGERS, CONSOLIDATIONS AND ACQUISITIONS/CHANGES OF OWNERSHIP**

This Section is applicable to projects involving merger, consolidation or acquisition/change of ownership.

**NOTE: For all projects involving a change of ownership THE TRANSACTION DOCUMENT must be submitted with the application for permit. The transaction document must be signed dated and contain the appropriate contingency language.**

**A. Criterion 1110.240(b), Impact Statement**

Read the criterion and provide an impact statement that contains the following information:

1. Any change in the number of beds or services currently offered.
2. Who the operating entity will be.
3. The reason for the transaction.
4. Any anticipated additions or reductions in employees now and for the two years following completion of the transaction.
5. A cost-benefit analysis for the proposed transaction.

**B. Criterion 1110.240(c), Access**

Read the criterion and provide the following:

1. The current admission policies for the facilities involved in the proposed transaction.
2. The proposed admission policies for the facilities.
3. A letter from the CEO certifying that the admission policies of the facilities involved will not become more restrictive.

**C. Criterion 1110.240(d), Health Care System**

Read the criterion and address the following:

1. Explain what the impact of the proposed transaction will be on the other area providers.
2. List all of the facilities within the applicant's health care system and provide the following for each facility.
  - a. the location (town and street address);
  - b. the number of beds;
  - c. a list of services; and
  - d. the utilization figures for each of those services for the last 12 month period.
3. Provide copies of all present and proposed referral agreements for the facilities involved in this transaction.
4. Provide time and distance information for the proposed referrals within the system.
5. Explain the organization policy regarding the use of the care system providers over area providers.
6. Explain how duplication of services within the care system will be resolved.
7. Indicate what services the proposed project will make available to the community that are not now available.

**APPEND DOCUMENTATION AS ATTACHMENT-19, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

The following Sections **DO NOT** need to be addressed by the applicants or co-applicants responsible for funding or guaranteeing the funding of the project if the applicant has a bond rating of A- or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18 month period prior to the submittal of the application):

- Section 1120.120 Availability of Funds – Review Criteria
- Section 1120.130 Financial Viability – Review Criteria
- Section 1120.140 Economic Feasibility – Review Criteria, subsection (a)

**VIII. - 1120.120 - Availability of Funds**

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources from the following sources, as applicable: **Indicate the dollar amount to be provided from the following sources:**

<u>\$400,000</u>		a)	Cash and Securities – statements (e.g., audited financial statements, letters from financial institutions, board resolutions) as to:
		1)	the amount of cash and securities available for the project, including the identification of any security, its value and availability of such funds; and
		2)	interest to be earned on depreciation account funds or to be earned on any asset from the date of applicant's submission through project completion;
_____		b)	Pledges – for anticipated pledges, a summary of the anticipated pledges showing anticipated receipts and discounted value, estimated time table of gross receipts and related fundraising expenses, and a discussion of past fundraising experience.
_____		c)	Gifts and Bequests – verification of the dollar amount, identification of any conditions of use, and the estimated time table of receipts;
<u>\$1,000,000</u>		d)	Debt – a statement of the estimated terms and conditions (including the debt time period, variable or permanent interest rates over the debt time period, and the anticipated repayment schedule) for any interim and for the permanent financing proposed to fund the project, including:
		1)	For general obligation bonds, proof of passage of the required referendum or evidence that the governmental unit has the authority to issue the bonds and evidence of the dollar amount of the issue, including any discounting anticipated;
		2)	For revenue bonds, proof of the feasibility of securing the specified amount and interest rate;
		3)	For mortgages, a letter from the prospective lender attesting to the expectation of making the loan in the amount and time indicated, including the anticipated interest rate and any conditions associated with the mortgage, such as, but not limited to, adjustable interest rates, balloon payments, etc.;
		4)	For any lease, a copy of the lease, including all the terms and conditions, including any purchase options, any capital improvements to the property and provision of capital equipment;
		5)	For any option to lease, a copy of the option, including all terms and conditions.
_____		e)	Governmental Appropriations – a copy of the appropriation Act or ordinance accompanied by a statement of funding availability from an official of the governmental unit. If funds are to be made available from subsequent fiscal years, a copy of a resolution or other action of the governmental unit attesting to this intent;
_____		f)	Grants – a letter from the granting agency as to the availability of funds in terms of the amount and time of receipt;
_____		g)	All Other Funds and Sources – verification of the amount and type of any other funds that will be used for the project.
<u>\$1,400,000</u>		<b>TOTAL FUNDS AVAILABLE</b>	

**APPEND DOCUMENTATION AS ATTACHMENT-39, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**IX. 1120.130 - Financial Viability**

All the applicants and co-applicants shall be identified, specifying their roles in the project funding or guaranteeing the funding (sole responsibility or shared) and percentage of participation in that funding.

**Financial Viability Waiver**

The applicant is not required to submit financial viability ratios if:

1. "A" Bond rating or better
2. All of the projects capital expenditures are completely funded through internal sources
3. The applicant's current debt financing or projected debt financing is insured or anticipated to be insured by MBIA (Municipal Bond Insurance Association Inc.) or equivalent
4. The applicant provides a third party surety bond or performance bond letter of credit from an A rated guarantor.

See Section 1120.130 Financial Waiver for information to be provided

**APPEND DOCUMENTATION AS ATTACHMENT-40, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion. When the applicant's facility does not have facility specific financial statements and the facility is a member of a health care system that has combined or consolidated financial statements, the system's viability ratios shall be provided. If the health care system includes one or more hospitals, the system's viability ratios shall be evaluated for conformance with the applicable hospital standards.

Provide Data for Projects Classified as:	Category A or Category B (last three years)			Category B (Projected)
Enter Historical and/or Projected Years:	NOT APPLICABLE	NOT APPLICABLE	NOT APPLICABLE	2014
Current Ratio				7.63
Net Margin Percentage				9.75%
Percent Debt to Total Capitalization				12.68%
Projected Debt Service Coverage				3.92
Days Cash on Hand				61.49
Cushion Ratio				3.19

Provide the methodology and worksheets utilized in determining the ratios detailing the calculation and applicable line item amounts from the financial statements. Complete a separate table for each co-applicant and provide worksheets for each.

**2. Variance**

Applicants not in compliance with any of the viability ratios shall document that another organization, public or private, shall assume the legal responsibility to meet the debt obligations should the applicant default.

**APPEND DOCUMENTATION AS ATTACHMENT 41, IN NUMERICAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**X. 1120.140 - Economic Feasibility**

**This section is applicable to all projects subject to Part 1120.**

**A. Reasonableness of Financing Arrangements**

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

- 1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
- 2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
  - A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
  - B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

**B. Conditions of Debt Financing**

This criterion is applicable only to projects that involve debt financing. The applicant shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) That the selected form of debt financing for the project will be at the lowest net cost available;
- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.

**C. Reasonableness of Project and Related Costs**

Read the criterion and provide the following:

1. Identify each department or area impacted by the proposed project and provide a cost and square footage allocation for new construction and/or modernization using the following format (insert after this page).

COST AND GROSS SQUARE FEET BY DEPARTMENT OR SERVICE									
Department (list below)	A	B	C	D	E	F	G	H	Total Cost (G + H)
	Cost/Square Foot New	Mod.	Gross Sq. Ft. New	Circ.*	Gross Sq. Ft. Mod.	Circ.*	Const. \$ (A x C)	Mod. \$ (B x E)	
Contingency									
<b>TOTALS</b>									
* Include the percentage (%) of space for circulation									

**D. Projected Operating Costs**

The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.

**E. Total Effect of the Project on Capital Costs**

The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

**APPEND DOCUMENTATION AS ATTACHMENT -42- IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**XI. Safety Net Impact Statement**

**SAFETY NET IMPACT STATEMENT that describes all of the following must be submitted for ALL SUBSTANTIVE AND DISCONTINUATION PROJECTS:**

1. The project's material impact, if any, on essential safety net services in the community, to the extent that it is feasible for an applicant to have such knowledge.
2. The project's impact on the ability of another provider or health care system to cross-subsidize safety net services, if reasonably known to the applicant.
3. How the discontinuation of a facility or service might impact the remaining safety net providers in a given community, if reasonably known by the applicant.

**Safety Net Impact Statements shall also include all of the following:**

1. For the 3 fiscal years prior to the application, a certification describing the amount of charity care provided by the applicant. The amount calculated by hospital applicants shall be in accordance with the reporting requirements for charity care reporting in the Illinois Community Benefits Act. Non-hospital applicants shall report charity care, at cost, in accordance with an appropriate methodology specified by the Board.
2. For the 3 fiscal years prior to the application, a certification of the amount of care provided to Medicaid patients. Hospital and non-hospital applicants shall provide Medicaid information in a manner consistent with the information reported each year to the Illinois Department of Public Health regarding "Inpatients and Outpatients Served by Payor Source" and "Inpatient and Outpatient Net Revenue by Payor Source" as required by the Board under Section 13 of this Act and published in the Annual Hospital Profile.
3. Any information the applicant believes is directly relevant to safety net services, including information regarding teaching, research, and any other service.

**A table in the following format must be provided as part of Attachment 43.**

Safety Net Information per PA 96-0031			
CHARITY CARE			
Charity (# of patients)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			
Charity (cost in dollars)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			
MEDICAID			
Medicaid (# of patients)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			

<b>Medicaid (revenue)</b>			
Inpatient			
Outpatient			
<b>Total</b>			

APPEND DOCUMENTATION AS ATTACHMENT-43, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**XII. Charity Care Information**

Charity Care information **MUST** be furnished for **ALL** projects.

1. All applicants and co-applicants shall indicate the amount of charity care for the latest three **audited** fiscal years, the cost of charity care and the ratio of that charity care cost to net patient revenue.
2. If the applicant owns or operates one or more facilities, the reporting shall be for each individual facility located in Illinois. If charity care costs are reported on a consolidated basis, the applicant shall provide documentation as to the cost of charity care; the ratio of that charity care to the net patient revenue for the consolidated financial statement; the allocation of charity care costs; and the ratio of charity care cost to net patient revenue for the facility under review.
3. If the applicant is not an existing facility, it shall submit the facility's projected patient mix by payer source, anticipated charity care expense and projected ratio of charity care to net patient revenue by the end of its second year of operation.

Charity care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer. (20 ILCS 3960/3) Charity Care **must** be provided at cost.

A table in the following format must be provided for all facilities as part of Attachment 44.

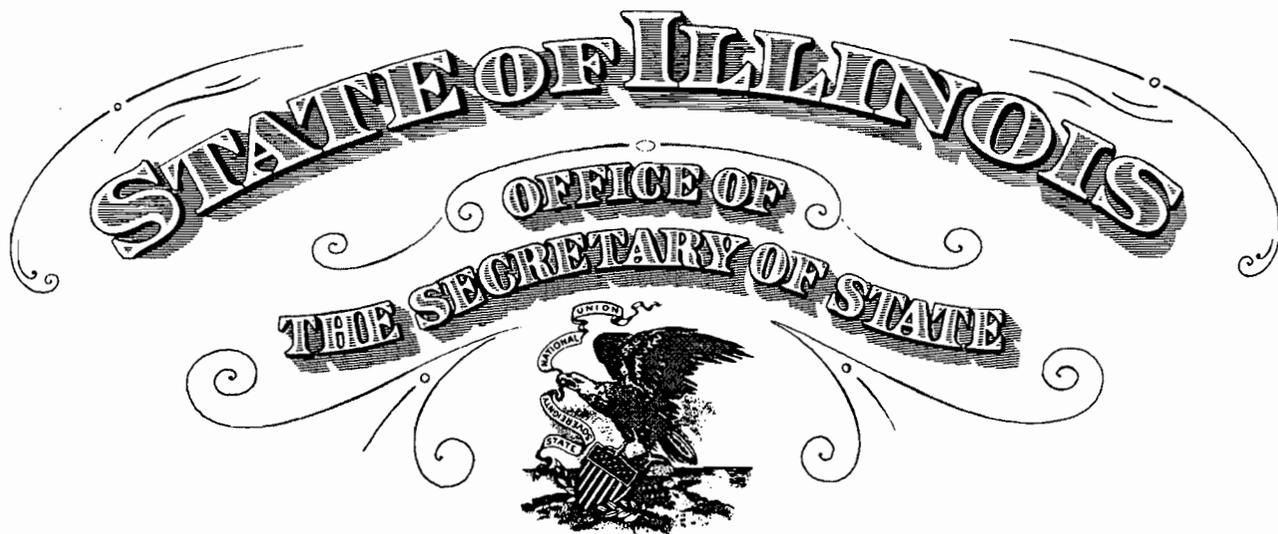
CHARITY CARE			
	Year	Year	Year
<b>Net Patient Revenue</b>			
Amount of Charity Care (charges)			
Cost of Charity Care			

APPEND DOCUMENTATION AS ATTACHMENT-44, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Section I**  
**Attachment 1**  
**Applicant Identification**

The Certificate of Good Standing for Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") is attached at ATTACHMENT 1.

Scott Borre ("Borre"), an Illinois resident, is the sole member, sole manager, and 100% owner of the Purchaser.



*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

ELMWOOD PARK SURGERY CENTER ACQUISITION & DEVELOPMENT LLC, HAVING ORGANIZED IN THE STATE OF ILLINOIS ON OCTOBER 08, 2012, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.



*In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 9TH day of OCTOBER A.D. 2012 .*

*Jesse White*

Authentication #: 1228301106

Authenticate at: <http://www.cyberdriveillinois.com>

SECRETARY OF STATE

**Section I**  
**Attachment 2**  
**Site Ownership**

A copy of the current Commercial Lease between Chicago Title Land Trust Company, Successor Trustee to LaSalle National Bank and Trust of Chicago, As Trustee Under a Trust Agreement Dated April 1, 1971 and Known as Trust No. 22-75583-00-9 and Elmwood Park Same Day Surgery LLC (the "Seller") is attached at ATTACHMENT 2.

EP

B

COMMERCIAL LEASE

1. BASIC LEASE PROVISIONS

1.1 Basic Lease Provisions

A. Building and Address:

1614 Harlem Avenue  
Elmwood Park, Illinois 60635

B. Landlord and Address:

American National Bank and Trust Company of Chicago,  
as Trustee under a Trust Agreement dated April 1, 1971  
and known as Trust No. 22-75583-00-9  
c/o Hugar Building Partnership, an Illinois general partnership  
1614 Harlem Avenue  
Elmwood Park, Illinois 60635

Monthly rent checks are to be sent to: Patricia Hugar  
1614 Harlem Avenue  
Elmwood Park, IL 60635

C. Tenant and Current Address:

Elmwood Park Same Day Surgery, L.L.C.,  
an Illinois limited liability company  
1614 Harlem Avenue  
Elmwood Park, Illinois 60635

D. Date of Lease: December 11, 1996

E. Lease Term: Ten (10) years, plus four (4) five (5) year renewal options

(11) 12/11/96  
(12) 12/11/97

F. Commencement Date of Term: The last to occur of (i) the date Tenant is licensed by the Illinois Department of Public Health to operate a surgery center at the Premises; (ii) the date Tenant receives a Certificate of Exemption from the Illinois Health Facilities Planning Board for the transfer to Tenant of the Certificate of Need to operate the Surgery Center at the Premises; or (iii) the date Tenant commences its business as per Subsection 1.1H herein, subsequent to the completion of the items described in Sections 11.1 and 11.2 herein.

G. Expiration Date of Term: Ten (10) years after the Commencement Date

H. Lease Purpose: Operate an ambulatory outpatient surgery center licensed by the Illinois Department of Public Health.

I. Monthly Base Rent: See Schedule "A," attached hereto and made a part hereof.

J. Tenant's Proportionate Share (as defined in Section 4.1): \_\_\_\_\_

K. Monthly Base Rent for Basement Premises: \$416.67

2. PREMISES AND TERM

2.1 Lease of Premises

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises containing approximately \_\_\_\_\_ square feet of space specifically described on Exhibit "A" attached hereto and made a part hereof ("Surgery Center Premises"), together with the 500 square feet of basement space ("Basement Premises") (Surgery Center Premises and Basement Premises are collectively referred to as the "Premises") in the building commonly known as 1614 Harlem Avenue, Elmwood Park, Illinois 60635 ("Building"), for the term and upon the conditions provided in this lease (the "Lease").

2.2 Term

The term of this Lease (the "Term") shall commence on the date (the "Commencement Date") specified in Subsection 1.1F. The Term shall expire unless terminated as herein provided, on the date (the "Expiration Date") specified in Subsection 1.1G.

2.3 Option

Tenant shall have the option ("Option") to renew this Lease for four (4) additional terms of five (5) years ("Option Terms"). Tenant shall exercise each Option by giving written notice to Landlord not less than ninety (90) days prior to the termination of the Term and each Option Term. Monthly Base Rent for the Surgery Center Premises for the Option Terms shall include only Component A of Monthly Base Rent set forth on Schedule "A." The Monthly Base Rent for the Surgery Center Premises for the first year of the First Option Term shall be one hundred three percent (103%) of Component A of the Monthly Base Rent for the last year of the Term. Thereafter, Monthly Base Rent for the Surgery Center Premises for each year of each Option Term shall increase by three percent (3%). The Monthly Base Rent for the Basement Premises shall increase three percent (3%) each year of the Option Terms. All other terms of the Lease shall apply during the Option Terms, except that there shall be no further option for renewal.

3. RENT

3.1 Monthly Base Rent

Tenant agrees to promptly pay to Landlord at the address set forth in Subsection 1.1B. herein or at such other place designated by Landlord, base rent for the Surgery Center Premises at the initial

monthly rate specified in Schedule B and base rent for the Basement Premises at the monthly rate specified in Subsection 1.1K (collectively "Monthly Base Rent"). Monthly Base Rent shall be paid in advance on the first day of each month of the Term. Monthly Base Rent shall be prorated for partial months within the Term.

3.2 Additional Rent

In addition to paying the Monthly Base Rent specified in Section 3.1 above, Tenant shall pay as Additional Rent the amounts specified in Sections 4.2 and 4.3 hereof. Monthly Base Rent, Additional Rent, and all other amounts to be paid by Tenant to Landlord hereunder are sometimes collectively referred to as "Rent". All Additional Rent shall be payable for the same periods and in the same manner, time, and place as the Monthly Base Rent. Additional Rent shall be prorated for partial months within the Term.

3.3 Rent Abatement.

Landlord agrees that Tenant shall receive a rent abatement of \$2,800 per month for the first six (6) months of the Term.

4. ADJUSTMENTS TO RENT

4.1 Common Areas.

Landlord grants to Tenant and Tenant's customers and invitees the right to use, in common with all others to whom Landlord has or may hereafter grant rights to use the same, the Common Areas located within or around the Building. The term "Common Areas" as used in this Lease, shall mean any parking areas, roadways, pedestrian sidewalks, driveways, delivery areas, trash removal areas, landscaped areas, security areas, public washrooms and all other areas or improvements which may be provided by Landlord for the common use of all tenants in the Building. The manner in which such areas and facilities shall be maintained and operated and the expenditures therefore shall be at the reasonable discretion of Landlord. Landlord hereby reserves the following rights with respect to the Common Areas:

- (i) To establish reasonable rules and regulations for the use thereof;
- (ii) Provided Landlord does not interfere with the access to or use of the Premises, to close all or any portion of the Common Areas as may be deemed necessary by Landlord to make repairs or changes, to prevent a dedication thereof or the accrual of any rights to any person or the public therein, or to discourage noncustomer use or parking; and
- (iii) Provided Landlord does not interfere with the access to or use of the Premises, to change the layout of the Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise.

4.2 Definitions

"Operating Expenses" shall mean all costs, expenses and disbursements which Landlord shall pay or become obligated to pay in connection with the management, operation, maintenance, and repair of the Building, the Common Areas and of the personal property, fixtures, machinery, equipment, and systems located in or used in connection with the Building and the Common Areas including, without limitation, all costs incurred by Landlord to insure the Building.

Notwithstanding anything contained in the Lease to the contrary, no expenses incurred for the following shall be included within the definition of Operating Expenses: (a) costs of a capital nature, including, but not limited to capital improvements, capital replacements, capital repairs, capital equipment and capital tools, all in connection with generally accepted accounting principles except a current amortization of those capital improvements which are made or installed for the purpose of reducing Operating Expenses or are made or installed pursuant to any governmental or insurance requirement; (b) repairs or other work occasioned by fire, windstorm or other casualty or by the exercise of the right of eminent domain for which Landlord is reimbursed whether by insurance proceeds or otherwise; (c) leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or other occupants; (d) costs incurred in renovating or otherwise improving or decorating, painting or decorating space for tenants or other occupants or vacant space; (e) Landlord's costs of electricity and other services sold to tenants and for which Landlord is entitled or would ordinarily be entitled to be reimbursed by tenants as an addition charge or rental over and above the basic rent payable under the Lease Agreement with such tenant; (f) depreciation and amortization; (g) costs incurred due to violation by Landlord or any tenant of the terms and conditions of any Lease; (h) overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or to the real property, to the extent only that the costs of such service exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate; (i) interest on debt or amortization payments on any mortgage(s), and rental under any ground or underlying lease(s); (j) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord; (k) all items and services for which Tenant reimburses Landlord or pays third persons; (l) any costs, fines, penalties, legal fees or costs of litigation incurred due to violations by Landlord, its employees, agents, contractors or assigns, of any governmental rule or authority; and (m) wages, salaries or other compensation paid to any executive employees above the grade of building manager.

"Taxes" shall mean all federal, state and local government taxes, assessments and charges (including transit or transit district taxes or assessments) of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall, during the Term or any renewal or extension thereof, pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, or operation of the Building and the land upon which the Building is situated (the "Land"), or of the personal property, fixtures, machinery, equipment, and systems located in or used in connection with the Building. For purposes hereof, Taxes for any year shall be Taxes which may now or hereafter be levied, imposed, or assessed against the Land. All fees, costs and legal expenses (including reasonable contingent attorneys' fees) paid by Landlord in connection with seeking a reduction in Taxes shall be included in "Taxes." The amount of Taxes shall be reduced by the net amount of any tax refund obtained by Landlord. Taxes shall not include any federal, state, or local sales, use, franchise, gift, estate, capital stock, inheritance, or general income tax, except that if a change occurs in the method of taxation resulting in whole or in part the substitution of any such taxes

or assessments for any Taxes as defined above, such substituted taxes or assessments shall be deemed Taxes.

"Tenant's Proportionate Share" shall mean the percentage calculated by Landlord on a uniform basis for the Building by dividing the rentable area of the Premises by the total square footage of the Building.

4.3 Operating Expense Adjustment

Tenant shall pay to Landlord, as Additional Rent, an amount ("Expense Adjustment Amount") equal to Tenant's Proportionate Share of Operating Expenses incurred during each calendar year as estimated by Landlord. Tenant shall pay Expense Adjustment Amounts to Landlord monthly in accordance with Section 3.2.

At the end of each calendar year, or at such later time as Landlord shall be able to determine the actual amounts of Operating Expenses for the previous calendar year, Landlord shall notify Tenant of the actual amounts of Operating Expenses paid. If Tenant has paid more than Tenant's Proportionate Share, then Tenant shall receive a credit against future payments of Additional Rent equal to the amount of the excess payments. If Tenant has paid less than Tenant's Proportionate Share, then Tenant shall pay the shortfall to Landlord within five business days of receipt of notice from Landlord. Tenant's obligation to pay such shortfall shall survive the termination of this Lease regardless of the reason for such termination.

4.4 Tax Adjustment

Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the amount of Taxes payable for each calendar year ("Tax Adjustment Amount").

At the end of each calendar year, or at such later time as Landlord shall be able to determine the actual amounts of Taxes for the previous calendar year, Landlord shall give Tenant notice of the actual amounts of Taxes paid together with a copy of the subject tax bill. Tenant shall pay the Tax Adjustment Amount within fifteen (15) days after receipt of the tax bill and Landlord's computation of the Tax Adjustment Amount.

4.5 Books and Records

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, which records shall be available to Tenant for inspection at the office of the Building upon reasonable prior notice. Tenant shall be permitted to engage an independent audit firm to audit Landlord's books and records pertaining to Operating Expenses not more than one time per calendar year. If the audit determines that Tenant overpaid the Expense Adjustment Amount for any calendar year, Landlord shall immediately reimburse to Tenant the amount of the overpayment. If the audit determines that Tenant underpaid the Expense Adjustment Amount for any calendar year, Tenant shall immediately reimburse to Landlord the amount of the underpayment. If the overpayment is more than five percent (5%), Landlord shall pay for the cost of the audit.

4.6 Projections

For purposes of calculating Operating Expenses for any calendar year, Landlord may, from time to time, make reasonable estimates, forecasts or projections of Operating Expenses which shall be communicated by written notice to Tenant.

5. CONDITIONS PRECEDENT.

The obligations of Tenant under this Lease are expressly conditioned on the satisfaction of each of the following on or before December 31, 1997:

- (a) Tenant shall obtain a license from the Illinois Department of Public Health to operate a surgery center at the Premises; and
- (b) Tenant shall receive a Certificate of Exemption from the Illinois Health Facilities Planning Board for the transfer to Tenant of the Certificate of Need to operate the Surgery Center at the Premises.

If any one of the aforementioned conditions are not satisfied as of December 31, 1997, at Tenant's option, this Lease shall be null and void and Tenant shall have no further obligations hereunder.

6. UTILITIES

Tenant will pay in addition to Rent, the costs of all sewer, gas, electric current, telephone, water and any other utilities used or consumed at, on or in the Premises, as and when the charges for the same become due and payable. If Tenant fails to pay for any of the above services when the same shall become due and payable, Landlord shall have the right, but not the duty, after written notice to Tenant and the expiration of the applicable cure period, to pay the same, which amount so paid shall be Additional Rent and shall be payable immediately upon demand from Landlord. If Tenant is unable, at any time, to operate its business as a result of any utility failure outside of the reasonable control of Tenant and such utility failure shall continue for a period of three or more days, then, Rent shall abate until such time as the utilities in question are functioning and Tenant is able to operate its business, however discontinuance of any utility service, unless caused by the act or omission of Landlord or the agents or employees of Landlord, shall not result in any other liability of Landlord to Tenant or be considered an eviction or disturbance of Tenant's use of the Premises.

7. POSSESSION, USE AND ENJOYMENT OF PREMISES

7.1 Possession and Use of Premises

Tenant shall be entitled to possession of the Premises upon the Commencement Date. Tenant shall occupy and use the Premises for the purposes set forth in Subsection 1.1H only. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (a) is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule (including the Board of Fire Underwriters); (b) may be

dangerous to persons or property; (c) may invalidate or increase the amount of premiums for any policy of insurance affecting the Building, and if any additional amounts of insurance premiums are so incurred, Tenant shall pay to Landlord the additional amounts on demand; or (d) may create a nuisance, disturb any other tenant of the Building or the occupants of neighboring property or injure the reputation of the Building.

7.2 Quiet Enjoyment

So long as Tenant shall not be in default under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises, subject to the terms of this Lease.

8. MAINTENANCE

8.1 Tenant Maintenance

Tenant shall, at Tenant's sole cost and expense, keep the Premises and all improvements, fixtures and other personal property located therein in good order and condition including, without limitation, all electrical, plumbing, sewer, heating, ventilating and air conditioning systems and equipment located in or servicing the Premises, and floors, windows and doors in the Premises. Tenant will not do or permit any act or thing which might impair the value or usefulness of the Premises or any part thereof, or commit or permit any waste of or upon the Premises or any part thereof. In addition to other remedies provided herein for breach of Tenant's obligations hereunder, if Tenant fails to make any needed repairs or maintain the Premises in a clean and sightly condition in accordance with all public health safety and fire statutes, ordinances, rules and regulations, Landlord, its agents, employees and contractors, after written notice to Tenant and the expiration of the applicable cure period, shall be allowed entry upon any portion of the Premises to make the necessary repairs, and any and all costs and expenses incurred by Landlord on account thereof shall be paid by Tenant immediately upon demand by Landlord. Tenant shall, at Tenant's sole cost and expense, hire adequate scavenger service for the removal of waste and garbage resulting from the operation of Tenant's business at the Premises, and until such removal shall keep the same in covered or sealed containers.

8.2 Landlord Maintenance

Landlord shall repair, replace and maintain the Common Areas of the Building, and the roof, structural elements of the Building. The Common Areas, as well as all structural elements of the Building will be maintained, repaired and replaced in a "first class condition" in accordance with standard building practices of other similar buildings in the same geographic location.

9. ASSIGNMENT AND SUBLETTING

Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed:

- (a) assign or convey this Lease or any interest under it;
- (b) sublet the Premises or any part thereof; or

(c) permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant.

Landlord's consent to any assignment, subletting or transfer or Landlord's election to accept any assignee, sublessee or transferee as a tenant hereunder shall not release Tenant from any covenant or obligation under this Lease, including, but not limited to, any such covenant or obligation due and owing from and after the date of any such assignment, subletting or transfer. Any assignee by acceptance of the assignment or the taking possession of the Premises thereby assumes and agrees to perform all of Tenant's obligations under this Lease. Landlord's consent to any assignment, subletting or transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future assignment, subletting or transfer.

Notwithstanding anything to the contrary contained in this Section 9, Tenant may, upon Landlord's consent, which consent shall not be unreasonably withheld or delayed, permit the Premises to be occupied by, or may sublet all or any portion of the Premises, or assign this Lease to any party which directly or indirectly (including members of Tenant): (i) wholly owns or controls Tenant; (ii) is wholly owned or controlled by Tenant; (iii) is under common control or ownership with Tenant; or (iv) to which Tenant or any of the foregoing parties have merged, consolidated or reorganized or to which all or substantially all of Tenant's assets or such other parties' assets are sold, assigned or transferred. In such event, (a) Landlord shall receive an executed copy of transfer documents promptly after execution; (b) any such transferee shall expressly assume Tenant's obligations under the Lease; and (c) Tenant shall not remain liable under the Lease in the case of an assignment.

10. LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any part thereof arising out of work performed or, alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall, within thirty (30) days after receipt of notice thereof, either have such lien or claim for lien released of record or shall deliver to Landlord a bond in the form, content, amount, and issued by a surety, reasonably satisfactory to Landlord indemnifying Landlord against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien or claim for lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord.

11. ALTERATIONS AND IMPROVEMENTS

11.1 Landlord's Work

Landlord shall, at Landlord's sole costs and expense, cause to be constructed an addition at the Building ("Addition") as set forth in the plans and specifications incorporated into the Construction Contract attached hereto as Exhibit "C" and made a part hereof. Landlord and Tenant acknowledge that the parties intend to use one general contractor for the construction of the Addition and the completion of the Tenant's work described in Section 11.2. Accordingly, Landlord and Tenant shall cooperate with each other and work with the selected contractor in order to complete the Addition and

Tenant's work in a timely fashion in accordance with the terms of this Lease. Landlord shall cause the Addition to be substantially completed in accordance with the foregoing plans and specifications on or before December 31, 1997. If Landlord fails to complete construction of the Addition as is required pursuant to this Subsection 11.1 and deliver the Premises to Tenant for completion of Tenant's work required pursuant to Subsection 11.2 herein on or before December 31, 1997, Tenant shall be permitted, in Tenant's sole discretion, to terminate the Lease by written notice to Landlord. Landlord agrees to hold Tenant and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which arises out of or in any way is connected with the construction of the Addition. The construction of the Addition shall be in accordance with applicable legal, governmental and quasi governmental requirements, ordinances and rules. The Addition shall be constructed in a good and workmanlike manner and with the use of good grades of materials.

#### 11.2 Tenant's Work

With the exception of the construction of the Addition, Tenant shall, at Tenant's expense, perform or cause to be performed the interior improvements to the Premises set forth in the plans and specifications approved by Landlord and Tenant and attached hereto as Exhibit "D," and made a part hereof, as well as other related documents such as Tenant's design criteria, and shall fully equip the Premises with all trade fixtures, furniture, furnishings, exterior signs, special equipment and other items necessary for the completion of the Premises and the operation of Tenant's business on or before April 30, 1998. If Tenant fails to complete Tenant's work as is required pursuant to this Subsection 11.2 on or before April 30, 1998, Landlord shall be permitted, in Landlord's sole discretion, to terminate the Lease by written notice to Tenant. All such work shall be completed as set forth below.

Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, make or cause to be made any alterations, improvements, additions, installations or decorations in or to the Premises. If Landlord so consents, before commencement of any such work or delivery of any materials into the Premises or the Building, Tenant shall furnish to Landlord for approval architectural plans and specifications, names and addresses of all contractors, contracts, necessary permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form and amount as may be reasonably satisfactory to Landlord. Tenant agrees to hold Landlord and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. All such work shall be done only by contractors or mechanics approved by Landlord (which approval shall not be unreasonably withheld) and at such time and in such manner as Landlord may from time to time designate. Tenant shall pay the cost of all such work. Upon completion of such work, Tenant shall furnish Landlord with contractor's affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith. All such work shall be in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules (including the Board of Fire Underwriters), and all requirements of applicable insurance companies. All such work shall be done in a good and workmanlike manner and with the use of good grades of materials. All alterations, improvements, additions and installations to or on the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or termination of this Lease, or termination of Tenant's right of possession of the Premises, without compensation or credit to Tenant.

12. WAIVER OF CLAIMS AND INDEMNITY

12.1 Waiver

To the fullest extent now or hereafter permitted by law and except for claims arising from the acts or omissions of Landlord or the agents and employees of Landlord, Tenant waives all claims it may have against Landlord, and the agents and employees of said Landlord, for damage to person or property sustained by Tenant or any occupant or other person resulting from the Building or the Premises or any part of the Building or Premises becoming out of repair or resulting from any accident within the Building or Premises or resulting directly or indirectly from any act or omission of Landlord or Landlord's agents and employees or resulting directly or indirectly from any act or omission of Tenant or any other person while on the Premises or in the Building.

12.2 Indemnification

Tenant agrees to indemnify and hold harmless Landlord and Landlord's agents and employees against any and all liabilities, obligations, claims, demands, costs and expenses of every kind and nature, including reasonable attorneys' fees, arising from Tenant's occupancy of the Premises or from any breach or default on the part of Tenant in the performance of any agreement of Tenant to be performed pursuant to the terms of this Lease, or from any act or neglect of Tenant, any subtenant, their respective employees, agents, guests, servants, invitees or customers in or about the Premises, the Building or the Common Areas. In any case such proceeding is brought against any of said persons, Tenant covenants to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Landlord, if requested by Landlord.

Landlord agrees to indemnify and hold harmless Tenant and Tenant's agents and employees against any and all liabilities, obligations, claims, demands, costs and expenses of every kind and nature, including reasonable attorneys' fees, arising from any breach or default on the part of Landlord in the performance of any agreement of Landlord to be performed pursuant to the terms of this Lease, or for any act or neglect of Landlord or Landlord's agents, employees, guests, servants, invitees or customers in or about the Premises, the Building or the Common Areas. In any case, such proceeding is brought against any of said persons, Landlord covenants to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Tenant, if requested by Tenant.

13. LANDLORD'S REMEDIES

13.1 Events of Default

The parties acknowledge and agree that certain affiliates of Landlord are members of Tenant. Thus, the following shall constitute a breach of this Lease by Tenant: (i) Tenant fails to pay any installment of Rent when such installment of Rent shall be due and Tenant fails to cure such default within ten (10) days after written notice thereof to Tenant; (ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant and fails to cure such default within sixty (60) days after written notice thereof to Tenant; however, if in Landlord's reasonable discretion, it is impracticable to cure the default within sixty (60) days, then provided Tenant shall commence to cure the default within the sixty (60) day period, the failure to completely cure the default within the cure period shall not constitute a breach of this Lease if Tenant

diligently proceeds to cure the default and such default is cured within a reasonable time period thereafter; (iii) the interest of Tenant in this Lease is levied upon under execution or other legal process; (iv) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts and said petition is not dismissed within ninety (90) days after the filing thereof, or any petition is filed to reorganize or modify Tenant's capital structure, or upon the dissolution of Tenant; (v) Tenant is declared insolvent by law or any assignment of Tenant's property is made for the benefit of creditors; or (vi) a receiver is appointed for Tenant or Tenant's property.

### 13.2 Landlord's Remedies

In the event of any default of this Lease by Tenant, Landlord, at its option, without further notice or demand to Tenant, may, in addition to all other rights and remedies provided in this Lease, at law or in equity:

- (a) terminate this Lease and Landlord shall be entitled to recover (1) all Rent due and payable by the Tenant at termination, (2) an amount equal to the then present value of the Rent for the remainder of the Term, plus the present value of the fair market rent of the Premises for the remainder of the Term (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses relating to recovery of the Premises, preparation for reletting and for reletting itself); (3) the Unamortized Leasehold Improvement Cost (as hereinafter defined); (4) the cost of performing any other covenant to be performed by Tenant, and (5) such damages, as provided by law, resulting from Tenant's breach of the Lease; or
- (b) terminate Tenant's right of possession of the Premises without terminating this Lease, in which event Landlord shall make a reasonable attempt to relet the Premises, or any part thereof for the account of Tenant, for such rent and term and upon such terms and conditions as are acceptable to Landlord. For purposes of such reletting, Landlord is authorized to decorate, repair, alter and improve the Premises to the extent reasonably necessary. If Landlord is unable, after making a reasonable attempt, to relet the Premises, or if the Premises are relet and a sufficient sum is not realized therefrom after payment of all Landlord's expenses of reletting (including repairs, alterations, improvements, additions, decorations, reasonable legal fees and brokerage commissions) to satisfy the payment when due of Rent reserved under this Lease for any monthly period (hereinafter "Deficiency"), then Tenant shall pay Landlord a sum equal to the amount of Monthly Base Rent due under this Lease for each such monthly period, or if the Premises have been relet, Tenant shall pay any such Deficiency monthly. Tenant agrees that Landlord may file suit to recover any sums due to Landlord hereunder from time to time and that such suit or recovery of any amount due Landlord hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. In the event Landlord elects, pursuant to this Subsection (b), to terminate Tenant's right of possession only without terminating this Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof, as provided in Article 14 hereof; provided, however, that such entry and possession shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's

obligation to pay the Monthly Base Rent reserved hereunder for the full term or from any other obligation of Tenant under this Lease.

For purposes of this Section 13.2, "Unamortized Leasehold Improvement Cost" shall mean the cost to Landlord, if any, of purchasing, fabricating and installing all improvements which were installed on the Premises by Landlord pursuant to this Lease prior to the beginning of the Term, including interest thereon, calculated by amortizing such costs over the Term with interest at the rate specified in Schedule "A" and multiplying the total costs and interest by a fraction, the numerator of which is the number of months of the Term not yet elapsed on the date the Term is terminated and the denominator of which is the total number of months of the Term.

13.3 Landlord Default

In the event Landlord fails to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Landlord and fails to cure such default within thirty (30) days after written notice thereof to Landlord, Tenant shall have the right, but not the duty, to pay or perform Landlord's obligation and offset the costs incurred in paying or performing said obligation against installments of Rent until Tenant is fully reimbursed therefore. The foregoing shall be in addition to but not in lieu of any other rights and remedies available to Tenant arising out of or resulting from a default by Landlord under the terms of this Lease.

13.4 Attorneys' Fees

The defaulting party shall pay, upon demand, all costs and expenses, including attorneys' fees, incurred by the prevailing party in enforcing the observance and performance by the defaulting party of all covenants, conditions and provisions of this Lease to be observed and performed by the defaulting party, or resulting from a default under this Lease.

14. SURRENDER OF PREMISES

Upon expiration or termination of this Lease or termination of Tenant's right of possession of the Premises, or any part thereof, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition, ordinary wear and tear excepted. Upon any termination which occurs other than by reason of Tenant's default, Tenant shall be entitled to remove from the Premises all movable personal property of Tenant, provided Tenant shall immediately repair all damage resulting from such removal. In the event possession of the Premises is not immediately delivered to Landlord or if Tenant shall fail to remove all of Tenant's movable personal property, as aforesaid, Landlord may remove any of such property therefrom without any liability to Tenant, and at Tenant's expense. All movable personal property which may be removed from the Premises by Lease shall be conclusively presumed to have been abandoned by Tenant, and title thereto shall pass to Landlord without any cost or credit therefor, and Landlord may, at its option and at Tenant's expense, store and/or dispose of such property.

15. HOLDING OVER

Tenant shall pay Landlord one hundred fifty percent (150%) the latest Monthly Base Rent then applicable for each month or portion thereof Tenant retains possession of the Premises, or any portion thereof, after the expiration or termination of this Lease, and also shall pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord hereinbefore or by law provided. If Tenant retains possession of the Premises, or any part thereof, for ten (10) days after the expiration or termination of this Lease, then at the sole option of Landlord expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one year (or less if specified by Landlord at Landlord's option) on the same terms and conditions, except that the Monthly Base Rent shall be increased to one hundred fifty percent (150%) of the latest Monthly Base Rent, plus any subsequent escalations.

16. DAMAGE BY FIRE OR OTHER CASUALTY

16.1 Substantial Untenantability

If the Building or the Premises are made substantially untenable by fire or other casualty, Landlord may elect either to (i) terminate this Lease as of the date of the fire or other casualty by giving Tenant written notice thereof within ninety (90) days after said date; or (ii) proceed to repair or restore the Building or the Premises by giving Tenant written notice thereof within ninety (90) days after said date. If neither party elects to terminate the Lease, Landlord shall proceed to repair or restore the Building or the Premises, other than leasehold improvements and personal property paid for or installed by Tenant.

Restoration shall be commenced by the Landlord within ninety (90) days after such damage shall have occurred and shall be substantially completed within one hundred eighty (180) days after such damage shall have occurred, due allowance being made for delay in the commencement or completion of restoration occasioned by causes beyond the Landlord's control. If the Landlord does not commence such restoration within such ninety (90) day period, and complete said restoration within such one hundred eighty (180) day period, Tenant may terminate this Lease as of the date of such damage by serving notice on the Landlord after the expiration of such period.

16.2 Insubstantial Untenantability

If the Premises or the Building are damaged by fire or other casualty but neither is rendered substantially untenable, then Landlord shall proceed to repair and restore the Building or the Premises, other than the leasehold improvements and personal property paid for and installed by Tenant, unless such damage occurs during the last twelve (12) months of the Term, in which event Landlord or Tenant shall have the right to terminate this Lease as of the date of such fire or other casualty by giving written notice thereof to the other within thirty (30) days after the date of such fire or other casualty.

16.3 Rent Abatement

If all or any part of the Premises are rendered substantially untenantable by fire or other casualty or if all or any part of the Building is damaged by fire or other casualty which makes the Premises substantially untenantable, and this Lease is not terminated, Monthly Base Rent shall abate for all or that part of the Premises which is untenantable on a per diem basis from the date of the fire or other casualty until Landlord has substantially completed the repair and restoration work in the Premises which it is required to perform, provided that as a result of such fire or other casualty, Tenant does not occupy the portion of the Premises which is untenantable during such period. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to expend more than the insurance proceeds received by Landlord as a result of the casualty or fire.

17. EMINENT DOMAIN

17.1 Taking of Building or Premises

In the event the whole or any part of the Building, the Premises or the Common Areas is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) which renders the Premises untenantable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent shall be apportioned as of said date. If the condemnation is of a partial nature which does not render the Premises or Building untenantable, Landlord shall have the right, exercisable upon not less than ninety (90) days written notice to Tenant prior to the date of the taking designated in the notice from the condemning authority, to repair the Premises or the Building to the condition existing prior to the condemnation and the Lease shall continue in effect. Tenant may terminate the Lease if Landlord does not so repair the Premises or the Building within one hundred eighty (180) days from the date the Condemnation Monthly Base Rent shall abate on a proportionate basis during the period that Landlord is repairing the Premises.

17.2 Compensation

Landlord shall be entitled to receive the entire price or award from any such sale, taking or condemnation without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award; provided, however, Tenant shall have the right to separately pursue against the condemning authority an award in respect of the loss, if any, to leasehold improvements paid for by Tenant, and for Tenant's cost of relocation without any credit or allowance from Landlord.

18. TENANT'S INSURANCE

18.1 Insurance

Tenant, at Tenant's expense, agrees to maintain in force during the Term: (i) Comprehensive General Liability Insurance on an occurrence basis with minimum limits of liability in an amount of \$1,000,000.00 for bodily injury, personal injury or death to any one person and \$1,000,000.00 for bodily injury, personal injury or death to more than one person, and \$100,000.00 with respect to damage to property, including water and sprinkler damage; (ii) Fire Insurance, with extended coverage and vandalism and malicious mischief endorsements, in an amount adequate to cover the full replacement value of all leasehold improvements and all fixtures, contents and wall and floor

coverings in the Premises and (iii) plate glass insurance covering all exterior plate glass in the Premises.

18.2 Required Policy Provisions

The policies referred to in Section 18.1 shall name Landlord, ~~and Landlord's mortgagee, if any,~~ its respective agents and employees as additional insureds, as their interests may appear. Each policy referred to in Section 18.1 shall be issued by one or more responsible insurance companies reasonably satisfactory to Landlord and shall contain the following provisions and endorsements: (i) that such insurance may not be canceled or amended without thirty (30) days' prior written notice to Landlord; (ii) an express waiver of any right of subrogation by the insurance company against Landlord and its agents and employees; and (iii) that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policy.

18.3 Release of Rights of Recovery

Tenant shall deliver to Landlord certificates of insurance of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and not less than ten (10) days prior to the expiration date of each policy. Whenever (a) any loss, cost, damage, or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease, or by anyone claiming by, through or under it in connection with the Premises, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Lease to be so insured, then, anything contained in this Lease to the contrary notwithstanding, the party so insured (or so required) hereby releases the other party from any liability said other party may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered had such insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (except that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect). If the party released from liability hereunder is Landlord, the term "Landlord," for the purpose of this Subsection 18.3 only, shall also include the beneficiary of Landlord and said parties' agents and employees.

19. RULES AND REGULATIONS

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with all Rules and Regulations which Landlord may from time to time enact. Landlord shall not be responsible for any violation of the Rules and Regulations by other tenants of the Building but shall enforce the same against other tenants on a uniform basis.

20. LANDLORD'S RIGHTS

Landlord shall have the following rights exercisable with notice to Tenant: (i) to install, affix and maintain all signs on the exterior and/or interior of the Building; (ii) to designate and/or approve prior

to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items and all internal lighting that may be visible from the exterior of the Premises or the public corridors of the Building; (iii) to display the Premises to prospective tenants at reasonable hours during the last ninety (90) days of the Term and to display the Premises to prospective purchasers at reasonable hours any time during the Term; (iv) to change the arrangement of entrances, doors, corridors and stairs in the Building, provided that no such change shall materially adversely affect Tenant's access to the Premises; (v) to prohibit the placing of vending or dispensing machines of any kind in or about the Premises; (vi) to take any and all reasonable measures (without notice to Tenant in the event of an emergency), including inspections and repairs to the Premises or to the Building, as may be necessary or desirable in the operation or protection thereof; and (vii) to retain at all times master keys or pass keys to all doors in and to the Premises.

21. ESTOPPEL CERTIFICATE

Tenant shall from time to time, upon not less than ten (10) days' prior written notice request by Landlord or any mortgagee holding a mortgage on the Land, deliver to Landlord or such mortgagee a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease, as modified, is in full force and effect; (ii) the amount of Rent then payable hereunder and the date to which Rent has been paid; (iii) that Landlord is not in default under this Lease or, if in default, a detailed description of such default(s); (iv) that Tenant is or is not in possession of the Premises, as the case may be; and (v) any other statements reasonably required by Landlord.

22. SUBORDINATION AND ATTORNMENT

22.1 Subordination

This Lease and the rights of Tenant hereunder shall be and are hereby made expressly subject and subordinate at all times to the lien of any mortgage now or hereafter existing against the Building and to all advances made or hereafter to be made upon the security thereof. Tenant agrees to execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as may be requested in writing by Landlord from time to time. Tenant acknowledges that its title is and always shall be subordinate to the title of the owner of the Building, and nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of the owner of the Building.

22.2 Attornment

In the event of the foreclosure of any such mortgage by voluntary agreement or otherwise, or the commencement of any judicial action seeking such foreclosure, Tenant, at the request of the then Landlord, shall attorn to and recognize such first mortgagee or purchaser in foreclosure as Tenant's Landlord under this Lease. Tenant agrees to execute and deliver at any time upon request of such first mortgagee, purchaser, or their successors, any instrument to further evidence such attornment. Tenant hereby waives its right, if any, to elect to terminate this Lease or to surrender possession of the Premises in the event of any such mortgage foreclosure.

22.3 Nondisturbance

If Tenant is required to execute a subordination or attornment agreement pursuant to Subsection 22.1 or 22.2 herein, Landlord shall, simultaneously therewith, use its best efforts to obtain from the mortgagee, purchaser or successor in interest of Landlord, a nondisturbance agreement stating that Tenant's possession under the Lease and Tenant's rights and privileges thereunder shall not be disturbed, so long as Tenant is not in default under this Lease.

23. NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given and delivered, whether or not received, when deposited in the United States Mail, first class postage prepaid and properly addressed, certified mail, return receipt requested or personally delivered or sent by a nationally recognized overnight courier, at the addresses specified in Subsections 1.1B and 1.1C, or such other address as Landlord or Tenant shall designate by written notice to the other.

24. HAZARDOUS MATERIALS

Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's agents, employees and grantees from and against any all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interests, fines, penalties and expenses, including attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Landlord and Landlord's agents, employees and grantees as a result of the occurrence of any of the following during the term of the Lease: (i) any violation or claim for violation of Environmental Laws (as hereinafter defined) by Tenant with respect to Tenant's use or occupancy of the Premises, injury to any person or his property as a result of the violation or claim of violation of Environmental Laws, or any governmental or judicial claim, ordinance or judgment with respect to the clean up of Hazardous Materials (as hereinafter defined) at or with respect to the Premises; (ii) any cost, claim or liability or damage expended in remediation of the Premises required by governmental authority, regarding the release, escape, seepage, leak or discharge or migration of any Hazardous Materials during the term of this Lease and on or under the Premises or the improvements thereon.

The term "Hazardous Materials" shall mean any substance, material, wastes, gas or particular material which is regulated by any local governmental authority, the State of Illinois or the United States government, including, without limitation, any material or substance which is defined as a "hazardous waste", "Hazardous Material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local or federal law or which contains (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radioactive material, (v) designated as a "Hazardous Substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251, et. seq. (33 U.S.C. 1317), (vi) defined as a "Hazardous Waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et. seq. (42 U.S.C. 6901), or (vii) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. 9601). Environmental Laws shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees

regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

25. RIGHT OF FIRST REFUSAL

In the event that Landlord shall receive from any third party an acceptable bona fide offer to purchase the Building during the term of this Lease, Landlord shall give notice of such bona fide offer to Tenant, which notice shall include a copy of the bona fide offer to purchase the Building from the third party, and shall grant Tenant the right to purchase the property ("Right of First Refusal") for the purchase price contained in the bona fide offer from the third party. Tenant shall exercise the Right of First Refusal by giving written notice of the election to exercise such right within thirty (30) days after Tenant's receipt of Landlord's notice. In the event Tenant gives written notice of its election to purchase the Building pursuant to this paragraph, the Building shall be sold and conveyed to Tenant. The closing of the purchase and sale shall take place on or before sixty (60) days following the date Tenant exercises the Right of First Refusal. If Landlord does not receive notice of Tenant's intent to exercise the Right of First Refusal within said thirty (30) day period, the Right of First Refusal shall expire and Landlord may accept the bona fide offer to sell the Building to the third party. In the event Tenant fails to timely exercise its Right of First Refusal and Landlord fails to consummate the sale of the Building to the third party on the exact terms contained in the bona fide offer within sixty (60) days from the date of the notice, this paragraph shall continue in effect.

26. MISCELLANEOUS

26.1 Late Charges

All Rent and other payments due from Tenant to Landlord, delinquent in excess of thirty (30) days, shall bear interest at twelve percent (12%) per annum, from the date due until paid.

26.2 Entire Agreement

This Lease, the Schedule and the Exhibits attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written.

26.3 Accord and Satisfaction

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term.

26.4 Landlord's Obligations on Sale of Building

In the event of any sale or transfer of the Building, Landlord and the seller or transferor (and the beneficiaries of any selling or transferring land trust) shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, provided such purchaser shall assume all obligations of Landlord occurring from and after the date of such sale or transfer.

26.5 Binding Effect

This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

26.6 Force Majeure

Landlord and Tenant shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease on Landlord's or Tenant's part to be performed, if the other party fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, or any other cause beyond the reasonable control of either party.

26.7 Captions

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

26.8 Applicable Law

This Lease shall be construed in accordance with the laws of the State of Illinois.

26.9 Time

Time is of the essence of this Lease and the performance of all obligations hereunder.

26.10 Amendments

This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective unless it is in writing, signed by the party against whom enforcement thereof is sought.

26.11 Riders

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

26.12 Severability

If any provision, term or condition of this Lease or any application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Subsection 1.1D hereof.

LANDLORD:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not individually, but solely as Trustee of that Trust Agreement dated April 1, 1971, and known as Trust No. 22-75583-00-9

By: \_\_\_\_\_

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

TENANT:

ELMWOOD PARK SAME DAY SURGERY, L.L.C., an Illinois limited liability company

By: \_\_\_\_\_

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

**EXHIBIT "A"**  
**DESCRIPTION OF PREMISES**

C-28565-3  
AJW 12/9/96

SCHEDULE "B"

MONTHLY BASE RENT - SURGERY CENTER PREMISES

The monthly base rent shall be jointly determined by Landlord and Tenant as an annual amount, payable monthly, equal to a twelve (12%) percent return to Landlord on the capitalized investment of the Landlord for the Landlord's Work pursuant to Section 11.1 of the Lease. From and after the first annual anniversary following the Commencement Date, the base rent shall be increased by a factor of one hundred three (103%) percent per annum during the remaining term.

C-20545-3  
AJW 12/9/96

**EXHIBIT "C"**

**CONSTRUCTION CONTRACT - LANDLORD'S WORK**

C-70363-3  
AJW 12/9/96

0046

**ATTACHMENT**

2

**EXHIBIT "C"**  
**PLANS AND SPECIFICATIONS - TENANT'S WORK**

C-22545-3  
AJW 12/9/96

0047

**ATTACHMENT**  
**2**

**AMENDMENT AND REAFFIRMATION  
OF COMMERCIAL LEASE**

This Amendment and Reaffirmation of Commercial Lease (this "Amendment") is made and entered into as of the 19 day of March, 1998, by and among American National Bank and Trust Company of Chicago, as Trustee w/t/d April 1, 1971 a/k/a Trust No. 22-75583-00-9 ("Hugar"), and Elmwood Park Same Day Surgery, L.L.C., an Illinois limited liability company ("E.P.") (Hugar and E.P. are sometimes collectively referred to herein as the "Parties").

**WITNESSETH:**

**WHEREAS**, prior hereto, the Parties entered into a certain Commercial Lease dated as of December 11, 1996 (the "Agreement");

**WHEREAS**, the Parties agreed pursuant to the Agreement to satisfy certain contingencies by certain dates;

**WHEREAS**, because of certain zoning issues relating to the property located at 1614 N. Harlem Avenue, Elmwood Park, Illinois, the financing, construction and closing of this transaction has been delayed and, accordingly, certain dates and conditions pursuant to the Agreement have expired;

**WHEREAS**, the Parties desire to amend the Agreement to extend certain dates and to reaffirm the terms of the Agreement subject to the terms and subject to the provisions set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein and other good and valuable consideration, the receipt and sufficiency of such consideration is hereby acknowledged, the Parties hereby agree as set forth in this Amendment.

1. **Use of Defined Terms.** Except as expressly set forth in this Amendment, all terms which have an initial capital letter where not required by the rules of grammar are defined in the Agreement.

2. **Amendments.**

A. ~~Section 4.1 of the Agreement is hereby amended by filling in the blank line with the following:~~  
"75%".

B. Section 5 of the Agreement is hereby amended by deleting references to the date: "December 31, 1997" therein and substituting therefor the following date: "December 31, 1998".

C. Section 11.1 of the Agreement is hereby amended by deleting references to the date: "December 31, 1997" and substituting therefor the following date: "December 31, 1998".



## Lease Abstract

Elmwood Park



BRADFORD ALLEN  
Realty Services

### Building:

1614 Harlem - *Hugar Clinic*

### Area:

8,382 square feet

### Lease Expiration Date:

December 31, 2006

### Remaining Term:

6/2005 - 12/31/2005 - \$23.71

1/2006 - 12/31/2006 - \$24.42

### Security Deposit:

*Unknown*

### Renewal Option:

- Tenant will have four renewal options of five years each.
- Will need to provide written notice to the Landlord not less than 90 days prior to termination of lease term.
- 1<sup>st</sup> renewal option will be equal to 103% of monthly base rent of last year of the term.
- The second through fourth renewal option's rate will increase by 3% *per year*.

### Right of First Refusal

- Tenant will have the right to purchase the property within 30 days of Landlord's written notice.
- Purchase to take place within 60 days of exercised right of first refusal.

### Assignment/Subletting:

- Written consent by the Landlord that will not be unreasonably withheld.
- Must provide Landlord with executed copies of the transfer documents.

### Hold Over

- Rent will increase to 150% of latest monthly base rent and tenant will be responsible for all damages sustained by Landlord.
- At Landlord's sole option, if tenant remains in space for more than 10 days, it will constitute a 1-year renewal at 150% rent plus any escalations.

### Other:

500 square feet basement space at a rate of \$416.67/month.

- Rent increases by 3% for each year of option terms.

## OPERATING LEASES GUARANTY

This Operating Leases Guaranty (the "Guaranty") is made and entered into this 2nd day of September, 1998 by Donald W. Hugar and Ronald Hugar (collectively, "Guarantor") in favor of American National Bank and Trust Company of Chicago ("Lender").

### RECITALS

A. American National Bank and Trust Company of Chicago, as Trustee w/t/d April 1, 1971 a/k/a Trust No. 22-75583-00-9 (the "Trust") owns that certain property commonly known as 1614 N. Harlem Avenue, Elmwood Park, Illinois (the "Premises").

B. The Trust has entered into the following leases affecting the Premises: (i) Commercial Lease ("E.P. Lease") dated December 11, 1996, as amended by that certain Amendment and Reaffirmation of Commercial Lease dated March 19, 1998 between the Trust and Elmwood Park Same Day Surgery, L.L.C., an Illinois limited liability company ("E.P."), and (ii) Industrial Building Lease ("Hugar Lease") (the E.P. Lease and the Hugar Lease are collectively referred to herein as the "Leases") dated September 2, 1998 between the Trust and Dr. Donald W. Hugar, Ltd. ("Hugar") (E.P. and Hugar are collectively referred to herein as the "Tenants").

C. The Trust and the Hugar Building Partnership, as beneficiary of the Trust ("Partnership"), are obtaining financing from Lender in order to construct an addition to the building on the Premises ("Loan"), and in order to make the Loan so, the Lender requires that Guarantor enter into this Guaranty on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. The undersigned do hereby guarantee the full, faithful and timely payment and performance by Tenants of all the payments, covenants and other obligations of Tenant under or pursuant to the Leases. If the Tenant shall default at any time in the payment of any rent or any other sums, costs or charges whatsoever, or in the performance of any of the other covenants and obligations of the Tenants, under or pursuant to the Leases, then the undersigned, at its expense, shall on demand of the Landlord fully and promptly, and will and truly, pay all rent, sums, costs and charges to be paid by Tenants, under or pursuant to the Leases.

2. The Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of, or subletting, concession, franchising, licensing or permitting under, the Leases. The undersigned hereby waives notices of any of the foregoing, and agrees that the liability of the undersigned hereunder shall be based upon the obligations of Tenants set forth in the Leases as the same may be altered, renewed, extended, modified, amended or assigned.

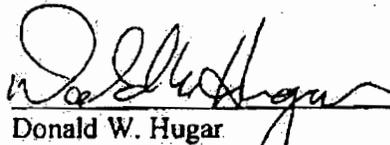
3. The undersigned's obligations hereunder shall remain fully binding until such time as the Trust and Partnership have satisfied the Loan.

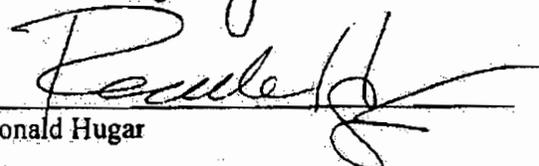
4. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such guarantors shall not release any other of such guarantors.

5. In the event that Lender should institute any suit against the Guarantors for violation of or to enforce any of the covenants or conditions of this Guaranty or to enforce any right of Lender hereunder, or should the undersigned institute any suit against Lender arising out of or in connection with this Guaranty, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interest or rights hereunder, the prevailing party in any such suit shall be entitled to the fees of its attorney(s) in the reasonable amount thereof, to be determined by the court and taxed as a part of the cost therein.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty this 2nd day of September, 1998.

GUARANTORS

  
\_\_\_\_\_  
Donald W. Hugar

  
\_\_\_\_\_  
Ronald Hugar

Doc ID: 77227-1

**EXECUTION VERSION**

**SECOND AMENDMENT TO COMMERCIAL LEASE**

This Second Amendment to Commercial Lease ("Second Amendment") is made as of this \_\_\_ day of December, 2012 by and among CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TRUSTEE TO LASALLE NATIONAL BANK, SUCCESSOR TRUSTEE TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER A TRUST AGREEMENT DATED APRIL 1, 1971 AND KNOWN AS TRUST NO. 22-75583-00-9("Landlord") and ELMWOOD PARK SAME DAY SURGERY, L.L.C., an Illinois limited liability company ("Tenant") [Landlord and Tenant are collectively referred to herein as the "Parties"].

**RECITALS:**

WHEREAS, Landlord and Tenant entered into that certain Commercial Lease dated December 11, 1996 (the "Original Lease"), as amended by that certain Amendment and Reaffirmation of Commercial Lease dated March 19, 1998 (the "First Amendment") [the First Amendment and the Original Lease are herein collectively referred to as the "Lease"] in connection with that certain premises, as modified hereby, consisting of approximately 8,382 square feet of space described in the Lease and located at 1614 N. Harlem Avenue, Elmwood Park, Illinois 60707 ("Premises"); and

WHEREAS, the Term of the Lease expired on or about May 2009, and Tenant has been occupying the Premises on a month-to-month basis;

WHEREAS, Tenant has entered into that certain Asset Purchase Agreement with Instant Care Management, LLC ("Acquiror") dated August 31, 2012 ("Purchase Agreement"), for the sale and purchase of substantially all the assets of Tenant;

WHEREAS, it is a condition precedent to the closing of the transactions evidenced by the Purchase Agreement ("Closing") that Acquiror be assigned a Lease for the Premises acceptable to Acquiror, among other conditions precedent to Closing as set forth in the Purchase Agreement;

WHEREAS, in order for Acquiror to be issued the Licenses (as defined in the Purchase Agreement), Acquiror is required to demonstrate that, at the Closing of the transactions contemplated by the Purchase Agreement, that it will hold a valid lease for the Premises for a significant period of time (not a month to month lease);

WHEREAS, the Landlord acknowledges that the beneficiaries of Landlord are personally benefitted by the transactions evidenced by the Purchase Agreement and will accept Acquiror (or its permitted assignee pursuant to Section 14 at Closing) as a substitute Tenant; and

WHEREAS, the Parties desire to renew the Lease and to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree to amend the Lease, as follows:

1. **Recitals.** The Recitals set forth above are incorporated herein by reference and made a part hereof as though fully set forth herein.

2. **Term.** The Term of the Lease is hereby extended through December 31, 2019 (as same may be extended by the exercise of an Option pursuant to Section 2.3 of the Lease (as amended herein), the "Expiration Date").

3. **Lease Purpose.** Section 1.1H shall be expanded to include ancillary general office use.

4. **Monthly Base Rent.** Commencing January 1, 2013, Section 3.1 and Schedule B of the Lease shall be deleted in their entirety, and the Monthly Base Rent pursuant to the Lease shall be as follows through December 31, 2019:

Period	PSF	Annual Base Rent	Monthly Base Rent
1/1/13 - 12/31/13	\$23.00	\$192,786.00	\$16,065.50
1/1/14 - 12/31/14	\$23.58	\$197,647.56	\$16,470.63
1/1/15 - 12/31/15	\$24.17	\$202,592.94	\$16,882.75
1/1/16 - 12/31/16	\$24.77	\$207,657.34	\$17,304.78
1/1/17 - 12/31/17	\$25.39	\$212,812.27	\$17,734.36
1/1/18 - 12/31/18	\$26.02	\$218,099.64	\$18,174.97
1/1/19 - 12/31/19	\$26.67	\$223,552.13	\$18,629.34

Subject to the provisions of Section 11 of this Second Amendment, it is the intent of the parties that this shall be a gross lease.

5. **Address.** Section 1.1.B of the Lease is hereby amended to provide that Tenant shall send monthly rent checks to the following address:

Hugar Building Partnership  
1614 N. Harlem Avenue  
Elmwood Park, Illinois 60707

6. **Premises.** Notwithstanding anything in the Lease to the contrary, the Premises consists of approximately 8,382 square feet of space in the Building (also called the Surgery Center Premises, which consists of the entire second floor of the Building and the currently unfinished portion of the first floor of the Building). Landlord and Tenant acknowledge and agree that Tenant is not leasing the Basement Premises. Accordingly, all references to "Monthly Base Rent for Basement Premises" and/or "Basement Premises" are hereby deleted from the Lease.

7. **Options.** Section 2.3 of the Lease is deleted and replaced with the following:

**“2.3 Option**

Provided Tenant is not then in default at the time of exercise of such respective Option Term, Tenant shall have the option to renew this Lease for three (3) additional terms (each being an “Option”) of five (5) years each (each being an “Option Term”). Tenant shall exercise each Option by giving written notice to Landlord not less than ninety (90) days prior to the then Expiration Date, as applicable. Monthly Base Rent for the Surgery Center Premises for each year of each Option Term shall increase by 2.5% of the Annual Base Rent for the immediately preceding year, as set forth in the schedule below:

Period	PSF	Annual Base Rent	Monthly Base Rent
<b>First Option Term</b>			
1/1/20-12/31/20	\$27.34	\$229,163.88	\$19,096.99
1/1/21-12/31/21	\$28.02	\$234,863.64	\$19,571.97
1/1/22-12/31/22	\$28.72	\$240,731.04	\$20,060.92
1/1/23-12/31/23	\$29.44	\$246,766.08	\$20,563.84
1/1/24-12/31/24	\$30.18	\$252,968.76	\$21,080.73
<b>Second Option Term</b>			
1/1/25-12/31/25	\$30.93	\$259,255.26	\$21,604.61
1/1/26-12/31/26	\$31.70	\$265,709.40	\$22,142.45
1/1/27-12/31/27	\$32.49	\$272,331.18	\$22,694.27
1/1/28-12/31/28	\$33.30	\$279,120.60	\$23,260.05
1/1/29-12/31/29	\$34.14	\$286,161.48	\$23,846.79
<b>Third Option Term</b>			
1/1/30-12/31/30	\$34.99	\$293,286.18	\$24,440.52
1/1/31-12/31/31	\$35.86	\$300,578.52	\$25,048.21
1/1/32-12/31/32	\$36.76	\$308,122.32	\$25,676.86
1/1/33-12/31/33	\$37.68	\$315,833.76	\$26,319.48
1/1/34-12/31/34	\$38.62	\$323,712.84	\$26,976.07

All other terms of the Lease, as modified by this Second Amendment, shall apply during the Option Terms, except that there shall be no further options for renewal.”

8. **Section 3.3.** Section 3.3 of the Lease is hereby deleted.

9. **Exhibits and Schedules.** Exhibit A shall be deleted and replaced by Exhibit A attached to this Second Amendment. Schedule B, Exhibit C and Exhibit D are hereby deleted.

10. **Tenant’s Proportionate Share.** “Tenant’s Proportionate Share” pursuant to Section 4.2 is 58.2%, which has been determined by dividing the rentable area of the Premises by the total square footage of the Building.

11. **Additional Rent.** As of January 1, 2022 (if the first Option is exercised by Tenant), a Base Year for Operating Expenses and Taxes shall be established as follows and the Lease shall otherwise be modified as set forth herein.

- a. "Base Year for Operating Expenses" shall be 2021; and
- b. "Base Year for Taxes" shall be the 2020 Taxes payable in 2021.

The first paragraph of Section 4.3 of the Lease shall be deleted and replaced with the following:

"Commencing with the calendar year 2022 (if the first Option is exercised by Tenant), Tenant shall pay to Landlord, as Additional Rent, an amount ("Expense Adjustment Amount") equal to Tenant's Proportionate Share of Operating Expenses incurred during each calendar year as estimated by Landlord in excess of the Operating Expenses for the Base Year for Operating Expenses. Tenant shall pay the Expense Adjustment Amounts to Landlord monthly in accordance with Section 3.2."

Section 4.4 of the Lease shall be deleted and replaced with the following:

"Commencing with the calendar year 2022 (if the first Option is exercised by Tenant), Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Proportionate Share multiplied by the amount by which Taxes paid during each calendar year by Landlord exceed the Taxes for the Base Year for Taxes ("Tax Adjustment Amount"). Tenant shall pay the Tax Adjustment Amounts to Landlord monthly in accordance with Section 3.2. When applicable, prior to each calendar year, or as soon as reasonably possible, Landlord shall estimate and notify Tenant of the Tax Adjustment Amount due for such year, and Tenant shall pay Landlord one-twelfth (1/12<sup>th</sup>) of such estimate on the first day of each month during such year. Such estimate may be based upon the most recent tax bills and may be revised by Landlord whenever it obtains information relevant to making such estimate more accurate. As soon as reasonably possible after the end of each calendar year commencing with the calendar year 2022, or such later time as Landlord shall be able to determine the actual amounts of Taxes for the previous calendar year, Landlord shall deliver to Tenant a statement setting forth the actual Taxes for such calendar year, the Tax Adjustment Amount that Tenant paid for such year, and the Tax Adjustment Amount payable for such year. Within fifteen (15) days after receipt of such statement, Tenant shall pay to Landlord the actual Tax Adjustment Amount due for such calendar year minus any payments of the Tax Adjustment Amount made by Tenant for such year. If Tenant's estimated payments of the Tax Adjustment Amount exceed the amount due Landlord for such calendar year, Landlord shall apply such excess as a credit against Tenant's other obligations under this Lease or promptly refund such excess to Tenant if the Term has already expired, in either case without interest to Tenant. Tenant's obligation to pay the Tax Adjustment Amount shall survive the termination of the Lease.

12. **Utilities.** Section 6 of the Lease shall be amended by adding the following provision at the end thereof:

"Gas service to the Building is not separately metered, therefore, gas service charges shall be allocated among the tenants of the Building in proportion to the portion of the rentable

square footage of the Building so occupied by such party; provided, however, if any time during the Term of the Lease less than ninety-five percent (95%) of the then current space in the Building is occupied, at Landlord's option, such gas charges shall be allocated to the portion of the space in the Building which is actually occupied and generating such gas charges.”

13. **Maintenance.**

The first sentence of Section 8.1 is deleted and replaced with the following sentence:

“Tenant shall, at Tenant’s sole cost and expense, keep the Premises and all improvements, systems, fixtures and personal property located therein or exclusively serving the Premises in good order and condition, including, without limitation, all electrical, plumbing, sewer, heating, ventilating and air conditioning systems and equipment located in or exclusively serving the Premises (including the three rooftop HVAC units serving the Premises), and floors, windows and doors in the Premises; provided, however, notwithstanding the foregoing: (i) Tenant’s sole obligation for repair and maintenance of the HVAC systems shall be to enter into and pay for an annual HVAC Service Contract (as defined herein) with the Landlord being responsible for all repair and maintenance required above and beyond what is covered under the HVAC Service Contract (“**Extra Repair/Maintenance Costs**”) maintained by Tenant (further, provided, however, notwithstanding the foregoing, all Extra Repair/Maintenance Costs may be included in Operating Expenses commencing with the calendar year 2022 and passed-through to the Tenant in accordance with the terms and conditions hereof); and (ii) in the event that the HVAC systems serving the Premises need replacement as reasonably determined by Landlord’s designated contractor, the Landlord shall be responsible for replacement of such system; further provided, however, Tenant shall pay to Landlord during the Term of this Lease the annual amortized cost of such replacement (with such cost amortized over a ten (10) year period), provided, however, Landlord shall not be permitted to pass through any amortized HVAC replacement costs until the calendar year commencing January 1, 2017 with the annual amortized amounts due within thirty (30) days after Landlord’s issuance of an invoice to Tenant (with a proration for any partial year). Tenant shall enter into an annual HVAC service contract with a reputable HVAC contractor as reasonably approved by Landlord, which provides for regular maintenance of the HVAC system (at least two (2) times annually) and otherwise to specifically cover maintenance necessary to maintain the HVAC systems and equipment in proper mechanical operating condition in at least the maintenance coverage historically provided by AMS Mechanical Systems, Inc. per the Planned Maintenance Agreement attached as **Exhibit 2** (the “**HVAC Service Contract**”); provided that such regular maintenance shall be only required twice annually.”

Section 8.2 of the Lease is hereby deleted and replaced as follows:

“8.2 **Landlord Maintenance.**

Landlord shall repair, replace and maintain the Common Areas of the Building (including, without limitation, the parking areas, landscaped areas, entrance areas, elevators and stairwells of the Building, and the performance of snow removal), the roof, exterior and common walls, and utility connections up to the point of connection to the Premises, all of which shall be

maintained in a “good and workmanlike manner” in accordance with standard building practices of other similar buildings in the same geographic location.”

14. **Assignment.** The last paragraph of Section 9 is deleted and replaced with the following paragraph:

“Notwithstanding anything to the contrary contained in this Section 9, Tenant may, without obtaining Landlord’s consent, permit the Premises to be occupied by, or may sublet all or any portion of the Premises, or assign this Lease to any party which directly or indirectly (including members of Tenant): (i) wholly owns or controls Tenant; (ii) is wholly owned or controlled by Tenant, (iii) is under common control or ownership with Tenant, or (iv) to which Tenant or any of the foregoing parties have merged, consolidated or reorganized or to which all or substantially all of Tenant’s assets or such other parties’ assets are sold, assigned or transferred as a going concern, including, without limitation, Elmwood Park Surgery Center Acquisition & Development, LLC, as assignee of Acquiror, provided such assignee shall be the operator of such business operations conducted at the Premises (each of the transfers set forth in (i), (ii), (iii) and/or (iv) being a “Permitted Transfer”). In order for such a Permitted Transfer to be effective, Tenant must deliver written notice of such Permitted Transfer to Landlord together with executed copies of the transfer documents promptly after execution and any such transferee must agree to assume the obligations of Tenant under the Lease. With respect to an assignment or sublease pursuant to (i), (ii) or (iii) above, Tenant shall not be released from liability under this Lease. With respect to an assignment of the Lease pursuant to (iv) above, Tenant shall be released from obligations first arising under the Lease after the date on which such Lease is assigned by Tenant and the assignee thereof has executed and delivered to Landlord a commercially reasonable agreement to be bound by this Lease.”

15. **Landlord’s Remedies.** Section 13.2(a)(3) is hereby deleted in its entirety. Section 13.2(a)(2) is deleted and replaced with the following:

“(2) an amount equal to the then present value of the Rent for the remainder of the Term, less the present value of the fair market rent of the Premises for the remainder of the Term as a surgical treatment center (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses relating to recovery of the Premises, preparation for reletting and for reletting itself);”

16. **Surrender.** The last sentence of Section 14 is deleted and replaced with the following sentence:

“All movable personal property not removed from the Premises by Tenant within five (5) business days after receipt by Tenant of written notice after lease expiration or termination reflecting that personal property remains at the Premises shall be conclusively presumed to have been abandoned by Tenant, and title thereto shall pass to Landlord without any cost or credit therefor, and Landlord may, at its option and at Tenant’s expense, store and/or dispose of such property.”

17. **Substantial Untenantability.** The first paragraph of Section 16.1 is deleted and replaced with the following paragraph:

“If the Building or Premises are made substantially untenantable by fire or other casualty, Landlord may elect to (i) terminate the Lease as of the date of the fire or other casualty by giving Tenant written notice thereof within ninety (90) days after said date; or (ii) proceed to repair or restore the Building or the Premises by giving Tenant written notice thereof within ninety (90) days after said date. If the Premises are made substantially untenantable by fire or other casualty during the last twelve (12) months of the Term (and provided Tenant has not exercised any valid option to extend the Term), then Tenant shall also have the right to terminate this Lease as of the date of such damage by giving written notice to Landlord within (30) days’ after the date of such fire or other casualty. If neither party terminates the Lease, Landlord shall proceed to repair or restore the Building or the Premises, other than leasehold improvements and personal property paid for and installed by Tenant.”

18. **Insurance.**

Section 18.1 of the Lease shall be modified to provide that the liability insurance limits as of January 1, 2013 shall be at least \$1,000,000.00 per occurrence and \$3,000,000.00 in the annual aggregate.

The following Section 18.4 shall be added to the Lease:

“18.4: Commencing as of and at any time after the commencement of the Second Option Term, Landlord may require that Tenant increase such limits of its required insurance hereunder or require such other insurance that Landlord deems reasonably necessary and which are being required by landlords of similar buildings of similar tenants in the vicinity of the Premises and are typically carried by similar tenants as same shall be reasonably negotiated and agreed between Landlord and Tenant.”

The following Section 18.5 shall be added to the Lease:

“18.5 Landlord’s Insurance Requirements. Landlord agrees that at all times during the Term, Landlord will maintain a policy or policies of fire and extended coverage insurance covering the Building in an amount to cover the full replacement cost thereof (but specifically excepting coverage for any Tenant’s leasehold improvements and/or alterations, Tenant’s trade fixtures, equipment and other personal property) Landlord shall also maintain commercial general liability coverage in such form and amounts typically carried by prudent owners of comparable Buildings in the area in which the Building is located as reasonably determined by Landlord.”

The following Section 18.6 shall be added to the Lease:

“18.5 Waiver of Subrogation. Landlord and Tenant each waives any claim it might have against the other for damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured against under any property insurance policy that covers the Building, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, regardless of whether the negligence of the other party caused such

property Loss. Each party will cause its property insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.”

19. **Certifications/Broker Commissions.** Landlord and Tenant each hereby represent and certify that, to their respective knowledge, as of the date of this Second Amendment, all obligations and conditions under the Lease have been paid and performed to date by Landlord and Tenant, and such obligations and conditions have been satisfied free of defenses and setoffs, and there are no defaults by either Landlord and Tenant under the Lease. Without limiting the generality of the foregoing, Landlord hereby confirms that all Rent and other sums due and payable under the Lease as of the date of this Second Amendment have been paid in full. Further, Landlord and Tenant represent and warrant to each other that neither party has had any dealings with any broker or agent in connection with this Second Amendment, and they both agree to indemnify and hold harmless the other for any claim to a fee or commission by a broker or agent to the extent arising by, through or under the indemnifying party.

20. **Miscellaneous.** Except as set forth in this Second Amendment, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby incorporated herein by reference. Each capitalized term not defined in this Second Amendment shall have the meaning ascribed to it in the Lease. In the event of a conflict between the terms and conditions of this Second Amendment and the Lease, this Second Amendment shall govern and control.

21. **Termination Right.** In the event that the Closing on the transactions evidenced by the Purchase Agreement, for any reason, do not occur on or before July 1, 2013 (“**Outside Closing Date**”), then either Tenant or Landlord may terminate this Second Amendment upon at least thirty (30) days prior written notice to the other at any time after the Outside Closing Date but before the Closing Date, of its intention to terminate the Second Amendment. Within thirty (30) days of the effective date of such termination of this Second Amendment, Tenant shall pay to Landlord the difference between the amount that Landlord would have received in Rent (including, without limitation, Monthly Base Rent and Additional Rent) under the Lease for the period from January 1, 2013 through the effective date of termination of this Second Amendment under the terms and conditions of the Lease in effect as same existed immediately prior to January 1, 2013 and the amount of Rent paid pursuant to this Second Amendment for the same period. From and after the effective date of termination of this Second Amendment, the Lease shall continue in full force and effect on a month-to-month basis (“**Month-To-Month Term**”) under the same terms and conditions of the Lease in effect as same existed immediately prior to January 1, 2013 and either party may terminate such Month-To-Month Term as provided for under applicable law.

22. **Entire Agreement.** This Second Amendment constitutes the entire agreement between the Parties hereto with respect to the amendment of the Lease as provided for herein.

23. **Counterparts.** For convenience, this Second Amendment may be executed with facsimile signatures and/or in any number of counterparts, each of which shall be deemed an original and all of such counterparts when taken together shall constitute but one and the same document which shall be sufficiently evidenced by such executed counterparts.

24. **Successors.** This Second Amendment shall be binding on, and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and permitted assignees.

25. **Acknowledgement Re: Tenant Improvements.** Tenant represents and warrants to Landlord that within twelve (12) months from the date of the Closing, it shall spend at least \$225,000.00 in "hard costs" ("**Minimum Tenant Work Cost**") in connection with certain leasehold improvements, betterments and alterations to the Premises ("**New Tenant Leasehold Improvements**"). Tenant shall perform the New Tenant Leasehold Improvements (i) using high quality materials, (ii) in a good and workmanlike manner and (iii) in compliance with all applicable laws. The New Tenant Leasehold Improvements shall be subject to the reasonable approval of Landlord and Section 11.2 of the Lease (except as otherwise provided for herein), which consent shall not be unreasonably, conditioned, withheld or delayed if Tenant desires to make such the New Tenant Leasehold Improvements materially in the layout set forth in the floor plan attached hereto as **Exhibit 1**. Within 20 days from completion of the New Tenant Leasehold Improvements, Tenant shall provide to Landlord a certification and affidavit, in form and substance reasonably acceptable to Landlord, certifying the total cost ("**Tenant's Total Work Cost**") of the New Tenant Leasehold Improvements (the "**Tenant Work Certification**") along with such other reasonable documentation evidencing the Tenant's Total Work Cost incurred by Tenant. In the event that the Tenant's Total Work Cost is less than the Minimum Tenant Work Cost, Tenant shall pay the difference between the Minimum Tenant Work Cost and the Tenant's Total Work Cost simultaneously upon delivery of the Tenant Work Certification to Landlord.

26. **Beneficiaries.** Tenant acknowledges and confirms: (i) that for purposes of any Tenant indemnification under the Lease and/or naming of Landlord as additional insureds under any insurance policies as required of Tenant hereunder, the term Landlord shall include any and all beneficiary(s) of Landlord, and (ii) that Landlord's beneficiary(s) shall be entitled to provide notices on behalf Landlord and otherwise enforce the terms and conditions of this Lease.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment to Lease as of the day and year first above written.

**LANDLORD:**

CHICAGO TITLE LAND TRUST  
COMPANY, SUCCESSOR TRUSTEE OF  
LASALLE NATIONAL BANK,  
SUCCESSOR TRUSTEE OF AMERICAN  
NATIONAL BANK, AS TRUSTEE U/T/D  
APRIL 1, 1971 A/K/A TRUST NO. 22-  
75583-00-9

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

**TENANT:**

ELMWOOD PARK SAME DAY  
SURGERY, L.L.C., an Illinois limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



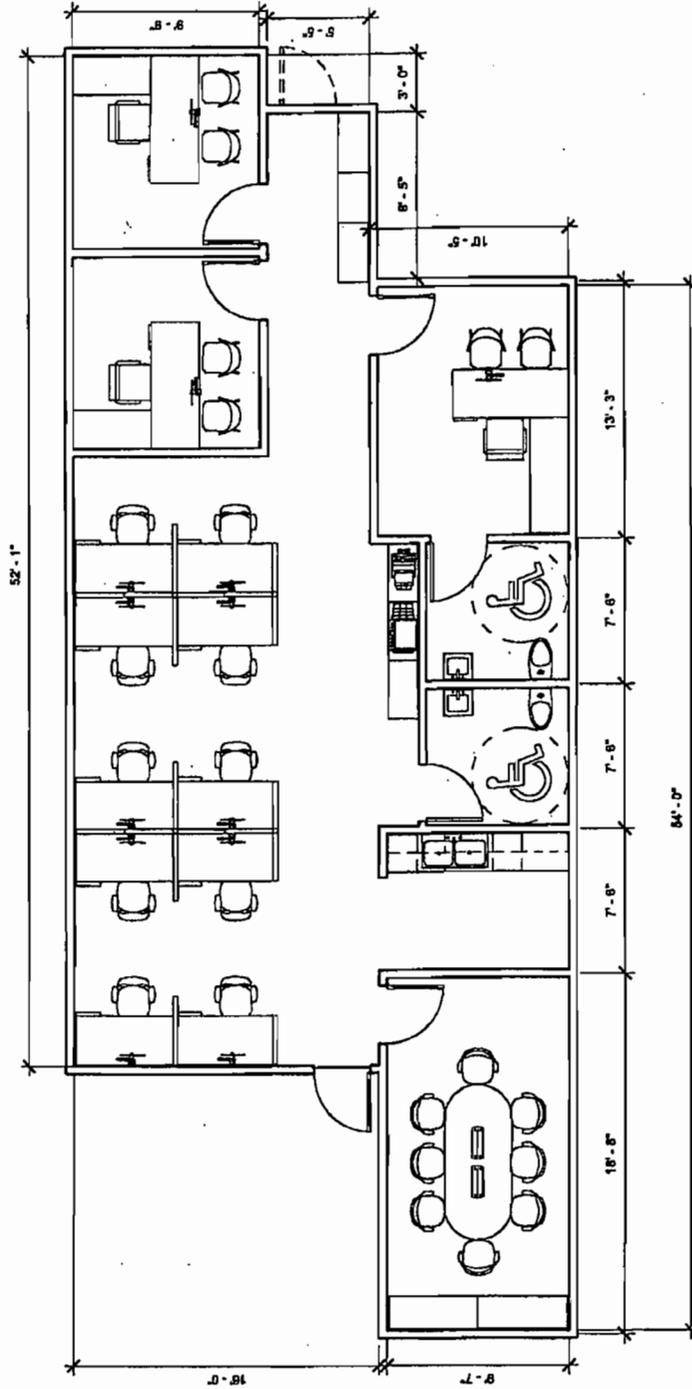


**EXHIBIT 1**  
**APPROVED FLOOR PLAN**

**See attached Floor Plan**

### Spaceplan Option 5

Project number	63212
Date	09/27/2012
Drawn by	MMS
Checked by	KLM
A105	
Scale 3/16" = 1'-0"	



# unispace

www.unispace.com

**EXHIBIT 2**  
**PLANNED MAINTENANCE AGREEMENT**

**See Attached.**



MECHANICAL SYSTEMS, INC.

# EquipCare™

## PLANNED MAINTENANCE AGREEMENT FOR:

CUSTOMER: Same Day Surgery – Elmwood Park

ADDRESS: 1614 North Harlem Avenue, Suite 300  
Elmwood Park, IL 60707

PHONE: (708) 452-5000 E-MAIL ADDRESS: dcullota@uspi.com

CUSTOMER REPRESENTATIVE: Mr. Don Cullota

COVERAGE DATES: FROM: October 1, 2010 TO: September 30, 2011  
"PLEASE REFERENCE TERMS & CONDITIONS REGARDING RENEWALS"

EQUIPMENT SCHEDULE(S): Attached Schedule "A" QUOTE #: 04297

SYSTEM TYPE(S):  REFRIGERATION  HVAC  BOILERS  COMPUTER EQUIPMENT

COVERAGE TYPE:  FULL MAINTENANCE  PREVENTIVE MAINTENANCE  OPS. / MAINT TRAINING

AMS Mechanical Systems, Inc. will provide the following maintenance tasks for both **Full Maintenance** and **Preventive Maintenance Agreements** on each inspection in order to maintain equipment as listed in **Schedule "A"** in proper mechanical operating condition (see **Schedule "A"** attached).

*"Over 40 Years Of Quality Service"*

140 E. TOWER DRIVE • BURR RIDGE, IL 60527 • (630) 887-7700 • FAX (630) 887-0770 • www.amsmechanicalsystems.com

0068

ATTACHMENT

AMS MECHANICAL SYSTEMS, INC.

EquipCare™

### COVERAGE INFORMATION

- Base cost of Preventive Maintenance per year, including optional services chosen, will be \$6,080.00  
(Please note a 5% reduction has already been applied to the amount.)
- Billing will be \$1,520.00 / Quarter
- Terms of Payment – Net 30 Days.
- All time and material labor rates are subject to increase January 1 & June 1<sup>st</sup> of each calendar year.

### SPECIAL TERMS AND CONDITIONS

Four (4) scheduled preventative maintenance visits per year

Four (4) Pre-Filter changes per year

One (1) Belt change per year

One (1) Coil power washing per year

### NOTE:

Hepa Filter change may be performed for an additional cost to the contract of \$16,500.00 (or \$17,000.00 for Premium Time). Per the manufacturer, Hepa Filters for this location have a five (5) year life expectancy depending upon the environment.

### COVERAGE BENEFITS:

- Proposal pricing valid for 30-days from proposed date.
- A dedicated primary and secondary technician to each account and / or site location
- AMS Mechanical Systems is UA Star Certified
- Uniformed technicians, drug and background checked.
- Priority service over non-contract customers.
- Emergency Response Priority Service by our trained and certified technicians.
- No truck, tool, travel or fuel charges on preventive maintenance visits.
- No minimum hour requirements on service repairs NOT covered by contract
- Service Rates NOT covered by contract are provided to contract customers at a 10% discount.
  - ❖ T & M Rates are subject to increase January 1 & June 1<sup>st</sup> of each calendar year

### ACCEPTANCE

*PO-5460*

AMS MECHANICAL SYSTEMS, INC.:

EQUIPMENT OWNER:

Approved By: *[Signature]*

Approved By: \_\_\_\_\_

Title: Senior Service Account Representative

Title: \_\_\_\_\_

Proposed Date: 9/7/2010

Effective Date of Agreement: \_\_\_\_\_



**PURCHASE ORDER**

Elmwood Park Sameday Surgery  
1614 N. Harlem Ave  
Elmwood Park, IL 60707

PO#: 5460  
Date: 06/28/2010  
Contact: STORMI LITTLE  
Phone: 708-452-5000  
Fax: 708-452-5588

Vendor: AMS  
140 E. TOWER DRIVE  
BURR RIDGE, IL 60527

Phone: (630)887-7700  
Fax: (630)887-0770  
Salesperson:  
Terms:  
Acct#: 21131

Comments: 10/1/10 - 9/30/11

Qty Order	Qty Rcvd	UM	Description	GL#	Vendor Cat#	Unit Price	Ext Price
1	1	EA	PM AGREEMENT X4/YR (1520.00)E			6,080.00	6,080.00

Purchase Order Total: 6,080.00

cerials Manager Signature: \_\_\_\_\_

*Stormi Little*

Date: 10/1/10

Invoice To:  
Elmwood Park Sameday Surgery  
1614 N. Harlem Ave  
Elmwood Park, IL 60707  
708-452-5000

**Section I**  
**Attachment 3**  
**Operating Entity/Licensee**

The Certificate of Good Standing for Elmwood Park Surgery Center Acquisition & Development LLC is attached at ATTACHMENT 1.

Scott Borre, an Illinois resident, is the sole member, sole manager, and 100% owner of Elmwood Park Surgery Center Acquisition & Development LLC.

**Section I**  
**Attachment 4**  
**Organizational Relationships**

Elmwood Park Same Day Surgery LLC (the "Seller") is currently a joint venture between Same Day LLC, an affiliate of United Surgical Partners International, Inc., Dr. Ronald Hugar, and Dr. Donald Hugar.

Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") is an Illinois limited liability company. The Purchaser is a special purpose vehicle and was organized specifically for the Transaction. Scott Borre, an Illinois resident, is the sole member, sole manager, and 100% owner of the Purchaser.

The organizational chart for the Purchaser is attached at ATTACHMENT 4.

Elmwood Park Surgery Center  
Acquisition & Development LLC

Mr. Scott Borre  
(100% Owner)

**Section I**  
**Attachment 5**  
**Flood Plain Requirements**

This Project involves a change of ownership. This Project does not involve any construction or modernization. Accordingly, this criterion is not applicable.

**Section I**  
**Attachment 6**  
**Historic Resources Preservation Act Requirements**

This Project involves a change of ownership. This Project does not involve any construction or modernization. Accordingly, this criterion is not applicable.

**Section I**  
**Attachment 7**  
**Project Costs**

The total cost of the Project will be \$1,400,000.

**Section I**  
**Attachment 8**  
**Project Status and Completion Schedules**

The proposed Transaction is projected to be completed by June 30, 2013, with an outside date of August 31, 2013.

**Section I**  
**Attachment 9**  
**Cost/Space Requirements**

This Project involves a change of ownership. This Project does not involve any construction or modernization. Accordingly, this criterion is not applicable.

**Section III**  
**Attachment 11**  
**Criterion 1110.230(a), Background of The Applicants**

1a. The Purchaser is a special purpose vehicle that was specifically organized for the Transaction. Thus, the Purchaser does not currently own or operate any licensed health care facilities in Illinois.

1b. Borre does not currently own or operate any licensed health care facilities in Illinois. Borre provides management services to Illinois medical groups, surgical suites, and facilities primarily serving patients with work place injuries. Borre has developed various management models which are patient focused and has enjoyed long standing relationships which some of the leading workers compensation attorneys, physicians, and service unions in the Chicagoland area. Borre also serves on the Auxiliary Board of Directors for Rush University Medical Center and the Board of Directors for the Highland Park Art Center. Borre is also a member of Young Presidents' Organization ("YPO") of Chicago.

1c. In conjunction with Athletico Physical Therapy, the Applicants are in the process of organizing a not-for-profit entity that will provide free medical care and related physical therapy services to veterans and service members who incurred a physical injury co-incident to their military service (similar to the Wounded Warriors Project).

1c. Dr. Lawrence Hollander, a general surgeon who has practiced medicine since 1970, has agreed to serve as the Medical Director of the Elmwood Park Surgery Center (the "Surgery Center") following the Transaction.

2a. The Purchaser is a special purpose vehicle that was specifically organized for the Transaction. Thus, no adverse actions have been taken against any Illinois licensed facility owned and/or operated by the Purchaser in the last three years.

2b. Borre does not currently own or operate any licensed health care facilities in Illinois. Thus, Borre has had no adverse actions have been taken against any Illinois licensed facility owned and/or operated by the Purchaser in the last three years.

2c. Letters certifying the aforementioned information are attached at ATTACHMENT 11.

3. Authorization letters granting access to the Review Board and the Illinois Department of Public Health ("IDPH") to verify information about the Purchaser and Borre are attached at ATTACHMENT 11.

4. Neither the Purchaser nor Borre have submitted any certificate of need applications in the past year.

Elmwood Park Surgery Center Acquisition & Development LLC

May 1, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

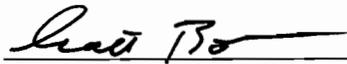
Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Criterion 1130.520(b)(3), No Adverse Actions Certification

Dear Ms. Avery and Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1130.520(b)(3), that there have been no adverse actions taken against any facility owned or operated by Elmwood Park Surgery Center Acquisition & Development LLC during the three (3) years prior to the filing of this Certificate of Need.

Sincerely,



Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition &  
Development LLC

SUBSCRIBED AND SWORN  
to before me this 1<sup>st</sup> day  
of May, 2013.

  
Notary Public

May 1, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Criterion 1130.520(b)(3), No Adverse Actions Certification

Dear Ms. Avery and Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1130.520(b)(3), that there have been no adverse actions taken against any facility owned or operated by me during the three (3) years prior to the filing of this Certificate of Need.

Sincerely,

  
\_\_\_\_\_  
Scott Borre

SUBSCRIBED AND SWORN  
to before me this 6<sup>th</sup> day  
of May, 2013.

  
\_\_\_\_\_  
Notary Public



Elmwood Park Surgery Center Acquisition & Development LLC

May 21, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

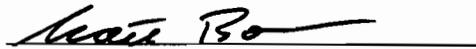
Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Authorization to Access Information, Criterion 1110.230(a)(3)(C)

Dear Ms. Avery and Mr. Constantino:

Pursuant to 77 Ill. Admin. Code § 1110.230(a)(3)(C), I hereby authorize the Illinois Health Facilities & Services Review Board (the "Board") and the Illinois Department of Public Health ("IDPH") to access all information necessary to verify any documentation or information submitted by Elmwood Park Surgery Center Acquisition & Development LLC with this application. I further authorize the Board and IDPH to obtain any additional documentation or information which the Board or IDPH finds pertinent and necessary to process this application.

Sincerely,



Scott Borre

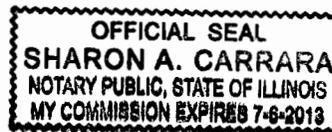
Sole Member and Manager

Elmwood Park Surgery Center Acquisition & Development LLC

SUBSCRIBED AND SWORN  
to before me this 21 day  
of May, 2013.



Notary Public



May 21, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Authorization to Access Information, Criterion 1110.230(a)(3)(C)

Dear Ms. Avery and Mr. Constantino:

Pursuant to 77 Ill. Admin. Code § 1110.230(a)(3)(C), I hereby authorize the Illinois Health Facilities & Services Review Board (the "Board") and the Illinois Department of Public Health ("IDPH") to access all information necessary to verify any documentation or information submitted by me with this application. I further authorize the Board and IDPH to obtain any additional documentation or information which the Board or IDPH finds pertinent and necessary to process this application.

Sincerely,



Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition & Development LLC

SUBSCRIBED AND SWORN  
to before me this 21 day  
of May, 2013.



Notary Public



**Section III**  
**Attachment 12**  
**Criterion 1110.230(b), Purpose of Project**

**Purpose Statement**

The Applicants seek a Certificate of Need from the Illinois Health Facilities & Services Review Board (the "Review Board") to allow the consummation of the proposed Transaction between Elmwood Park Same Day Surgery LLC (the "Seller") and Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser"), whereby the Purchaser will acquire the Elmwood Park Same Day Surgery Center (the "Surgery Center") from the Seller, pursuant to an Asset Purchase Agreement, a copy of which is attached at ATTACHMENT 19. The Purchaser intends to maintain and enhance patient access to health care services in the service area through the recruitment of new physicians to the Surgery Center and increased coordination with other service area healthcare providers following the Transaction.

**Supporting Statements & Documentation**

1. This Project involves a change of ownership. Thus, the Surgery Center will remain open and continue to provide access to health care.
2. Borre provides management services to Illinois medical groups, surgical suites, and facilities primarily serving patients with work place injuries. Borre has developed various management models which are patient focused and has enjoyed long standing relationships which some of the leading workers compensation attorneys, physicians, and service unions in the Chicagoland area.
3. If this Project is approved by the Review Board, the Purchaser intends to recruit new physicians to the Surgery Center.
4. If this Project is approved by the Review Board, the Purchaser intends to make additional capital expenditures at the Surgery Center in the future to meet the equipment needs of the newly recruited physicians.
5. The Surgery Center is currently located in Health Service Area 7. Because this Project involves a change of ownership, the Health Service Area will not change.
6. In conjunction with Athletico Physical Therapy, the Applicants are in the process of organizing a not-for-profit entity that will provide free medical care and related physical therapy services to veterans and service members who incurred a physical injury co-incident to their military service (similar to the Wounded Warriors Project).
7. Thus, this Project will actually improve access to healthcare in the service area.

**Section III**  
**Attachment 13**  
**Criterion 1110.230(c), Alternatives to Proposed Project**

The Applicants reviewed no less than four other alternatives before electing to file this Certificate of Need. As discussed below, the primary options reviewed included: (i) purchase another surgery center; (ii) purchase less than a controlling interest in the Elmwood Park Same Day Surgery Center (the "Surgery Center"); (iii) do nothing; or (iv) purchase the Surgery Center and obtain a Certificate of Need. The last option is the only real viable option for the Applicants. Accordingly, it was chosen as the preferred option.

**Alternative #1: Purchase Another Surgery Center**

The Applicants have been actively searching for a surgery center to purchase for the past four years. Indeed, Borre has spent considerable sums of money performing due diligence and negotiating with several other surgery centers in the Chicagoland area. Most importantly, the Surgery Center is well managed, well maintained, has an extensive compliance program and provides quality care to its patients. In addition, the Seller negotiated in good faith and demonstrated a clear desire to facilitate a transaction. For all of these reasons, the Applicants elected to move forward with the Seller and execute the Asset Purchase Agreement (versus purchasing another surgery center).

**Alternative #2: Purchase Less Than a Controlling Interest**

The Seller and the Applicants specifically explored a non-controlling interest transaction. For a variety of reasons, that option was rejected by both the Seller and the Applicants. In particular, the Applicants wanted the flexibility to recruit additional physicians to the Surgery Center and offer said physicians ownership interests in the Surgery Center in the future.

**Alternative #3: Do Nothing**

As was mentioned in Alternative #1, the Applicants have been actively searching for a surgery center to purchase for the past four years and the Sellers were desirous of selling the Surgery Center. If the "do nothing" alternative were chosen, neither the Applicants nor the Seller would have achieved their objectives.

**Alternative #4: Purchase the Surgery Center**

In the final analysis, and in light of the significant issues expressed in the other alternatives, the Applicants and the Sellers elected to execute the Asset Purchase Agreement, thereby facilitating the sale of the Surgery Center to the Applicants.

**Section VI**  
**Attachment 19**

**Criterion 1110.240, Mergers, Consolidations and Acquisitions/Changes of Ownership**

**Criterion 1120.240(b), Impact Statement**

1. Transaction Documents. The executed Asset Purchase Agreement (the "Asset Purchase Agreement") between Elmwood Park Same Day Surgery LLC (the "Seller") and Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") is attached at ATTACHMENT 19. The Asset Purchase Agreement contains the appropriate contingency language regarding approval by the Review Board. See Sections 5.4 and 6.4 of the Asset Purchase Agreement ("Purchaser and Seller acknowledge and agree that the transactions set forth in this Agreement shall be subject to approval by the IHFSRB.")
2. Services Currently Offered. The Elmwood Park Same Day Surgery Center (the "Surgery Center") is currently licensed as a multi-specialty ambulatory surgical treatment center with three operating rooms. Following the Transaction, the Surgery Center will continue to be licensed as a multi-specialty ambulatory surgical treatment center with three operating rooms.
3. Operating Entity. Elmwood Park Surgery Center Acquisition & Development LLC will be the operating entity following the Transaction.
4. Reason for Transaction. The Seller has indicated a desire to sell the Surgery Center and the Purchaser has indicated a desire to purchase the Surgery Center. The Purchaser intends to maintain and enhance patient access to health care services in the service area through the recruitment of new physicians and increased coordination with other service area healthcare providers.
5. Anticipated Additions or Reductions of Employees. No significant additions or reductions in the number of clinical employees at the Surgery Center are anticipated now or for the next two years as a result of the Transaction. All current employees at the Surgery Center will have the opportunity to interview for a comparable position with the Purchaser following the Transaction.
6. Cost-Benefit Analysis. This is an arms length financial transaction between Elmwood Park Same Day Surgery LLC and Elmwood Park Surgery Center Acquisition & Development LLC. Under the terms of the Transaction, Elmwood Park Surgery Center Acquisition & Development LLC will purchase the Elmwood Park Same Day Surgery Center from Elmwood Park Same Day Surgery LLC for \$1,400,000. The Transaction satisfies the desire of Elmwood Park Same Day Surgery LLC to sell the Elmwood Park Same Day Surgery Center; as well as satisfying the desire of Elmwood Park Surgery Center Acquisition & Development LLC to purchase the Elmwood Park Same Day Surgery Center.

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is made as of December 31, 2012, by and between Elmwood Park Same Day Surgery, L.L.C., an Illinois limited liability company (the “Seller”), and Elmwood Park Surgery Center Acquisition & Development LLC, an Illinois limited liability company (the “Purchaser”).

### **RECITALS**

**WHEREAS**, Seller owns and operates an ambulatory surgery facility known as the Elmwood Park Same Day Surgery Center, located at 1614 North Harlem Avenue, Elmwood Park, Illinois 60707 (the “Facility”);

**WHEREAS**, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller substantially all of the assets of Seller which are directly or indirectly related to, necessary for, or used in connection with, the operation of the Facility, on the terms and conditions set forth in this Agreement (the “Facility Assets”);

**NOW, THEREFORE** in consideration of the mutual promises, covenants, and agreements hereinafter contained, the parties agree as follows:

### **SECTION 1** **SALE OF ASSETS**

**1.1 Sale of Assets to the Purchaser.** Subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase, and Seller agrees to sell, assign, transfer, convey and deliver to the Purchaser all of Seller’s right, title and interest in and to the Facility Assets (the “Purchased Assets”), including without limitation, those assets more particularly described on Schedule 1.1(a), at an aggregate purchase price of One Million, Four Thousand Dollars (\$1,400,000) (the “Purchase Price”). The Purchase Price to be paid hereunder shall be allocated among the Purchased Assets in the manner to be mutually agreed upon by Seller and Purchaser. Seller and Purchaser shall use the allocation of the purchase price as designated in this Section in all instances in which the valuation of the Purchased Assets is in issue, including, but not limited to, valuation for tax purposes and depreciation calculations.

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained in this Agreement, the following assets (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder, shall be excluded from the Purchased Assets and this Agreement, and shall not be assigned and transferred to the Purchaser:

(a) cash on hand or in bank accounts of the Seller, cash equivalents and short-term investments;

(b) all accounts receivable arising from the rendering of services to patients at the Facility, billed and unbilled, recorded or unrecorded, with collection agencies or otherwise, accrued and existing in respect of services rendered up to the Closing;

(c) all amounts payable to Seller in respect of third party payors pursuant to retrospective settlements (including, without limitation, pursuant to Medicare, Medicaid and Champus/Tricare cost reports filed or to be filed by Sellers for periods prior to the Closing Date) and all appeals and appeal rights of Seller relating to such settlements, including cost report settlements, for periods prior to the Closing;

(d) all Seller records relating to the Excluded Assets and Excluded Liabilities (as defined below) that are not specifically identified in Schedule 1.1(a), as well as all records which by law Seller is required to maintain in its possession;

(e) rights in connection with and assets of all pension, profit sharing, deferred compensation, or any other employee health and welfare benefit plan of the Seller, including but not limited to those benefit plans described in Section 2.18 (“Benefit Plans”);

(f) any reserves or prepaid expenses related to Excluded Assets and Excluded Liabilities (including, without limitation, prepaid legal expenses or insurance premiums);

(g) except as provided in Section 6.8, all insurance policies, insurance claims, insurance proceeds arising in connection with the operation of the Facility or the Purchased Assets prior to the Closing and all insurance proceeds arising in connection with the Excluded Assets and Excluded Liabilities;

(h) all claims, rights, interests and proceeds with respect to refunds of taxes for periods ending on or prior to the Closing and all rights to pursue appeals of the same;

(i) all charters, minute books, and documents related to Seller’s legal status, tax records, and any refunds attributable to the period prior to the Closing; and

(j) all rights of Sellers under this Agreement and its related documents.

**1.3 Assumption of Liabilities.** Seller shall transfer the Purchased Assets to Purchaser free and clear of any and all liabilities and encumbrances of whatever kind. Purchaser shall not, by virtue of its purchase of the Purchased Assets, assume or become responsible for any liabilities or obligations of the Seller. At the Closing, Purchaser shall assume the following liabilities:

(a) those, and only those, obligations and liabilities accruing after the Closing under the contracts and leases of the Seller that are expressly assumed by Purchaser at or prior to the Closing (the "Assumed Contracts"), other than any obligations and liabilities arising from any breach or default by Seller under any of the Assumed Contracts before the Closing or any breach or default arising as a result of Seller's failure to obtain any consent or approval relating to assignment of any of the Assumed Contracts;

(b) the obligations for accrued and vested vacation, personal, sick and/or other leave entitlements ("PTO Liability") for the employees of Seller who accept employment with Purchaser or Purchaser's designated management company for the Facility after the Closing, subject to a reduction of the Purchase Price by the amount of the PTO Liability. The amount of PTO Liability will be based on the liability accrued on Seller's financial statements, unless otherwise agreed by the parties, and Purchaser shall have the option to require Seller to pay out prior to Closing any balance due an individual employee that Purchaser deems excessive; and

(c) such trade accounts payable and other current liabilities of Seller that are mutually agreed upon by Seller and Purchaser in writing at the Closing (the "Payables"), subject to a reduction of the Purchase Price by the amount of the Payables.

The Payables, the Assumed Contracts, and the PTO Liability are referred to, collectively, as the "Assumed Liabilities."

**1.4 Excluded Liabilities.** Except for the Assumed Liabilities, Purchaser shall not assume and under no circumstances shall Purchaser be obligated to pay or assume, and none of the assets of Purchaser shall be or become liable for or subject to any liability, indebtedness, commitment, or obligation of Seller, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise (collectively, the "Excluded Liabilities"), including, without limitation, the following Excluded Liabilities:

(a) any debt, obligation, expense or liability of Seller that is not an Assumed Liability;

(b) claims or potential claims for medical malpractice or general liability arising from events that occurred prior to the Closing;

(c) those claims and obligations (if any) specified in Schedule 1.4 hereto;

(d) any liabilities associated with or arising out of any of the Excluded Assets;

(e) federal, state or local tax liabilities or obligations of Seller in respect of periods prior to the Closing including, without limitation, any income tax, any franchise tax, any tax recapture, any sales and/or use tax, and any FICA, FUTA, workers'

compensation, and any and all other taxes or amounts due and payable as a result of the exercise by the employees at the Facility of such employee's right to vacation, sick leave, and holiday benefits accrued while in the employ of Seller (provided, however, that this clause (e) shall not apply to any and all taxes payable with respect to any employee benefits, including PTO Liability, constituting Assumed Liabilities);

(f) liability for any and all claims by or on behalf of Seller's employees relating to periods prior to the Closing including, without limitation, liability for any Benefit Plan, liability for any EEOC claim, ADA claim, FMLA claim, wage and hour claim, unemployment compensation claim, or workers' compensation claim (provided, however, that this clause (f) shall not apply to any employee benefits, including the PTO Liability, constituting Assumed Liabilities);

(g) any obligation or liability accruing, arising out of, or relating to any federal, state or local investigations of, or claims or actions against, Seller or any of its affiliates or any of their employees, medical staff, agents, vendors or representatives with respect to acts or omissions prior to the Closing;

(h) any civil or criminal obligation or liability accruing, arising out of, or relating to any acts or omissions of Seller, its affiliates or their directors, officers, employees and agents claimed to violate any constitutional provision, statute, ordinance or other law, rule, regulation, interpretation or order of any governmental entity;

(i) liability for any amount (including, if applicable, any penalty or interest) due or that may become due to Medicare or Medicaid or any other health care reimbursement or payment intermediary or other person or entity on account of any overpayment or duplicate payment or otherwise attributable to any period prior to the Closing;

(j) liabilities or obligations arising as a result of any breach by Seller at any time of any contract or commitment that is not assumed by Purchaser;

(k) liabilities or obligations arising out of any breach by Seller prior to the Closing of any Contract (as hereinafter defined in Section 2.8); and

(l) any debt, obligation, expense, or liability of Seller arising out of or incurred as a result of any transaction of Seller occurring after the Closing or for any violation by Seller of any law, regulation, or ordinance at any time.

**1.5 Payment.** As of and at the Closing, the Purchaser shall pay the Purchase Price for the Purchased Assets minus the Payables and the amount of the PTO Liability as of the last payroll date prior to the Closing (the "Initial PTO Liability Amount") by (i) certified or bank checks payable to the Seller, (ii) wire transfer of immediately available funds in accordance with the Seller's instructions, or (iii) any combination of the foregoing.

**1.6 Closing and Delivery.** The purchase and sale of the Purchased Assets (the "Closing") shall take place at the offices of Foley & Lardner LLP, 321 North Clark

Street, Suite 2800, Chicago, Illinois 60654 at 10:00 a.m. local time on the date that is five (5) business days following satisfaction or waiver of the conditions set forth in Sections 6 and 7 hereof, or such other date as the Seller and the Purchaser agree. The Closing shall be effective on the first day of the month in which the Closing occurs, unless otherwise agreed to by the Seller and the Purchaser. The date on which the Closing actually occurs is referred to herein as the “Closing Date.” Subject to the provisions of Section 8, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 1.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

**1.7 Adjustment Amount.** The “Adjustment Amount” (which may be a positive or negative number) will be equal to the difference between the Initial PTO Liability Amount and the PTO Liability amount as of the Closing. The Adjustment Amount shall be paid by the Purchaser to the Seller, if a positive number, or by the Seller to the Purchaser, if a negative number. Seller will calculate the PTO Liability amount as of the Closing within fifteen (15) days after the Closing and provide such calculation to Purchaser. Payment of the Adjustment Amount will be made within five (5) business days after the date such calculation is provided to Purchaser, or such later date as the Seller and Purchaser agree upon the final PTO Liability amount if Purchaser objects to Seller’s calculation.

**1.8 Operation of Facility From and After the Closing.**

(a) Charity Care. Consistent with the requirements of the Illinois Health Facilities & Services Review Board (“IHFSRB”), Purchaser shall maintain Seller’s existing charity care policies and practices for a period of at least twenty-four (24) months following the Closing Date.

(b) Service Commitments. Consistent with the requirements of the IHFSRB, Purchaser shall not close or discontinue any operating rooms or substantially reduce any services at the Facility for a period of at least twelve (12) months following the Closing Date. Following the Closing Date, Purchaser shall maintain ownership and control of the Facility for a period of at least thirty-six (36) months.

**SECTION 2**  
**REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Except as otherwise set forth herein, Seller represents and warrants to the Purchaser as of the date of this Agreement, as follows, which representations and warranties will be true as of the Closing Date.

**2.1 Organization and Standing.** Seller is a limited liability company duly organized and validly existing under, and by virtue of, the laws of the State of Illinois and is in good standing under such laws. Seller has the requisite power and authority, and has taken all action necessary, to own and operate its properties and assets, and to carry on its

business as presently conducted and to enter into this Agreement and to carry out the transactions contemplated hereby.

**2.2 Authority Relative to this Agreement.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and effectively authorized by the Board of Managers of Seller and, if required, its unit holders; no other corporate act or proceeding on the part of Seller or its unit holders is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and this Agreement constitutes a valid and binding obligation of Seller enforceable against it in accordance with its terms, except that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

**2.3 Absence of Breach.** Except for the consents required in Section 2.5 and described in Schedule 2.5, and the approval of the IHFSRB, the execution, delivery and performance by Seller of this Agreement does not (i) conflict with or result in a breach of any of the provisions of the operating agreement of Seller (the "Operating Agreement") or the Articles of Organization of Seller (the "Articles"), (ii) contravene any statute, rule, regulation, ordinance, order, code, permit, license or agreement with or of federal, state, local and foreign governmental and regulatory authorities to which Seller or the Purchased Assets are subject, or any order, writ, injunction or decree issued by any court, arbitrator or governmental agency or in connection with any judicial, administrative or other non-judicial proceeding (including, without limitation, arbitration or reference) to which Seller or the Purchased Assets are subject, (iii) cause the suspension or revocation of any certificates of need, accreditations, registrations, licenses, permits or other consents or approvals of governmental agencies or accreditation organizations presently in effect and to which Seller or the Purchased Assets are subject, (iv) conflict with or result in a material breach of or material default under any indenture or loan or credit agreement or any other agreement or instrument to which Seller is a party or by which it or the Purchased Assets may be affected or bound, (v) result in the acceleration of, create in any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body (collectively, "Person") the right to accelerate, terminate, modify, or cancel, or require any notice under any material contract or arrangement to which Seller is a party or by which it is bound, except for Seller's financing arrangements that will be satisfied at Closing from the Purchase Price or other Seller funds, (vi) accelerate any material obligation under, or give rise to a right of termination of, or constitute a material breach of, any agreement, permit, license or authorization to which Seller is a party or by which Seller is bound, or (vii) require the issuance of equity securities (including without limitation, by operation of any anti-dilution adjustment).

**2.4 Obligations to Related Parties.** Except as (a) have been recorded in the books and accounts of Seller and accrued in Seller's Unaudited Financial Statements (as hereinafter defined) or (b) may have been incurred in the ordinary course of business

since the date of the Unaudited Financial Statements, there are no current obligations of Seller to its officers, managers, members or employees for reimbursement of expenses, salaries, or otherwise as of the date of this Agreement. None of the officers, managers or unit holders of Seller, or any members of their immediate families, are indebted to Seller or have any direct or indirect ownership interest in any firm or corporation with which Seller is affiliated or with which Seller has a business relationship, or any firm or corporation that competes with Seller, and except (i) that certain of Seller's unit holders maintain referral relationships with Seller whereby such unit holder refer patients to Seller's Facility and provide medical services to such patients at such Facility, (ii) that certain officers, managers and/or unit holders of Seller may own stock in publicly traded companies which may compete with the Seller and/or (iii) as may be disclosed in Schedule 2.4. No officer, manager or unit holder, or any member of their immediate families, is a party to any material contract with Seller (other than such contracts as relate to any such person's ownership of units or other securities of Seller), except as set forth in Schedule 2.8. Seller is not a guarantor of any indebtedness of any other person, firm or corporation.

**2.5 Private Party Consents.** The execution, delivery and performance by the Seller of this Agreement does not require the authorization, consent or approval of any non-governmental third party, except for such consents as described on Schedule 2.5 hereof.

**2.6 Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Seller directly with the Purchaser, without the intervention of any other person or entity in any manner as to give rise to any valid claim against any of the parties hereto for a brokerage, finder's or similar fee or commission, and the Seller shall indemnify and hold the Purchaser harmless from any such brokerage, finder's or similar fee or commission claim arising out of any actions by the Seller or any employees, agents or representatives of the Seller.

**2.7 Title and Condition of Assets.** Except for obligations described in Schedule 2.7 that will be satisfied by Seller at Closing, Seller has good and valid title to the Purchased Assets or, with respect to those Purchased Assets that are leased by Seller, has valid and effective leasehold rights, including without limitation all rights to those assets reflected on Seller's Base Balance Sheet (as hereinafter defined in Section 2.13 (a)) or acquired by it after the date thereof (except for properties disposed of since that date in the ordinary course of business consistent with past practice), free and clear of all liens, claims, pledges, security interests, equities or encumbrances of any nature. All inventory is usable in the ordinary course of business. To Seller's knowledge, the Facility Assets are sufficient for the operation of the Facility as presently conducted.

**2.8 Contracts.**

(a) At or prior to the Closing, Seller shall provide Purchaser a list of all material commitments, leases and agreements, written or oral, which affect or relate to

the Facility or any of the Purchased Assets, including, but not limited to, the following (the "Contracts"):

(i) any material contract or material agreement with a network of healthcare providers or a third party payor, including, without limitation, employers and insurance companies, to provide healthcare services to patients at the Facility;

(ii) any contract or agreement with, either directly or indirectly, a physician or a physician practice or any other individual or entity that provides clinical services to patients of the Facility (other than the Operating Agreement);

(iii) any material contract or material agreement involving the obligation of the Seller to purchase products or services related to the Facility;

(iv) any commitment of the Seller to make a material capital expenditure or to purchase a material capital asset;

(v) any contract or agreement evidencing any material indebtedness of the Seller;

(vi) any lease or similar agreement of real or personal property under which the Purchased Assets are covered; and

(vii) any material contract or material agreement relating to use by Seller of any computer software.

(b) To Seller's knowledge, each of Seller's Contracts is in full force and effect and Seller is not in material default thereunder, and Seller has not received written notice of any alleged default under any such Contract. Seller has not received written notice that the counterparty to any such Contract intends to cancel or terminate the Contract. To Seller's knowledge, no event has occurred which, with or without the passage of time or the giving of notice, would constitute a material breach or material default by Seller of any of Seller's Contracts or would cause the acceleration of any material obligation of Seller or the creation of any material lien upon any of Seller's Purchased Assets.

(c) The Assumed Contracts are in full force and effect and Seller has fulfilled all of its material obligations thereunder; to Seller's knowledge, each of the Assumed Contracts is legal, valid, binding, enforceable, and shall be unaffected by the consummation of the transactions contemplated hereby; to Seller's knowledge, no party is in material breach or material default, and no event has occurred which with notice or lapse of time or both would constitute a material breach or material default or permit termination, modification, or acceleration under any Assumed Contract; and to Seller's knowledge, no party has repudiated any provision of any of the Assumed Contracts. Seller has made available to Purchaser true and complete copies of each Assumed Contract. Seller has not received written or other notice of any alleged default under any

Assumed Contract. Each of the Assumed Contracts constitutes the entire agreement between the respective parties thereto relating to the subject matter thereof.

## **2.9 Licenses, Regulatory Matters and Compliance with Laws.**

(a) Seller has all franchises, permits, licenses and other rights and privileges ("Licenses") necessary to permit it to own its property and to conduct its business as it is presently conducted. Seller's Licenses are not subject to any conditions or requirements that are not generally imposed on the holders thereof, and all the Licenses are valid and in full force and effect; and no proceeding is pending or, to the knowledge of Seller, threatened to revoke, suspend, cancel, terminate or otherwise adversely modify any of the Licenses. Seller is in compliance with the terms of the Licenses, and to the knowledge of Seller, there is no matter which would adversely affect the maintenance of the Licenses.

(b) The Facility is accredited by applicable accrediting agencies as necessary, for its operations in the manner presently operated, including but not limited to accreditation by the Joint Commission. The Facility is certified for participation in the Medicare and Medicaid programs and has current and valid supplier contracts with such programs and to Seller's knowledge is in material compliance with the conditions of participation of such programs and has received all approvals or qualifications necessary for reimbursement. The Seller has not received a written notice from any governmental authority which enforces the statutory or regulatory provisions in respect to either the Medicare or Medicaid program of any pending or threatened investigations with respect to the Facility, and to the knowledge of Seller, there is no matter which would materially and adversely affect the maintenance of such program participations or accreditations.

(c) Seller is and since its organization has been in material compliance with all federal, state, local and foreign laws and regulations ("Laws") applicable to Seller, including, but not limited to, the false claims, false representations, anti-kickback and all other provisions of the Medicare/Medicaid fraud and abuse laws and the physician self-referral provisions of the Stark Law. Seller has timely filed all reports, returns, data and other information required by all governmental authorities which control, directly or indirectly, any of Seller's activities to be filed therewith. No such report or return has been inaccurate, incomplete or misleading in any material respect.

## **2.10 Employee Relations.**

(a) There are no union organization activities pending or to Seller's knowledge threatened, between Seller and any of its current employees. To Seller's knowledge, none of Seller's employees belongs to any union or collective bargaining unit trade association or other similar employee organization. There are no controversies (including, without limitation, any unfair labor practice complaints, labor strikes, arbitrations, disputes, work slowdowns or work stoppages) affecting a material number of Seller's employees pending, or to Seller's knowledge, threatened. Seller has complied in all material respects with all applicable state and federal equal employment opportunity

and other laws related to employment, the non-compliance with which would have a material adverse effect on Seller or the Purchased Assets. Except as otherwise provided in Schedule 2.10 hereof, there are no pending or, to Seller's knowledge, threatened EEOC claims, OSHA complaints, wage and hour claims, unemployment compensation claims, worker's compensation claims or the like with respect to Seller.

(b) Schedule 2.10 contains a list of all employment agreements to which Seller is a party that entitles any employee to compensation or other consideration as a result of the transaction contemplated under this Agreement.

**2.11 Environmental Matters.** To Seller's knowledge, Seller is in material compliance with all applicable laws relating to the environment (the "Environmental Laws"). Seller has not handled, stored, released or exposed any hazardous substance or materials, as defined by Environmental Law ("Hazardous Substance") in material violation of any applicable Environmental Law. To Seller's knowledge, Seller has no liability for clean-up costs, remedial work or damages in connection with the handling, storage, release or exposure by Seller of any Hazardous Substance. Seller has not utilized any transporters or disposal facilities for the transport or disposal of Hazardous Substances, other than medical waste and cleaning supplies with respect to which Seller has complied in all material respects with all applicable laws related thereto.

**2.12 Litigation.** There is no order, judgment, or decree, injunction, or legal action, suit, claim, to Seller's knowledge, investigation or legal, administrative, arbitration or other proceeding instituted or, to Seller's knowledge, pending against Seller or its assets, or which may call into question the validity or hinder the enforceability of this Agreement or the transactions contemplated hereby, at law or in equity, or before or by any governmental entity or body. All claims and professional liability incident reports relating to the Facility and required to be submitted to Seller's insurers have been submitted to such insurer(s). Seller has provided or made available to Purchaser a complete list of all general liability incidents, incident reports and malpractice claims that have occurred at the Facility in the last seven (7) years. To Seller's knowledge, no governmental entity or body is currently conducting an investigation of Seller and, to Seller's actual knowledge, no such investigation has been threatened.

**2.13 Financial Information.**

(a) Seller has furnished to the Purchaser complete and correct copies, including exhibits, of (i) its unaudited balance sheet as of December 31, 2011 (the "Base Balance Sheet"); (ii) its unaudited income statement for the period ended December 31, 2011; and (iii) the unaudited balance sheets and the related statements of income of, or relating to, Seller for each month ended since the Base Balance Sheet Date, together with a year-to-date compilation and the notes, if any, related thereto (collectively, the "Unaudited Financial Statements").

(b) The Unaudited Financial Statements were prepared in conformity with generally accepted accounting principles ("GAAP"), except for the absence of

footnotes and subject to normal year-end adjustments, applied on a consistent basis, and fairly present, in all material respects, the financial condition and the results of operations of Seller as of the date and for the period indicated.

**2.14 Absence of Certain Developments.** Except as set forth in the Unaudited Financial Statements, since the date of the Base Balance Sheet (the “Base Balance Sheet Date”) and up to and including the date of this Agreement, other than as contemplated or permitted by this Agreement, Seller has conducted its business only in the ordinary and normal course and there has not been any: (i) material adverse change in the financial condition, business or prospects of Seller or in the Purchased Assets; (ii) declaration, setting aside or payment of any distribution with respect to, or any direct or indirect redemption or acquisition of any of Seller’s units or other securities or any split, combination or other reclassification of such units; (iii) cancellation of any material debt or claim held by Seller or the creation or assumption of any material indebtedness for borrowed money outside of the ordinary course of business; (iv) loss, destruction or damage to any property valued in excess of \$10,000 in the aggregate, whether or not insured; (v) acquisition or disposition of any assets (or any contract or arrangement therefor) valued in excess of \$10,000 in the aggregate or any other transaction other than in the ordinary course of business consistent with past practice; (vi) any entry into, or termination or cancellation of any material commitment, contract, agreement or transaction except for transactions in the ordinary course of business; (vii) any default or breach by Seller under any Assumed Contract; (viii) any increase made in the compensation levels of any member of senior management, or any general increase made in the compensation levels of employees in general, except in the ordinary course of business consistent with past practice; (ix) any changes in the rates charged for Seller’s services, other than those made in the ordinary course of business; (x) any changes in the accounting methods or practices employed or changes in depreciation or amortization policies; or (xi) any incidences wherein Seller paid, discharged or satisfied any material claims, material liabilities or material obligations (absolute, accrued, contingent or otherwise), other than in the ordinary course of business.

**2.15 Reserved.**

**2.16 Capitalization.**

(a) With the exception of any rights of first refusal, rights or first offer, options to purchase, or similar rights found in Seller’s Operating Agreement, Seller has not issued or agreed to issue, and is not obligated to issue, any currently outstanding warrants, options or other rights to purchase or acquire any units, nor any currently outstanding securities convertible into units or any warrants, options or other rights to acquire any such convertible securities.

(b) All of the outstanding units of ownership of Seller have been duly and validly authorized and issued, are fully paid and non-assessable and have been offered, issued, sold and delivered in material compliance with applicable federal and state securities laws.

(c) Except as may be provided in the Seller's Articles or Operating Agreement or as provided under federal and state securities laws, no agreements relating to the voting of the units of ownership of Seller, irrevocable proxies or restrictions on the transfer of the units of ownership of the Seller exist.

**2.17 Taxes.** All tax returns required to be filed by or on behalf of Seller have been timely filed with the appropriate governmental entity or requests for extensions have been timely filed and any such extensions have been granted and have not expired, each such tax return was true, complete and correct in all material respects and all taxes with respect to taxable periods or portions thereof covered by such tax returns and all other taxes (without regard to whether a tax return was or is required) for which Seller is otherwise liable have been paid in full or, to the extent not yet due, have been adequately reserved against on the Unaudited Financial Statements. Seller has withheld proper and accurate amounts from its employees' compensation in compliance with all withholding and similar provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including employee withholding and social security taxes, and any and all other applicable laws. No tax return of Seller has ever been examined or audited by any governmental body or entity. No extension or waiver of the limitation period applicable to any of the tax returns filed by Seller has been granted.

**2.18 Benefit Plans.** Except as set forth in Schedule 2.18, (a) Seller does not presently have, nor has it had within the last five (5) years, any pension, profit sharing, deferred compensation, or other employee pension plan or arrangement in which employees of the Seller participate or have participated; and (b) all Benefit Plans have been administered in material compliance with all applicable laws including, without limitation, the applicable provisions of the Code, and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). There are no unpaid "accumulated funding deficiencies" within the meaning of the Code with respect to any Seller Benefit Plan. No reportable events (within the meaning of ERISA) or prohibited transactions (within the meaning of the Code) have occurred with respect to any Seller Benefit Plan. There are no pending or, to Seller's knowledge, threatened claims by or on behalf of any Seller Benefit Plan or by any employee of Seller alleging a breach or breaches of fiduciary duties or violations of other applicable state or federal law which could result in liability on the part of Seller or the Benefit Plans under any law, nor to Seller's knowledge is there any reasonable basis for such a claim. Except as set forth on Schedule 2.18, all returns, reports, disclosure statements, and premium payments required to be made under the Code or ERISA with respect to the Benefit Plans have been timely filed or delivered. Except as described in the Schedule 2.18, the Benefit Plans have not been audited or investigated by the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation within the last five (5) years, and there are no outstanding issues with reference to the Benefit Plans pending before any governmental agency.

**2.19 Insurance Coverage.** Seller maintains in full force and effect, with no premium arrearages, the insurance policies, including but not limited to the liability and

hazard, medical malpractice, property and workers compensation insurance policies, bearing the numbers, for the terms, with the companies, in the amounts and providing the coverage set forth in Schedule 2.19. True and correct copies of all such policies and all endorsements thereto have been made available to Purchaser. Schedule 2.19 sets forth a list of all current claims for any loss in excess of Fifteen Thousand Dollars (\$15,000.00) per occurrence filed by or against Seller or any of Seller's employees or any leased employees providing services at the Facility, including workers' compensation, general liability and professional malpractice liability claims.

**2.20 Real Property.** The premises leased to Seller under that lease described in Schedule 2.20 constitutes all real property used or occupied by Seller in connection with the operation of the Facility (the "Real Property Lease"). Seller has provided Purchaser with a true, complete and accurate copy of the Real Property Lease, including any amendments or addenda thereto. Seller is in material compliance with the terms of its Real Property Lease. To Seller's knowledge, the premises demised under the Real Property Lease is in compliance in all material respects with all applicable zoning requirements, codes, ordinances and other laws, regulations and requirements, and the consummation of the transactions contemplated herein will not result in a violation of any such law or regulation or the termination of any applicable variance from any such law or regulation now existing. No portion of the Facility is subject to any pending or, to Seller's knowledge, threatened condemnation proceeding. Except as provided on Schedule 2.20, there are no leases, subleases, licenses, concessions or other agreements, written or oral, by and between Seller and any other party, granting to any such party or parties the right of use or occupancy of any portion of the Facility. The Facility is supplied with utilities and other services necessary for the intended operation of the Facility.

**2.21 Medical Staff Matters.** At or prior to the Closing, Seller shall provide Purchaser a list of all providers in good standing on the medical staff of the Facility. There are no pending or, to the knowledge of Seller, threatened disputes with members of the medical staff of the Facility.

**2.22 Trademarks.** At or prior to the Closing, Seller shall provide Purchaser a list of all fictional business names, trade names, registered and unregistered trademarks, service marks and applications of the Seller related to the Facility (collectively, the "Marks"). For each registered Mark, at or prior to the Closing, Seller shall provide a listing of the registration number and the jurisdiction of registration beside each Mark. To Seller's knowledge, no Mark has been or is now involved in any opposition, invalidation or cancellation, nor does any Mark infringe on the rights of any third party.

**2.23 HIPAA.** Except as disclosed in Schedule 2.23, Seller (i) to the extent, if any, that Seller's operations are subject to the administrative simplification provisions of HIPAA, as codified at 42 U.S.C. Sections 1320d through d-8, as amended, and the implementing regulations contained in 45 C.F.R. Parts 160, 162 and 164, is in compliance in all material respects with those administrative simplification provisions and implementing regulations, including, without limitation, in conducting any of the

standard transactions set forth in 45 CFR Part 162; and (ii) is in compliance in all material respects with all other applicable information privacy or security laws. Complete and accurate copies of the compliance policies and/or procedures and privacy notices relating to information privacy or security laws have been furnished to Purchaser. Except as disclosed in Schedule 2.23, Seller has entered into business associate contracts, in each case in which such entity is acting as a business associate (as defined in 45 C.F.R. Section 160.103). To Seller's knowledge, Seller is not under investigation by any governmental body or entity for a violation of any information privacy or security laws. Seller has not received any notice from the United States Department of Health and Human Services Office of Civil Rights or Department of Justice relating to any such alleged violations. To Seller's knowledge, Seller has not acted in a manner that would trigger a notification or reporting requirement under any Contract or laws related to the collection, use, disclosure or security of personal information. Complete and accurate copies of any written complaints delivered to Seller during the past twelve (12) months alleging a violation of any information privacy or security laws have been furnished to Purchaser.

**2.24 Government Imposed Compliance Obligations, Etc.** Seller (a) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services, (b) does not have any reporting obligations pursuant to any settlement agreement entered into with any governmental authority, (c) to Seller's knowledge, has not been the subject of any government payor program investigation conducted by any federal or state enforcement agency, (d) has not been a defendant in any qui tam/False Claims Act or similar litigation, and (e) has not been served with or received any search warrant, subpoena, civil investigative demand, contact letter, or telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the Facility).

**2.25 Books and Records.** Except as set forth in Schedule 2.25, Seller does not have any of its records, systems, controls, data or information recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of Seller.

**2.26 Misrepresentations or Omissions.** No representation or warranty made by Seller in this Agreement, in any Schedule, or in any statement, certificate or instrument furnished or to be furnished to Purchaser by Seller pursuant to this Agreement contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements contained herein and therein not misleading. Copies of all documents referred to in any Schedule hereto have been delivered or made available to Purchaser and constitute true, correct and complete copies thereof and include all amendments, exhibits, schedules, appendices, supplements or modifications thereto or waivers thereunder.

**SECTION 3**  
**REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

Except as otherwise set forth herein, the Purchaser represents and warrants to the Seller as of the date of this Agreement as follows, which representations and warranties will be true as of the Closing Date:

**3.1 Organization and Standing.** The Purchaser is a limited liability company duly organized and validly existing under, and by virtue of, the laws of the State of Illinois and is in good standing under such laws. The Purchaser has the requisite power and authority to own and operate its properties and assets, and to carry on its business as presently conducted, to enter into this Agreement and to carry out the transactions contemplated hereby.

**3.2 Authority Relative to this Agreement.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and effectively authorized by the Board of Managers of the Purchaser; no other corporate act or proceeding on the part of the Purchaser, its board or its member is necessary to authorize this Agreement or the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Purchaser, and this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms, except that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

**3.3 Absence of Breach.** The execution, delivery and performance by the Purchaser of this Agreement does not (i) conflict with or result in a breach of any of the provisions of the Purchaser's articles of incorporation or code of regulations, (ii) contravene any statutes, rules, regulations, ordinances, orders, codes, permits, licenses and agreements with or of federal, state, local and foreign governmental and regulatory authorities or any order, writ, injunction or decree issued by any court, arbitrator or governmental agency or in connection with any judicial, administrative or other non-judicial proceeding (including, without limitation, arbitration or reference) or cause the suspension or revocation of any certificates of need, accreditations, registrations, licenses, permits and other consents or approvals of governmental agencies or accreditation organizations presently in effect, which affects or binds the Purchaser, or any of its material properties, (iii) conflict with or result in a breach of or default under any indenture or loan or credit agreement or any other agreement or instrument to which the Purchaser is a party or by which it or any of its properties may be affected or bound, (iv) result in the acceleration of, create in any person or entity the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, or other arrangement to which the Purchaser is a party or by which it is bound, or (v) accelerate any obligation under, or give rise to a right of termination of, or constitute a material breach of, any agreement, permit, license or authorization to which the Purchaser is a party or by which the Purchaser is bound, or require the issuance of equity securities (including without limitation, by operation of any anti-dilution adjustment).

**3.4 Private Party Consents.** The execution, delivery and performance by the Purchaser of this Agreement does not require the authorization, consent or approval of any non-governmental third party, except for such consents as have been obtained or waived.

**3.5 Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the Purchaser directly with the Seller or its agents, without the intervention of any other person or entity in any manner as to give rise to any valid claim against any of the parties hereto for a brokerage, finder's or similar fee or commission, and the Purchaser shall indemnify and hold the Seller harmless from any such claim arising out of any actions by the Purchaser or any employees, agents or representatives of the Purchaser.

**3.6 Misrepresentations or Omissions.** No representation or warranty made by Purchaser in this Agreement, or in any statement, certificate or instrument furnished or to be furnished to Seller by Purchaser pursuant to this Agreement contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements contained herein and therein not misleading.

#### **SECTION 4 COVENANTS OF THE SELLER**

**4.1 Conduct Pending Closing.** Prior to the Closing, unless the Purchaser shall otherwise consent in writing, which consent shall not be unreasonably withheld or delayed, and except for actions which arise from, are due or related to or are a natural result of the transactions anticipated under this Agreement, Seller shall:

(a) Conduct its business only in the usual and ordinary course consistent with past practice;

(b) Use reasonable efforts to keep intact its property and assets and its business and to preserve relationships beneficial to such business that doctors, patients, payors, suppliers and others have with it;

(c) Fulfill all of its material obligations under each of the Assumed Contracts; not amend, terminate, renew, fail to renew or renegotiate any of the Assumed Contracts; and except as required by its terms, not amend, terminate, renew, fail to renew or renegotiate any other contract other than in the ordinary course of business consistent with past practice;

(d) Not sell, lease, mortgage, encumber, or otherwise dispose of or grant any interest in, or permit or suffer to exist any lien or encumbrance upon or the disposition of, any of its property or assets, whether by the taking of action or the failure to take action other than inventory and supplies utilized in the ordinary course of business consistent with past practice;

- (e) Maintain in force and effect all insurance policies;
- (f) Not enter into any contract except in the ordinary course of business consistent with past practice; and
- (g) Not grant any general or uniform increase in the rates of pay or benefits to its employees or any increase in salary or benefits of any of its senior management personnel, except for compensation previously agreed to prior to the date hereof.

Further, with respect to Seller's claims made insurance policies, including but not limited to professional liability insurance policies, and any related umbrella policies, Seller (i) shall purchase extension period ("tail") coverage to insure Seller against claims made at any time (including after the Closing) related to any occurrence, or any act, activity or service of Seller, prior to the Closing Date; and (ii) shall provide Purchaser with certificates of such insurance coverage on or before the Closing Date. For any professional liability policy unlimited tail coverage must be purchased. For all other claims made policies, the maximum allowable tail coverage by the insurance company must be purchased.

**4.2 Access and Information.** Subject to the restrictions set forth in Section 5.2 respecting confidentiality and provided that the Purchaser has complied with each and every provision thereof, the Seller shall afford the Purchaser, and the counsel, accountants and other representatives of the Purchaser, reasonable access during normal business hours, throughout the period from the date hereof to the Closing, to the Seller's assets, and the employees, personnel and medical staff associated therewith and all the properties, books, contracts, commitments, cost reports and records respecting the Seller's business (regardless of where such information may be located). The Seller's covenants under this Section are made with the understanding that the Purchaser shall use all such information in compliance with all Laws.

**4.3 No Solicitation.** Seller will not, and will use its best efforts to cause its officers, employees, agents and representatives, in their capacity as such, not to, directly or indirectly, solicit, encourage or initiate any discussions with, or, subject to fiduciary duties to the Seller's unit holders, negotiate or otherwise deal with, or provide any information to, any Person or group of Persons, other than the Purchaser and its officers, employees and agents, concerning any sale of or similar transactions involving all or substantially all of the assets, the business or the equity of Seller. None of the foregoing shall prohibit the provision of information to others in a manner in keeping with the ordinary conduct of Seller's business in a manner consistent with past practice.

**4.4 Use of Proceeds.** Seller shall use the proceeds from the Purchase Price for corporate purposes, including the repayment of indebtedness and the making of distributions or other payments to the Seller's unit holders.

**4.5 Covenant Not to Compete.** Seller agrees that (a) for a period of five (5) years after the Closing Date and within a ten (10) mile radius of the Facility, it shall not, directly or indirectly, own an equity interest in or finance an ambulatory surgery center, hospital or other facility that provides surgical services, whether on an inpatient or outpatient basis and (b) for a period of two (2) years after the Closing Date and within a ten (10) mile radius of the Facility, it shall not manage or provide consulting or administrative services to any ambulatory surgery center or other facility that provides surgical services solely on an outpatient basis. Seller shall use its best efforts to cause each of the physician owners of Seller (the "Physician Owners") to enter into Noncompete Agreements with Purchaser. For the avoidance of any doubt, nothing in this Section 4.5 shall apply to United Surgical Partners International, Inc., or any of its affiliates.

## **SECTION 5** **COVENANTS OF THE SELLER AND THE PURCHASER**

**5.1 Expenses.** Whether or not the transactions contemplated hereby are consummated, except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses.

**5.2 Announcements; Confidentiality.** Prior to the Closing Date, no press or other public announcement, or public statement or comment in response to any inquiry, relating to the transactions contemplated by this Agreement shall be issued or made by the Purchaser or the Seller without the joint approval of the Purchaser and the Seller. Subject to the foregoing, the parties hereto recognize and agree that all information, instruments, documents and details concerning the businesses of the Purchaser and the Seller are strictly confidential, and the Seller and the Purchaser expressly covenant and agree with each other that, prior to and after the Closing, they will not, nor will they allow any of their respective officers, directors, employees, representatives or agents (including professional advisors) to disclose or publicly comment upon any matters relating to the business of the other or relating to this Agreement, including, without limitation, the terms, timing or progress of the transactions contemplated hereby, or its negotiation, terms, provisions or conditions, including Purchase Price, except for disclosure to their respective professional advisors (who shall agree not to disclose the same) and to governmental authorities which is reasonably necessary to effectuate the transactions contemplated hereby and in a manner consistent with the provisions of this Agreement. Each party shall keep all information obtained from the other either before or after the date of this Agreement confidential, and neither party shall reveal such information to, nor produce copies of any written information for, any person outside its management group or its lenders, attorneys, accountants, financing sources and other professional advisors without the prior written consent of the other party, unless such party is compelled to disclose such information by judicial or administrative process or by any other requirements of Law. If the transactions contemplated by this Agreement should fail to close for any reason, each party shall return to the other as soon as practicable all originals and copies of written information provided to such party by or on

behalf of the other party and none of such information shall be used by either party, or their employees, agents or representatives in the business operations of any person. Notwithstanding the foregoing, each party's obligations under this Section shall not apply to any information or document which is or becomes available to the public other than as a result of a disclosure by the other party in violation of this Agreement or other obligation of confidentiality under which such information may be held or becomes available to the party on a non-confidential basis from a source other than the other party or its officers, directors, employees, representatives or agents. The parties' obligations under this Section shall survive the termination of this Agreement.

**5.3 Employees.** At Closing, Purchaser shall have the sole discretion to offer employment to each of Seller's employees on an at-will basis in accordance with the customary employment practices, policies and procedures of Purchaser.

**5.4 Governmental Approvals.** Seller and Purchaser shall use commercially reasonable efforts to (i) obtain all governmental approvals (or exemptions therefrom) necessary or required to allow it to perform its obligations under this Agreement; and (ii) assist and cooperate with each other and their respective representatives and counsel in obtaining all governmental consents, approvals, and licenses which a party deems necessary or appropriate and in the preparation of any document or other material which may be required by any governmental agency as a predicate to or as a result of the transactions contemplated herein. **Purchaser and Seller acknowledge and agree that the transactions set forth in this Agreement shall be subject to approval by the IHFSRB.**

**5.5 Access to Records.** After the Closing Date, Purchaser shall provide Seller with reasonable access to the records in Purchaser's possession that were transferred to Purchaser by Seller, during normal business hours and on reasonable notice, to enable Seller to collect accounts receivables, to prepare financial statements or tax returns or deal with audits, or for the purpose of defending against or testifying in any litigation concerning liability asserted against Seller. After the Closing Date, Seller shall provide Purchaser with reasonable access to the records relating to the Excluded Assets and the Excluded Liabilities, and to records which by law Seller is required to maintain in its possession, during normal business hours and on reasonable notice, as reasonably requested in connection with Purchaser's operation of the Purchased Assets.

## SECTION 6

### **CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATION TO CLOSE**

Except as otherwise provided below, the obligations of the Purchaser to consummate the transactions contemplated by this Agreement at the Closing shall be subject to the fulfillment at or prior to the Closing of the following conditions, unless the Purchaser waives such fulfillment:

**6.1 Real Property Lease.** Purchaser shall have obtained the right to occupy the property subject of the Real Property Lease effective as of the Closing Date (and contingent upon the Closing), through assignment, subletting or otherwise, on terms

satisfactory to Purchaser in its reasonable discretion.

**6.2 Performance of Agreement.** The Seller shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

**6.3 Accuracy of Representations and Warranties.** The representations and warranties in Section 2 hereof shall be true and correct in all material respects on the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date.

**6.4 Consents and Approvals.** The Seller shall have obtained the approval and consent of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of the obligations of the Seller hereunder by all required parties, including its Board of Managers, all governmental entities, regulatory agencies, accreditation organizations, utility providers, material vendors, lenders, and other parties which are necessary or appropriate to the consummation of the transactions contemplated by this Agreement, and the performance of the obligations of Seller hereunder. The Purchaser shall have obtained the approval and consent of this Agreement by all required third parties, including all governmental entities, regulatory agencies, accreditation organizations, utility providers, material vendors, lenders, and other parties which are necessary or appropriate to the consummation of the transactions contemplated by this Agreement, and the performance of the obligations of Purchaser hereunder. **Purchaser and Seller acknowledge and agree that the transactions set forth in this Agreement shall be subject to approval by the IHFSRB.**

**6.5 Receipt of Documents by Purchaser.** The Purchaser shall have received the following:

(a) Certified copies of the resolutions of the Seller's Board of Managers authorizing the execution and delivery of this Agreement and the transactions contemplated hereby, together with certified copies of any of the Seller's unit holder resolutions which are necessary to approve the execution and delivery of this Agreement and/or the performance of the obligations of the Seller hereunder;

(b) A certificate executed by Seller as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing Date and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing Date;

(c) One or more certificates as to the incumbency of the officer(s) of the Seller who has signed this Agreement or any certificate, document or instrument delivered pursuant to this Agreement; and

(d) Certificate of good standing of Seller issued as of a recent date by the Secretary of State of the State of Illinois.

**6.6 Absence of any Injunction or Other Restriction.** No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the transactions contemplated by this Agreement or Purchaser's operation of the Purchased Assets as a hospital outpatient department after the Closing; and since the date of this Agreement no statute, rule or regulation of any governmental entity shall have been enacted, or interpreted by a governmental entity in a manner, which prohibits, restricts or delays the consummation hereof or prohibits Purchaser from operating the Purchased Assets as a hospital outpatient department after the Closing.

**6.7 Satisfaction of Debt Obligations.** Seller shall have provided documentation to Purchaser, satisfactory to Purchaser in its reasonable discretion, evidencing the satisfaction of all outstanding indebtedness described in Schedule 2.7 and release of all liens, claims, pledges, security interests, equities or encumbrances affecting the Purchased Assets.

**6.8 Absence of Material Adverse Effect.** There shall not have occurred or been discovered any change in the business, operations, or financial condition of the business of the Seller, nor shall any circumstances or conditions have come into existence that, individually or in the aggregate, have caused or are reasonably likely to result in a material adverse effect on such business or the Assets, that is the result of a negligent or intentional act of Seller or the Physician Owners, nor shall there have occurred any material damage or destruction to the Purchased Assets that is not covered by the insurance described in Schedule 2.19. If there is material damage or destruction to the Purchased Assets that is insured under a policy described in Schedule 2.19, Purchaser shall not be released from the obligation to proceed with Closing or have the right to terminate this Agreement, but there shall be credited against the Purchase Price the amount of Seller's insurance deductible, and all proceeds of insurance available to Seller by reason of such damage or destruction shall be assigned to Purchaser at the Closing. "Material adverse effect" shall exclude the effect of (i) changes in the economy of the United States or the State of Illinois and (ii) changes in any government or private payor programs generally applicable to operators of acute care hospitals or ambulatory surgery centers.

**6.9 Closing Certificate.** The Purchaser shall have received a certificate executed by Seller as to the accuracy of its representations and warranties as of the date of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing. Any inaccuracy of Seller's representations and warranties as of the date of the Closing that are disclosed in such certificate shall not release Purchaser from the obligation to proceed with Closing (unless such inaccuracy also constitutes failure to satisfy a condition other than this Section), but such inaccuracy shall be subject to indemnity to the extent provided in Section 9 hereof.

**6.10 Transfer Documents.** Seller shall have delivered all documents required to transfer the Purchased Assets to Purchaser including, without limitation, a bill of sale

for the Purchased Assets and assignment and assumption agreements for any Assumed Contracts.

**SECTION 7**  
**CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

The obligations of the Seller to consummate the transactions contemplated by this Agreement at the Closing shall be subject to the fulfillment at or prior to the Closing of the following conditions, unless the Seller waives such fulfillment:

**7.1 Performance of Agreement.** The Purchaser shall have performed in all material respects its agreements and obligations contained in this Agreement required to be performed on or prior to the Closing.

**7.2 Accuracy of Representations and Warranties.** The representations and warranties in Section 3 hereof shall be true and correct in all material respects on the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date.

**7.3 Absence of any Injunction or Other Restriction.** No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the transactions contemplated by this Agreement, and no statute, rule or regulation of any governmental entity shall have been enacted which prohibits, restricts or delays the consummation hereof.

**7.4 Closing Certificate.** The Seller shall have received a certificate executed by Purchaser as to the accuracy of its representations and warranties as of the date of the Closing and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing. Any inaccuracy of Purchaser's representations and warranties as of the date of the Closing that are disclosed in such certificate shall not release Seller from the obligation to proceed with Closing (unless such inaccuracy also constitutes failure to satisfy a condition other than this Section 7.4), but such inaccuracy shall be subject to the provisions of Section 9 hereof.

**7.5 Transfer Documents.** Purchaser shall have delivered all documents required to accept the Purchased Assets from Seller and to assume the Assumed Liabilities including, without limitation, a bill of sale for the Purchased Assets and assignment and assumption agreements for any Assumed Contracts in substantially the form attached hereto as Exhibit 7.5A and assignment and assumption agreements in substantially the form attached hereto as Exhibit 7.5B.

**7.6 Receipt of Documents by Seller.** The Seller shall have received the following:

(a) Certified copies of the resolutions of the Purchaser authorizing the execution and delivery of this Agreement and the transactions contemplated hereby; and

(b) A certificate executed by Purchaser as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing Date and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing Date.

(c) One or more certificates as to the incumbency of each officer of the Purchaser who has signed this Agreement or any certificate, document or instrument delivered pursuant to the Agreement; and

(d) Certificate of Good Standing of Purchaser issued as of a recent date by the Secretary of State of the State of Illinois.

## **SECTION 8** **TERMINATION**

**8.1 Termination Events.** This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) (i) By the Purchaser if a Breach (as hereinafter defined) of any provision of this Agreement has been committed by Seller and such Breach has not been cured, to Purchaser's reasonable satisfaction, or waived by Purchaser within fifteen (15) calendar days following written notice of such Breach by Purchaser to Seller; or (ii) by the Seller if a Breach (as hereinafter defined) of any provision of this Agreement has been committed by Purchaser and such Breach has not been cured, to Seller's reasonable satisfaction, or waived by Seller within fifteen (15) calendar days following written notice of such Breach by Seller to Purchaser;

(b) (i) By the Purchaser if any of the conditions in Section 7 have not been satisfied as of the Closing Date and the Purchaser has not waived such condition on or before the Closing Date, so long as Purchaser shall have complied fully with its obligations under this Agreement;

(c) By mutual consent of the Purchaser and Seller;

(d) By either the Purchaser or the Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before June 30, 2013 (the "Termination Date"), or such later date as the parties may agree upon; or

(e) By Purchaser, by giving written notice to Seller at any time on or before the Closing Date, if after the date of this Agreement there shall have occurred any development or event, or circumstances or conditions shall have come into existence that, individually or in the aggregate, have caused or are reasonably likely to cause a material adverse effect as specifically described in Section 6.8.

For purposes of this Section 8 a “Breach” of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any inaccuracy in or breach of, or any failure to perform or comply with, any material representation, material warranty, material covenant, material obligation or other material provision of this Agreement.

**8.2 Effect of Termination.** Subject to the further provisions of this Section, each party's right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 5.1 (expenses) and 5.2 (confidentiality) will survive; *provided, however*, that if this Agreement is terminated by a party because of the Breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal and equitable remedies will survive such termination unimpaired.

## **SECTION 9** **INDEMNIFICATION**

**9.1 Indemnification by the Seller.** Subject to the limitations set forth in Section 9.6 hereof, Seller agrees to defend, indemnify and hold the Purchaser and its affiliates and their respective direct and indirect partners, members, stockholders, directors, officers, employees and agents (parties receiving the benefit of the indemnification agreement herein shall be referred to collectively as “Indemnified Parties” and individually as an “Indemnified Party”) harmless from and against any and all losses, claims, damages, obligations, liens, assessments, judgments, fines, liabilities, and other costs and actual, out-of-pocket expenses (including without limitation interest, penalties and any investigation costs, legal fees and other expenses in each case as reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, as the same are incurred) of any kind or nature whatsoever (“Losses”) which may be sustained or suffered by any such Indemnified Party, based upon, arising out of, in respect of, or in connection with:

(a) any inaccuracy in or breach of any representation or warranty made by Seller in this Agreement or in any other instrument or document delivered pursuant to this Agreement;

(b) any breach of any covenant or agreement made by Seller in this Agreement or in any instrument or agreement delivered pursuant to this Agreement;

(c) any liability arising out of ownership or operation of the Facility prior to the Closing, except for the Assumed Liabilities;

(d) any liability relating to any of the Benefit Plans maintained by the Seller or any of its respective affiliates prior to the Closing, except for the Assumed Liabilities;

(e) any liability relating to the rendering of medical services by the Facility prior to the Closing, including, but not limited to, liabilities for medical malpractice and claims related to billing for medical services;

(f) any liability of Seller with respect to sales and use tax arising out of the ownership or operation of the Facility prior to the Closing; and

(h) any of the Excluded Liabilities.

**9.2 Indemnification by the Purchaser.** Subject to the limitations set forth in Section 10.6 hereof, the Purchaser agrees to defend, indemnify and hold the Seller and its affiliates and their respective direct and indirect partners, members, shareholders, directors, officers, employees and agents (in their capacity as such) harmless from and against any and all Losses which may be sustained or suffered by any such Indemnified Party, based upon, arising out of, in respect of, or in connection with (a) any inaccuracy in or breach of any representation or warranty made by the Purchaser in this Agreement or in any other instrument or document delivered pursuant to this Agreement; (b) any breach of any covenant or agreement made by the Purchaser in this Agreement or in any instrument or agreement delivered pursuant to this Agreement; (c) the Assumed Liabilities; (d) any liability arising out of ownership or operation of the Facility following the Closing, except for the Excluded Liabilities; and (e) any liability imposed upon Seller relating to the rendering of medical services by the Facility after the Closing, including, but not limited to, liabilities for medical malpractice and claims related to billing for medical services.

**9.3 Procedure for Indemnification – Third Party Claims.**

(a) Promptly after receipt by an Indemnified Party of notice of the commencement of any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any court, tribunal, governmental body, government contractor or arbitrator (collectively, a “Proceeding”) against it, such Indemnified Party will, if a claim is to be made against an indemnifying party under this Section, give notice to the indemnifying party of the commencement of such claim, but the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any Indemnified Party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnifying party's failure to give such notice.

(b) If any Proceeding referred to in Section 9.3(a) is brought against an Indemnified Party and it gives notice to the indemnifying party of the commencement of such Proceeding, the indemnifying party will, unless the claim involves taxes, be entitled

to participate in such Proceeding and, to the extent that the indemnifying party wishes (unless (i) the indemnifying party is also a party to such Proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying party fails to provide reasonable assurance to the Indemnified Party of its financial capacity to defend such Proceeding and provide indemnification with respect to such Proceeding), to assume the defense of such Proceeding with counsel reasonably satisfactory to the Indemnified Party and, after notice from the indemnifying party to the Indemnified Party of its election to assume the defense of such Proceeding, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the Indemnified Party under this Section for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such Proceeding, other than reasonable costs of investigation. Notwithstanding the foregoing, in the event the exceptions in (i) and (ii) above do not apply, the Indemnified Party shall always be entitled to participate in the defense of any claim for which the defense has been assumed by the indemnifying party as long as such participation is at the Indemnified Party's expense. If the indemnifying party assumes the defense of a Proceeding, (i) no compromise or settlement of such claims may be effected by the indemnifying party without the Indemnified Party's consent (which may not be unreasonably withheld) unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party, and (B) the sole relief provided is monetary damages that are paid in full by the indemnifying party; and (ii) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying party of the commencement of any Proceeding and the indemnifying party does not, within fifteen business days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such Proceeding, the indemnifying party will be bound by any determination made in such Proceeding or any compromise or settlement.

(c) Notwithstanding the foregoing, if an Indemnified Party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the indemnifying party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) With respect to any third-party claim subject to indemnification under this Section 9, (i) both the Indemnified Person and the indemnifying person, as the case may be, shall keep the other person fully informed of the status of such third-party claim and any related proceedings at all stages thereof where such person is not represented by its own counsel, and (ii) the parties agree to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any third-party

claim.

(e) With respect to any third-party claim subject to indemnification under this Section 9, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all confidential information (subject to protection under Section 5.2 hereof) and the attorney-client and work-product privileges. In connection therewith, each Party agrees that: (i) it will use its commercially reasonable efforts, in respect of any third-party claim in which it has assumed or participated in the defense, to avoid production of confidential information (consistent with applicable Laws and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any third-party claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

**9.4 Procedure for Indemnification – Other Claims.** A claim for indemnification for any matter not involving a third party claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after liability for indemnification has been established under this Agreement.

**9.5 Settlement of Claims.** An Indemnified Party may not settle any third party claim without the Indemnifying Party's prior written consent, which consent the Indemnifying Party may not unreasonably withhold or delay.

**9.6 Limitation; Survival of Representations, Warranties and Covenants; Assignability of Rights.**

(a) Limitations. Each of Seller and Purchaser shall be liable under Section 9.1(a) or Section 9.2(a) (*i.e.*, for misrepresentations and breaches of warranties), as applicable, only when the total Losses exceed Fifty Thousand Dollars (\$50,000) (the "Basket Limit"), after which Purchaser or Seller, as applicable, shall be liable for all such Losses beginning with the first dollar following the Basket Limit. Seller's maximum aggregate liability pursuant to Section 9.1(a) shall not exceed the Purchase Price.

(b) Survival. With the exception of any covenants, obligations or commitments, which by their terms are performed or required to be performed prior to or upon the Closing, all of the representations, warranties, covenants, and agreements made by the parties in this Agreement or pursuant hereto in any certificate, instrument, or document shall survive the consummation of the transactions described herein, and may be fully and completely relied upon by Seller and Purchaser, as the case may be, notwithstanding any investigation heretofore or hereafter made by any of them or on behalf of any of them, and shall not be deemed merged into any instruments or agreements delivered at the Closing or thereafter. Notwithstanding anything in this Section 9.6(b) to the contrary, any claim, demand, or cause of action with respect to a breach of any representation or warranty made in this Agreement (other than the representations or warranties contained in Section 2.1, Section 2.2, Section 2.7, Section 3.1, and Section 3.2, which shall survive indefinitely, and Section 2.9, Section 2.23,

Section 2.24, which shall survive for three (3) years following the Closing), must be made or brought, if at all, within eighteen (18) months after the Closing Date.

(c) Reliance; Assignability. All covenants, agreements, representations and warranties (i) made herein and in the certificates, lists, Exhibits, Schedules, documents, or other written information executed, delivered, or furnished in connection herewith or therewith and (ii) to be performed hereunder and thereunder (A) shall be deemed to have been relied upon by the parties; (B) shall survive the Closing and the delivery of the Purchased Assets indefinitely, subject to the limitation provided in Section 9.6(b); and (C) shall bind the parties' successors and assigns, whether so expressed or not, and, except as otherwise provided in this Agreement, all such covenants, agreements, representations and warranties shall inure to the benefit of the parties' successors and assigns, whether so expressed or not. The right to indemnification, payment of Losses or other remedy based on such representations, warranties, covenants, and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations. For purposes of this Agreement, the parties' successors shall include any corporation into which a party is merged or consolidated.

**9.7 Escrow Agreement.** The Escrow Agreement previously executed by Seller and Purchaser shall remain in place until the Closing Date.

## **SECTION 10** **MISCELLANEOUS**

**10.1 Amendment.** Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than by a written instrument referencing this Agreement and signed by the parties to this Agreement.

**10.2 Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by facsimile or electronic mail or otherwise delivered by hand or by messenger addressed:

(a) If to Seller: United Surgical Partners International, Inc., 15305 Dallas Parkway, Suite 1600, Addison, Texas, 75001, Facsimile: (972) 713-3550, Attention, General Counsel, as the same may be updated in accordance with the provisions hereof;

(b) If to the Purchaser, to Instant Care Management LLC, 815 Howard Street, Evanston, Illinois 60602, Attention: Scott Borre, President and Chief Executive Officer, with a copy to Foley & Lardner LLP, 321 North Clark Street, Suite 2800, Chicago, Illinois 60654, Attention: Edward J. Green, Esq., Facsimile: (312) 832-4700, as the same may be updated in accordance with the provisions hereof.

(c) Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given when delivered if delivered personally, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid or, if sent by facsimile, upon confirmation of facsimile transfer.

**10.3 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

**10.4 Successors and Assigns.** This Agreement, and any and all rights, duties and obligations hereunder, shall not be assigned, transferred, delegated or sublicensed by either party without the prior written consent of the other party. Any attempt without such permission to assign, transfer, delegate or sublicense any rights, duties or obligations that arise under this Agreement shall be void. Subject to the foregoing and except as otherwise provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties.

**10.5 Entire Agreement.** This Agreement and the exhibits and schedules thereto constitute the full and entire understanding and agreement between the parties hereto with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner with regard to the subjects hereof or thereof by any warranties, representations or covenants except as specifically set forth herein or therein.

**10.6 Titles and Subtitles.** The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. All references in this Agreement to sections, paragraphs, exhibits and schedules shall, unless otherwise provided, refer to sections and paragraphs hereof and exhibits and schedules attached hereto.

**10.7 Counterparts.** This Agreement may be executed in any number of counterparts and each such agreement executed shall for all purposes be deemed an original, and all counterparts together shall constitute but one and the same instrument. This Agreement may be executed and delivered in either hardcopy, in portable document format (.pdf), or facsimile. This Agreement shall be binding upon all signatories hereof who sign below.

**10.8 Further Assurances.** Each party hereto agrees to execute and deliver, by the proper exercise of its corporate, limited liability company, partnership or other powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.

**10.9 Third Party Beneficiaries.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person other than the parties hereto, and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

**10.10 Knowledge.** Whenever “Seller’s knowledge” or any variant thereof is used herein, it shall mean, as to a particular matter, (a) the actual knowledge, after reasonable inquiry, of Seller’s Administrator, Michelle Richardson, and the members of its Board of Managers and (b) the actual knowledge of any of the Physician Owners.

*[Signatures appear on the following page]*

This Asset Purchase Agreement was executed as of this 31<sup>st</sup> day of December, 2012.

**SELLER:**

**ELMWOOD PARK SAME DAY SURGERY, L.L.C.**

By:   
Name: John B. Wellik  
Title: Vice President

**PURCHASER:**

**ELMWOOD PARK SURGERY CENTER  
ACQUISITION & DEVELOPMENT LLC**

By: \_\_\_\_\_  
Name: Scott Borre  
Title: President & Chief Executive Officer

This Asset Purchase Agreement was executed as of this 31<sup>st</sup> day of December, 2012.

**SELLER:**

**ELMWOOD PARK SAME DAY SURGERY, L.L.C.**

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER:**

**ELMWOOD PARK SURGERY CENTER  
ACQUISITION & DEVELOPMENT LLC**

By: Scott Borre  
Name: Scott Borre  
Title: President & Chief Executive Officer

## SCHEDULES

Schedule 1.1(a)	List of Assets
Schedule 1.4	Excluded Liabilities
Schedule 2.4	Related Party Transactions
Schedule 2.5	Private Party Consents
Schedule 2.7	Title and Condition of Assets
Schedule 2.10	Employment Relations
Schedule 2.18	Benefit Plans
Schedule 2.19	Insurance Coverage/Claims
Schedule 2.20	Real Property Leases
Schedule 2.23	HIPAA
Schedule 2.25	Books and Records

**SCHEDULE 1.1(a)**

**PURCHASED ASSETS**

- (A) All tangible personal property used in the operation of the Facility, including but not limited to all supplies, inventory (including pharmaceuticals and other consumables), furniture, machinery, office furnishings, hardware and equipment, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- (B) All intangible assets relating to operation of the Facility, including, but not limited to, all trade names (whether registered or common law), patents, copyrighted materials, trademarks, service marks, domain names and addresses, other intellectual property, telephone numbers and facsimile numbers;
- (C) All rights, benefits, and authority granted Seller under the Assumed Contracts accruing after the Closing;
- (D) All collection and credit records, medical literature, and advertising related to the Facility, including but not limited to purchasing records, supplier lists and manuals;
- (E) To the extent transferable or assignable, all software and firmware licensed by Seller that are embedded in the Purchased Assets;
- (F) All patient medical records, employment and personnel records, and medical staff credentialing records (which records shall be deemed not to constitute Excluded Assets); and
- (F) Except for records that constitute Excluded Assets, all other data and records of Seller used to operate the Facility, including all operating and business records, financial records, and all other books and records.

**SCHEDULE 1.4**  
**EXCLUDED LIABILITIES**

NONE

**SCHEDULE 2.4**

**RELATED PARTY TRANSACTIONS**

NONE

**SCHEDULE 2.5**

**PRIVATE PARTY CONSENTS**

1. Certain Assumed Contracts require the consent of the counter-party thereto.
2. The assignment of the Real Estate Lease requires the consent of the landlord.

**SCHEDULE 2.7**

**TITLE AND CONDITION OF ASSETS**

NONE

**SCHEDULE 2.10**

**EMPLOYMENT RELATIONS**

NONE

**SCHEDULE 2.18**

**BENEFIT PLANS**

NONE

**SCHEDULE 2.19**

**INSURANCE COVERAGE**

**[See Attached]**

THE FACILITY PROGRAM SCHEDULE OF INSURANCE FOR:  
UNITED SURGICAL PARTNERS INTERNATIONAL, INC.

Coverage	Limits	Deductible/Retention	Policy Term	Company	Policy Number
Commercial Property - Limits below are on a per occurrence basis Blanket Buildings, Improvement & Betterments, Business Personal Property/Contents, & Business Income* Accounts Receivables EDP Equipment & Media Boiler & Machinery- Equipment Breakdown EQ, Volcanic Eruption, Landslide, and Mine Subsidence except EQ occurring in moderate hazard counties EQ occurring in California and high hazard counties Flood- Zone A/All Other Off Premises Power Failure <i>Valuation: Replacement Cost/Agreed Amount</i>	\$500,000,000 \$25,000,000 \$25,000,000 \$100,000,000 \$25,000,000 \$25,000,000 \$10,000,000 \$10,000,000/\$25,000,000 \$25,000,000	\$10,000 \$10,000 \$10,000 \$10,000 \$25,000 2% of damage minimum \$100,000 5% of damage minimum \$250,000 \$25,000 24 hours	9/30/11-9/30/12	Lexington Insurance Company	21469003
Crime- Employee Dishonesty Money & Securities/Forgery/Computer Fraud	\$3,000,000 \$3,000,000	\$50,000 \$50,000	9/30/11-9/30/12	National Union Fire Insurance Company	011502752
Commercial Gen. Liability- Occurrence Form Professional Liability- Claims Made- Retro Dates Vary Employee Benefits Program Adm.- Claims Made Automobile including Hired & Non Owned Automobile Liability Hired Car Physical Damage Umbrella- GL- Occurrence Form Professional-Claims Made- Retro Dates Vary 2nd Excess Umbrella Employment Practices Liability- Claims Made- Retro Dates Vary Private Directors & Officers/General Partnership- Claims Made Pollution Liability- Claims Made Fiduciary Liability	\$1/11,000,000 \$1/11,000,000 \$1/1,000,000 \$1,000,000 Value of vehicle damaged \$25,000,000 Included in above \$15,000,000 \$5,000,000 \$10,000,000 \$5,000,000 \$5,000,000	\$25,000 Deductible per claim \$25,000 Deductible per claim N/A N/A \$500/\$500 Primary Limits listed above** N/A Primary plus umbrella limits \$150,000/\$500,000*** \$250,000/\$100,000**** \$100,000 \$10,000	1/1/12-1/1/13 1/1/12-1/1/13 1/1/12-1/1/13 9/30/11-9/30/12 9/30/11-9/30/12 1/1/12-1/1/13 1/1/12-1/1/13 9/30/11-9/30/12 9/30/11-9/30/12 9/30/11-9/30/14 9/30/11-9/30/12	Continental Casualty/USP Assurance Continental Casualty/USP Assurance Continental Casualty/USP Assurance Travelers Property Casualty Co. of America Travelers Property Casualty Co. of America Sleedast Insurance Company Darwin Select Insurance Co. Illinois National Insurance Company Illinois National Insurance Company Ironsore Specialty Insurance Company Illinois National Insurance Company	HAZ30117209423 HAZ30117209423 HAZ30117209423 TJCAP488D1969 TJCAP488D1969 HPC967425803 0305-1572 011525058 011525333 001155100 011502615
Workers Compensation/Employers Liab- Large Deductible Policy Workers Compensation/Employers Liab- Retro Policy for AZ and OR Texas Nonsubscriber Excess Policy	Statutory-1000/1000/1000 Statutory-1000/1000/1000 \$25,000,000	\$350,000 Deductible per claim \$350,000 Deductible per claim \$250,000 Deductible per claim	9/30/11-9/30/12 9/30/11-9/30/12 9/30/11-9/30/12	Travelers Property Casualty of America Travelers Indemnity Company North American-Specialty	TC2JUB488D2966 TRJUB488D1957 EPC1000019-02

\*\*Self Insured Retention applies when primary limits are exhausted  
\*\*\*\$150,000 on all claims except 3rd party at \$500,000

\*Named Windstorm deductible is 5% in Florida and other hazardous areas 2%  
\*\*\*\*\$250,000 Securities Claims Each Loss/\$100,000 All Other Claims Each Loss

As of 2/27/12

**SCHEDULE 2.20**

**REAL PROPERTY LEASES**

**[See Attached]**

EP

B

COMMERCIAL LEASE

1. BASIC LEASE PROVISIONS

1.1 Basic Lease Provisions

A. Building and Address:

1614 Harlem Avenue  
Elmwood Park, Illinois 60635

B. Landlord and Address:

American National Bank and Trust Company of Chicago,  
as Trustee under a Trust Agreement dated April 1, 1971  
and known as Trust No. 22-75583-00-9  
c/o Hugar Building Partnership, an Illinois general partnership  
1614 Harlem Avenue  
Elmwood Park, Illinois 60635

Monthly rent checks are to be sent to: Patricia Hugar  
1614 Harlem Avenue  
Elmwood Park, IL 60635

C. Tenant and Current Address:

Elmwood Park Same Day Surgery, L.L.C.,  
an Illinois limited liability company  
1614 Harlem Avenue  
Elmwood Park, Illinois 60635

D. Date of Lease: December 11, 1996

E. Lease Term: Ten (10) years, plus four (4) five (5) year renewal options

(11) 07/22/06  
(12) 01/07

F. Commencement Date of Term: The last to occur of (i) the date Tenant is licensed by the Illinois Department of Public Health to operate a surgery center at the Premises; (ii) the date Tenant receives a Certificate of Exemption from the Illinois Health Facilities Planning Board for the transfer to Tenant of the Certificate of Need to operate the Surgery Center at the Premises; or (iii) the date Tenant commences its business as per Subsection 1.1H herein, subsequent to the completion of the items described in Sections 11.1 and 11.2 herein.

G. Expiration Date of Term: Ten (10) years after the Commencement Date

- H. Lease Purpose: Operate an ambulatory outpatient surgery center licensed by the Illinois Department of Public Health.
- I. Monthly Base Rent: See Schedule "A," attached hereto and made a part hereof.
- J. Tenant's Proportionate Share (as defined in Section 4.1): \_\_\_\_\_
- K. Monthly Base Rent for Basement Premises: \$416.67

2. PREMISES AND TERM

2.1 Lease of Premises

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises containing approximately \_\_\_\_\_ square feet of space specifically described on Exhibit "A" attached hereto and made a part hereof ("Surgery Center Premises"), together with the 500 square feet of basement space ("Basement Premises") (Surgery Center Premises and Basement Premises are collectively referred to as the "Premises") in the building commonly known as 1614 Harlem Avenue, Elmwood Park, Illinois 60635 ("Building"), for the term and upon the conditions provided in this lease (the "Lease").

2.2 Term

The term of this Lease (the "Term") shall commence on the date (the "Commencement Date") specified in Subsection 1.1F. The Term shall expire unless terminated as herein provided, on the date (the "Expiration Date") specified in Subsection 1.1G.

2.3 Option

Tenant shall have the option ("Option") to renew this Lease for four (4) additional terms of five (5) years ("Option Terms"). Tenant shall exercise each Option by giving written notice to Landlord not less than ninety (90) days prior to the termination of the Term and each Option Term. Monthly Base Rent for the Surgery Center Premises for the Option Terms shall include only Component A of Monthly Base Rent set forth on Schedule "A." The Monthly Base Rent for the Surgery Center Premises for the first year of the First Option Term shall be one hundred three percent (103%) of Component A of the Monthly Base Rent for the last year of the Term. Thereafter, Monthly Base Rent for the Surgery Center Premises for each year of each Option Term shall increase by three percent (3%). The Monthly Base Rent for the Basement Premises shall increase three percent (3%) each year of the Option Terms. All other terms of the Lease shall apply during the Option Terms, except that there shall be no further option for renewal.

3. RENT

3.1 Monthly Base Rent

Tenant agrees to promptly pay to Landlord at the address set forth in Subsection 1.1B. herein or at such other place designated by Landlord, base rent for the Surgery Center Premises at the initial

monthly rate specified in Schedule B and base rent for the Basement Premises at the monthly rate specified in Subsection 1.1K (collectively "Monthly Base Rent"). Monthly Base Rent shall be paid in advance on the first day of each month of the Term. Monthly Base Rent shall be prorated for partial months within the Term.

3.2 Additional Rent

In addition to paying the Monthly Base Rent specified in Section 3.1 above, Tenant shall pay as Additional Rent the amounts specified in Sections 4.2 and 4.3 hereof. Monthly Base Rent, Additional Rent, and all other amounts to be paid by Tenant to Landlord hereunder are sometimes collectively referred to as "Rent". All Additional Rent shall be payable for the same periods and in the same manner, time, and place as the Monthly Base Rent. Additional Rent shall be prorated for partial months within the Term.

3.3 Rent Abatement

Landlord agrees that Tenant shall receive a rent abatement of \$2,800 per month for the first six (6) months of the Term.

4. ADJUSTMENTS TO RENT

4.1 Common Areas

Landlord grants to Tenant and Tenant's customers and invitees the right to use, in common with all others to whom Landlord has or may hereafter grant rights to use the same, the Common Areas located within or around the Building. The term "Common Areas" as used in this Lease, shall mean any parking areas, roadways, pedestrian sidewalks, driveways, delivery areas, trash removal areas, landscaped areas, security areas, public washrooms and all other areas or improvements which may be provided by Landlord for the common use of all tenants in the Building. The manner in which such areas and facilities shall be maintained and operated and the expenditures therefore shall be at the reasonable discretion of Landlord. Landlord hereby reserves the following rights with respect to the Common Areas:

- (i) To establish reasonable rules and regulations for the use thereof;
- (ii) Provided Landlord does not interfere with the access to or use of the Premises, to close all or any portion of the Common Areas as may be deemed necessary by Landlord to make repairs or changes, to prevent a dedication thereof or the accrual of any rights to any person or the public therein, or to discourage noncustomer use or parking; and
- (iii) Provided Landlord does not interfere with the access to or use of the Premises, to change the layout of the Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise.

Definitions

"Operating Expenses" shall mean all costs, expenses and disbursements which Landlord shall pay or become obligated to pay in connection with the management, operation, maintenance, and repair of the Building, the Common Areas and of the personal property, fixtures, machinery, equipment, and systems located in or used in connection with the Building and the Common Areas including, without limitation, all costs incurred by Landlord to insure the Building.

Notwithstanding anything contained in the Lease to the contrary, no expenses incurred for the following shall be included within the definition of Operating Expenses: (a) costs of a capital nature, including, but not limited to capital improvements, capital replacements, capital repairs, capital equipment and capital tools, all in connection with generally accepted accounting principles except a current amortization of those capital improvements which are made or installed for the purpose of reducing Operating Expenses or are made or installed pursuant to any governmental or insurance requirement; (b) repairs or other work occasioned by fire, windstorm or other casualty or by the exercise of the right of eminent domain for which Landlord is reimbursed whether by insurance proceeds or otherwise; (c) leasing commissions, attorney's fees, costs and disbursements and other expenses incurred in connection with negotiations or disputes with tenants, other occupants, or prospective tenants or other occupants; (d) costs incurred in renovating or otherwise improving or decorating, painting or decorating space for tenants or other occupants or vacant space; (e) Landlord's costs of electricity and other services sold to tenants and for which Landlord is entitled or would ordinarily be entitled to be reimbursed by tenants as an addition charge or rental over and above the basic rent payable under the Lease Agreement with such tenant; (f) depreciation and amortization; (g) costs incurred due to violation by Landlord or any tenant of the terms and conditions of any Lease; (h) overhead and profit increment paid to subsidiaries or affiliates of Landlord for services on or to the real property, to the extent only that the costs of such service exceed competitive costs of such services were they not so rendered by a subsidiary or affiliate; (i) interest on debt or amortization payments on any mortgage(s), and rental under any ground or underlying lease(s); (j) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord; (k) all items and services for which Tenant reimburses Landlord or pays third persons; (l) any costs, fines, penalties, legal fees or costs of litigation incurred due to violations by Landlord, its employees, agents, contractors or assigns, of any governmental rule or authority; and (m) wages, salaries or other compensation paid to any executive employees above the grade of building manager.

"Taxes" shall mean all federal, state and local government taxes, assessments and charges (including transit or transit district taxes or assessments) of every kind or nature, whether general, special, ordinary or extraordinary, which Landlord shall, during the Term or any renewal or extension thereof, pay or become obligated to pay because of or in connection with the ownership, leasing, management, control, or operation of the Building and the land upon which the Building is situated (the "Land"), or of the personal property, fixtures, machinery, equipment, and systems located in or used in connection with the Building. For purposes hereof, Taxes for any year shall be Taxes which may now or hereafter be levied, imposed, or assessed against the Land. All fees, costs and legal expenses (including reasonable contingent attorneys' fees) paid by Landlord in connection with seeking a reduction in Taxes shall be included in "Taxes." The amount of Taxes shall be reduced by the net amount of any tax refund obtained by Landlord. Taxes shall not include any federal, state, or local sales, use, franchise, gift, estate, capital stock, inheritance, or general income tax, except that if a change occurs in the method of taxation resulting in whole or in part the substitution of any such taxes

or assessments for any Taxes as defined above, such substituted taxes or assessments shall be deemed Taxes.

"Tenant's Proportionate Share" shall mean the percentage calculated by Landlord on a uniform basis for the Building by dividing the rentable area of the Premises by the total square footage of the Building.

4.3 Operating Expense Adjustment

Tenant shall pay to Landlord, as Additional Rent, an amount ("Expense Adjustment Amount") equal to Tenant's Proportionate Share of Operating Expenses incurred during each calendar year as estimated by Landlord. Tenant shall pay Expense Adjustment Amounts to Landlord monthly in accordance with Section 3.2.

At the end of each calendar year, or at such later time as Landlord shall be able to determine the actual amounts of Operating Expenses for the previous calendar year, Landlord shall notify Tenant of the actual amounts of Operating Expenses paid. If Tenant has paid more than Tenant's Proportionate Share, then Tenant shall receive a credit against future payments of Additional Rent equal to the amount of the excess payments. If Tenant has paid less than Tenant's Proportionate Share, then Tenant shall pay the shortfall to Landlord within five business days of receipt of notice from Landlord. Tenant's obligation to pay such shortfall shall survive the termination of this Lease regardless of the reason for such termination.

4.4 Tax Adjustment

Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the amount of Taxes payable for each calendar year ("Tax Adjustment Amount").

At the end of each calendar year, or at such later time as Landlord shall be able to determine the actual amounts of Taxes for the previous calendar year, Landlord shall give Tenant notice of the actual amounts of Taxes paid together with a copy of the subject tax bill. Tenant shall pay the Tax Adjustment Amount within fifteen (15) days after receipt of the tax bill and Landlord's computation of the Tax Adjustment Amount.

4.5 Books and Records

Landlord shall maintain books and records showing Operating Expenses and Taxes in accordance with sound accounting and management practices, which records shall be available to Tenant for inspection at the office of the Building upon reasonable prior notice. Tenant shall be permitted to engage an independent audit firm to audit Landlord's books and records pertaining to Operating Expenses not more than one time per calendar year. If the audit determines that Tenant overpaid the Expense Adjustment Amount for any calendar year, Landlord shall immediately reimburse to Tenant the amount of the overpayment. If the audit determines that Tenant underpaid the Expense Adjustment Amount for any calendar year, Tenant shall immediately reimburse to Landlord the amount of the underpayment. If the overpayment is more than five percent (5%), Landlord shall pay for the cost of the audit.

4.6 Projections

For purposes of calculating Operating Expenses for any calendar year, Landlord may, from time to time, make reasonable estimates, forecasts or projections of Operating Expenses which shall be communicated by written notice to Tenant.

5. CONDITIONS PRECEDENT.

The obligations of Tenant under this Lease are expressly conditioned on the satisfaction of each of the following on or before December 31, 1997:

- (a) Tenant shall obtain a license from the Illinois Department of Public Health to operate a surgery center at the Premises; and
- (b) Tenant shall receive a Certificate of Exemption from the Illinois Health Facilities Planning Board for the transfer to Tenant of the Certificate of Need to operate the Surgery Center at the Premises.

If any one of the aforementioned conditions are not satisfied as of December 31, 1997, at Tenant's option, this Lease shall be null and void and Tenant shall have no further obligations hereunder.

6. UTILITIES

Tenant will pay in addition to Rent, the costs of all sewer, gas, electric current, telephone, water and any other utilities used or consumed at, on or in the Premises, as and when the charges for the same become due and payable. If Tenant fails to pay for any of the above services when the same shall become due and payable, Landlord shall have the right, but not the duty, after written notice to Tenant and the expiration of the applicable cure period, to pay the same, which amount so paid shall be Additional Rent and shall be payable immediately upon demand from Landlord. If Tenant is unable, at any time, to operate its business as a result of any utility failure outside of the reasonable control of Tenant and such utility failure shall continue for a period of three or more days, then, Rent shall abate until such time as the utilities in question are functioning and Tenant is able to operate its business, however discontinuance of any utility service, unless caused by the act or omission of Landlord or the agents or employees of Landlord, shall not result in any other liability of Landlord to Tenant or be considered an eviction or disturbance of Tenant's use of the Premises.

7. POSSESSION, USE AND ENJOYMENT OF PREMISES

7.1 Possession and Use of Premises

Tenant shall be entitled to possession of the Premises upon the Commencement Date. Tenant shall occupy and use the Premises for the purposes set forth in Subsection 1.1H only. Tenant shall not occupy or use the Premises (or permit the use or occupancy of the Premises) for any purpose or in any manner which: (a) is unlawful or in violation of any applicable legal, governmental or quasi-governmental requirement, ordinance or rule (including the Board of Fire Underwriters); (b) may be

dangerous to persons or property; (c) may invalidate or increase the amount of premiums for any policy of insurance affecting the Building, and if any additional amounts of insurance premiums are so incurred, Tenant shall pay to Landlord the additional amounts on demand; or (d) may create a nuisance, disturb any other tenant of the Building or the occupants of neighboring property or injure the reputation of the Building.

7.2 Quiet Enjoyment

So long as Tenant shall not be in default under this Lease, Tenant shall be entitled to peaceful and quiet enjoyment of the Premises, subject to the terms of this Lease.

8. MAINTENANCE

8.1 Tenant Maintenance

Tenant shall, at Tenant's sole cost and expense, keep the Premises and all improvements, fixtures and other personal property located therein in good order and condition including, without limitation, all electrical, plumbing, sewer, heating, ventilating and air conditioning systems and equipment located in or servicing the Premises, and floors, windows and doors in the Premises. Tenant will not do or permit any act or thing which might impair the value or usefulness of the Premises or any part thereof, or commit or permit any waste of or upon the Premises or any part thereof. In addition to other remedies provided herein for breach of Tenant's obligations hereunder, if Tenant fails to make any needed repairs or maintain the Premises in a clean and sightly condition in accordance with all public health safety and fire statutes, ordinances, rules and regulations, Landlord, its agents, employees and contractors, after written notice to Tenant and the expiration of the applicable cure period, shall be allowed entry upon any portion of the Premises to make the necessary repairs, and any and all costs and expenses incurred by Landlord on account thereof shall be paid by Tenant immediately upon demand by Landlord. Tenant shall, at Tenant's sole cost and expense, hire adequate scavenger service for the removal of waste and garbage resulting from the operation of Tenant's business at the Premises, and until such removal shall keep the same in covered or sealed containers.

8.2 Landlord Maintenance

Landlord shall repair, replace and maintain the Common Areas of the Building, and the roof, structural elements of the Building. The Common Areas, as well as all structural elements of the Building will be maintained, repaired and replaced in a "first class condition" in accordance with standard building practices of other similar buildings in the same geographic location.

9. ASSIGNMENT AND SUBLETTING

Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed:

- (a) assign or convey this Lease or any interest under it;
- (b) sublet the Premises or any part thereof; or

(c) permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant.

Landlord's consent to any assignment, subletting or transfer or Landlord's election to accept any assignee, sublessee or transferee as a tenant hereunder shall not release Tenant from any covenant or obligation under this Lease, including, but not limited to, any such covenant or obligation due and owing from and after the date of any such assignment, subletting or transfer. Any assignee by acceptance of the assignment or the taking possession of the Premises thereby assumes and agrees to perform all of Tenant's obligations under this Lease. Landlord's consent to any assignment, subletting or transfer shall not constitute a waiver of Landlord's right to withhold its consent to any future assignment, subletting or transfer.

Notwithstanding anything to the contrary contained in this Section 9, Tenant may, upon Landlord's consent, which consent shall not be unreasonably withheld or delayed, permit the Premises to be occupied by, or may sublet all or any portion of the Premises, or assign this Lease to any party which directly or indirectly (including members of Tenant): (i) wholly owns or controls Tenant; (ii) is wholly owned or controlled by Tenant; (iii) is under common control or ownership with Tenant; or (iv) to which Tenant or any of the foregoing parties have merged, consolidated or reorganized or to which all or substantially all of Tenant's assets or such other parties' assets are sold, assigned or transferred. In such event, (a) Landlord shall receive an executed copy of transfer documents promptly after execution; (b) any such transferee shall expressly assume Tenant's obligations under the Lease; and (c) Tenant shall not remain liable under the Lease in the case of an assignment.

10. LIENS

Tenant shall not permit any lien or claim for lien of any mechanic, laborer or supplier or any other lien to be filed against the Building, the Land, the Premises, or any part thereof arising out of work performed or, alleged to have been performed by, or at the direction of, or on behalf of Tenant. If any such lien or claim for lien is filed, Tenant shall, within thirty (30) days after receipt of notice thereof, either have such lien or claim for lien released of record or shall deliver to Landlord a bond in the form, content, amount, and issued by a surety, reasonably satisfactory to Landlord indemnifying Landlord against all costs and liabilities resulting from such lien or claim for lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such lien or claim for lien so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same, and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord.

11. ALTERATIONS AND IMPROVEMENTS

11.1 Landlord's Work

Landlord shall, at Landlord's sole costs and expense, cause to be constructed an addition at the Building ("Addition") as set forth in the plans and specifications incorporated into the Construction Contract attached hereto as Exhibit "C" and made a part hereof. Landlord and Tenant acknowledge that the parties intend to use one general contractor for the construction of the Addition and the completion of the Tenant's work described in Section 11.2. Accordingly, Landlord and Tenant shall cooperate with each other and work with the selected contractor in order to complete the Addition and

Tenant's work in a timely fashion in accordance with the terms of this Lease. Landlord shall cause the Addition to be substantially completed in accordance with the foregoing plans and specifications on or before December 31, 1997. If Landlord fails to complete construction of the Addition as is required pursuant to this Subsection 11.1 and deliver the Premises to Tenant for completion of Tenant's work required pursuant to Subsection 11.2 herein on or before December 31, 1997, Tenant shall be permitted, in Tenant's sole discretion, to terminate the Lease by written notice to Landlord. Landlord agrees to hold Tenant and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which arises out of or in any way is connected with the construction of the Addition. The construction of the Addition shall be in accordance with applicable legal, governmental and quasi governmental requirements, ordinances and rules. The Addition shall be constructed in a good and workmanlike manner and with the use of good grades of materials.

#### 11.2 Tenant's Work

With the exception of the construction of the Addition, Tenant shall, at Tenant's expense, perform or cause to be performed the interior improvements to the Premises set forth in the plans and specifications approved by Landlord and Tenant and attached hereto as Exhibit "D," and made a part hereof, as well as other related documents such as Tenant's design criteria, and shall fully equip the Premises with all trade fixtures, furniture, furnishings, exterior signs, special equipment and other items necessary for the completion of the Premises and the operation of Tenant's business on or before April 30, 1998. If Tenant fails to complete Tenant's work as is required pursuant to this Subsection 11.2 on or before April 30, 1998, Landlord shall be permitted, in Landlord's sole discretion, to terminate the Lease by written notice to Tenant. All such work shall be completed as set forth below.

Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, make or cause to be made any alterations, improvements, additions, installations or decorations in or to the Premises. If Landlord so consents, before commencement of any such work or delivery of any materials into the Premises or the Building, Tenant shall furnish to Landlord for approval architectural plans and specifications, names and addresses of all contractors, contracts, necessary permits and licenses, certificates of insurance and instruments of indemnification against any and all claims, costs, expenses, damages and liabilities which may arise in connection with such work, all in such form and amount as may be reasonably satisfactory to Landlord. Tenant agrees to hold Landlord and its agents and employees forever harmless against all claims and liabilities of every kind, nature and description which may arise out of or in any way be connected with such work. All such work shall be done only by contractors or mechanics approved by Landlord (which approval shall not be unreasonably withheld) and at such time and in such manner as Landlord may from time to time designate. Tenant shall pay the cost of all such work. Upon completion of such work, Tenant shall furnish Landlord with contractor's affidavits and full and final waivers of lien and receipted bills covering all labor and materials expended and used in connection therewith. All such work shall be in accordance with all applicable legal, governmental and quasi-governmental requirements, ordinances and rules (including the Board of Fire Underwriters), and all requirements of applicable insurance companies. All such work shall be done in a good and workmanlike manner and with the use of good grades of materials. All alterations, improvements, additions and installations to or on the Premises shall become part of the Premises at the time of their installation and shall remain in the Premises at the expiration or termination of this Lease, or termination of Tenant's right of possession of the Premises, without compensation or credit to Tenant.

12. WAIVER OF CLAIMS AND INDEMNITY

12.1 Waiver

To the fullest extent now or hereafter permitted by law and except for claims arising from the acts or omissions of Landlord or the agents and employees of Landlord, Tenant waives all claims it may have against Landlord, and the agents and employees of said Landlord, for damage to person or property sustained by Tenant or any occupant or other person resulting from the Building or the Premises or any part of the Building or Premises becoming out of repair or resulting from any accident within the Building or Premises or resulting directly or indirectly from any act or omission of Landlord or Landlord's agents and employees or resulting directly or indirectly from any act or omission of Tenant or any other person while on the Premises or in the Building.

12.2 Indemnification

Tenant agrees to indemnify and hold harmless Landlord and Landlord's agents and employees against any and all liabilities, obligations, claims, demands, costs and expenses of every kind and nature, including reasonable attorneys' fees, arising from Tenant's occupancy of the Premises or from any breach or default on the part of Tenant in the performance of any agreement of Tenant to be performed pursuant to the terms of this Lease, or from any act or neglect of Tenant, any subtenant, their respective employees, agents, guests, servants, invitees or customers in or about the Premises, the Building or the Common Areas. In any case such proceeding is brought against any of said persons, Tenant covenants to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Landlord, if requested by Landlord.

Landlord agrees to indemnify and hold harmless Tenant and Tenant's agents and employees against any and all liabilities, obligations, claims, demands, costs and expenses of every kind and nature, including reasonable attorneys' fees, arising from any breach or default on the part of Landlord in the performance of any agreement of Landlord to be performed pursuant to the terms of this Lease, or for any act or neglect of Landlord or Landlord's agents, employees, guests, servants, invitees or customers in or about the Premises, the Building or the Common Areas. In any case, such proceeding is brought against any of said persons, Landlord covenants to defend such proceeding at its sole cost and expense by legal counsel reasonably satisfactory to Tenant, if requested by Tenant.

13. LANDLORD'S REMEDIES

13.1 Events of Default

The parties acknowledge and agree that certain affiliates of Landlord are members of Tenant. Thus, the following shall constitute a breach of this Lease by Tenant: (i) Tenant fails to pay any installment of Rent when such installment of Rent shall be due and Tenant fails to cure such default within ten (10) days after written notice thereof to Tenant; (ii) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant and fails to cure such default within sixty (60) days after written notice thereof to Tenant; however, if in Landlord's reasonable discretion, it is impracticable to cure the default within sixty (60) days, then provided Tenant shall commence to cure the default within the sixty (60) day period, the failure to completely cure the default within the cure period shall not constitute a breach of this Lease if Tenant

diligently proceeds to cure the default and such default is cured within a reasonable time period thereafter; (iii) the interest of Tenant in this Lease is levied upon under execution or other legal process; (iv) a petition is filed by or against Tenant to declare Tenant bankrupt or seeking a plan of reorganization or arrangement under any Chapter of the Bankruptcy Act, or any amendment, replacement or substitution therefor, or to delay payment of, reduce or modify Tenant's debts and said petition is not dismissed within ninety (90) days after the filing thereof, or any petition is filed to reorganize or modify Tenant's capital structure, or upon the dissolution of Tenant; (v) Tenant is declared insolvent by law or any assignment of Tenant's property is made for the benefit of creditors; or (vi) a receiver is appointed for Tenant or Tenant's property.

### 13.2 Landlord's Remedies

In the event of any default of this Lease by Tenant, Landlord, at its option, without further notice or demand to Tenant, may, in addition to all other rights and remedies provided in this Lease, at law or in equity:

- (a) terminate this Lease and Landlord shall be entitled to recover (1) all Rent due and payable by the Tenant at termination, (2) an amount equal to the then present value of the Rent for the remainder of the Term, plus the present value of the fair market rent of the Premises for the remainder of the Term (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses relating to recovery of the Premises, preparation for reletting and for reletting itself); (3) the Unamortized Leasehold Improvement Cost (as hereinafter defined); (4) the cost of performing any other covenant to be performed by Tenant, and (5) such damages, as provided by law, resulting from Tenant's breach of the Lease; or
- (b) terminate Tenant's right of possession of the Premises without terminating this Lease, in which event Landlord shall make a reasonable attempt to relet the Premises, or any part thereof for the account of Tenant, for such rent and term and upon such terms and conditions as are acceptable to Landlord. For purposes of such reletting, Landlord is authorized to decorate, repair, alter and improve the Premises to the extent reasonably necessary. If Landlord is unable, after making a reasonable attempt, to relet the Premises, or if the Premises are relet and a sufficient sum is not realized therefrom after payment of all Landlord's expenses of reletting (including repairs, alterations, improvements, additions, decorations, reasonable legal fees and brokerage commissions) to satisfy the payment when due of Rent reserved under this Lease for any monthly period (hereinafter "Deficiency"), then Tenant shall pay Landlord a sum equal to the amount of Monthly Base Rent due under this Lease for each such monthly period, or if the Premises have been relet, Tenant shall pay any such Deficiency monthly. Tenant agrees that Landlord may file suit to recover any sums due to Landlord hereunder from time to time and that such suit or recovery of any amount due Landlord hereunder shall not be any defense to any subsequent action brought for any amount not theretofore reduced to judgment in favor of Landlord. In the event Landlord elects, pursuant to this Subsection (b), to terminate Tenant's right of possession only without terminating this Lease, Landlord may, at Landlord's option, enter into the Premises, remove Tenant's signs and other evidences of tenancy, and take and hold possession thereof, as provided in Article 14 hereof; provided, however, that such entry and possession shall not terminate this Lease or release Tenant, in whole or in part, from Tenant's

obligation to pay the Monthly Base Rent reserved hereunder for the full term or from any other obligation of Tenant under this Lease.

For purposes of this Section 13.2, "Unamortized Leasehold Improvement Cost" shall mean the cost to Landlord, if any, of purchasing, fabricating and installing all improvements which were installed on the Premises by Landlord pursuant to this Lease prior to the beginning of the Term, including interest thereon, calculated by amortizing such costs over the Term with interest at the rate specified in Schedule "A" and multiplying the total costs and interest by a fraction, the numerator of which is the number of months of the Term not yet elapsed on the date the Term is terminated and the denominator of which is the total number of months of the Term.

13.3 Landlord Default

In the event Landlord fails to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Landlord and fails to cure such default within thirty (30) days after written notice thereof to Landlord, Tenant shall have the right, but not the duty, to pay or perform Landlord's obligation and offset the costs incurred in paying or performing said obligation against installments of Rent until Tenant is fully reimbursed therefore. The foregoing shall be in addition to but not in lieu of any other rights and remedies available to Tenant arising out of or resulting from a default by Landlord under the terms of this Lease.

13.4 Attorneys' Fees

The defaulting party shall pay, upon demand, all costs and expenses, including attorneys' fees, incurred by the prevailing party in enforcing the observance and performance by the defaulting party of all covenants, conditions and provisions of this Lease to be observed and performed by the defaulting party, or resulting from a default under this Lease.

14. SURRENDER OF PREMISES

Upon expiration or termination of this Lease or termination of Tenant's right of possession of the Premises, or any part thereof, Tenant shall surrender and vacate the Premises immediately and deliver possession thereof to Landlord in a clean, good and tenantable condition, ordinary wear and tear excepted. Upon any termination which occurs other than by reason of Tenant's default, Tenant shall be entitled to remove from the Premises all movable personal property of Tenant, provided Tenant shall immediately repair all damage resulting from such removal. In the event possession of the Premises is not immediately delivered to Landlord or if Tenant shall fail to remove all of Tenant's movable personal property, as aforesaid, Landlord may remove any of such property therefrom without any liability to Tenant, and at Tenant's expense. All movable personal property which may be removed from the Premises by Lease shall be conclusively presumed to have been abandoned by Tenant, and title thereto shall pass to Landlord without any cost or credit therefor, and Landlord may, at its option and at Tenant's expense, store and/or dispose of such property.

15. HOLDING OVER

Tenant shall pay Landlord one hundred fifty percent (150%) the latest Monthly Base Rent then applicable for each month or portion thereof Tenant retains possession of the Premises, or any portion thereof, after the expiration or termination of this Lease, and also shall pay all damages sustained by Landlord by reason of such retention of possession. The provisions of this Article shall not constitute a waiver by Landlord of any re-entry rights of Landlord hereinbefore or by law provided. If Tenant retains possession of the Premises, or any part thereof, for ten (10) days after the expiration or termination of this Lease, then at the sole option of Landlord expressed by written notice to Tenant, but not otherwise, such holding over shall constitute a renewal of this Lease for a period of one year (or less if specified by Landlord at Landlord's option) on the same terms and conditions, except that the Monthly Base Rent shall be increased to one hundred fifty percent (150%) of the latest Monthly Base Rent, plus any subsequent escalations.

16. DAMAGE BY FIRE OR OTHER CASUALTY

16.1 Substantial Untenantability

If the Building or the Premises are made substantially untenable by fire or other casualty, Landlord may elect either to (i) terminate this Lease as of the date of the fire or other casualty by giving Tenant written notice thereof within ninety (90) days after said date; or (ii) proceed to repair or restore the Building or the Premises by giving Tenant written notice thereof within ninety (90) days after said date. If neither party elects to terminate the Lease, Landlord shall proceed to repair or restore the Building or the Premises, other than leasehold improvements and personal property paid for or installed by Tenant.

Restoration shall be commenced by the Landlord within ninety (90) days after such damage shall have occurred and shall be substantially completed within one hundred eighty (180) days after such damage shall have occurred, due allowance being made for delay in the commencement or completion of restoration occasioned by causes beyond the Landlord's control. If the Landlord does not commence such restoration within such ninety (90) day period, and complete said restoration within such one hundred eighty (180) day period, Tenant may terminate this Lease as of the date of such damage by serving notice on the Landlord after the expiration of such period.

16.2 Insubstantial Untenantability

If the Premises or the Building are damaged by fire or other casualty but neither is rendered substantially untenable, then Landlord shall proceed to repair and restore the Building or the Premises, other than the leasehold improvements and personal property paid for and installed by Tenant, unless such damage occurs during the last twelve (12) months of the Term, in which event Landlord or Tenant shall have the right to terminate this Lease as of the date of such fire or other casualty by giving written notice thereof to the other within thirty (30) days after the date of such fire or other casualty.

16.3 Rent Abatement

If all or any part of the Premises are rendered substantially untenable by fire or other casualty or if all or any part of the Building is damaged by fire or other casualty which makes the Premises substantially untenable, and this Lease is not terminated, Monthly Base Rent shall abate for all or that part of the Premises which is untenable on a per diem basis from the date of the fire or other casualty until Landlord has substantially completed the repair and restoration work in the Premises which it is required to perform, provided that as a result of such fire or other casualty, Tenant does not occupy the portion of the Premises which is untenable during such period. Notwithstanding anything to the contrary herein, Landlord shall not be obligated to expend more than the insurance proceeds received by Landlord as a result of the casualty or fire.

17. EMINENT DOMAIN

17.1 Taking of Building or Premises

In the event the whole or any part of the Building, the Premises or the Common Areas is taken or condemned by any competent authority for any public use or purpose (including a deed given in lieu of condemnation) which renders the Premises untenable, this Lease shall terminate as of the date title vests in such authority, and Monthly Base Rent shall be apportioned as of said date. If the condemnation is of a partial nature which does not render the Premises or Building untenable, Landlord shall have the right, exercisable upon not less than ninety (90) days written notice to Tenant prior to the date of the taking designated in the notice from the condemning authority, to repair the Premises or the Building to the condition existing prior to the condemnation and the Lease shall continue in effect. Tenant may terminate the Lease if Landlord does not so repair the Premises or the Building within one hundred eighty (180) days from the date the Condemnation Monthly Base Rent shall abate on a proportionate basis during the period that Landlord is repairing the Premises.

17.2 Compensation

Landlord shall be entitled to receive the entire price or award from any such sale, taking or condemnation without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award; provided, however, Tenant shall have the right to separately pursue against the condemning authority an award in respect of the loss, if any, to leasehold improvements paid for by Tenant, and for Tenant's cost of relocation without any credit or allowance from Landlord.

18. TENANT'S INSURANCE

18.1 Insurance

Tenant, at Tenant's expense, agrees to maintain in force during the Term: (i) Comprehensive General Liability Insurance on an occurrence basis with minimum limits of liability in an amount of \$1,000,000.00 for bodily injury, personal injury or death to any one person and \$1,000,000.00 for bodily injury, personal injury or death to more than one person, and \$100,000.00 with respect to damage to property, including water and sprinkler damage; (ii) Fire Insurance, with extended coverage and vandalism and malicious mischief endorsements, in an amount adequate to cover the full replacement value of all leasehold improvements and all fixtures, contents and wall and floor

coverings in the Premises and (iii) plate glass insurance covering all exterior plate glass in the Premises.

18.2 Required Policy Provisions

The policies referred to in Section 18.1 shall name Landlord, and Landlord's mortgagee, if any, its respective agents and employees as additional insureds, as their interests may appear. Each policy referred to in Section 18.1 shall be issued by one or more responsible insurance companies reasonably satisfactory to Landlord and shall contain the following provisions and endorsements: (i) that such insurance may not be canceled or amended without thirty (30) days' prior written notice to Landlord; (ii) an express waiver of any right of subrogation by the insurance company against Landlord and its agents and employees; and (iii) that the policy shall not be invalidated should the insured waive in writing prior to a loss, any or all rights of recovery against any other party for losses covered by such policy.

18.3 Release of Rights of Recovery

Tenant shall deliver to Landlord certificates of insurance of all policies and renewals thereof to be maintained by Tenant hereunder, not less than ten (10) days prior to the Commencement Date and not less than ten (10) days prior to the expiration date of each policy. Whenever (a) any loss, cost, damage, or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease, or by anyone claiming by, through or under it in connection with the Premises, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Lease to be so insured, then, anything contained in this Lease to the contrary notwithstanding, the party so insured (or so required) hereby releases the other party from any liability said other party may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered had such insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (except that in the case of increased cost, the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such release and waiver in full force and effect). If the party released from liability hereunder is Landlord, the term "Landlord," for the purpose of this Subsection 18.3 only, shall also include the beneficiary of Landlord and said parties' agents and employees.

19. RULES AND REGULATIONS

Tenant agrees for itself and for its subtenants, employees, agents, and invitees to comply with all Rules and Regulations which Landlord may from time to time enact. Landlord shall not be responsible for any violation of the Rules and Regulations by other tenants of the Building but shall enforce the same against other tenants on a uniform basis.

20. LANDLORD'S RIGHTS

Landlord shall have the following rights exercisable with notice to Tenant: (i) to install, affix and maintain all signs on the exterior and/or interior of the Building; (ii) to designate and/or approve prior

to installation, all types of signs, window shades, blinds, drapes, awnings or other similar items and all internal lighting that may be visible from the exterior of the Premises or the public corridors of the Building; (iii) to display the Premises to prospective tenants at reasonable hours during the last ninety (90) days of the Term and to display the Premises to prospective purchasers at reasonable hours any time during the Term; (iv) to change the arrangement of entrances, doors, corridors and stairs in the Building, provided that no such change shall materially adversely affect Tenant's access to the Premises; (v) to prohibit the placing of vending or dispensing machines of any kind in or about the Premises; (vi) to take any and all reasonable measures (without notice to Tenant in the event of an emergency), including inspections and repairs to the Premises or to the Building, as may be necessary or desirable in the operation or protection thereof; and (vii) to retain at all times master keys or pass keys to all doors in and to the Premises.

21. ESTOPPEL CERTIFICATE

Tenant shall from time to time, upon not less than ten (10) days' prior written notice request by Landlord or any mortgagee holding a mortgage on the Land, deliver to Landlord or such mortgagee a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease, as modified, is in full force and effect; (ii) the amount of Rent then payable hereunder and the date to which Rent has been paid; (iii) that Landlord is not in default under this Lease or, if in default, a detailed description of such default(s); (iv) that Tenant is or is not in possession of the Premises, as the case may be; and (v) any other statements reasonably required by Landlord.

22. SUBORDINATION AND ATTORNMENT

22.1 Subordination

This Lease and the rights of Tenant hereunder shall be and are hereby made expressly subject and subordinate at all times to the lien of any mortgage now or hereafter existing against the Building and to all advances made or hereafter to be made upon the security thereof. Tenant agrees to execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as may be requested in writing by Landlord from time to time. Tenant acknowledges that its title is and always shall be subordinate to the title of the owner of the Building, and nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of the owner of the Building.

22.2 Attornment

In the event of the foreclosure of any such mortgage by voluntary agreement or otherwise, or the commencement of any judicial action seeking such foreclosure, Tenant, at the request of the then Landlord, shall attorn to and recognize such first mortgagee or purchaser in foreclosure as Tenant's Landlord under this Lease. Tenant agrees to execute and deliver at any time upon request of such first mortgagee, purchaser, or their successors, any instrument to further evidence such attornment. Tenant hereby waives its right, if any, to elect to terminate this Lease or to surrender possession of the Premises in the event of any such mortgage foreclosure.

22.3 Nondisturbance

If Tenant is required to execute a subordination or attornment agreement pursuant to Subsection 22.1 or 22.2 herein, Landlord shall, simultaneously therewith, use its best efforts to obtain from the mortgagee, purchaser or successor in interest of Landlord, a nondisturbance agreement stating that Tenant's possession under the Lease and Tenant's rights and privileges thereunder shall not be disturbed, so long as Tenant is not in default under this Lease.

23. NOTICES

All notices required or permitted to be given hereunder shall be in writing and shall be deemed given and delivered, whether or not received, when deposited in the United States Mail, first class postage prepaid and properly addressed, certified mail, return receipt requested or personally delivered or sent by a nationally recognized overnight courier, at the addresses specified in Subsections 1.1B and 1.1C, or such other address as Landlord or Tenant shall designate by written notice to the other.

24. HAZARDOUS MATERIALS

Tenant agrees to indemnify, defend and hold harmless Landlord and Landlord's agents, employees and grantees from and against any all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interests, fines, penalties and expenses, including attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Landlord and Landlord's agents, employees and grantees as a result of the occurrence of any of the following during the term of the Lease: (i) any violation or claim for violation of Environmental Laws (as hereinafter defined) by Tenant with respect to Tenant's use or occupancy of the Premises, injury to any person or his property as a result of the violation or claim of violation of Environmental Laws, or any governmental or judicial claim, ordinance or judgment with respect to the clean up of Hazardous Materials (as hereinafter defined) at or with respect to the Premises; (ii) any cost, claim or liability or damage expended in remediation of the Premises required by governmental authority, regarding the release, escape, seepage, leak or discharge or migration of any Hazardous Materials during the term of this Lease and on or under the Premises or the improvements thereon.

The term "Hazardous Materials" shall mean any substance, material, wastes, gas or particular material which is regulated by any local governmental authority, the State of Illinois or the United States government, including, without limitation, any material or substance which is defined as a "hazardous waste", "Hazardous Material", "hazardous substance", "extremely hazardous waste" or "restricted hazardous waste" under any provision of local or federal law or which contains (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyl, (iv) radioactive material, (v) designated as a "Hazardous Substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. 1251, et. seq. (33 U.S.C. 1317), (vi) defined as a "Hazardous Waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et. seq. (42 U.S.C. 6901), or (vii) defined as a "Hazardous Substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. 9601). Environmental Laws shall mean all statutes specifically described in the foregoing sentence and all federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees

regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

25. RIGHT OF FIRST REFUSAL

In the event that Landlord shall receive from any third party an acceptable bona fide offer to purchase the Building during the term of this Lease, Landlord shall give notice of such bona fide offer to Tenant, which notice shall include a copy of the bona fide offer to purchase the Building from the third party, and shall grant Tenant the right to purchase the property ("Right of First Refusal") for the purchase price contained in the bona fide offer from the third party. Tenant shall exercise the Right of First Refusal by giving written notice of the election to exercise such right within thirty (30) days after Tenant's receipt of Landlord's notice. In the event Tenant gives written notice of its election to purchase the Building pursuant to this paragraph, the Building shall be sold and conveyed to Tenant. The closing of the purchase and sale shall take place on or before sixty (60) days following the date Tenant exercises the Right of First Refusal. If Landlord does not receive notice of Tenant's intent to exercise the Right of First Refusal within said thirty (30) day period, the Right of First Refusal shall expire and Landlord may accept the bona fide offer to sell the Building to the third party. In the event Tenant fails to timely exercise its Right of First Refusal and Landlord fails to consummate the sale of the Building to the third party on the exact terms contained in the bona fide offer within sixty (60) days from the date of the notice, this paragraph shall continue in effect.

26. MISCELLANEOUS

26.1 Late Charges

All Rent and other payments due from Tenant to Landlord, delinquent in excess of thirty (30) days, shall bear interest at twelve percent (12%) per annum, from the date due until paid.

26.2 Entire Agreement

This Lease, the Schedule and the Exhibits attached hereto contain the entire agreement between Landlord and Tenant concerning the Premises and there are no other agreements, either oral or written.

26.3 Accord and Satisfaction

No payment by Tenant or receipt by Landlord of a lesser amount than any installment or payment of Rent due shall be deemed to be other than on account of the amount due, and no endorsement or statement on any check or any letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or payment of Rent or pursue any other remedies available to Landlord. No receipt of money by Landlord from Tenant after the termination of this Lease or Tenant's right of possession of the Premises shall reinstate, continue or extend the Term.

26.4 Landlord's Obligations on Sale of Building

In the event of any sale or transfer of the Building, Landlord and the seller or transferor (and the beneficiaries of any selling or transferring land trust) shall be entirely freed and relieved of all agreements and obligations of Landlord hereunder accruing or to be performed after the date of such sale or transfer, provided such purchaser shall assume all obligations of Landlord occurring from and after the date of such sale or transfer.

26.5 Binding Effect

This Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

26.6 Force Majeure

Landlord and Tenant shall not be deemed in default with respect to any of the terms, covenants and conditions of this Lease on Landlord's or Tenant's part to be performed, if the other party fails to timely perform same and such failure is due in whole or in part to any strike, lockout, labor trouble (whether legal or illegal), civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, or any other cause beyond the reasonable control of either party.

26.7 Captions

The Article and Section captions in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such Articles and Sections.

26.8 Applicable Law

This Lease shall be construed in accordance with the laws of the State of Illinois.

26.9 Time

Time is of the essence of this Lease and the performance of all obligations hereunder.

26.10 Amendments

This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective unless it is in writing, signed by the party against whom enforcement thereof is sought.

26.11 Riders

All Riders attached hereto and executed both by Landlord and Tenant shall be deemed to be a part hereof and hereby incorporated herein.

26.12 Severability

If any provision, term or condition of this Lease or any application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, this Lease has been executed as of the date set forth in Subsection 1.1D hereof.

**LANDLORD:**

**AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, not individually, but solely as Trustee of that Trust Agreement dated April 1, 1971, and known as Trust No. 22-75583-00-9

By: \_\_\_\_\_

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

**TENANT:**

**ELMWOOD PARK SAME DAY SURGERY, L.L.C.**, an Illinois limited liability company

By: \_\_\_\_\_

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

**EXHIBIT "A"**  
**DESCRIPTION OF PREMISES**

C-205653  
AJW 12/9/96

0151

**ATTACHMENT**  
19

SCHEDULE "B"

MONTHLY BASE RENT - SURGERY CENTER PREMISES

The monthly base rent shall be jointly determined by Landlord and Tenant as an annual amount, payable monthly, equal to a twelve (12%) percent return to Landlord on the capitalized investment of the Landlord for the Landlord's Work pursuant to Section 11.1 of the Lease. From and after the first annual anniversary following the Commencement Date, the base rent shall be increased by a factor of one hundred three (103%) percent per annum during the remaining term.

**EXHIBIT "C"**

**CONSTRUCTION CONTRACT - LANDLORD'S WORK**

C-20545-3  
AJW 12/9/96

0153

**ATTACHMENT**  
19

**EXHIBIT "C"**

**PLANS AND SPECIFICATIONS - TENANT'S WORK**

C-22145-3  
AFW 12/9/96

**AMENDMENT AND REAFFIRMATION  
OF COMMERCIAL LEASE**

This Amendment and Reaffirmation of Commercial Lease (this "Amendment") is made and entered into as of the 19 day of March, 1998, by and among American National Bank and Trust Company of Chicago, as Trustee w/t/d April 1, 1971 a/k/a Trust No. 22-75583-00-9 ("Hugar"), and Elmwood Park Same Day Surgery, L.L.C., an Illinois limited liability company ("E.P.") (Hugar and E.P. are sometimes collectively referred to herein as the "Parties").

**WITNESSETH:**

**WHEREAS**, prior hereto, the Parties entered into a certain Commercial Lease dated as of December 11, 1996 (the "Agreement");

**WHEREAS**, the Parties agreed pursuant to the Agreement to satisfy certain contingencies by certain dates;

**WHEREAS**, because of certain zoning issues relating to the property located at 1614 N. Harlem Avenue, Elmwood Park, Illinois, the financing, construction and closing of this transaction has been delayed and, accordingly, certain dates and conditions pursuant to the Agreement have expired;

**WHEREAS**, the Parties desire to amend the Agreement to extend certain dates and to reaffirm the terms of the Agreement subject to the terms and subject to the provisions set forth in this Amendment.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein and other good and valuable consideration, the receipt and sufficiency of such consideration is hereby acknowledged, the Parties hereby agree as set forth in this Amendment.

1. **Use of Defined Terms.** Except as expressly set forth in this Amendment, all terms which have an initial capital letter where not required by the rules of grammar are defined in the Agreement.
2. **Amendments.**
  - A. ~~Section 4.1 of the Agreement is hereby amended by filling in the blank line with the following: "75%".~~
  - B. Section 5 of the Agreement is hereby amended by deleting references to the date: "December 31, 1997" therein and substituting therefor the following date: "December 31, 1998".
  - C. Section 11.1 of the Agreement is hereby amended by deleting references to the date: "December 31, 1997" and substituting therefor the following date: "December 31, 1998".

3. **Reaffirmation.** Each of the Parties do hereby affirm and remake all their respective representations, warranties, covenants, duties, obligations and liabilities contained in the Agreement, except as amended herein.

4. **Miscellaneous.**

A. If, and to the extent, the terms and provisions of this Amendment contradict or conflict with the terms of the Agreement, the terms and provisions of this Amendment shall govern and control; provided, however, to the extent the terms and provisions of this Amendment do not contradict or conflict with the terms and provisions of the Agreement, the Agreement, as amended by this Amendment, shall remain in and have its intended full force and effect, and the Parties hereby affirm, confirm and ratify the same.

B. This Amendment has been executed and delivered in Chicago, Illinois, and shall be governed by and construed in accordance with the laws of the State of Illinois.

C. If any provision contained herein is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Amendment, the balance of which shall remain in and have its intended full force and effect; provided, however, if such invalid or unenforceable provision may be modified as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

D. For convenience, this Amendment may be executed with facsimile signatures and/or in any number of counterparts, each of which shall be deemed an original and all of such counterparts when taken together shall constitute but one and the same document which shall be sufficiently evidenced by such executed counterparts.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed and delivered by their duly authorized officers, if applicable, as of the date first set forth above.

AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO, AS TRUSTEE U/T/D  
APRIL 1, 1971 A/K/A TRUST NO. 22-75583-00-9

ELMWOOD PARK SAME DAY SURGERY, L.L.C.

By: \_\_\_\_\_  
Its: Trust Officer

By: Edward Adams  
Its: \_\_\_\_\_

This instrument is executed by the undersigned Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally, no personal liability or personal responsibility is assumed by or shall at any time be assessed or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

# Lease Abstract

Elmwood Park



BRADFORD ALLEN  
Realty Services

## Building:

1614 Harlem - *Hugar Clinic*

## Area:

8,382 square feet

## Lease Expiration Date:

December 31, 2006

## Remaining Term:

6/2005 - 12/31/2005 - \$23.71

1/2006 - 12/31/2006 - \$24.42

## Security Deposit:

*Unknown*

## Renewal Option:

- Tenant will have four renewal options of five years each.
- Will need to provide written notice to the Landlord not less than 90 days prior to termination of lease term.
- 1<sup>st</sup> renewal option will be equal to 103% of monthly base rent of last year of the term.
- The second through fourth renewal option's rate will increase by 3% *per year*.

## Right of First Refusal

- Tenant will have the right to purchase the property within 30 days of Landlord's written notice.
- Purchase to take place within 60 days of exercised right of first refusal.

## Assignment/Subletting:

- Written consent by the Landlord that will not be unreasonably withheld.
- Must provide Landlord with executed copies of the transfer documents.

## Hold Over

- Rent will increase to 150% of latest monthly base rent and tenant will be responsible for all damages sustained by Landlord.
- At Landlord's sole option, if tenant remains in space for more than 10 days, it will constitute a 1-year renewal at 150% rent plus any escalations.

## Other:

500 square feet basement space at a rate of \$416.67/month.

- Rent increases by 3% for each year of option terms.

## OPERATING LEASES GUARANTY

This Operating Leases Guaranty (the "Guaranty") is made and entered into this 2nd day of September, 1998 by Donald W. Hugar and Ronald Hugar (collectively, "Guarantor") in favor of American National Bank and Trust Company of Chicago ("Lender").

### RECITALS

A. American National Bank and Trust Company of Chicago, as Trustee u/t/d April 1, 1971 a/k/a Trust No. 22-75583-00-9 (the "Trust") owns that certain property commonly known as 1614 N. Harlem Avenue, Elmwood Park, Illinois (the "Premises").

B. The Trust has entered into the following leases affecting the Premises: (i) Commercial Lease ("E.P. Lease") dated December 11, 1996, as amended by that certain Amendment and Reaffirmation of Commercial Lease dated March 19, 1998 between the Trust and Elmwood Park Same Day Surgery, L.L.C., an Illinois limited liability company ("E.P."), and (ii) Industrial Building Lease ("Hugar Lease") (the E.P. Lease and the Hugar Lease are collectively referred to herein as the "Leases") dated September 2, 1998 between the Trust and Dr. Donald W. Hugar, Ltd. ("Hugar") (E.P. and Hugar are collectively referred to herein as the "Tenants").

C. The Trust and the Hugar Building Partnership, as beneficiary of the Trust ("Partnership"), are obtaining financing from Lender in order to construct an addition to the building on the Premises ("Loan"), and in order to make the Loan so, the Lender requires that Guarantor enter into this Guaranty on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants and agrees as follows:

1. The undersigned do hereby guarantee the full, faithful and timely payment and performance by Tenants of all the payments, covenants and other obligations of Tenant under or pursuant to the Leases. If the Tenant shall default at any time in the payment of any rent or any other sums, costs or charges whatsoever, or in the performance of any of the other covenants and obligations of the Tenants, under or pursuant to the Leases, then the undersigned, at its expense, shall on demand of the Landlord fully and promptly, and will and truly, pay all rent, sums, costs and charges to be paid by Tenants, under or pursuant to the Leases.

2. The Guaranty shall remain and continue in full force and effect and shall not be discharged in whole or in part notwithstanding (whether prior or subsequent to the execution hereof) any alteration, renewal, extension, modification, amendment or assignment of, or subletting, concession, franchising, licensing or permitting under, the Leases. The undersigned hereby waives notices of any of the foregoing, and agrees that the liability of the undersigned hereunder shall be based upon the obligations of Tenants set forth in the Leases as the same may be altered, renewed, extended, modified, amended or assigned.

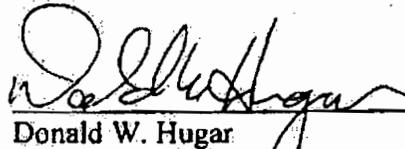
3. The undersigned's obligations hereunder shall remain fully binding until such time as the Trust and Partnership have satisfied the Loan.

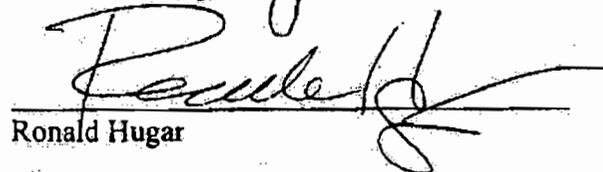
4. If this Guaranty is signed by more than one party, their obligations shall be joint and several, and the release of one of such guarantors shall not release any other of such guarantors.

5. In the event that Lender should institute any suit against the Guarantors for violation of or to enforce any of the covenants or conditions of this Guaranty or to enforce any right of Lender hereunder, or should the undersigned institute any suit against Lender arising out of or in connection with this Guaranty, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interest or rights hereunder, the prevailing party in any such suit shall be entitled to the fees of its attorney(s) in the reasonable amount thereof, to be determined by the court and taxed as a part of the cost therein.

IN WITNESS WHEREOF, the undersigned have executed this Guaranty this 2nd day of September, 1998.

GUARANTORS

  
\_\_\_\_\_  
Donald W. Hugar

  
\_\_\_\_\_  
Ronald Hugar

Doc ID: 77227-1

**EXECUTION VERSION**

**SECOND AMENDMENT TO COMMERCIAL LEASE**

This Second Amendment to Commercial Lease ("Second Amendment") is made as of this \_\_\_ day of December, 2012 by and among CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TRUSTEE TO LASALLE NATIONAL BANK, SUCCESSOR TRUSTEE TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER A TRUST AGREEMENT DATED APRIL 1, 1971 AND KNOWN AS TRUST NO. 22-75583-00-9("Landlord") and ELMWOOD PARK SAME DAY SURGERY, L.L.C., an Illinois limited liability company ("Tenant") [Landlord and Tenant are collectively referred to herein as the "Parties"].

**RECITALS:**

WHEREAS, Landlord and Tenant entered into that certain Commercial Lease dated December 11, 1996 (the "Original Lease"), as amended by that certain Amendment and Reaffirmation of Commercial Lease dated March 19, 1998 (the "First Amendment") [the First Amendment and the Original Lease are herein collectively referred to as the "Lease"] in connection with that certain premises, as modified hereby, consisting of approximately 8,382 square feet of space described in the Lease and located at 1614 N. Harlem Avenue, Elmwood Park, Illinois 60707 ("Premises"); and

WHEREAS, the Term of the Lease expired on or about May 2009, and Tenant has been occupying the Premises on a month-to-month basis;

WHEREAS, Tenant has entered into that certain Asset Purchase Agreement with Instant Care Management, LLC ("Acquiror") dated August 31, 2012 ("Purchase Agreement"), for the sale and purchase of substantially all the assets of Tenant;

WHEREAS, it is a condition precedent to the closing of the transactions evidenced by the Purchase Agreement ("Closing") that Acquiror be assigned a Lease for the Premises acceptable to Acquiror, among other conditions precedent to Closing as set forth in the Purchase Agreement;

WHEREAS, in order for Acquiror to be issued the Licenses (as defined in the Purchase Agreement), Acquiror is required to demonstrate that, at the Closing of the transactions contemplated by the Purchase Agreement, that it will hold a valid lease for the Premises for a significant period of time (not a month to month lease);

WHEREAS, the Landlord acknowledges that the beneficiaries of Landlord are personally benefitted by the transactions evidenced by the Purchase Agreement and will accept Acquiror (or its permitted assignee pursuant to Section 14 at Closing) as a substitute Tenant; and

WHEREAS, the Parties desire to renew the Lease and to amend the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree to amend the Lease, as follows:

1. **Recitals.** The Recitals set forth above are incorporated herein by reference and made a part hereof as though fully set forth herein.
2. **Term.** The Term of the Lease is hereby extended through December 31, 2019 (as same may be extended by the exercise of an Option pursuant to Section 2.3 of the Lease (as amended herein), the "Expiration Date").
3. **Lease Purpose.** Section 1.1H shall be expanded to include ancillary general office use.
4. **Monthly Base Rent.** Commencing January 1, 2013, Section 3.1 and Schedule B of the Lease shall be deleted in their entirety, and the Monthly Base Rent pursuant to the Lease shall be as follows through December 31, 2019:

Period	PSF	Annual Base Rent	Monthly Base Rent
1/1/13 - 12/31/13	\$23.00	\$192,786.00	\$16,065.50
1/1/14 - 12/31/14	\$23.58	\$197,647.56	\$16,470.63
1/1/15 - 12/31/15	\$24.17	\$202,592.94	\$16,882.75
1/1/16 - 12/31/16	\$24.77	\$207,657.34	\$17,304.78
1/1/17 - 12/31/17	\$25.39	\$212,812.27	\$17,734.36
1/1/18 - 12/31/18	\$26.02	\$218,099.64	\$18,174.97
1/1/19 - 12/31/19	\$26.67	\$223,552.13	\$18,629.34

Subject to the provisions of Section 11 of this Second Amendment, it is the intent of the parties that this shall be a gross lease.

5. **Address.** Section 1.1.B of the Lease is hereby amended to provide that Tenant shall send monthly rent checks to the following address:

Hugar Building Partnership  
1614 N. Harlem Avenue  
Elmwood Park, Illinois 60707

6. **Premises.** Notwithstanding anything in the Lease to the contrary, the Premises consists of approximately 8,382 square feet of space in the Building (also called the Surgery Center Premises, which consists of the entire second floor of the Building and the currently unfinished portion of the first floor of the Building). Landlord and Tenant acknowledge and agree that Tenant is not leasing the Basement Premises. Accordingly, all references to "Monthly Base Rent for Basement Premises" and/or "Basement Premises" are hereby deleted from the Lease.

7. **Options.** Section 2.3 of the Lease is deleted and replaced with the following:

**“2.3 Option**

Provided Tenant is not then in default at the time of exercise of such respective Option Term, Tenant shall have the option to renew this Lease for three (3) additional terms (each being an “Option”) of five (5) years each (each being an “Option Term”). Tenant shall exercise each Option by giving written notice to Landlord not less than ninety (90) days prior to the then Expiration Date, as applicable. Monthly Base Rent for the Surgery Center Premises for each year of each Option Term shall increase by 2.5% of the Annual Base Rent for the immediately preceding year, as set forth in the schedule below:

Period	PSF	Annual Base Rent	Monthly Base Rent
<b>First Option Term</b>			
1/1/20-12/31/20	\$27.34	\$229,163.88	\$19,096.99
1/1/21-12/31/21	\$28.02	\$234,863.64	\$19,571.97
1/1/22-12/31/22	\$28.72	\$240,731.04	\$20,060.92
1/1/23-12/31/23	\$29.44	\$246,766.08	\$20,563.84
1/1/24-12/31/24	\$30.18	\$252,968.76	\$21,080.73
<b>Second Option Term</b>			
1/1/25-12/31/25	\$30.93	\$259,255.26	\$21,604.61
1/1/26-12/31/26	\$31.70	\$265,709.40	\$22,142.45
1/1/27-12/31/27	\$32.49	\$272,331.18	\$22,694.27
1/1/28-12/31/28	\$33.30	\$279,120.60	\$23,260.05
1/1/29-12/31/29	\$34.14	\$286,161.48	\$23,846.79
<b>Third Option Term</b>			
1/1/30-12/31/30	\$34.99	\$293,286.18	\$24,440.52
1/1/31-12/31/31	\$35.86	\$300,578.52	\$25,048.21
1/1/32-12/31/32	\$36.76	\$308,122.32	\$25,676.86
1/1/33-12/31/33	\$37.68	\$315,833.76	\$26,319.48
1/1/34-12/31/34	\$38.62	\$323,712.84	\$26,976.07

All other terms of the Lease, as modified by this Second Amendment, shall apply during the Option Terms, except that there shall be no further options for renewal.”

8. **Section 3.3.** Section 3.3 of the Lease is hereby deleted.

9. **Exhibits and Schedules.** Exhibit A shall be deleted and replaced by Exhibit A attached to this Second Amendment. Schedule B, Exhibit C and Exhibit D are hereby deleted.

10. **Tenant’s Proportionate Share.** “Tenant’s Proportionate Share” pursuant to Section 4.2 is 58.2%, which has been determined by dividing the rentable area of the Premises by the total square footage of the Building.

11. **Additional Rent.** As of January 1, 2022 (if the first Option is exercised by Tenant), a Base Year for Operating Expenses and Taxes shall be established as follows and the Lease shall otherwise be modified as set forth herein.

- a. "Base Year for Operating Expenses" shall be 2021; and
- b. "Base Year for Taxes" shall be the 2020 Taxes payable in 2021.

The first paragraph of Section 4.3 of the Lease shall be deleted and replaced with the following:

"Commencing with the calendar year 2022 (if the first Option is exercised by Tenant), Tenant shall pay to Landlord, as Additional Rent, an amount ("Expense Adjustment Amount") equal to Tenant's Proportionate Share of Operating Expenses incurred during each calendar year as estimated by Landlord in excess of the Operating Expenses for the Base Year for Operating Expenses. Tenant shall pay the Expense Adjustment Amounts to Landlord monthly in accordance with Section 3.2."

Section 4.4 of the Lease shall be deleted and replaced with the following:

"Commencing with the calendar year 2022 (if the first Option is exercised by Tenant), Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Proportionate Share multiplied by the amount by which Taxes paid during each calendar year by Landlord exceed the Taxes for the Base Year for Taxes ("Tax Adjustment Amount"). Tenant shall pay the Tax Adjustment Amounts to Landlord monthly in accordance with Section 3.2. When applicable, prior to each calendar year, or as soon as reasonably possible, Landlord shall estimate and notify Tenant of the Tax Adjustment Amount due for such year, and Tenant shall pay Landlord one-twelfth (1/12<sup>th</sup>) of such estimate on the first day of each month during such year. Such estimate may be based upon the most recent tax bills and may be revised by Landlord whenever it obtains information relevant to making such estimate more accurate. As soon as reasonably possible after the end of each calendar year commencing with the calendar year 2022, or such later time as Landlord shall be able to determine the actual amounts of Taxes for the previous calendar year, Landlord shall deliver to Tenant a statement setting forth the actual Taxes for such calendar year, the Tax Adjustment Amount that Tenant paid for such year, and the Tax Adjustment Amount payable for such year. Within fifteen (15) days after receipt of such statement, Tenant shall pay to Landlord the actual Tax Adjustment Amount due for such calendar year minus any payments of the Tax Adjustment Amount made by Tenant for such year. If Tenant's estimated payments of the Tax Adjustment Amount exceed the amount due Landlord for such calendar year, Landlord shall apply such excess as a credit against Tenant's other obligations under this Lease or promptly refund such excess to Tenant if the Term has already expired, in either case without interest to Tenant. Tenant's obligation to pay the Tax Adjustment Amount shall survive the termination of the Lease.

12. **Utilities.** Section 6 of the Lease shall be amended by adding the following provision at the end thereof:

"Gas service to the Building is not separately metered, therefore, gas service charges shall be allocated among the tenants of the Building in proportion to the portion of the rentable

square footage of the Building so occupied by such party; provided, however, if any time during the Term of the Lease less than ninety-five percent (95%) of the then current space in the Building is occupied, at Landlord's option, such gas charges shall be allocated to the portion of the space in the Building which is actually occupied and generating such gas charges."

13. **Maintenance.**

The first sentence of Section 8.1 is deleted and replaced with the following sentence:

"Tenant shall, at Tenant's sole cost and expense, keep the Premises and all improvements, systems, fixtures and personal property located therein or exclusively serving the Premises in good order and condition, including, without limitation, all electrical, plumbing, sewer, heating, ventilating and air conditioning systems and equipment located in or exclusively serving the Premises (including the three rooftop HVAC units serving the Premises), and floors, windows and doors in the Premises; provided, however, notwithstanding the foregoing: (i) Tenant's sole obligation for repair and maintenance of the HVAC systems shall be to enter into and pay for an annual HVAC Service Contract (as defined herein) with the Landlord being responsible for all repair and maintenance required above and beyond what is covered under the HVAC Service Contract ("**Extra Repair/Maintenance Costs**") maintained by Tenant (further, provided, however, notwithstanding the foregoing, all Extra Repair/Maintenance Costs may be included in Operating Expenses commencing with the calendar year 2022 and passed-through to the Tenant in accordance with the terms and conditions hereof); and (ii) in the event that the HVAC systems serving the Premises need replacement as reasonably determined by Landlord's designated contractor, the Landlord shall be responsible for replacement of such system; further provided, however, Tenant shall pay to Landlord during the Term of this Lease the annual amortized cost of such replacement (with such cost amortized over a ten (10) year period), provided, however, Landlord shall not be permitted to pass through any amortized HVAC replacement costs until the calendar year commencing January 1, 2017 with the annual amortized amounts due within thirty (30) days after Landlord's issuance of an invoice to Tenant (with a proration for any partial year). Tenant shall enter into an annual HVAC service contract with a reputable HVAC contractor as reasonably approved by Landlord, which provides for regular maintenance of the HVAC system (at least two (2) times annually) and otherwise to specifically cover maintenance necessary to maintain the HVAC systems and equipment in proper mechanical operating condition in at least the maintenance coverage historically provided by AMS Mechanical Systems, Inc. per the Planned Maintenance Agreement attached as **Exhibit 2** (the "**HVAC Service Contract**"); provided that such regular maintenance shall be only required twice annually."

Section 8.2 of the Lease is hereby deleted and replaced as follows:

"8.2 **Landlord Maintenance.**

Landlord shall repair, replace and maintain the Common Areas of the Building (including, without limitation, the parking areas, landscaped areas, entrance areas, elevators and stairwells of the Building, and the performance of snow removal), the roof, exterior and common walls, and utility connections up to the point of connection to the Premises, all of which shall be

maintained in a “good and workmanlike manner” in accordance with standard building practices of other similar buildings in the same geographic location.”

14. **Assignment.** The last paragraph of Section 9 is deleted and replaced with the following paragraph:

“Notwithstanding anything to the contrary contained in this Section 9, Tenant may, without obtaining Landlord’s consent, permit the Premises to be occupied by, or may sublet all or any portion of the Premises, or assign this Lease to any party which directly or indirectly (including members of Tenant): (i) wholly owns or controls Tenant; (ii) is wholly owned or controlled by Tenant, (iii) is under common control or ownership with Tenant, or (iv) to which Tenant or any of the foregoing parties have merged, consolidated or reorganized or to which all or substantially all of Tenant’s assets or such other parties’ assets are sold, assigned or transferred as a going concern, including, without limitation, Elmwood Park Surgery Center Acquisition & Development, LLC, as assignee of Acquiror, provided such assignee shall be the operator of such business operations conducted at the Premises (each of the transfers set forth in (i), (ii), (iii) and/or (iv) being a “Permitted Transfer”). In order for such a Permitted Transfer to be effective, Tenant must deliver written notice of such Permitted Transfer to Landlord together with executed copies of the transfer documents promptly after execution and any such transferee must agree to assume the obligations of Tenant under the Lease. With respect to an assignment or sublease pursuant to (i), (ii) or (iii) above, Tenant shall not be released from liability under this Lease. With respect to an assignment of the Lease pursuant to (iv) above, Tenant shall be released from obligations first arising under the Lease after the date on which such Lease is assigned by Tenant and the assignee thereof has executed and delivered to Landlord a commercially reasonable agreement to be bound by this Lease.”

15. **Landlord’s Remedies.** Section 13.2(a)(3) is hereby deleted in its entirety. Section 13.2(a)(2) is deleted and replaced with the following:

“(2) an amount equal to the then present value of the Rent for the remainder of the Term, less the present value of the fair market rent of the Premises for the remainder of the Term as a surgical treatment center (taking into account the time and expense necessary to obtain a replacement tenant or tenants, including expenses relating to recovery of the Premises, preparation for reletting and for reletting itself);”

16. **Surrender.** The last sentence of Section 14 is deleted and replaced with the following sentence:

“All movable personal property not removed from the Premises by Tenant within five (5) business days after receipt by Tenant of written notice after lease expiration or termination reflecting that personal property remains at the Premises shall be conclusively presumed to have been abandoned by Tenant, and title thereto shall pass to Landlord without any cost or credit therefor, and Landlord may, at its option and at Tenant’s expense, store and/or dispose of such property.”

17. **Substantial Untenantability.** The first paragraph of Section 16.1 is deleted and replaced with the following paragraph:

“If the Building or Premises are made substantially untenable by fire or other casualty, Landlord may elect to (i) terminate the Lease as of the date of the fire or other casualty by giving Tenant written notice thereof within ninety (90) days after said date; or (ii) proceed to repair or restore the Building or the Premises by giving Tenant written notice thereof within ninety (90) days after said date. If the Premises are made substantially untenable by fire or other casualty during the last twelve (12) months of the Term (and provided Tenant has not exercised any valid option to extend the Term), then Tenant shall also have the right to terminate this Lease as of the date of such damage by giving written notice to Landlord within (30) days’ after the date of such fire or other casualty. If neither party terminates the Lease, Landlord shall proceed to repair or restore the Building or the Premises, other than leasehold improvements and personal property paid for and installed by Tenant.”

18. **Insurance.**

Section 18.1 of the Lease shall be modified to provide that the liability insurance limits as of January 1, 2013 shall be at least \$1,000,000.00 per occurrence and \$3,000,000.00 in the annual aggregate.

The following Section 18.4 shall be added to the Lease:

“18.4: Commencing as of and at any time after the commencement of the Second Option Term, Landlord may require that Tenant increase such limits of its required insurance hereunder or require such other insurance that Landlord deems reasonably necessary and which are being required by landlords of similar buildings of similar tenants in the vicinity of the Premises and are typically carried by similar tenants as same shall be reasonably negotiated and agreed between Landlord and Tenant.”

The following Section 18.5 shall be added to the Lease:

“18.5 **Landlord’s Insurance Requirements.** Landlord agrees that at all times during the Term, Landlord will maintain a policy or policies of fire and extended coverage insurance covering the Building in an amount to cover the full replacement cost thereof (but specifically excepting coverage for any Tenant’s leasehold improvements and/or alterations, Tenant’s trade fixtures, equipment and other personal property) Landlord shall also maintain commercial general liability coverage in such form and amounts typically carried by prudent owners of comparable Buildings in the area in which the Building is located as reasonably determined by Landlord.”

The following Section 18.6 shall be added to the Lease:

“18.5 **Waiver of Subrogation.** Landlord and Tenant each waives any claim it might have against the other for damage to or theft, destruction, loss, or loss of use of any property (a "Loss"), to the extent the same is insured against under any property insurance policy that covers the Building, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, regardless of whether the negligence of the other party caused such

property Loss. Each party will cause its property insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party.”

19. **Certifications/Broker Commissions.** Landlord and Tenant each hereby represent and certify that, to their respective knowledge, as of the date of this Second Amendment, all obligations and conditions under the Lease have been paid and performed to date by Landlord and Tenant, and such obligations and conditions have been satisfied free of defenses and setoffs, and there are no defaults by either Landlord and Tenant under the Lease. Without limiting the generality of the foregoing, Landlord hereby confirms that all Rent and other sums due and payable under the Lease as of the date of this Second Amendment have been paid in full. Further, Landlord and Tenant represent and warrant to each other that neither party has had any dealings with any broker or agent in connection with this Second Amendment, and they both agree to indemnify and hold harmless the other for any claim to a fee or commission by a broker or agent to the extent arising by, through or under the indemnifying party.

20. **Miscellaneous.** Except as set forth in this Second Amendment, all of the terms and conditions of the Lease shall remain in full force and effect and are hereby incorporated herein by reference. Each capitalized term not defined in this Second Amendment shall have the meaning ascribed to it in the Lease. In the event of a conflict between the terms and conditions of this Second Amendment and the Lease, this Second Amendment shall govern and control.

21. **Termination Right.** In the event that the Closing on the transactions evidenced by the Purchase Agreement, for any reason, do not occur on or before July 1, 2013 (“**Outside Closing Date**”), then either Tenant or Landlord may terminate this Second Amendment upon at least thirty (30) days prior written notice to the other at any time after the Outside Closing Date but before the Closing Date, of its intention to terminate the Second Amendment. Within thirty (30) days of the effective date of such termination of this Second Amendment, Tenant shall pay to Landlord the difference between the amount that Landlord would have received in Rent (including, without limitation, Monthly Base Rent and Additional Rent) under the Lease for the period from January 1, 2013 through the effective date of termination of this Second Amendment under the terms and conditions of the Lease in effect as same existed immediately prior to January 1, 2013 and the amount of Rent paid pursuant to this Second Amendment for the same period. From and after the effective date of termination of this Second Amendment, the Lease shall continue in full force and effect on a month-to-month basis (“**Month-To-Month Term**”) under the same terms and conditions of the Lease in effect as same existed immediately prior to January 1, 2013 and either party may terminate such Month-To-Month Term as provided for under applicable law.

22. **Entire Agreement.** This Second Amendment constitutes the entire agreement between the Parties hereto with respect to the amendment of the Lease as provided for herein.

23. **Counterparts.** For convenience, this Second Amendment may be executed with facsimile signatures and/or in any number of counterparts, each of which shall be deemed an original and all of such counterparts when taken together shall constitute but one and the same document which shall be sufficiently evidenced by such executed counterparts.

24. **Successors.** This Second Amendment shall be binding on, and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and permitted assignees.

25. **Acknowledgement Re: Tenant Improvements.** Tenant represents and warrants to Landlord that within twelve (12) months from the date of the Closing, it shall spend at least \$225,000.00 in "hard costs" ("**Minimum Tenant Work Cost**") in connection with certain leasehold improvements, betterments and alterations to the Premises ("**New Tenant Leasehold Improvements**"). Tenant shall perform the New Tenant Leasehold Improvements (i) using high quality materials, (ii) in a good and workmanlike manner and (iii) in compliance with all applicable laws. The New Tenant Leasehold Improvements shall be subject to the reasonable approval of Landlord and Section 11.2 of the Lease (except as otherwise provided for herein), which consent shall not be unreasonably, conditioned, withheld or delayed if Tenant desires to make such the New Tenant Leasehold Improvements materially in the layout set forth in the floor plan attached hereto as **Exhibit 1**. Within 20 days from completion of the New Tenant Leasehold Improvements, Tenant shall provide to Landlord a certification and affidavit, in form and substance reasonably acceptable to Landlord, certifying the total cost ("**Tenant's Total Work Cost**") of the New Tenant Leasehold Improvements (the "**Tenant Work Certification**") along with such other reasonable documentation evidencing the Tenant's Total Work Cost incurred by Tenant. In the event that the Tenant's Total Work Cost is less than the Minimum Tenant Work Cost, Tenant shall pay the difference between the Minimum Tenant Work Cost and the Tenant's Total Work Cost simultaneously upon delivery of the Tenant Work Certification to Landlord.

26. **Beneficiaries.** Tenant acknowledges and confirms: (i) that for purposes of any Tenant indemnification under the Lease and/or naming of Landlord as additional insureds under any insurance policies as required of Tenant hereunder, the term Landlord shall include any and all beneficiary(s) of Landlord, and (ii) that Landlord's beneficiary(s) shall be entitled to provide notices on behalf Landlord and otherwise enforce the terms and conditions of this Lease.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties have executed this Second Amendment to Lease as of the day and year first above written.

**LANDLORD:**

CHICAGO TITLE LAND TRUST  
COMPANY, SUCCESSOR TRUSTEE OF  
LASALLE NATIONAL BANK,  
SUCCESSOR TRUSTEE OF AMERICAN  
NATIONAL BANK, AS TRUSTEE U/T/D  
APRIL 1, 1971 A/K/A TRUST NO. 22-  
75583-00-9

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

**TENANT:**

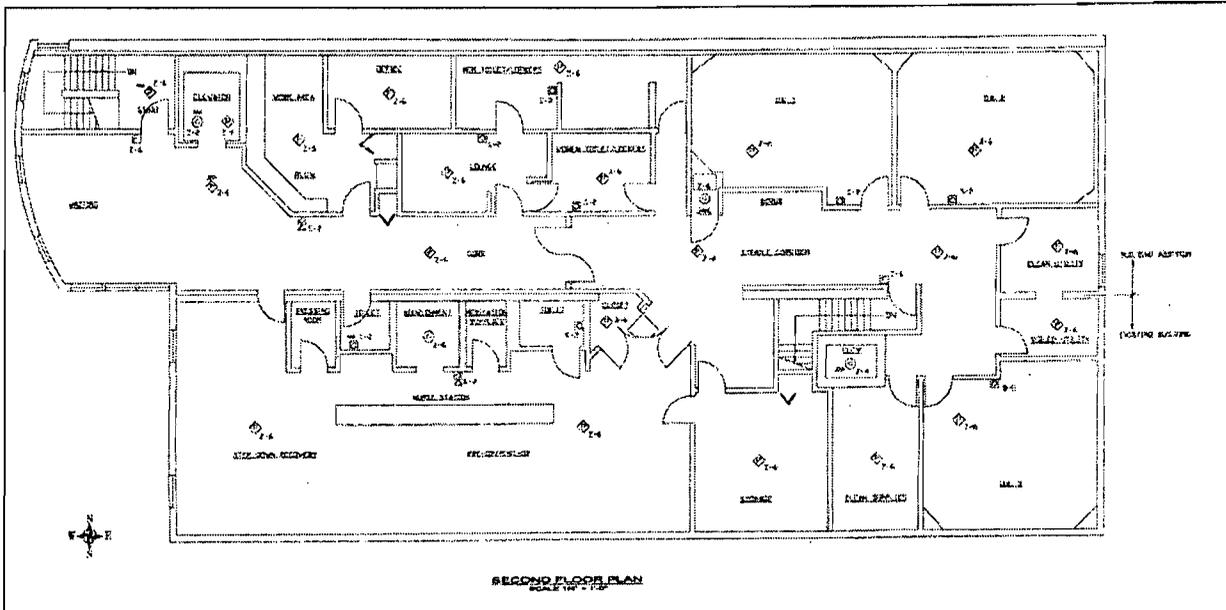
ELMWOOD PARK SAME DAY  
SURGERY, L.L.C., an Illinois limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

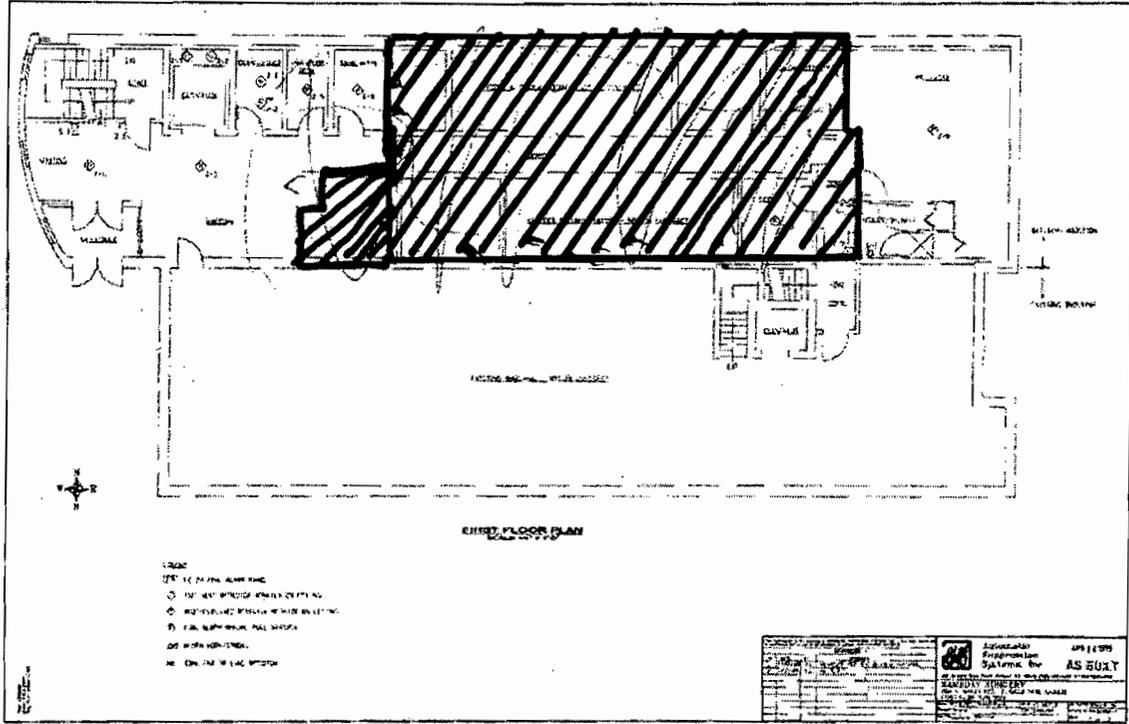
**ENTIRE SECOND FLOOR OF THE PREMISES**



**FIRST FLOOR PORTION OF THE PREMISES (UNFINISHED)**

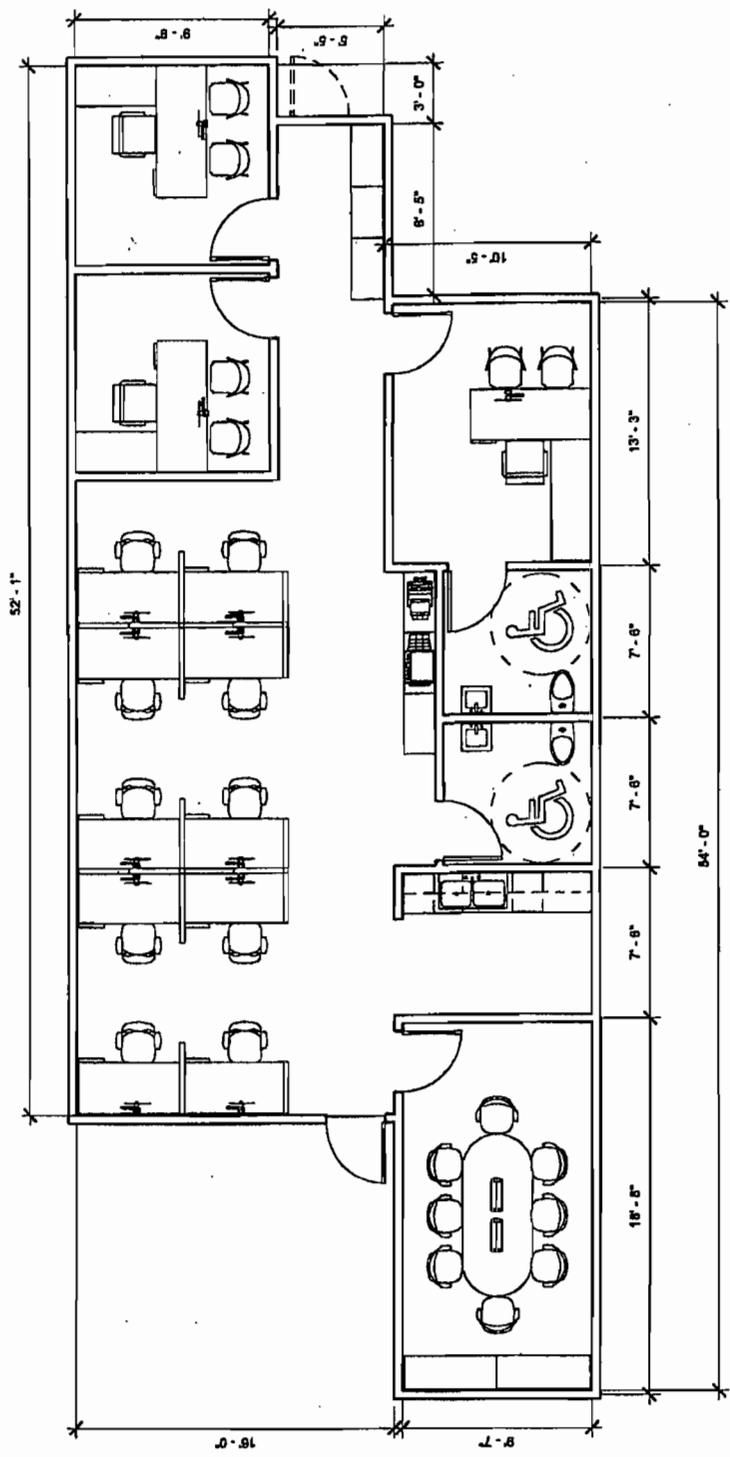
See Attached Depicting Approximate Location.

FLOOR PLAN FIRST FLOOR (Unfinished) =   
of Premises



**EXHIBIT 1**  
**APPROVED FLOOR PLAN**

**See attached Floor Plan**



### Spaceplan Option 5

Project number	93212	A105
Date	09/27/2012	
Drawn by	MMS	
Checked by	KJM	
		Scale 3/16" = 1'-0"

**unispac**  
www.unispac.com

**EXHIBIT 2**  
**PLANNED MAINTENANCE AGREEMENT**

**See Attached.**



**MECHANICAL SYSTEMS, INC.**

# EquipCare™

## PLANNED MAINTENANCE AGREEMENT FOR:

CUSTOMER: Same Day Surgery – Elmwood Park

ADDRESS: 1614 North Harlem Avenue, Suite 300

Elmwood Park, IL 60707

PHONE: (708) 452-5000 E-MAIL ADDRESS: dcullota@uspi.com

CUSTOMER REPRESENTATIVE: Mr. Don Cullota

COVERAGE DATES: FROM: October 1, 2010 TO: September 30, 2011

**"PLEASE REFERENCE TERMS & CONDITIONS REGARDING RENEWALS"**

EQUIPMENT SCHEDULE(S): Attached Schedule "A" QUOTE. #: 04297

SYSTEM TYPE(S):  REFRIGERATION  HVAC  BOILERS  COMPUTER EQUIPMENT

COVERAGE TYPE:  FULL MAINTENANCE  PREVENTIVE MAINTENANCE  OPS. / MAINT TRAINING

AMS Mechanical Systems, Inc. will provide the following maintenance tasks for both **Full Maintenance** and **Preventive Maintenance Agreements** on each inspection in order to maintain equipment as listed in **Schedule "A"** in proper mechanical operating condition (see **Schedule "A"** attached).

*"Over 40 Years Of Quality Service"*

AMS MECHANICAL SYSTEMS, INC.

EquipCare™

### COVERAGE INFORMATION

- Base cost of Preventive Maintenance per year, including optional services chosen, will be **\$6,080.00**  
(Please note a 5% reduction has already been applied to the amount.)
- Billing will be **\$1,520.00 / Quarter**
- Terms of Payment – Net 30 Days.
- All time and material labor rates are subject to increase January 1 & June 1<sup>st</sup> of each calendar year.

### SPECIAL TERMS AND CONDITIONS

Four (4) scheduled preventative maintenance visits per year

Four (4) Pre-Filter changes per year

One (1) Belt change per year

One (1) Coil power washing per year

#### NOTE:

Hepa Filter change may be performed for an additional cost to the contract of \$16,500.00 (or \$17,000.00 for Premium Time). Per the manufacturer, Hepa Filters for this location have a five (5) year life expectancy depending upon the environment.

#### COVERAGE BENEFITS:

- Proposal pricing valid for 30-days from proposed date.
- A dedicated primary and secondary technician to each account and / or site location
- AMS Mechanical Systems is UA Star Certified
- Uniformed technicians, drug and background checked.
- Priority service over non-contract customers.
- Emergency Response Priority Service by our trained and certified technicians.
- No truck, tool, travel or fuel charges on preventive maintenance visits.
- No minimum hour requirements on service repairs NOT covered by contract
- Service Rates NOT covered by contract are provided to contract customers at a 10% discount.
  - ❖ T & M Rates are subject to increase January 1 & June 1<sup>st</sup> of each calendar year

### ACCEPTANCE

*PD-5460*

AMS MECHANICAL SYSTEMS, INC.:

Approved By: *[Signature]*

Title: Senior Service Account Representative

Proposed Date: 9/7/2010

EQUIPMENT OWNER:

Approved By: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date of Agreement: \_\_\_\_\_



**PURCHASE ORDER**

Elmwood Park Sameday Surgery  
 1614 N. Harlem Ave  
 Elmwood Park, IL 60707

PO#: 5460  
 Date: 06/28/2010  
 Contact: STORMI LITTLE  
 Phone: 708-452-5000  
 Fax: 708-452-5588

Vendor: AMS  
 140 E. TOWER DRIVE  
 BURR RIDGE, IL 60527

Phone: (630)887-7700  
 Fax: (630)887-0770  
 Salesperson:  
 Terms:  
 Acct#: 21131

Comments: 10/1/10 - 9/30/11

Qty Order	Qty Rcvd	UM	Description	GL#	Vendor Cat#	Unit Price	Ext Price
1	1	EA	PM AGREEMENT X4/YR (1520.00)E			6,080.00	6,080.00

Purchase Order Total: 6,080.00

Serials Manager Signature: \_\_\_\_\_

*Stormi Little*

Date: 10/1/10

Invoice To:  
 Elmwood Park Sameday Surgery  
 1614 N. Harlem Ave  
 Elmwood Park, IL 60707  
 708-452-5000

0178

**SCHEDULE 2.23**

**HIPAA**

NONE

**SCHEDULE 2.25**

**BOOKS AND RECORDS**

NONE

**Criterion 1120.240(c), Access**

1. Current Admissions Policy. A copy of the current admissions policy for the Elmwood Park Same Day Surgery Center is attached at ATTACHMENT 19.
2. Proposed Admissions Policy. Elmwood Park Surgery Center Acquisition & Development LLC intends to maintain the current admissions policy for the Elmwood Park Same Day Surgery Center following the Transaction.
3. Admissions Policy Certification. Affidavits from Mr. Borre, the CEO, sole manager, and sole member of Elmwood Park Surgery Center Acquisition & Development LLC, certifying that the admission policies at the Elmwood Park Same Day Surgery Center will not become more restrictive following the Transaction are attached at ATTACHMENT 19.

## Clinical Policies and Procedures Manual

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**SECTION:** PC/ Provision of Care, Treatment and Services  
**TITLE:** ADMISSION CRITERIA  
**PAGE** 1 of 2  
**EFFECTIVE DATE:**  
**REVISION DATE:** March 2008

**SIGNATURE:** \_\_\_\_\_

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### **POLICY:**

Procedures eligible to be performed at Sameday Surgery Centers are identified. The Governing Board and Medical Advisory Committee approved this list of procedures. Changes to this list shall be approved by the above committees, which shall also monitor the quality of medical care provided at the centers.

This corporation will only accommodate those patients for which an ambulatory care service would be the proper service. The following factors are to be considered in determining if this ambulatory care should be given:

- CLASS I:** Normally healthy patient.  
Defined as a patient with no cardiovascular, pulmonary, hepatic, diabetic or other life threatening disease.
  
- CLASS II:** Patient with a mild systemic disease that does not limit activity and is not incapacitating.  
Defined as a patient with existing but controlled disease.

The patient should be free of infection that would require his/her treatment as a contaminated case in surgery, post anesthesia recovery private room.

Cases scheduled with anesthesia will require:

For local anesthesia:

No routine testing required  
UCG on all women of childbearing age, including those with tubal ligation  
(excluding hysterectomies)

For IV Conscious Sedation

A recent patient History and Physical within 30 days.  
UCG on all women of childbearing age, including those with tubal ligation  
(excluding hysterectomies)

IVF PATIENTS

All IVF patients are excluded from any pre-op testing.

MAC/GENERAL/REGIONAL

A recent patient History and Physical within 30 days.  
UCG on all women of childbearing age, including those with tubal ligation  
(excluding hysterectomies)

EKG for:

Patients with cardiac history (at the discretion of the Medical Director)  
Patients over the age of 55 (at the discretion of the Medical Director)  
(can be done the day of surgery if necessary)

OTHER TESTS:

At the discretion of the Medical Director or Anesthesiologist

The above may be waived per the Anesthesiologist. Any abnormal results will be reported to the surgeon and anesthesiologist.

Exceptions: Patients categorized as CLASS III may be approved by the surgeon and anesthesiologist after careful consideration and consultation.

CLASS III: Patient with systemic disease that may limit activity and may be incapacitating.  
Defined as a patient with existing disease, controlled or not.

The anesthesiologist will have the right to cancel any scheduled surgery when in his/her opinion; the patient is not a satisfactory risk.

## Clinical Policies and Procedures Manual

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**SECTION:** PC/Provision of Care, Treatment and Services  
**TITLE:** ADMISSION CRITERIA AND GENERAL POLICIES  
**PAGE:** 1 of 3  
**EFFECTIVE DATE:**  
**REVISION DATE:** June 2012

**SIGNATURE:** \_\_\_\_\_

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1. Patient admission to the facility is scheduled through the private physician who is a member of the medical staff.
2. Procedures scheduled for the facility will fall within the Approved Procedures List specific to the facility and those specifically delineated to the surgeon booking the procedure.
3. To ensure adequate preparation for a patient's admission to the facility, the surgery should be scheduled a minimum of three (3) days in advance if possible.
4. The first surgeries scheduled for the day will begin at the earliest by 7:00 a.m.. The last cases will be scheduled in an attempt to have all patients discharged by 5:00 p.m..
5. All patients are to be classified according to their physical status as recommended by the American Society of Anesthesiology. Listed below are physical status classifications:

**Class I:** A healthy patient.

**Example:** Inguinal hernia in an otherwise healthy patient.

**Class II:** A patient with mild systemic disease.

**Example:** Chronic bronchitis, moderate obesity, diet-controlled diabetes mellitus, old myocardial infarction, mild hypertension.

**Class III:** A patient with a severe systemic disease that is not incapacitating.

**Example:** Coronary artery disease with angina, insulin-dependent diabetes mellitus, morbid obesity, moderate-to-severe pulmonary insufficiency.

Only patients who are classified as I, II, or III (at the discretion of the Medical Director) are candidates for outpatient surgery. If a case is posted as straight local, a physician (MD and/or DO) is not on duty at the Center, the attending surgeon must be available until the patient is discharged.

8. Procedures which are discouraged from being performed but may be scheduled with the approval of the Medical Director are:
  - a. Premature baby under one year of age
  - b. Infants under the age of three months
  - c. Infants with a weight of less than eight pounds
  - d. Patients who have demonstrated incapacitating mental disorders
  - e. Patients who have communicable infectious diseases
9. Anesthesia-related cases are to be medically cleared by an anesthesiologist before being transported to the OR, when applicable.
10. Chest x-ray, EKG, and lab studies should be ordered by the attending surgeon based upon by the patient's medical status and history prior to surgery. Additional studies may be ordered at the discretion of the anesthesiologist at the time of admission.
11. N.P.O. Requirement: Per anesthesia guidelines.
12. All patients must arrange to be accompanied and transported by a responsible, unless waived by the surgeon. A statement must be included in the discharge notes if waived.
13. Patients who have an acute URI or unexplained fever for one week before surgery should not be scheduled (chronic rhinorrhea will be accepted).
14. A patient known to have malignant hyperthermia or a family history of such are not candidates for surgery. Also patients with known latex allergy are not candidates for surgery.
15. All pediatric patients (age 12 and under) must meet the same criteria as for adults.
16. All minor age patients must be accompanied and transported by a parent or legal guardian. If a guardian, legal documentation of their guardianship must be brought to the facility before or at the time of admission.
17. Case scheduled for local anesthesia will have monitoring of vital signs.
18. Anesthesia cannot be administered until the attending surgeon is in the building.
19. All local patients, must be cleared by the surgeon.
20. Infections or complications: If an incident regarding infection or complication should occur following a patient discharge, notify the Administrator or the Clinical Manager as soon as possible. Should hospitalization be required, please ask that a copy of the discharge summary be sent to the facility.
21. An assessment will be conducted to give pre-op instructions and notify the patient of their approved insurance coverage and payment/fee policy.
22. Patients will usually be instructed to report to the facility for admission no less than 30 to 45 minutes prior to the intended procedure.
23. All patients having anesthesia or anesthesia stand-by will be discharged from the facility by order of an anesthesiologist. Local cases will be discharged by the surgeon.

24. All patients that do not receive any intra-op medications (ie local) will not require monitoring of vital signs in the operating room. These would include, but not limited to (IVF procedures, bariatric band adjustments, etc).
25. The patient's ability to meet discharge criteria will be documented on the chart. In instances where a patient cannot meet criteria for discharge, or any time there is an adverse change in patient's postoperative condition, the attending physician will be notified. The decision to transfer a patient to a hospital will ultimately rest with the anesthesiologist and/or surgeon.
26. The surgeon/anesthesiologist is responsible for a pre-operative H&P. A discharge summary is required by the surgeon for all local cases.

MAC/GENERAL/REGIONAL

A recent patient History and Physical within 30 days.

UCG on all women of childbearing age, including those with tubal ligation  
(excluding hysterectomies)

EKG for:

Patients with cardiac history (at the discretion of the Medical Director)

Patients over the age of 55 (at the discretion of the Medical Director)

(can be done the day of surgery if necessary)

OTHER TESTS:

At the discretion of the Medical Director or Anesthesiologist

The above may be waived per the Anesthesiologist. Any abnormal results will be reported to the surgeon and anesthesiologist.

Exceptions: Patients categorized as CLASS III may be approved by the surgeon and anesthesiologist after careful consideration and consultation.

CLASS III: Patient with systemic disease that may limit activity and may be incapacitating.  
Defined as a patient with existing disease, controlled or not.

The anesthesiologist will have the right to cancel any scheduled surgery when in his/her opinion; the patient is not a satisfactory risk.

Elmwood Park Surgery Center Acquisition & Development LLC

May 1, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

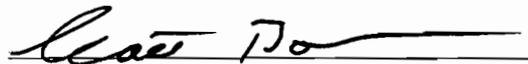
Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Criterion 1110.240(c), Admission Policy & Access to Care Certification

Dear Ms. Avery and Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1110.240(c), that Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") shall not cause Elmwood Park Same Day Surgery Center (the "Surgery Center") to adopt more restrictive admission policies or take measures to reduce access to care at the Surgery Center following the proposed transaction between the Purchaser and Elmwood Park Same Day Surgery LLC.

Sincerely,



Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition &  
Development LLC

SUBSCRIBED AND SWORN  
to before me this 6<sup>th</sup> day  
of May, 2013.

  
Notary Public

May 1, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Criterion 1110.240(c), Admission Policy & Access to Care Certification

Dear Ms. Avery and Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1110.240(c), that I shall not cause Elmwood Park Same Day Surgery Center (the "Surgery Center") to adopt more restrictive admission policies or take measures to reduce access to care at the Surgery Center following the proposed transaction between Elmwood Park Surgery Center Acquisition & Development LLC and Elmwood Park Same Day Surgery LLC.

Sincerely,

  
\_\_\_\_\_  
Scott Borre

SUBSCRIBED AND SWORN  
to before me this 1<sup>st</sup> day  
of May, 2013.

  
\_\_\_\_\_  
Notary Public



**Criterion 1120.240(d), Health Care System**

This criterion is not applicable to the Transaction because Elmwood Park Surgery Center Acquisition & Development LLC is not part of a health care system.

**Section VIII**  
**Attachment 39**  
**Criterion 1120.120, Availability of Funds**

The Applicants will fund the Transaction with \$400,000 in cash from Mr. Borre and an acquisition loan in the amount of \$1,000,000 from Cole Taylor Bank. Of the \$400,000 in cash, \$200,000 in cash has already been escrowed with Chicago Title & Trust Company (Escrow Trust Number 201238204) as an earnest money deposit for the Transaction. The Applicants will also establish a \$500,000 revolving line of credit to support the Surgery Center's ongoing working capital needs following the Transaction. An affidavit from Mr. Borre attesting to these statements is attached at ATTACHMENT 39. A commitment letter from Cole Taylor Bank is attached at ATTACHMENT 39.

Elmwood Park Surgery Center Acquisition & Development LLC

May 21, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Re: Criterion 1120.120, Availability of Cash Certification

Dear Ms. Avery and Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1120.120, to the following:

1. Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") will fund the Transaction set forth in that certain Asset Purchase Agreement between the Purchaser and Elmwood Park Same Day Surgery LLC with \$400,000 in cash and an acquisition loan in the amount of \$1,000,000 from Cole Taylor Bank. The Purchaser will also establish a \$500,000 revolving line of credit to support the ongoing working capital needs of the Elmwood Park Surgery Center following the Transaction.
2. I will personally fund the \$400,000 in cash from my own funds, which are readily available.
3. I have already escrowed \$200,000 in cash with Chicago Title & Trust Company (Escrow Trust Number 201238204) as an earnest money deposit for the Transaction.

Sincerely,

  
\_\_\_\_\_

Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition & Development LLC

SUBSCRIBED AND SWORN  
to before me this 21 day  
of May, 2013.

  
\_\_\_\_\_  
Notary Public





May 13, 2013

Mr. Scott Borre  
President & Sole Member  
Elmwood Park Surgery Center Acquisition & Development LLC  
1800 Lake Avenue  
Highland Park, IL 60035

Dear Scott:

Cole Taylor Bank (the "Bank") is pleased to offer you a proposal to make the following financial accommodations to Elmwood Park Surgery Center Acquisition & Development LLC (the "Borrower"). The proposal is subject to the terms and conditions specified in this presentation.

The conditions and terms as described herein are not intended to incorporate all such terms or conditions as may be found in the Loan Agreement or such other documents necessary to close the transaction.

Based on the information gathered to date, the following outlines the primary terms.

**Revolving Line of Credit Facility**

<b>Borrower:</b>	Elmwood Park Surgery Center Acquisition & Development LLC
<b>Amount:</b>	\$500,000 secured revolving line of credit.
<b>Use of Proceeds:</b>	To support the Company's ongoing working capital needs.
<b>Collateral:</b>	Secured by a first priority all asset blanket lien.
<b>Maturity:</b>	One year from closing
<b>Rate:</b>	WSJ Prime + 1%.
<b>Payments:</b>	Interest only payments will be paid on a monthly basis, with principal and unpaid interest due at maturity.



**Term Loan**

**Borrower:** Elmwood Park Surgery Center Acquisition & Development LLC.

**Amount:** \$1,000,000 secured term loan.

**Use of Proceeds:** To finance the asset purchase of Elmwood Park Same Day Surgery LLC per the Asset Purchase Agreement.

**Collateral:** Secured by a first priority all asset blanket lien.

**Term:** Five years from closing.

**Rate:** WSJ Prime +1.5% floating.

**Payments:** Monthly principal payment of approximately \$16,667 plus interest based upon an amortization of five years.

**Prepayment Penalty:** None.

**Other Terms and Conditions:**

**Availability:** Advances for both loans shall be evidenced by a monthly borrowing base certificate with advances of 30% on acceptable accounts receivable. Ineligible accounts will be determined and mutually agreed upon, but may include affiliated, government, foreign, and contra accounts among others.

**Personal Guarantees:** Scott Borre

**Financial Covenants: To Begin FY2013**

- Quarterly Minimum Tangible Net Worth - TBD
- Annual Minimum Net Income of \$500,000.
- Annual Retained Earnings growth of \$250,000.

**Reporting Requirements: To Begin FY2013**

- Quarterly financial statements within 15 days following each quarter-end.
- Annual CPA compiled financial statements within 120 days following each year-end.
- Borrowing Base Certificate, accounts receivable and payable aging reports.
- Annual personal financial statement and tax returns from Scott Borre.



**Operating Account:** Borrower shall maintain all operating accounts at the Bank.

**Commitment Fee:** 1%

**Documentation:** The foregoing facilities will be subject to execution of definitive credit and security documents in form and substance reasonably acceptable to the Bank, conditions precedent to funding, including reps and warranties, negative and affirmative covenants, defaults, Patriot Act/know your customer and other terms and provisions customary for transactions and borrowers of this type. All documentation will be governed by Illinois law.

**Out-of-pocket Expenses:** Borrower will be responsible for all legal expenses, underwriting costs, filing fees, and any other out-of-pocket expenses incurred in connection with the documentation and closing of this transaction.

The details of this proposal have been reviewed by management and approval of such conditions and terms as described herein is subject to satisfactory completion of due diligence, receipt of state and county searches acceptable to Cole Taylor Bank, and any negotiation, preparation, and execution of legal documentation fully acceptable to Cole Taylor Bank. The proposed term sheet will expire if not accepted by both the Bank and Borrower prior to the end of business day on May 31, 2013.

Sincerely,

Jim Sisk  
Senior Vice President

Agreed to and accepted this \_\_\_\_ day of May, 2013 by:

\_\_\_\_\_  
Scott Borre  
Instant Care Management Group

\_\_\_\_\_  
James M. Sisk, SVP  
Cole Taylor Bank

**Section IX**  
**Attachment 41**  
**Criterion 1120.130, Financial Viability**

1. Project Funding. The Applicants will fund the Transaction with \$400,000 in cash from Mr. Borre and an acquisition loan in the amount of \$1,000,000 from Cole Taylor Bank. Of the \$400,000 in cash, \$200,000 in cash has already been escrowed with Chicago Title & Trust Company (Escrow Trust Number 201238204) as an earnest money deposit for the Transaction. The Applicants will also establish a \$500,000 revolving line of credit to support the Surgery Center's ongoing working capital needs following the Transaction. An affidavit from Mr. Borre attesting to these statements is attached at ATTACHMENT 39. A commitment letter from Cole Taylor Bank is attached at ATTACHMENT 39.

2. Viability Ratios. Elmwood Park Surgery Center Acquisition & Development LLC is a special purpose vehicle and was specifically organized for the Transaction. Thus, Elmwood Park Surgery Center Acquisition & Development LLC does not have any historical financial information.

The Applicants engaged the certified public accounting firm of FG MK, LLC to prepare the proforma financial statements for Elmwood Park Surgery Center Acquisition & Development LLC following the Transaction (the "Proformas"). The Proformas are attached at ATTACHMENT 41.

FGMK, LLC also calculated all of the ratios set forth in the below chart:

Financial Viability Analysis						
	July 2013- June 2014	State Norm	FY 2014 vs. Norm	July 2014- June 2015	State Norm	FY 2015 vs. Norm
Current Ratio	7.63	1.5	Satisfies	8.24	1.5	Satisfies
Net Margin Percentage	9.75%	3.5%	Satisfies	14.41%	3.5%	Satisfies
Percent Debt to Total Capitalization	12.68%	80%	Satisfies	8.25%	80%	Satisfies
Projected Debt Service Coverage	3.92	1.75	Satisfies	4.28	1.75	Satisfies
Days Cash on Hand	61.49	45	Satisfies	81.00	45	Satisfies
Cushion Ratio	3.19	3	Satisfies	4.37	3	Satisfies

3. Variances. The Applicants have satisfied the financial viability ratios.

**Elmwood Park Surgery Center Acquisition Development LLC**  
**Projected Balance Sheet**  
**3 Years**

	Year 1	Year 2	Year 3
	Jul 13 - Jun 14	Jul 14 - Jun 15	Jul 15 - Jun 16
Cash	889,641	1,218,781	1,605,284
Accounts Receivable, Net	3,509,684	3,707,565	3,925,235
FF&E	2,183,851	2,183,851	2,183,851
Accum Dep	(449,211)	(602,499)	(755,787)
Other Assets	599,938	599,938	599,938
<b>Total Assets</b>	<b>6,733,902</b>	<b>7,107,636</b>	<b>7,558,521</b>
Accounts Payable	389,438	401,121	413,155
Line of Credit	-	-	-
Term Loan - Current Portion	187,328	196,423	205,959
Term Loan - LT Portion	692,630	496,207	290,248
<b>Total Liabilities</b>	<b>1,269,396</b>	<b>1,093,751</b>	<b>909,362</b>
Equity	5,464,506	6,013,885	6,649,159
<b>Total Liabilities &amp; Equity</b>	<b>6,733,902</b>	<b>7,107,636</b>	<b>7,558,521</b>

**Elmwood Park Surgery Center Acquisition Development LLC**  
**Projection**  
**12 Months**

**12 MONTHS PROJECTED**

	Jul 13	Aug 13	Sep 13	Oct 13	Nov 13	Dec 13	Jan 14	Feb 14	Mar 14	Apr 14	May 14	Jun 14	Total
<b>Collections</b>	455,685	455,685	455,685	455,685	469,356	483,437	497,940	512,878	528,264	544,112	560,436	577,249	5,996,412
<b>COGS</b>													
Medical Staff	33,208	33,208	33,208	33,208	33,208	33,208	33,208	33,208	33,208	33,208	33,208	33,208	398,490
Contract Labor	35,658	35,658	35,658	35,658	36,728	37,830	38,965	40,134	41,338	42,578	43,855	45,171	469,232
Medical Supplies & Other	23,104	23,104	23,104	23,104	23,797	24,511	25,246	26,003	26,784	27,587	28,415	29,267	304,025
<b>Total COGS</b>	91,970	91,970	91,970	91,970	93,732	95,548	97,418	99,345	101,329	103,373	105,478	107,646	1,171,747
<b>Gross Margin</b>	363,716	363,716	363,716	363,716	375,623	387,888	400,521	413,533	426,935	440,740	454,958	469,603	4,824,665
<b>Admin Expenses</b>													
Sales & Marketing	142,345	142,345	142,345	142,345	146,615	151,014	155,544	160,211	165,017	169,967	175,066	180,318	1,873,133
Facilities Expense	28,937	28,937	28,937	28,937	64,706	64,706	64,706	64,706	64,706	64,706	64,706	64,706	633,396
Payroll	7,218	7,218	7,218	7,218	12,774	12,774	12,774	12,774	12,774	12,774	12,774	12,774	131,062
Telephone	75,872	75,872	75,872	75,872	75,872	75,872	75,872	75,872	75,872	75,872	75,872	75,872	910,464
Professional & Other Services	1,851	1,851	1,851	1,851	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	23,405
Utilities	18,398	18,398	18,398	18,398	19,000	19,000	19,000	19,000	19,000	19,000	19,000	19,000	225,592
Other Services	2,154	2,154	2,154	2,154	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	32,616
Depreciation	2,502	2,502	2,502	2,502	3,000	3,000	3,000	3,000	3,000	3,000	3,000	3,000	34,010
Other	9,806	9,806	9,806	9,806	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	119,226
G & A	2,005	2,005	2,005	2,005	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	48,021
Relocation Fees	-	-	-	25,000	-	-	-	-	-	-	-	-	25,000
Other Related Fees	-	5,000	25,000	25,000	25,000	-	-	-	-	-	-	-	80,000
Other Costs	-	-	-	20,000	-	-	-	-	-	-	-	-	20,000
Other	4,498	4,498	4,498	4,498	8,456	8,398	8,339	8,280	8,221	8,161	8,101	8,041	83,987
<b>Admin Expenses</b>	295,586	300,586	320,586	365,586	375,424	354,764	359,235	363,843	368,590	373,481	378,520	383,712	4,239,910
<b>Net Income</b>	68,130	63,130	43,130	(1,870)	200	33,125	41,286	49,690	58,346	67,259	76,438	85,891	584,755
<b>Cash Flow</b>													
Cash at Beginning of Period	493,866	569,214	639,562	689,909	495,257	493,432	524,473	563,617	611,107	667,192	732,131	806,189	493,866
Net Income	68,130	63,130	43,130	(1,870)	200	33,125	41,286	49,690	58,346	67,259	76,438	85,891	584,755
Add Depreciation	7,218	7,218	7,218	7,218	12,774	12,774	12,774	12,774	12,774	12,774	12,774	12,774	131,062
Less Distributions	-	-	-	-	-	-	-	-	-	-	-	-	-
CapX	-	-	-	(1,600,000)	-	-	-	-	-	-	-	-	(1,600,000)
Debt Service	-	-	-	(14,799)	(14,857)	(14,916)	(14,975)	(15,034)	(15,094)	(15,154)	(15,214)	(15,274)	(120,042)
Change of Credit Line	-	-	-	1,000,000	-	-	-	-	-	-	-	-	1,000,000
Other Note	-	-	-	400,000	-	-	-	-	-	-	-	-	400,000
Other Contribution	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash at End of Period	569,214	639,562	689,909	495,257	493,432	524,473	563,617	611,107	667,192	732,131	806,189	889,641	889,641

**Elmwood Park Surgery Center Acquisition Development LLC**  
**Projection**  
**3 Years**

	Year 1 Jul 13 - Jun 14	Year 2 Jul 14 - Jun 15	Year 3 Jul 15 - Jun 16
<b>Collections</b>	5,996,412	6,596,053	7,255,659
<b>COGS</b>			
Medical Staff	398,490	438,339	482,173
Contract Labor	469,232	516,156	567,771
Medical Supplies & Other	304,025	313,145	322,540
<b>Total COGS</b>	<b>1,171,747</b>	<b>1,267,640</b>	<b>1,372,484</b>
<b>Gross Margin</b>	<b>4,824,665</b>	<b>5,328,413</b>	<b>5,883,175</b>
<b>Admin Expenses</b>			
Sales & Marketing	1,873,133	2,060,446	2,266,491
Facilities Expense	633,396	646,064	658,985
Depreciation	131,062	153,288	153,288
Admin Payroll	910,464	928,673	947,247
Telephone	23,405	23,873	24,351
Legal & Professional	225,592	230,104	234,706
Computer Services	32,616	33,268	33,933
Outside Services	34,010	34,690	35,383
Travel	119,226	121,610	124,042
Other G & A	48,021	48,981	49,961
Accreditation Fees	25,000	5,000	5,000
Transaction Related Fees	80,000	-	-
Moving Costs	20,000	-	-
Interest	83,987	91,731	82,636
<b>Total Admin Expenses</b>	<b>4,239,910</b>	<b>4,377,727</b>	<b>4,616,023</b>
<b>Net Income</b>	<b>584,755</b>	<b>950,686</b>	<b>1,267,152</b>
<b>Cash Flow</b>			
Cash at Beginning of Period	493,866	889,641	1,218,781
Net Income	584,755	950,686	1,267,152
Add Depreciation	131,062	153,288	153,288
Less Distributions	-	(587,506)	(837,514)
CapX	(1,600,000)	-	-
Debt Service	(120,042)	(187,328)	(196,423)
Line of Credit	-	-	-
Term Note	1,000,000	-	-
Capital Contribution	400,000	-	-
Cash at End of Period	889,641	1,218,781	1,605,284

**Elmwood Park Surgery Center Acquisition Development LLC  
Financial Ratios**

	<u>Jul 13 - Jun 14</u>	<u>Jul 14 - Jun 15</u>	<u>Target</u>
Current Ratio	7.63	8.24	1.50
Net Margin Percentage	9.75%	14.41%	3.50%
LTD to Equity Ratio	12.68%	8.25%	80.00%
Debt Service Coverage Ratio	3.92	4.28	1.75
Days Cash on Hand	61.49	81.00	45.00
Cushion Ratio	3.19	4.37	3.00

**Section X**  
**Attachment 42**  
**Economic Feasibility**  
**Criterion 1120.140**

**Criterion 1120.140(a), Reasonableness of Financing Arrangements**

Scott Borre's Affidavit in support of this Criterion is attached as ATTACHMENT 42.

Elmwood Park Surgery Center Acquisition & Development LLC

May 21, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

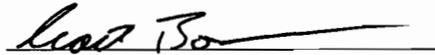
Re: Criterion 1120.140(a), Reasonableness of Financing Arrangements Certification

Dear Ms. Avery and Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1120.140(a), to the following:

1. Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") will fund the Transaction set forth in that certain Asset Purchase Agreement between the Purchaser and Elmwood Park Same Day Surgery LLC with \$400,000 in cash and an acquisition loan in the amount of \$1,000,000 from Cole Taylor Bank (the "Acquisition Loan"). The Purchaser will also establish a \$500,000 revolving line of credit to support the ongoing working capital needs of the Elmwood Park Surgery Center following the Transaction.
2. I will personally fund the \$400,000 in cash from my own funds, which are readily available.
3. I have already escrowed \$200,000 in cash with Chicago Title & Trust Company (Escrow Trust Number 201238204) as an earnest money deposit for the Transaction.
4. Borrowing the \$1,000,000 from Cole Taylor Bank was less costly than liquidating my other investments.
5. My other investments can be converted to cash (if necessary) within a 60 day period to retire the Acquisition Loan. Indeed, I have personally guaranteed the Acquisition Loan.

Sincerely,



Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition & Development LLC

SUBSCRIBED AND SWORN  
to before me this 21 day  
of May, 2013.



Notary Public



**Criterion 1120.140(b), Conditions of Debt Financing**

Scott Borre's Affidavit in support of this Criterion is attached as ATTACHMENT 42.

Elmwood Park Surgery Center Acquisition & Development LLC

May 21, 2013

Ms. Courtney R. Avery  
Administrator  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

Mr. Michael Constantino  
Supervisor, Project Review Section  
Illinois Health Facilities Planning Board  
525 West Jefferson Street, Second Floor  
Springfield, Illinois 62761-0001

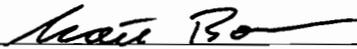
Re: Criterion 1120.140(b), Conditions of Debt Financing Certification

Dear Ms. Avery and Mr. Constantino:

I hereby certify, under penalty of perjury as provided in § 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109, and pursuant to 77 Ill. Admin. Code § 1120.140(b), to the following:

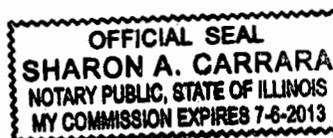
1. Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") will fund the Transaction set forth in that certain Asset Purchase Agreement between the Purchaser and Elmwood Park Same Day Surgery LLC with \$400,000 in cash and an acquisition loan in the amount of \$1,000,000 from Cole Taylor Bank (the "Acquisition Loan"). The Purchaser will also establish a \$500,000 revolving line of credit to support the ongoing working capital needs of the Elmwood Park Surgery Center following the Transaction (the "Working Capital Loan").
2. The Acquisition Loan and the Working Capital Loan are the lowest net cost forms of financing available to the Purchaser for this Transaction.

Sincerely,

  
\_\_\_\_\_  
Scott Borre  
Sole Member and Manager  
Elmwood Park Surgery Center Acquisition & Development LLC

SUBSCRIBED AND SWORN  
to before me this 21 day  
of May, 2013.

  
\_\_\_\_\_  
Notary Public



**Criterion 1120.140(c), Reasonableness of Project and Related Costs**

This Project involves a change of ownership. This Project does not involve any construction or modernization. Accordingly, this criterion is not applicable.

**Criterion 1120.140(d), Projected Operating Expenses (in year one):**

Operating Expenses: \$5,645,367

Cases: 736

Operating Expenses per Case: \$7,670

**Criterion 1120.140(e), Total Effect of the Project On Capital Costs (in year one)**

Capital Costs: \$1,600,000

Cases: 736

Capital Costs per Case: \$2,174

**Section XI**  
**Attachment 43**  
**Safety Net Impact Statement**

This Project involves a change of ownership. A change of ownership constitutes a non-substantive project. Accordingly, this criterion is not applicable.

**Section XII**  
**Attachment 44**  
**Charity Care Information**

Elmwood Park Surgery Center Acquisition & Development LLC (the "Purchaser") is a special purpose vehicle and was specifically organized for the Transaction. Thus, the Purchaser does not have any historical charity care information.

Based on a review of the published data, it would appear that the Elmwood Park Same Day Surgery Center has not historically provided any charity care.

As set forth in Criterion 1110.230, the Applicants, in conjunction with Athletico Physical Therapy, are in the process of organizing a not-for-profit entity that will provide free medical care and related physical therapy services to veterans and service members who incurred a physical injury co-incident to their military service (similar to the Wounded Warriors Project).

The Applicants also intend to work with the medical staff at the Elmwood Park Same Day Surgery Center to educate them on the Applicants' willingness to provide charity care.

After paginating the entire, completed application, indicate in the chart below, the page numbers for the attachments included as part of the project's application for permit:

<b>INDEX OF ATTACHMENTS</b>		
<b>ATTACHMENT NO.</b>		<b>PAGES</b>
1	Applicant/Coapplicant Identification including Certificate of Good Standing	21-22
2	Site Ownership	23-71
3	Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership.	72
4	Organizational Relationships (Organizational Chart) Certificate of Good Standing Etc.	73-74
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6	Historic Preservation Act Requirements	76
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9	Cost Space Requirements	79
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12	Purpose of the Project	85
13	Alternatives to the Project	86
14	Size of the Project	
15	Project Service Utilization	
16	Unfinished or Shell Space	
17	Assurances for Unfinished/Shell Space	
18	Master Design Project	
19	Mergers, Consolidations and Acquisitions	87-190
	<b>Service Specific:</b>	
20	Medical Surgical Pediatrics, Obstetrics, ICU	
21	Comprehensive Physical Rehabilitation	
22	Acute Mental Illness	
23	Neonatal Intensive Care	
24	Open Heart Surgery	
25	Cardiac Catheterization	
26	In-Center Hemodialysis	
27	Non-Hospital Based Ambulatory Surgery	
28	General Long Term Care	
29	Specialized Long Term Care	
30	Selected Organ Transplantation	
31	Kidney Transplantation	
32	Subacute Care Hospital Model	
33	Post Surgical Recovery Care Center	
34	Children's Community-Based Health Care Center	
35	Community-Based Residential Rehabilitation Center	
36	Long Term Acute Care Hospital	
37	Clinical Service Areas Other than Categories of Service	
38	Freestanding Emergency Center Medical Services	
	<b>Financial and Economic Feasibility:</b>	
39	Availability of Funds	191-195
40	Financial Waiver	196-200
41	Financial Viability	201-207
42	Economic Feasibility	208
43	Safety Net Impact Statement	209
44	Charity Care Information	