

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

To

Soneet Kapila,

Division L

Assignee.

**MOTION TO DISMISS ASSIGNEE'S MOTION TO COMPEL AND
ALTERNATIVE RESPONSE IN OPPOSITION TO MOTION TO COMPEL**

Raintree III/IV Property Owner, LLC, incorrectly named as Raintree Venture Owner, LLC¹ ("Raintree") moves to dismiss Soneet Kapila's, as assignee ("Assignee") of Laser Spine Institute, LLC, Motion for Order Compelling Lessor Raintree Venture Owner, LLC to Allow Assignee Access to Maintain Assets and Patient Record Data, For Turnover of Assets of the Laser Spine

¹ Raintree Venture Owner, LLC was the former owner and landlord to the subject premises. Raintree III/IV Property Owner, LLC is the subject premises' current owner and landlord.

Institute, LLC Assignment Estate, and Awarding Sanctions (the "Motion"), or, in the alternative, responds in opposition to the Motion.

The Court should dismiss/deny the Motion for each and all of the following reasons:

(i) Raintree is not subject to personal jurisdiction in Florida;

(ii) Assignee's Motion is procedurally improper. Under Florida Statutes § 727.110(1), Assignee must file a supplemental proceeding, rather than a motion, to obtain the relief Assignee seeks;

(iii) Material disputes exist regarding which Laser Spine entity owns the equipment, whether that equipment is subject to Raintree's lien, and if so in what amount. The leased premises and the equipment are in Arizona. Arizona law governs Raintree's claimed lien and the parties' respective rights with respect to access and possession of the leased premises. Enforcement of any interim order Assignee might obtain must take place in Arizona. Putting personal jurisdiction issues aside, the proper forum is Arizona not Florida; and

(iv) Assignee's requests are unreasonable in all events. Before any access is allowed, and before anything is removed from the leased premises, Assignee must: provide the names and qualifications of the persons who will enter the premises; provide a reasonably detailed description of what those persons intend to do and why, and what they intend to remove from the premises; indemnify Raintree for any damages or claims that might impact Raintree as a result of Assignee's actions; and post a bond in Arizona for at least \$250,000 as security for Raintree's claimed lien.

I. INTRODUCTION.

Assignee is asking the Court, based on nothing more than an unverified motion, to compel Raintree, a Delaware company and non-party in this action, to turnover to Assignee furniture, fixtures, and equipment (the "FFE") in space in Scottsdale, Arizona (the "Premises") formerly

leased by Laser Spine Surgery Center of Arizona, LLC ("Tenant"). Assignee further seeks a judicial declaration that Raintree does not have a landlord's lien in the FFE, an order to provide access to the Premises, and sanctions for not complying with Assignee's demands to turn over the FFE. The Court must deny Assignee's Motion to Compel.

First, the Court does not have personal jurisdiction over Raintree. Raintree has not been properly served with process and is not a party to this action. Moreover, Assignee has not – and cannot – prove that the Court can exercise personal jurisdiction over Raintree. Raintree is a Delaware LLC, and does not have sufficient contact with Florida to allow courts in Florida to constitutionally exercise personal jurisdiction over Raintree. As such, the Court lacks jurisdiction to grant the requested relief.

Second, the Court should dismiss the Motion to Compel as procedurally improper. In an assignment case brought under Florida law, attempts to recover assets of the estate or to determine the validity, priority, or extent of a lien must be brought as a supplemental proceeding rather than as a motion. The Motion asks the Court to both compel Raintree to turn over the FFE housed in Arizona and to invalidate an Arizona landlord lien. Consequently, Assignee must bring these requests as a supplemental proceeding. Because Assignee has brought the claims by a motion rather than supplemental proceedings, the Court must dismiss the Motion to Compel.

Third, nearly everything concerning the pending dispute and the relief requested in the Motion is located in Arizona or is controlled by Arizona law. Indeed, enforcement of the order sought by the Motion must take place in Arizona. The dispute should be venued in Arizona, not Florida.

Fourth, if the Court looks past the jurisdictional, procedural, and evidentiary infirmities of the Motion (it should not), the Court should still deny the Motion. Before the Court makes a

determination regarding who owns the FFE or the parties' rights with respect to the FFE, Raintree should be given the opportunity to conduct discovery into the Assignee's allegations regarding LSI Spine Institute, LLC's ("LSI") ownership interest in the FFE so that it can prepare an adequate defense. And before any access is allowed or any FFE is removed from the Premises, Assignee should be required to: provide the names and qualifications of the persons who will enter the Premises and why access is needed; provide a reasonably detailed description of what those persons intend to do and what they intend to remove from the Premises; indemnify Raintree for any damages or claims that might impact Raintree as a result of Assignee's actions; and post a bond in Arizona for at least \$250,000 as security for Raintree's claimed lien.

II. ARGUMENT.

A. The Court should dismiss the Motion for lack of personal jurisdiction.

"Personal jurisdiction is necessary for a court to have the authority to determine the rights of the parties." *Gilliam v. Smart*, 809 So. 2d 905 (Fla. 1st DCA 2002). "Jurisdiction is perfected by the proper service of sufficient process." *Id.* (quoting *Abbate v. Provident Nat. Bank*, 631 So. 2d 312, 313 (Fla. 5th DCA 1994)). The party invoking the court's jurisdiction has the burden of proving valid service. *Id.* For valid service, Rule 1.070, Florida Rules of Civil Procedure, requires personal service of a summons and initial pleading on a defendant. Assignee has never served Raintree with process. Affidavit of Bradley Weinberg, attached as Exhibit A, ¶ 4. Instead, Assignee's attorney simply sent the Motion to Raintree's Arizona counsel by email and then unilaterally set the Motion to Compel for hearing. A true and correct copy of counsel for Assignee's email serving a copy of the Motion on Raintree's Arizona counsel is attached as Exhibit B. This is plainly deficient and insufficient invoke the Court's jurisdiction.

Even if Assignee was permitted to serve Raintree by email, the Court would still lack personal jurisdiction to adjudicate Assignee's claims. Under Florida law, a court must determine if a case satisfies two requirements to exercise jurisdiction. *Venetian Salami Co. v. J.S. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). "The trial court must first determine whether the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the long-arm statute." *Stonepeak Partners, LP v. Tall Tower Capital, LLC*, 231 So. 3d 548, 552 (Fla. 2d DCA 2017). If the defendant triggered the long-arm statute, then due process is satisfied and a court may exercise personal jurisdiction over a nonresident defendant if (1) there exist sufficient minimum contacts between the defendant and the forum state and (2) asserting jurisdiction would not "offend traditional notions of fair play and substantial justice." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1979); *International Show Co. v. Washington*, 326 U.S. 310, 316 (1945); *Erie Ins. Exch. v. Larose*, 202 So. 3d 148, 153 (Fla. 2d DCA 2016).

The Motion is devoid of any allegations of conduct by Raintree triggering Florida's long-arm statute. Section 48.193(1)(a), Florida Statutes, enumerates nine specific actions that subject a defendant to the statute's specific jurisdiction prong. Additionally, a defendant is subject to statute's general jurisdiction prong if the defendant engaging in "substantial and not isolated activity within this state" § 48.193(2), Fla. Stat. Assignee does not allege any facts suggesting that Raintree satisfies either prong. Instead, Assignee simply contends the Raintree, a Delaware LLC, entered into a lease with an Arizona entity Laser Spine Surgery Center of Arizona, LLC, ("LSSC Arizona") for commercial space located in Scottsdale, Arizona and has refused to allow Assignee, a non-party to that relationship, to enter the leased space or remove the FFE from the leased location. (Mot., pp. 3–4). This conduct in no way implicates Florida's long-arm statute.

Further, notwithstanding Assignee's allegations, Raintree has no actual contacts with Florida that would satisfy the minimum contacts necessary to satisfy specific or general jurisdiction. In evaluating specific personal jurisdiction, sufficient in-state minimum contacts involve three criteria: (1) "the contacts must be related to the plaintiff's cause of action or have given rise to it"; (2) "the contacts must involve some purposeful availment of the privilege of conducting activities within the forum, thereby invoking the benefits and protections of its laws"; and (3) "the defendant's contacts within the forum state must be such that she should reasonably anticipate being haled into court there." *Sculptchair*, 94 F.3d at 631. General personal jurisdiction is a higher threshold than specific jurisdiction. A defendant's minimum contacts must be "substantial or 'continuous and systematic' contacts with the forum to comport with due process." *Response Reward Sys., L.C. v. Meijer, Inc.*, 189 F. Supp. 2d 1332, 1338 (M.D. Fla. 2002).

Raintree's only connection with Florida is that it was, at one time, the owner of the Premises and LSSC Arizona's landlord. Ex. A, ¶¶ 2–4. Simply put, Raintree has absolutely no ties to Florida and Assignee cannot prove otherwise.

Finally, Section 727.102's grant of jurisdiction to the circuit court over assignment proceedings is not sufficient to create personal jurisdiction where none otherwise exists. *Phelan v. Am. Inst. of Toxicology, Inc.*, 8:17-CV-1691-T-17TGW, 2017 WL 4443724, at *3 (M.D. Fla. Oct. 4, 2017) ("Notably, unlike Federal Rule of Bankruptcy Procedure 7004(f), which authorizes nationwide service of process in cases related to bankruptcy, and Federal Rule of Civil Procedure 4(k)(1)(C), which allows a party to obtain personal jurisdiction over a defendant 'when authorized by a federal statute,' i.e. the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, the Florida [assignment for the benefit of creditors] statute lacks an independent basis for exercising personal jurisdiction over an out-of-state party.").

Therefore, the Court lacks personal jurisdiction over Raintree and has no ability to order Raintree to turnover FFE located in Arizona, to order access to the Premises, or to determine the validity of an Arizona landlord's lien.

B. Assignee's Motion is procedurally improper because Florida law requires requests to turnover property and determine the priority of liens in an assignment case be brought as a supplemental proceeding.

In an assignment action, section 727.110(1), Florida Statutes, allows all matters requiring court authorization in an assignment case to be brought by motion, except for three stated exceptions:

(a) An action by the assignee to recover money or other assets of the estate;

(b) An action by the assignee to determine the validity, priority, or extent of a lien or other interest in property or to subordinate or avoid an unperfected security interest under s. 727.109(8)(b);
and

(c) An action by the assignee to avoid any conveyance or transfer void or voidable by law under s. 727.109(8)(c)."

(emphasis added). These three exceptions must be brought as a supplemental proceeding. § 727.110(1), Fla. Stat. Although a supplemental proceeding is assigned to the same judge as the main assignment case, the proceeding receives a separate supplemental proceeding number and caption. § 727.110(2), Fla. Stat. More importantly, a supplemental proceeding is subject to the Florida Rules of Civil Procedure. § 727.110(2)(a), Fla. Stat. Among other things, this means that Assignee would need to actually serve Raintree (Rule 1.070) and that Raintree would have the opportunity to challenge jurisdiction, venue, and the adequacy of the pleadings. (Rule 1.440).

Assignee has ignored Section 727.110's explicit procedures and is thereby denying Raintree the procedural protections afforded to it under the Florida Rules of Civil Procedure. The

Court should therefore dismiss/deny the Motion with leave for Assignee to file a supplementary proceeding.

C. Arizona is the correct venue for this dispute.

The FFE is in Arizona. The Premises is in Arizona. Raintree's claimed lien is governed by Arizona law. The lease in question is governed by Arizona law. Lease Section 23.10, attached as Exhibit C. Implementation and enforcement of any order affecting the parties with respect to the FFE and the Premises must take place in Arizona. The LSI entity which was the actual tenant - LSSC Arizona - is an Arizona limited liability company. There are serious questions as to whether Raintree is subject to personal jurisdiction in Florida, and therefore whether any orders that this Court might make in response to Assignee's Motion are valid and enforceable. In contrast, the only connection Florida has with this particular dispute is that the assignment for benefit of creditors action was filed here.

Under these facts, it cannot be legitimately disputed that Arizona is a better venue for the current disputes than Florida. For that reason, the Court should dismiss/deny the Motion. *Mercury Ins. Co. of Florida v. Jackson*, 46 So. 3d 1129, 1130 (Fla. 1st DCA 2010) ("If there is no legal basis to support a plaintiff's choice of venue, the trial court must dismiss the case or transfer it to the appropriate venue.").

D. In the alternative, the Court should defer ruling on the Motion until Raintree is given the benefit of discovery, and should impose conditions on Assignee for the relief requested.

In the alternative and without waiving its jurisdictional and procedural objections, if the Court allows Assignee to proceed with the Motion, then Raintree requests that the Court give Raintree leave to take discovery into Assignee's factual allegations before holding a hearing on the merits of the Motion.

LSSC Arizona leased commercial space in Scottsdale, Arizona. LSSC Arizona defaulted on its lease by failing to make its rent payments. Well over \$10 million is owed and unpaid on the lease. LSSC Arizona housed the FFE at the Premises in Scottsdale. Under Arizona law, because LSSC Arizona failed to make its lease payments, Raintree is entitled to a statutory lien on all tenant property located at the premises. A.R.S. § 33-362(D). Assignee asserts that the equipment used by LSSC Arizona to operate a surgical center at the Scottsdale location does not actually belong to LSSC Arizona, but instead is owned by LSI. Assignee claims that therefore there is no valid lien on the FFE located at the Premises and asks the Court, based only on its Motion and unauthenticated hearsay, to compel turnover and to sanction Raintree.

However, granting Assignee the relief requested at the July 30, 2019 hearing – which Assignee unilaterally set – would be unfairly prejudicial. Raintree has no relationship with LSI. Raintree asserts - as common sense would dictate - that some or all of the FFE in the space that LSSC Arizona leased belongs to LSSC Arizona. Certainly the unauthenticated and unverified information attached to the Motion is not dispositive of the issue. Raintree has not had the opportunity to take any discovery that would allow it to investigate the basis for Assignee's claims. Invalidating Raintree's property rights and lien based only on Assignee's say-so would plainly violate due process.

Moreover, neither LSI nor LSSC Arizona have any right to access the Premises. LSSC ceased paying rent and has rejected the lease for the Premises. Assignee, however, asks the Court to enter an order allowing unfettered and unconditional access as though rent was still being paid. Of course, Assignee has not cited any law supporting such a request - because there is none.

Finally, Assignee seeks to remove patient protected health information and various MRI machines. Assignee mishandling either could seriously harm Raintree. A data breach or Assignee

otherwise failing to protect the patient information could expose Raintree to claims from patients under HIPAA. Likewise, as Assignee readily admits, improperly moving the MRI machines could damage the premises and/or harm other tenants because the magnets in the MRI machines can "overheat and possibly cause an explosion." (Motion, p. 6). Therefore, it is not unreasonable for the Court to require Assignee to indemnify Raintree before it is permitted to remove the MRI machines or the patient records.

If the Court is inclined to grant some of the relief requested by Assignee, it certainly should not be unconditional relief. Assignee must indemnify Raintree. Assignee must post a bond to act as substitute security for any FFE Assignee might seek to remove. And Assignee must provide a reasonable explanation to Raintree supporting its request for access. It is patently unreasonable not explain to Raintree who is accessing the space, when and why, what their qualifications are, what those persons intend to do, and to not indemnify Raintree.

E. In all events, sanctions are unwarranted.

Raintree have acted fully within their rights under the law and the governing documents. Their factual and legal positions have a good faith basis in fact and law, and are not frivolous. Assignee's request for sanctions is unwarranted and over the top. Sanctions are not appropriate simply because Raintree deigned to disagree with Assignee and claim lien rights. The Court should deny Assignee's request for sanctions.

III. CONCLUSION.

Assignee's Motion is an effort to sidestep the protections afforded to Raintree both procedurally under Florida's assignment statute and substantively by personal jurisdiction jurisprudence. Assignee is asking the Court to determine the rights of an Arizona company, which was never served, is not a party to the case, and has no ties to Florida, in property that is located

in Arizona based on unverified motion and without any discovery. The Court should consequently dismiss the Motion to Compel because the Courts lacks personal jurisdiction and the Motion is procedurally infirm. Further, because this dispute arises out of the lease, Raintree is entitled to recover and requests attorneys' fees and costs pursuant to the terms of the lease, or in the alternative, Arizona Revised Statute §12-341.01.

Respectfully submitted,

/s/ Zachary S. Foster

Zachary S. Foster

Florida Bar No. 111980

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*Attorney for Raintree III/IV Property Owner, LLC,
incorrectly named as Raintree Venture Owner, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of July, 2019, a copy of the foregoing has been electronically filed with the Clerk of Court through the Florida Courts E-Filing Portal and electronically served by the Portal or by U.S. Mail on parties identified on the Limited Notice

Parties list attached hereto and to:

Edward J. Peterson, Esq.
Matthew B. Hale, Esq.
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, Florida 33602
epeterson@srbp.com
mhale@srbp.com
Counsel for Assignee

/s/ Zachary S. Foster
Zachary S. Foster

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
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In re:

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Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No.
2019-CA-2762

To

Soneet Kapila,

Division L

Assignee.

_____ /

AFFIDAVIT OF BRADLEY WEINBERG

STATE OF California)
COUNTY OF Los Angeles)

BEFORE ME, the undersigned authority, personally appeared BRADLEY WEINBERG who, upon his oath, deposes and says:

1. My name is BRADLEY WEINBERG. I am AN AUTHORIZED SIGNATORY of Raintree III/IV Property Owner, LLC ("Raintree").

2. Raintree is a Delaware limited liability company. Raintree does not do business in Florida and has no contacts with Florida.

3. The Office Lease dated May 30, 2008 between original landlord RCC South, LLC and Laser Spine Surgery Center of Arizona, LLC, as amended was assigned to Raintree in 2018.

4. Raintree has not been personally served with a summons or pleading relating to this action.

DATED this 29th day of July, 2019.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.



BRADLEY WEINBERG

~~SWORN TO AND SUBSCRIBED~~ this 29 day of July, 2019, by BRAD WEINBERG, who is personally known to me or produced a driver's license as identification.

NOTARY PUBLIC
Printed Name: _____
My Commission Expires: _____
(Notary Stamp or Seal)

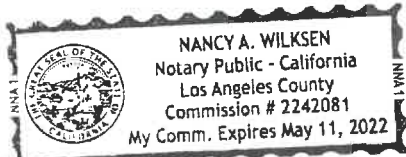
see attached certificate MW-7-29-19

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

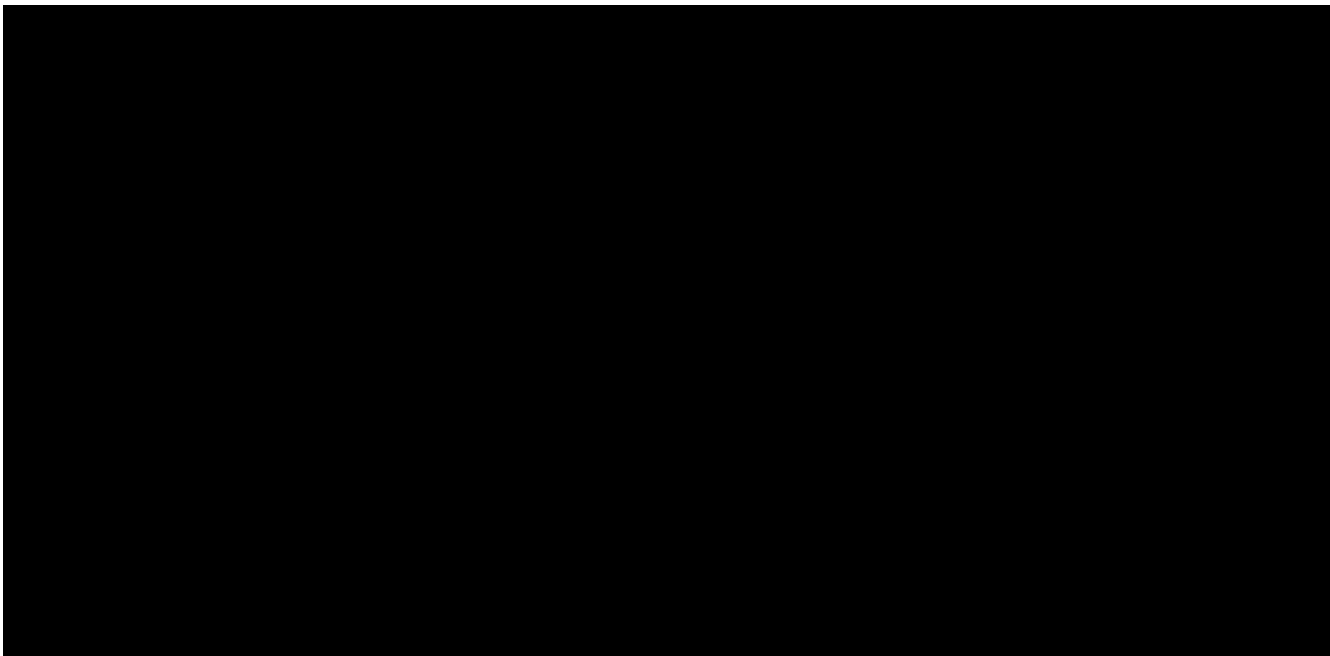
Subscribed and sworn to (or affirmed) before me on this 29th
day of July, 2019, by Bradley Weinberg

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Nancy A. Wilksen

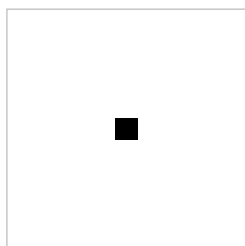







From: Khan Whiteside <kwhiteside@srbp.com>
Sent: Wednesday, July 10, 2019 1:22 PM
To: O'Neal, John M. (PHX x3436) <John.ONeal@quarles.com>
Cc: Edward J. Peterson <epeterson@srbp.com>; Matt B. Hale <MHale@srbp.com>
Subject: Kapila-Laser Spine Institute, LLC: SERVICE OF COURT DOCUMENT CASE NUMBER 292019CA002762A001HC

Please see attached Motion to Compel filed with the Court.

Thank you.

Court:	Thirteenth Judicial Circuit (Hillsborough County)
Court Case #:	19-CA-002762
Assignor	Laser Spine Institute, LLC
Assignee	Soneet Kapila
Document being served:	Motion to Compel
Sender's Name	Edward J. Peterson, Esq.
Sender's Phone	813.229.0144




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OFFICE LEASE

RCC SOUTH, LLC, a Delaware limited liability company ("Landlord"), hereby leases the Premises described below, for the Term and on the terms and conditions set forth in this Lease, to Laser Spine Surgery Center of Arizona, LLC, an Arizona limited liability company ("Tenant")

1. SUMMARY OF BASIC TERMS

1.1 **Date of Lease:** May 30, 2008.

1.2 **The Premises:** Suite 150 in the Building, consisting of approximately 35,342 square feet of rentable area as illustrated on the attached Exhibit A. Tenant shall initially take an estimated 25,207 rentable square feet as identified on Exhibit A (the "Initial Premises") and then 10,135 additional rentable square feet as identified on Exhibit A (the "Additional Premises") under the same terms and conditions and according to the Scheduled Commencement Dates described in Section 1.5.

1.3 **The Building:** The building, associated parking facilities, landscaping and other improvements, located at 8888 E. Raintree Drive in Scottsdale, Maricopa County, Arizona 85260 and known as Raintree Corporate Center IV ("RCC IV"). A site plan depicting the Building, six floor parking structure ("Parking Structure") and surface parking areas (together, with the Parking Structure, the "Parking Areas") and access drives within RCC IV is attached as Exhibit B.

1.4 **The Term:** The Term of this Lease for the Initial Premises shall begin on the Date of Lease set forth in Section 1.1, provided that the SNDA described in Section 15.1 is delivered to Tenant on or before the Date of Lease. If delivery of the SNDA is delayed beyond the Date of Lease, then commencement of the Term of the Lease for the Initial Premises shall be deferred until delivery of the SNDA to Tenant. The Term of this Lease for the Additional Premises shall begin on the earlier of a) the eighteen (18) month anniversary of the Rent Commencement Date for the Initial Premises as described in Section 1.5, or b) the date on which Tenant opens the Additional Premises for business. For example, if the Rent Commencement Date for the Initial Premises is December 1, 2008, then the Commencement Date of the Term for the Additional Premises shall be the earlier of Tenant opening the Additional Premises for business or June 1, 2010. The commencement date of the Term for the Initial Premises and Additional Premises, as applicable, shall be referred to herein as the "Commencement Date" as to each such portion of the Premises. Notwithstanding the later Commencement Date for the Additional Premises, the Term of Tenant's lease of both the Initial Premises and Additional Premises shall end on the tenth (10th) anniversary of the Rent Commencement Date set forth in Section 1.5 for the Initial Premises.

1.5 **Scheduled Rent Commencement Dates:** The Rent Commencement Date of the Initial Premises shall be two hundred fifty-five days from the Date of Lease. The Rent Commencement Date of the Additional Premises shall be the eighteen (18) month anniversary of the Rent Commencement Date of the Initial Premises. For example, if the Rent Commencement Date of the Initial Premises is December 1, 2008, the Rent Commencement Date of the Additional Premises shall be June 1, 2010. If Tenant elects to open a portion of the Initial

Premises or Additional Premises for business prior to the Rent Commencement Date for the Initial Premises or Additional Premises described herein, then the Rent Commencement Dates (and free rent periods) for the applicable rentable area of the Initial Premises or Additional Premises opened for business, as applicable, shall begin immediately and the Rent Commencement Date(s) for the balance of the Initial Premises and the Additional Premises, as applicable, shall be as described in this Section 1.5. However, Tenant may use the Additional Premises for access to portions of the Initial Premises without such use being considered "opening the Additional Premises for business" or resulting in acceleration of the Rent Commencement Date for the Additional Premises.

Notwithstanding the foregoing, Tenant may elect to occupy and use approximately 3,500 rentable square feet of the Additional Premises (the "Auxiliary Space") for Tenant's office based surgery practice during the time when the Tenant Improvement work is being completed in the Initial Premises. Tenant shall be charged Base Rent of \$28.25 per rentable square foot of such space during the period of use and the Base Rent applicable to such period shall be applied to the twelve (12) month free rent credit applicable to the Initial Premises. The cost of all Tenant Improvement work within the Auxiliary Space shall be applied against the Tenant Improvement Allowance for the Additional Premises. The plans and specifications for the Tenant Improvement work in the Auxiliary Space shall be subject to Landlord's approval as required pursuant to the terms of this Lease.

1.6 **Base Rent:** (The actual dates of each rental period shall be adjusted based on the actual Rent Commencement Dates for the Initial Premises and Additional Premises.)

<u>Period</u>	<u>Base Rent Per Rentable Sq. Ft.</u>	<u>Monthly Payment</u>
1/1/09 – 12/31/09	12 months Free Rent for Initial Premises beginning on Rent Commencement Date	\$0.00
1/1/10 – 6/30/10	\$28.25 (25,207 sq ft)	\$59,341.48
7/1/10 – 10/31/10	\$28.25 (25,207 sq ft) for Initial Premises and four months Free Rent for Additional Premises	\$59,341.48
11/1/10 – 12/31/10	\$28.25 (35,342sq ft)	\$83,200.96
1/1/11 – 12/31/11	\$28.75	\$84,673.54
1/1/12 – 12/31/12	\$29.25	\$86,146.13
1/1/13 – 12/31/13	\$29.75	\$87,618.71
1/1/14 – 12/31/14	\$30.25	\$89,091.29
1/1/15 – 12/31/15	\$30.75	\$90,563.88

<u>Period</u>	<u>Base Rent Per Rentable Sq. Ft.</u>	<u>Monthly Payment</u>
1/1/16 – 12/31/16	\$31.25	\$92,036.46
1/1/17 – 12/31/17	\$31.75	\$93,509.04
1/1/18 – 12/31/18	\$32.25	\$94,981.63

1.7 **Tenant's Proportionate Share:** 14.24%, consisting of the proportion that the Rentable Area of the Initial Premises bears to the Rentable Area of the Building. Tenant's Proportionate Share shall be adjusted after the Commencement Date for the Additional Premises to be approximately 19.97%, consisting of the proportion that the Rentable Area of the entire Premises bears to the Rentable Area of the Building. The Rentable Area of the Building (excluding parking facilities) is 176,994 square feet. The Tenant's Proportionate Share shall be subject to adjustment as described in Section 2.5 based on the final area measurements of the Initial Premises and Additional Premises.

1.8 **Expense Stop:** \$9.00 per square foot of Rentable Area of the Premises.

1.9 **Security Deposit:** Waived

1.10 **Names of Guarantors:** Waived

1.11 **Description of Tenant's Business:** Tenant will operate a licensed ambulatory surgical center on the Premises that includes general business offices, clinical areas, including physical therapy, surgical areas, employee training, patient lounge, lunch and/or kitchen facilities (including vending machines for Tenants' and its patients' use only) and any other legally permitted uses consistent with the character of similar commercial office or medical buildings in the suburban areas of Phoenix, Arizona.

1.12 **Parking Spaces:** 21 covered reserved spaces (\$40 per space per month), 80 covered unreserved spaces (\$25 per space per month), and 90 uncovered unreserved spaces (\$0 per space per month and available on a first-come, first-served basis) to be located in the Parking Structure in locations mutually approved in writing by Landlord and Tenant prior to the Date of Lease. At such time as the Commencement Date occurs for the Additional Premises as described in Section 1.5, Landlord shall provide Tenant with (6) additional covered reserved spaces, (12) additional covered unreserved spaces, and (12) additional uncovered, unreserved spaces, to be located in the Parking Structure in locations mutually approved in writing by Landlord and Tenant prior to the Commencement Date of the Additional Premises, at the same rates specified in this Section 1.12. Landlord shall reserve two (2) visitor parking spaces for Tenant's exclusive use, free of charge, adjacent to the patient exit for the purpose of Tenant's patient pick up. Landlord and Tenant shall mutually agree in writing prior to the Date of Lease to the location of the visitor spaces and the patient discharge exit door. Parking fees will be waived prior to the Rent Commencement Dates for the Initial Premises and Additional Premises and during the free rent and rental abatement periods applicable to the Initial Premises and Additional Premises.

1.13 **Tenant Improvement Allowance:** \$50.00 per rentable square foot ("rsf") for expenses in excess of Landlord's obligation to deliver the Premises to Tenant in Base Building Shell condition as described in Exhibit C. The Tenant Improvement Allowance shall be used for leasehold improvements, signage, phone and data cabling, infrastructure expenditures including those for enclosures for a back-up generator and HVAC equipment, a pad for the back-up HVAC equipment, space planning, architect fees, engineer fees, construction management fees, and Tenant's relocation expenses. Tenant may elect, by delivery of written notice to Landlord, to amortize additional Tenant Improvement Costs and any other costs related to the Premises up to \$20.00 per rsf as required by Tenant, including but not limited to, excess Tenant Improvement Costs above the \$50 rsf Tenant Improvement Allowance. Any such additional Tenant Improvement Costs shall be evenly amortized at an annual rate of 7% over the initial ten (10) year Term of the Lease and payable to Landlord on a monthly basis at the same time as Base Rent is paid pursuant to Section 6.1. Tenant shall have the right to select a construction management consultant and an architect for space planning and preparation of construction documents (which shall include engineering work) and the costs for the construction manager and architect shall be paid by Landlord as part of the Tenant Improvement Allowance. If Landlord fails to timely fund the Tenant Improvement Allowance as described in this Section 1.13, then Tenant may, without obligation, fund all or a portion of the Tenant Improvement Allowance. Any amounts paid by Tenant to fund the Tenant Improvement Allowance shall be immediately payable by Landlord to Tenant together with interest at the rate set forth in Section 19.2(c) from the date paid by Tenant until the date repaid by Landlord. In addition to pursuing any other rights and remedies of Tenant, Tenant may set off all amounts advanced for payment of the Tenant Improvement Allowance plus accrued interest against the Base Rent and Operating Costs payable to Landlord pursuant to this Lease.

1.14 **Tenant's Notice Address:**

Laser Spine Surgery Center of Arizona, LLC
3001 N. Rocky Pt. Drive, E.
Tampa, Florida 33607
Facsimile: (813) 386-2851
Attention: Phil Garcia

and

Laser Spine Surgery Center of Arizona, LLC
8888 East Raintree Drive, Suite 150
Scottsdale, AZ 85269
Attention: Phil Garcia

and

Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 84004-2202
Facsimile: (602) 382-6070
Attention: Joyce Kline Wright, Esq.

1.15 Landlord's Notice Address:

RCC South, LLC.
c/o Cavan Management Services
15333 N. Pima Road, Suite 305
Scottsdale, Arizona 85260
Facsimile: (480) 627-7010
Attention: Debbie L. Mitten

1.16 Tenant's designated broker:

The Staubach Company
3131 East Camelback Road, Suite 110
Phoenix, Arizona 85016
Attn: Steven N. Corney

1.17 Landlord's designated broker: Cavan Realty, Inc.

2. TERM, CONSTRUCTION, AND DELIVERY

2.1 Term. The Term of this Lease and the scheduled date of commencement of the Term for the Initial Premises and Additional Premises shall be as set forth in Sections 1.4 and 1.5.

2.2 Design and Construction. Exhibit C sets forth the respective obligations of Landlord and Tenant with respect to the design and construction of the Base Building Shell and Tenant Improvements for the Premises. Landlord shall have no obligation to make any improvements or alterations to the Premises except as provided in Exhibit C. Landlord may not make changes in the size, configuration, floor plan, design or access to the Building, Parking Areas or Parking Structure without Tenant's consent, which shall not be unreasonably withheld, unless the size, utility of and access to the Premises, Building, Parking Areas and Parking Structure available on the Commencement Date for the Initial Premises are not materially affected, in which case no consent from Tenant shall be required.

2.3 Delivery. Landlord shall deliver possession of the Premises to Tenant on the Commencement Date with the Base Building substantially complete as described in Exhibit C. If delivery of possession of either the Initial Premises or Additional Premises to Tenant is delayed for any reason, then this Lease shall remain in full force and effect, and Landlord shall not be liable to Tenant for any damage occasioned by such delay. Notwithstanding the foregoing, if delivery of possession is delayed so that the Commencement Date is more than sixty (60) days after the scheduled Commencement Date as set forth in Section 1.4, excluding any delay caused by Tenant Delay (as defined in Exhibit C) and subject to the provisions of Section 23.4, then Tenant, by written notice to Landlord, may terminate this Lease prior to taking possession, and upon such termination both Landlord and Tenant shall be released from all further obligations hereunder except that Tenant shall be entitled to receive reimbursement from Landlord for Tenant's actual losses, costs and expenses arising out of or in connection with termination of the Lease transaction, including fees and costs payable to all architects, space

planners, engineers, consultants, attorneys, third-party professional consultants not employed by Tenant and contractors.

2.4 Memorandum; Confirmation of Tenant Improvement Allowance and Brokerage Fees. At the request of either party, at any time following initial occupancy of the Initial Premises by Tenant, Landlord and Tenant shall execute a written memorandum confirming the Commencement Date and Rent Commencement Date for the Initial Premises, the Expiration Date, the Tenant's Proportionate Share, and the Rentable Area and Useable Area of the Initial Premises as measured pursuant to the BOMA International Standards described in Section 2.5. At any time following the initial occupancy of the Additional Premises by Tenant, Landlord and Tenant shall execute an amendment to the memorandum confirming the Commencement Date and Rental Commencement Date for the Additional Premises, the Tenant's Proportionate Share for the Additional Premises and the entire Premises, and the Rentable and Usable Area for the Additional Premises and the entire Premises as measured pursuant to the BOMA International Standards, as described in Section 2.5. Landlord shall also advise Tenant in writing following the Rent Commencement Date for the Initial Premises and Additional Premises of the actual amount of the Tenant Improvement Allowance expense and brokerage fees paid by Landlord for the Initial Premises and Additional Premises and Landlord shall evenly amortize such expenses over the initial Term of this Lease at an annual rate of 7% per annum. Such amounts shall be Landlord expenses and shall only be payable by Tenant to Landlord as expressly described in Sections 1.13 and 24.2.

2.5 Area Measurement. Landlord shall cause the Rentable Area and Useable Area of the Premises to be measured not later than thirty (30) days after the Rent Commencement Dates for each of the Initial Premises and Additional Premises and shall give written notice to Tenant of the Rentable Area and Useable Area as so determined. The Rentable Area and Useable Area of the Initial Premises and the Additional Premises, as applicable, are subject to verification by Tenant during the thirty (30) day period following receipt of such notice. Subject to Tenant's verification rights as provided above, once the architect has measured the Premises and calculated the Usable and Rentable Areas, as described herein, Usable and Rentable Areas of the Premises shall not be subject to further remeasurement or recalculation. "Rentable Area" and "Useable Area" means Rentable Area and "Useable Area" measured in accordance with American National Standard Z65.1-1996, as published by BOMA International; provided, however, that the Rentable Area of the Premises shall not exceed 112% of the Usable Area of the Premises, notwithstanding the actual measurements and "Rentable Area" for purposes of this Lease shall be adjusted so as not to exceed 112% of the Usable Area of the Premises.

2.6 Extension Option.

(a) So long as Tenant is not then in default under this Lease, Tenant shall have two (2) options (the "Extension Options") to extend the Term of this Lease for periods of five (5) years each (the "Extension Terms"). Tenant shall exercise an Extension Option, if at all, by giving written notice to Landlord no later than two hundred seventy (270) days before the expiration of the Term or first Extension Term, as applicable.

(b) Tenant's use and occupancy of the Premises during an Extension Term shall be subject to all the terms and conditions of this Lease except that Base Rent shall be at

Market Rate. For purposes of this Article, "Market Rate" means Base Rent (including provision for periodic increase in Base Rent during the Extension Term in accordance with then prevailing market practices) including rental concessions and tenant improvements being offered: (i) for new and renewal leases for comparable space in the Building, as reasonably determined by Tenant and Landlord, at the time the quotation of Market Rate is made, or (ii) if no space in the Building is then being marketed for lease, for new and renewal leases for comparable space in comparable buildings (defined as Class A buildings with similar rental rates in the surrounding North Scottsdale submarket and shall include Market Rates as well as tenant improvement allowances and other concessions, as reasonably determined by Landlord.

(c) Within thirty (30) days after written request, Landlord shall designate the Market Rate for the next Extension Term, provided, however, under no circumstances shall Landlord be obligated to respond earlier than twelve (12) months before the date that the first Extension Term or Second Extension Term would commence, as applicable. If Tenant exercises the Extension Option, it shall be deemed to have accepted the Base Rental rate proposed by Landlord for the applicable Extension Term.

3. USE OF PREMISES

3.1 **Permitted Uses.** Tenant may use and occupy the Premises for the purposes set forth in Section 1.11 and for no other purpose whatsoever without Landlord's prior written consent, and such consent shall not be unreasonably withheld or delayed.

3.2 **Insurance Restrictions.** Tenant shall not engage in any practice or conduct that would cause the cancellation of any insurance policies related to the Building. Tenant shall reimburse Landlord for any increases in insurance premiums paid by Landlord directly related to the nature of Tenant's use of the Premises or the nature of Tenant's business.

3.3 **Prohibitions.** Tenant shall not cause or maintain any nuisance in or about the Premises and shall keep the Premises free of debris, rodents, vermin and anything of a dangerous, noxious or offensive nature or which would create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, noise or heat. Tenant shall not cause the safe floor loading capacity (80 pounds on the floor and 100 pounds on the stairs) of the Premises to be exceeded; provided, however, that Tenant may install medical imaging and other equipment that exceeds the base Building loading capacity as long as reinforcement is installed to support such equipment in compliance with applicable building codes and engineering requirements. Tenant shall not disturb or interfere with the quiet enjoyment of the premises of any other tenant.

3.4 **Rules and Regulations.** Tenant shall comply and shall cause its employees to comply with the rules and regulations for the Building. The current rules and regulations are attached as Exhibit D. Landlord from time to time, by notice to Tenant, may amend the rules and regulations and establish other reasonable non-discriminatory rules and regulations for the Building. Notwithstanding the foregoing, the rules and regulations currently and hereafter in effect shall be modified as set forth on Exhibit D-1 and Tenant shall be authorized to use the Premises as described on Exhibit D-1. In the case of any inconsistency between the rules and regulations attached as Exhibit D or any amended rules and regulations, and the express terms of

this Lease and Exhibit D-1, the terms and provisions of this Lease and Exhibit D-1 shall govern and control.

3.5 Compliance with Environmental Laws. Tenant shall:

(a) comply with all federal, state and local laws, rules, orders, or regulations pertaining to health or the environment ("Environmental Laws"), including, without limitation, the comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") and the Resource Conservation and Recovery Act of 1987, as amended ("RCRA");

(b) not dispose of nor permit or acquiesce in the disposal of any waste products (including, but not limited to, paints, solvents, or paint thinners) on, under or around the Premises or the Building, other than medical waste that Tenant shall dispose of in accordance with applicable laws and regulations;

(c) not keep, store, or use within the Premises any regulated substances except small quantities that are reasonably necessary for Tenant's business and customarily associated with medical office and surgical center usage;

(d) promptly notify Landlord of any unlawful release of regulated substances of which Tenant becomes aware and excluding medical waste that Tenant will dispose of as provided in Section 3.5(b); and

(e) defend, indemnify and hold harmless Landlord from all costs, claims, demands, and damages, including attorneys' fees and court costs and investigatory and laboratory fees, related to any breach of this Lease, including, without limitation, any adverse health or environmental condition (including without limitation any violation of Environmental Laws) caused by Tenant. This indemnification obligation shall survive the termination of the Lease.

3.6 ADA. With respect to obligations arising under the Americans with Disabilities Act of 1990, regulations issued thereunder, the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, and any applicable requirements under comparable or related state law, as the same are in effect on the date hereof and may be hereafter modified or amended or supplemented (collectively the "ADA"):

(a) Landlord shall comply with the ADA with respect to operation of the Common Areas, work done in Common Areas (including, without limitation and as the case may be, alterations, barrier removal, or new construction) and reconstruction and restoration of the Premises by Landlord as a result of a casualty or taking. Landlord shall be solely responsible for causing the design of the Common Areas to satisfy all ADA requirements.

(b) Tenant shall comply with the ADA relating to operation of the Premises and alterations or improvements within the Premises. Tenant shall be solely responsible for causing the design of the initial Tenant Improvements constructed pursuant to Exhibit C-1 to satisfy all ADA requirements. Tenant, at its sole expense, shall make any alterations to the Premises required by the ADA.

3.7 **Compliance with Other Laws.** Tenant shall comply with all other laws imposed by federal, state or local authority related to the operation of its business and its occupancy of the Premises. If due to the nature of Tenant's use of the Premises, improvements or alterations are necessary to comply with any requirements imposed by law or with the requirements of insurance carriers, Tenant shall pay the entire cost of the improvements or alterations.

4. **PARKING AND COMMON AREAS**

4.1 **Administration.** All of the portions of the Building made available by Landlord for use in common by tenants and their employees and invitees ("Common Areas") at all times shall remain subject to Landlord's exclusive control and, subject to the limitation in Section 2.2, Landlord shall be entitled to make such changes in the Common Areas as it deems appropriate. The Common Areas shall include public restrooms. Landlord shall have the right to install, maintain, replace and operate cables, lines, wires, pipes or other facilities located above the ceiling grid or below the floor surface of the Premises for purposes of serving the Building or other tenants. Tenant shall not disturb any such facilities.

4.2 **Security.** Landlord shall install and operate an electronic system controlling access to the Building outside of normal business hours (including weekends and holidays). Landlord shall also provide security personnel to monitor the surveillance equipment or will hire foot patrol security personnel to monitor site activities at RCC IV after normal business hours (including weekends and holidays). Landlord does not, however, undertake responsibility for the security of tenants or their property, and Landlord shall not be responsible or liable for any loss or damage that is caused by criminal conduct of third parties, despite whatever security measures Landlord may implement, or by any malfunction or deficiency of the electronic access control system.

4.3 **Parking.** Tenant and its employees shall be entitled to the use of the parking spaces as described in Section 1.12 in the Parking Structure for the Building. Neither Tenant nor its employees and consultants shall use spaces designated for visitor parking. The location of reserved parking spaces shall be subject to relocation by Landlord to a location within the Parking Structure mutually approved by Landlord and Tenant upon not less than sixty (60) days prior notice to Tenant; provided, however, that Landlord shall not relocate the two (2) visitor parking spaces located adjacent to the patient exit without Tenant's prior written consent. Tenant shall cooperate with such procedures and requirements for access to the Parking Areas as Landlord may establish from time to time, including use of parking stickers, key cards, or other means. Landlord shall have no responsibility or liability for damage to vehicles parked in the Parking Areas, regardless of cause. Tenant shall pay to Landlord charges for the parking spaces, in advance, on or before the first (1st) day of each month, in the amounts set forth in Section 1.12, except that prior to the Rent Commencement Dates and during the free rental periods applicable to the Initial Premises, Additional Premises and any space leased pursuant to Section 24.1, no parking charges shall be payable by Tenant. Tenant may park and use a vehicle for use as a shuttle to transport patients to and from the Parking Areas and the Premises. Tenant may also establish a valet service for use by its patients.

5. **SECURITY DEPOSIT AND GUARANTIES – INTENTIONALLY OMITTED**

6. RENT

6.1 **Base Rent.** Tenant shall pay to Landlord, in advance, on the first (1st) day of each calendar month, beginning on the Rent Commencement Dates for the Initial Premises and Additional Premises, as applicable, Base Rent in the amounts set forth in Section 1.6; provided, however, that (i) no Base Rent shall be payable during the free rent periods applicable to the Initial Premises, Additional Premises and any space leased pursuant to Section 24.1; and (ii) Base Rent shall be subject to adjustment under Section 6.2 and abatement under Section 10.3.

6.2 **Adjustment for Rentable Area.** The amount of the Base Rent shall be adjusted based on the applicable rate of Base Rent Per Rentable Square Foot as shown in Section 1.6 and as a result of the measurement of the Premises pursuant to Section 2.5. Tenant's Proportionate Share also shall be adjusted, if necessary, to conform to the results of the initial measurement or as a result of any subsequent change in the Rentable Area of the Building.

6.3 **Late Charges and Interest.** If Base Rent or any other amount payable under this Lease is not paid within ten (10) days after the date it is due, Tenant shall pay to Landlord, as liquidated damages to compensate Landlord for costs and inconveniences of special handling and disruption of cash flow, a late charge in the amount of five percent (5%) of the amount past due. The assessment or collection of a late charge shall not constitute the waiver of a default and shall not bar the exercise of other remedies for nonpayment. In addition to the late charge, all amounts not paid within ten (10) days after the date due shall bear interest from the date due at the rate set forth in Section 19.2.

6.4 **Obligations Are Rent.** All amounts payable by Tenant to Landlord under this Lease, including without limitation Base Rent and Operating Costs, constitute rent and shall be payable without notice, demand, deduction or offset to such person and at such place as Landlord may from time to time designate by written notice to Tenant.

6.5 **Proration.** Base Rent payable with respect to a period consisting of less than a full calendar month shall be prorated.

7. OPERATING COSTS

7.1 **Tenant's Share.** Following the Rent Commencement Dates for the Initial Premises and Additional Premises, as applicable, Tenant shall pay to Landlord, Tenant's Proportionate Share of Operating Costs for each calendar year in excess of the Rentable Area of the Premises multiplied by the Expense Stop as set forth in Section 1.8. Notwithstanding the foregoing, Tenant's Proportionate Share of total Operating Costs shall be reduced on an equitable basis such that Tenant does not share in the Operating Costs for janitorial services or restroom supplies with respect to the areas of the Premises where restrooms are located within clean-room areas and operating room areas that are maintained by Tenant.

7.2 **Estimates.** From time to time Landlord shall by written notice specify Landlord's estimate, using generally accepted accounting principles, consistently applied for comparable buildings, of Tenant's obligation under Section 7.1. Tenant shall pay one-twelfth of the estimated annual obligation on the first (1st) day of each calendar month. Tenant acknowledges that the actual Operating Costs may be more or less than the Expense Stop.

7.3 Annual Reconciliation. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall provide to Tenant a written summary of the Operating Costs for the calendar year, determined on an accrual basis and broken down by principal categories of expense including the calculations performed to determine Operating Costs and all adjustments corresponding to the requirements of this Lease. Landlord shall also show the average occupancy for each Lease year. The statement also shall set forth Tenant's Proportionate Share of Operating Costs and shall show the amounts paid by Tenant on account. Any difference between Tenant's obligation and the amounts paid by Tenant on account shall be paid, refunded, or credited against rent, as the case may be, within fifteen (15) days after the statement is provided. Late delivery of the annual statement of Operating Costs shall not relieve Tenant of any obligation with respect to payment of Tenant's Proportionate Share of the Operating Costs. Tenant shall have the right at its own expense, to audit or inspect Landlord's records (but not more than once in any calendar year during the Term or the Extension Term). Tenant shall give Landlord not less than thirty (30) days prior written notice of Tenant's intention to conduct any such audit pursuant to the provisions of Section 7.7.

7.4 Partial Year Proration; Variable Cost Adjustment. During the first and last years of the Term, Tenant's responsibility for Operating Costs shall be adjusted in the proportion that the number of days of that calendar year during which Operating Costs are payable by Tenant and the Lease is in effect bears to 365. Tenant's obligations under this Article 7 for the payment of Operating Costs during the Lease Term, including the payment of any deficiency following receipt of the annual statement under Section 7.3, shall survive the expiration or termination of this Lease. If the mean level of occupancy of the Building during a calendar year is less than 95% of the rentable area, the Operating Costs shall be adjusted to reflect the fact that some costs, such as air conditioning and janitorial services, vary with level of occupancy while other costs, such as real estate taxes, may not. In order to allocate those variable costs to occupied space while allocating non-variable costs to occupied and unoccupied space alike, Landlord shall determine what the total Operating Costs would have been had the Building been at least 95% occupied during the entire calendar year on the average, and that adjusted total shall be the figure employed in the statement and calculations described in Sections 7.1 and 7.3. If the mean level of occupancy exceeds 95%, no adjustment shall be made.

7.5 "Operating Costs" consist of all costs of operating, maintaining and repairing the Building, including, without limitation, the following:

- (a) Real Property Taxes and expenses incurred in efforts to reduce Real Property Taxes provided that any decrease in Real Property Taxes achieved by Landlord shall be reflected in the calculation of Operating Costs;
- (b) Personal property taxes in property and equipment used in connection with the operation, maintenance, and repair of the Building.
- (c) Premiums for property, casualty, liability, rent interruption or other insurance;
- (d) Salaries, wages and other amounts paid or payable for on-site personnel including the Building manager, superintendent, operation and maintenance staff, and other

employees of Landlord involved in the maintenance and operation of the Building, including contributions and premiums towards fringe benefits, unemployment and worker's compensation insurance, pension plan contributions and similar premiums and contributions and the total charges of any independent contractors or managers engaged in the repair, care, maintenance and cleaning of any portion of the Building;

- (e) Cleaning, including janitorial services, sweeping of parking areas, and refuse removal;
- (f) Policing and security;
- (g) Landscaping, including irrigating, trimming, mowing, fertilizing, seeding, and replacing plants;
- (h) Utilities, including fuel, gas, electricity, water, sewer, telephone, and other services;
- (i) The cost of the rental of any equipment and the cost of supplies used in the maintenance and operation of the Building;
- (j) Maintaining, operating, repairing and replacing equipment;
- (k) Other items of repair, maintenance or replacement for which Landlord is responsible under Article 12;
- (l) Costs of alterations or modifications to the Building necessary to comply with requirements of applicable law, including without limitation the ADA, but only after the Commencement Date for the Initial Premises;
- (m) Audit fees and the cost of accounting services incurred in the preparation of statements referred to in this Lease; and
- (n) A fee for the administration and management of the Building appropriate to the nature of the Building as reasonably determined by the Landlord from time to time, provided that such fee shall be no greater than 3% of the gross monthly revenue of the Building (excluding capital expenditures and security deposits plus interest earned thereon).

Costs of capital expenditures incurred for the purpose of reducing Operating Costs, and costs of improvements, repairs, or replacements which otherwise constitute Operating Costs under this Article, but which are properly charged to capital accounts, shall be included in Operating Costs as amortized over their estimated useful lives, as determined by the Landlord in accordance with generally accepted accounting principles, and only the annual amortization amount shall be included in Operating Costs. Landlord shall utilize and cause to be utilized generally accepted accounting principals, consistently applied in accounting for all Operating Costs.

7.6 Exclusions. Notwithstanding anything to the contrary in Section 7.5, "Operating Costs" shall not include:

- (a) Amounts reimbursed by other sources, such as insurance proceeds, equipment warranties, judgments or settlements;
- (b) Ground rents;
- (c) Payments on any mortgage or other encumbrance;
- (d) Replacements (but not repairs) of structural elements such as the roof, fixed plumbing, and structural walls of the Building;
- (e) Costs of negotiating or enforcing leases of tenants;
- (f) Leasing commissions and marketing expenses;
- (g) General overhead and administrative expenses of Landlord not directly related to the operation of the Building;
- (h) Depreciation and amortization;
- (i) Expenses incurred by Landlord to prepare, renovate, repaint, redecorate or perform any other work in any space leased to an existing tenant or prospective tenant of the Building;
- (j) Expenses incurred by Landlord for repairs or other work occasioned by fire, windstorm, or other insurable casualty or condemnation;
- (k) Expenses incurred by Landlord to lease space to new tenants or to retain existing tenants including leasing commissions, advertising and promotional expenditures;
- (l) Expenses incurred by Landlord to resolve disputes, enforce or negotiate lease terms with prospective or existing tenants in connection with any financing, sale or syndication of the Property;
- (m) Interest, principal, points and fees, amortization or other costs associated with any debt and rent payable under any lease to which this Lease is subject and all costs and expenses associated with any such debt or lease and any ground lease rent, irrespective of whether this Lease is subject or subordinate thereto;
- (n) Cost of alterations, capital improvements, equipment replacement and other items which under generally accepted accounting principles are properly classified as capital expenditures;
- (o) Expenses for the replacement of any item covered under warranty;
- (p) Cost to correct any penalty or fine incurred by Landlord due to Landlord's violation of any federal, state, or local law or regulation and any interest or penalties due for late payment by Landlord of any of the Building Operating Expenses;

- (q) Cost of repairs necessitated by Landlord's negligence or willful misconduct, or of correcting any latent defect or original design defects in the Building construction, materials, or equipment;
- (r) Expenses for any item or service that Tenant pays directly to a third party or separately reimburses Landlord and expenses incurred by Landlord to the extent the same are reimbursable or reimbursed from any other tenants, occupants of the property, or third parties;
- (s) Expenses for any item or service not provided to Tenant, but exclusively to certain other tenants in the Building;
- (t) A property management fee for the Building of 3% of the gross monthly revenue in excess of the lesser of (i) the current management contract obligation, or (ii) 3% of the gross monthly revenue of the Building (exclusive of capital expenditures and security deposits and all interest accrued thereon) applicable to the Building for the relevant calendar year;
- (u) Salaries of (i) employees above the grade of building superintendent or building manager, and (ii) that portion of employee expenses for employees whose time is not spent directly and solely in the operation of the Property;
- (v) Landlord's general corporate overhead and administrative expenses, except if it is solely for the Building;
- (w) Business interruption (rent interruption is included) insurance or rental value insurance;
- (x) Expenses incurred by Landlord in order to comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of federal, state, county and city governments and of all other governmental authorities having or claiming jurisdiction over the building, including without limitation the Americans with Disabilities Act of 1990 (as amended), the Federal Occupational Safety and Health Act of 1970 (as amended) and any of said laws, rules and regulations relating to environmental, health or safety matters;
- (y) Reserves;
- (z) Fees paid to affiliates of Landlord to the extent that such fees exceed the customary amount charged for the services provided;
- (aa) The operating expenses incurred by Landlord relative to retail stores, hotels and any specialty service in the Building or on the Property; and
- (bb) Any additional operating expenses incurred by Landlord relative to any declaration of covenants or restrictions to which the Property may be subject;
- (cc) HVAC modification and replacement obligations necessary to comply with any Clean Air requirements, including ASHRAE standards, for the following: maintenance, fresh air, chlorofluorocarbons and hydrochlorofluorocarbons;

- (dd) Cost of sculptures, paintings and other objects of art;
- (ee) Costs associated with the removal of substances considered to be detrimental to the environment or the health of occupants of the Building; and
- (ff) Other items not customarily included as operating expenses for similar buildings.

7.7 Audit Rights. Tenant shall have the right at its own expense (without the requirement for Tenant to pay Landlord's costs of complying with this provision), to audit or inspect Landlord's records (but not more than once in any calendar year during the Term or any Extension Term). Tenant shall give Landlord not less than thirty (30) days prior written notice of Tenant's intention to conduct any such audit. Landlord shall cooperate with Tenant during the course of such audit, which shall be conducted during normal business hours in Landlord's office at the address indicated in Section 1.15. Landlord agrees to make such personnel available to Tenant as may be reasonably necessary for Tenant, or Tenant's employees or agents, to conduct such audit. If such audit discloses that the amount paid by Tenant as other additional rent payable by Tenant, hereunder, has been overstated by more than three percent (3%), Landlord shall refund the entirety of Tenant's overpayment to Tenant within fifteen (15) days of Tenant's written notice to Landlord of the results of the audit and shall reimburse Tenant for its costs incurred for the audit not to exceed \$7,500.

8. TAXES

8.1 Real Property Taxes and Assessments. Landlord shall pay before delinquent all general and special real property taxes and assessments that are levied on, or allocable to, the Building (collectively, "Real Property Taxes"). Landlord agrees to contest real property tax assessments that increase more than five percent (5%) in any year.

8.2 Taxes on Tenant. Tenant shall pay before delinquent all taxes levied or assessed upon, measured by, or arising from: (a) the conduct of Tenant's business; (b) Tenant's leasehold estate; or (c) Tenant's property.

8.3 Excise Taxes. Tenant shall pay to Landlord all sales, use, transaction privilege, or other excise tax that may at any time be levied or imposed upon, or measured by, any amount payable by Tenant under this Lease.

9. INSURANCE AND INDEMNITY

9.1 Insurance Policies. Tenant, at its expense, shall obtain and keep in full force and effect the following insurance:

(a) Special form property insurance including sprinkler leakage in an amount equal to the full replacement cost of all property located on the Premises owned or leased by Tenant.

(b) Business interruption insurance with a limit sufficient to insure not less than a twelve month loss of income.

(c) Commercial general liability insurance applying to the use and occupancy of the Premises and the business operated by Tenant, including coverage for "premises/operations", "products and completed operations", and "blanket contractual" liabilities, written on an occurrence basis with limits not less than \$2,000,000 per occurrence, \$3,000,000 annual aggregate, naming Landlord, its agents, affiliates and contract property manager as additional insureds.

(d) Workers' compensation insurance in accordance with applicable law and employer's liability insurance with a limit not less than \$1,000,000 bodily injury each accident; \$1,000,000 bodily injury by disease - each person; and \$1,000,000 bodily injury by disease - policy limit.

9.2 Policy Requirements. Tenant's insurance policies shall:

- (a) where applicable, contain the mortgagee's standard mortgage clause;
- (b) be taken out with insurers reasonably acceptable to Landlord and be in a form, and with deductible and retention amounts, satisfactory to Landlord;
- (c) be non-contributing and apply as primary and not as excess to, any other insurance available to the Landlord;
- (d) not be invalidated with respect to the interests of the Landlord and the holder of any encumbrance on the Building by reason of any breach or violation by Tenant of any warranties, representations, declarations or conditions contained in the policies; and
- (e) contain an agreement by the insurers to notify the Landlord, and the holder of any encumbrance on the Building designated by Landlord, in writing not less than thirty (30) days (ten (10) days in the case of non-payment of premium) prior to any cancellation, termination, or non-renewal.

9.3 Evidence of Coverage. Tenant shall deliver to Landlord certificates of insurance or, if required by Landlord, certified copies of each such insurance policy: (a) as soon as practicable after the placing of the required insurance and (b) periodically thereafter before expiration, renewal or replacement of the policies then in force. No review or approval of any such insurance certificate by Landlord shall derogate or diminish Landlord's rights or Tenant's obligations. Tenant shall not take possession of the Premises without having complied with the requirements of this Section.

9.4 Indemnity and Exculpation. Tenant shall defend, indemnify and hold Landlord (and its members, managing agents, officers, directors, employees, agents, and property manager) harmless, from and against any and all loss, claims, actions, damages, liability and expense in connection with loss of life, personal injury, damage to property or any other loss or injury whatsoever arising directly or indirectly from or out of this Lease, or any occurrence in, upon or at the Premises, or the occupancy or use by the Tenant of the Premises, or any act or omission of Tenant, its members, managing agents, agents, servants, employees or invitees. Tenant shall not be required, however, to indemnify Landlord against a claim arising from Landlord's negligence or willful misconduct. Landlord shall not be liable and Tenant hereby

waives all claims for any damage to any property in or about the Premises or the Building or injury or inconvenience to Tenant's business, by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances), except for Landlord's negligence or misconduct. Tenant acknowledges that it is protecting itself against loss by maintaining appropriate insurance coverage.

9.5 Waiver of Subrogation. Landlord and Tenant each hereby waives its respective rights and the subrogation rights of its respective insurer against the other party (as well as their respective members, officers, employees, agents, authorized representatives and invitees of such party), with respect to loss or damage to the Premises and any fixtures, equipment, personal property, furniture, improvements and alterations in or to the Premises, that are caused by or result from (a) risks required to be insured against under this Lease, or (b) risks that are insured against by insurance policies maintained by Landlord or Tenant from time to time. Landlord and Tenant shall provide notice of the waiver under this Section 9.5 to their respective insurance carrier(s) and shall obtain an endorsement waiving any right of subrogation in favor of the insurer.

9.6 Landlord's Policies. No insurable interest is conferred upon Tenant under any policies of insurance carried by Landlord, and Tenant shall not be entitled to share or receive proceeds of any insurance policy carried by Landlord, unless a claim is awarded to Tenant due to Landlord's negligence or misconduct.

10. FIRE AND CASUALTY

10.1 Termination Rights. If all or part of the Premises, Parking Spaces or Common Areas is rendered untenable by damage from fire or other casualty which in Landlord's opinion cannot be substantially repaired (employing normal construction methods without overtime or other premium) under applicable laws and governmental regulations within one hundred eighty (180) days from the date of the fire or other casualty, then either Landlord or Tenant may elect to terminate this Lease as of the date of such casualty by written notice delivered to the other not later than thirty (30) days after notice of Landlord's estimate of the time required for restoration is given by Landlord. Landlord shall provide such notice as soon as is practicable after the fire or other casualty occurs.

10.2 Restoration. If in Landlord's opinion the damage caused by the fire or other casualty can be substantially repaired (employing normal construction methods without overtime or other premium) under applicable laws and governmental regulations within one hundred eighty (180) days from the date of the fire or other casualty, or if neither party exercises its right to terminate under Section 10.1, Landlord shall repair such damage other than damage to furniture, chattels or trade fixtures which do not belong to the Landlord, which shall be repaired by Tenant at its own expense.

10.3 Abatement. During any period of casualty, damage or restoration (as set forth in Section 10) or interruption (as set forth in Section 12.5), the Base Rent and Operating Costs payable by Tenant shall be proportionately reduced to the extent that the Premises are thereby rendered untenable from the date of casualty until completion by Landlord of the repairs to

the Premises (or the part thereof rendered untenable) or until Tenant again uses the Premises (or the part thereof rendered untenable) in its business, whichever first occurs.

10.4 Demolition of Building; Damage Late in Term. Notwithstanding anything to the contrary in Section 10.1, if all or a substantial part (whether or not including the Premises) of the Building is rendered untenable by damage from fire or other casualty to such a material extent that in the opinion of Landlord the Building must be totally or partially demolished, whether or not to be reconstructed in whole or in part, or if a fire or casualty requiring substantial restoration or repair occurs during the last year of the Term, Landlord may elect to terminate this Lease as of the date of the casualty (or on the date of notice if the Premises are unaffected by such casualty) by written notice delivered to Tenant not more than sixty (60) days after the date of the fire or casualty.

10.5 Agreed Remedies. Except as specifically provided in this Article, there shall be no reduction of rent and Landlord shall have no liability to Tenant by reason of any injury to or interference with Tenant's business or property arising from fire or other casualty, howsoever caused, or from the making of any repairs resulting therefrom in or to any portion of the Building or the Premises. Tenant waives any statutory or other rights of termination by reason of fire or other casualty, it being the intention of the parties to provide specifically and exclusively in this Article for the rights of the parties with respect to termination of this Lease as a result of a casualty.

11. CONDEMNATION

11.1 Automatic Termination. If during the Term all or any part of the Premises is permanently taken for any public or quasi-public use under any statute or by right of eminent domain, or purchased under threat of such taking, this Lease shall automatically terminate on the date on which the condemning authority takes possession of the Premises.

11.2 Optional Termination. If during the term any part of the Building is taken or purchased by right of eminent domain or in lieu of condemnation, whether or not the Premises are directly affected, then if in the reasonable opinion of Landlord substantial alteration or reconstruction of the Building is necessary or desirable as a result thereof, or the amount of parking available to the Building is materially and adversely affected, Landlord shall have the right to terminate this Lease by giving Tenant at least thirty (30) days written notice of such termination.

11.3 Award. Landlord shall be entitled to receive and retain an award or consideration for the affected lands and improvements. Tenant shall not have or advance any claims against Landlord for the value of its property or its leasehold estate or the unexpired term of this Lease or for costs of removal or relocation or business interruption expense or any other damages arising out of the taking or purchase. Nothing herein shall give Landlord any interest in or preclude Tenant from seeking and recovering on its own account from the condemning authority any award of compensation attributable to the taking or purchase of Tenant's personal property or trade fixtures, for the unamortized cost of any improvements paid for by Tenant, for Tenant's business interruption and relocation expenses, or for the value of Tenant's leasehold estate for

the unexpired term of this Lease. If any award made or compensation paid to Tenant specifically includes an award or amount for Landlord, Tenant shall promptly account therefor to Landlord.

12. MAINTENANCE AND OFFICE SERVICES

12.1 **Maintenance by Tenant.** Tenant shall maintain the interior of the Premises and the improvements therein (excluding services and maintenance for which Landlord is responsible pursuant to Sections 12.2 and 12.4) in good condition and repair.

12.2 **Building Services.** Landlord shall provide the following services to Tenant:

(a) janitorial services to the Premises and to Common Areas according to the cleaning specifications (See Exhibit H) five nights per week, including light bulb replacements for building standard lights (T8's for 2 X 4 parabolic lenses) including Common Area and in-Premises restroom supplies (except for restrooms in operating room and clean-room areas within the Premises for which Tenant will provide janitorial services;

(b) elevator service by means of the Building's elevators; and

(c) heating, ventilation, and air conditioning to the Premises appropriate to a first class office building

12.3 **Utilities and Excess Charges.** Landlord shall supply to the Premises electrical power for lighting and for the operation of normal office equipment. Landlord shall supply water and sewer services for any plumbing facilities in the Premises and Common Area restrooms. Tenant shall pay to Landlord within thirty (30) days after receipt of invoice: (a) for heating, ventilation and air conditioning requested by Tenant to be provided to the Premises outside of normal business hours (6:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12 Noon on Saturday, excluding recognized federal, state and local holidays) at Landlord's hourly rate of \$12.00 per hour per zone, which shall be subject to adjustment for changes in electrical power rates; (b) for electrical power used by Tenant in excess of normal office demand, which shall be defined as a minimum of 23.9 watts per square foot; and (c) for water used by Tenant in excess of normal office demand (i.e. in excess of 10 gal/usf/year). If Tenant operates any facility, such as a computer room, that requires electrical power in excess of normal office demand or that requires cooling after normal business hours, Landlord may require such facilities to be separately metered or submetered to Tenant at Tenant's expense. If Tenant's business and/or improvements are likely to, or result in, the use of a volume of water in excess of normal office demand, Landlord may require Tenant's water supply to be separately metered or sub-metered to Tenant at Tenant's expense. All utilities provided to the Premises other than those describe above, including communications services, shall be arranged directly by Tenant with the utility supplier, including the posting of any required deposits, and paid directly to the utility supplier when due.

12.4 **Building and Common Area Maintenance.** Landlord shall maintain the Building (including roof, structural elements, doors, plate glass, heating, air conditioning, ventilation, electrical and plumbing systems serving the Building, and exterior window washing), all Common Areas (including the Parking Areas) in good condition and repair in accordance with standards then prevailing for comparable properties of like age and character.

29. Landlord shall not be responsible for lost or stolen personal property, equipment, money, or jewelry from the premises of tenants or public rooms whether or not such loss occurs when the Building or the premises are locked against entry.

30. Landlord may permit entrance to the premises of tenants by use of pass keys controlled by Landlord employees, contractors, or service personnel directly supervised by Landlord and employees of the United States Postal Service.

31. Each tenant and all of tenant's representatives, shall observe and comply with the directional and parking signs on the property surrounding the Building, and Landlord shall not be responsible for any damage to any vehicle towed because of noncompliance with parking regulations.

32. No tenant shall install any radio, telephone, television, microwave or satellite antenna, loudspeaker, music system or other device on the roof or exterior walls of the Building or on common walls with adjacent tenants.

33. Each tenant shall store all trash and garbage within its premises. No material shall be placed in the trash boxes or receptacles in the Building unless such material may be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage and will not result in a violation of any law or ordinance governing such disposal. All garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Landlord shall designate.

34. Each tenant shall give prompt notice to landlord of any accidents to or defects in plumbing, electrical or heating apparatus so that same may be attended to properly.

35. Landlord reserves the right to reasonably restrict but not prohibit access to and from the Building outside of normal business hours

36. Tenant and all of Tenant's servants, employees, agents, visitors, invitees and licensees shall observe faithfully and comply strictly with the foregoing Rules and Regulations and such other and further appropriate Rules and Regulations as Landlord or Landlord's agent from time to time adopt.

37. Landlord shall furnish each tenant, at Landlord's expense, with two (2) keys to unlock the entry level doors and two (2) keys to unlock each corridor door entry to each tenant's premises and, at such tenant's expense, with such additional keys as such tenant may request. No tenant shall install or permit to be installed any additional lock on any door into or inside of the premises demised to that tenant or make or permit to be made any duplicate of keys to the entry level doors or the doors to such premises. Landlord shall be entitled at all times to possession of a duplicate of all keys to all doors into or inside of the premises demised to tenants of the Building. All keys shall remain the property of Landlord. Upon the expiration of the Lease Term, each tenant shall surrender all such keys to Landlord and shall deliver to Landlord the combination to all locks on all safes, cabinets and vaults that will remain in the premises demised to that tenant. Landlord shall be entitled to install, operate and maintain security systems in or about the Building and/or the premises demised to any tenant. For the purposes of

this rule the term "keys" shall mean traditional metallic keys, plastic or other key cards and other lock opening devices.

38. Each person using the Parking Accommodations or other areas designated by Landlord where parking will be permitted shall comply with all Rules and Regulations adopted by Landlord with respect to the Parking Accommodations or other areas, including any employee or visitor parking restrictions, and any sticker or other identification system established by Landlord. Landlord may refuse to permit any person who violates any parking rule or regulation to park in the Parking Accommodations or other areas, and may remove any vehicle which is parked in the Parking Accommodations or other areas in violation of the parking Rules and Regulations. The Rules and Regulations applicable to the Parking Accommodations and the outside parking areas are as follows:

A. The maximum speed limit within the Parking Accommodations shall be 5 miles per hour; the maximum speed limit in other parking areas shall be 15 miles per hour.

B. All directional signs and arrows must be strictly observed.

C. All vehicles must be parked entirely within painted stall lines.

D. No vehicle may be parked (i) in an area not striped for parking, (ii) in a space which has been reserved for visitors or for another person or firm, (iii) in an aisle or on a ramp, (iv) where a "no parking" sign is posted or which has otherwise designated as a no parking area, (v) in a cross hatched area, (vi) in an area bearing a "handicapped parking only" or similar designation unless the vehicle bears an appropriate handicapped designation, (vii) in an area bearing a "loading zone" or similar designation unless the vehicle is then engaged in a loading or unloading function and (viii) in an area with a posted height limitation if the vehicle exceeds the limitation.

E. Parking passes, stickers or other identification devices that may be supplied by Landlord shall remain the property of Landlord and shall not be transferable. A replacement charge determined by Landlord will be payable by each tenant for loss of any magnetic parking card or parking pass or sticker.

F. Garage managers or attendants shall not be authorized to make or allow any exceptions to these Rules and Regulations.

G. Each operator shall be required to park and lock his or her own vehicle, shall use the Parking Facilities at his or her own risk and shall bear full responsibility for all damage to or loss of his or her vehicle, and for all injury to persons and damage to property caused by his or her operation of the vehicle.

H. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is inappropriately parked or parked in violation of these Rules and Regulations.

39. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of the Building Rules and Regulations when it is deemed necessary, desirable or proper, in Landlord's judgment for its best interest or of the best of the

tenants of the Building, so long as no such rescission, alteration or waiver adversely affects or otherwise abrogates Tenant's rights under this Lease or use and enjoyment of the Premises as contemplated by the Lease.

40. No smoking is permitted within the premises or in the Building pursuant to Scottsdale Revised Code, § 19-16, *Smoking Pollution Control Ordinance*. From time to time Landlord shall designate areas outside the building as smoking areas. Smoking shall be permitted only in such designated areas.

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Bob Brittingham
CYPRESS Office Properties
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EXHIBIT D-1

MODIFICATION OF RULES AND REGULATIONS

Tenant may engage in the following uses and activities and any uses and activities expressly authorized in the Lease notwithstanding any contrary provisions in the Rules and Regulations attached to the Lease as Exhibit D:

1. Tenant may install shades, screens, draperies and other window coverings on the inside of the Premises in front of the blinds provided by Landlord for the exterior windows of the Building.
2. Tenant may maintain oxygen tanks, pharmaceuticals, chemicals and other supplies required for its medical use in the Premises as long as the required MSDS sheets are posted per code.
3. Tenant may provide catered meals within the Premises for its patients, their families and its personnel. Such food shall be prepared off-site; however, it may be assembled and reheated in chafing dishes and other typical serving equipment within the Premises.
4. Tenant may sell medical equipment and supplies to its patients in connection with its medical practice operated in the Premises.
5. Tenant may install locks and bolts on doors and storage areas located within the interior of the Premises. Upon termination of the Lease, Tenant shall provide keys to any such locking devices to Landlord, but shall not be required to provide keys to Landlord for such devices during the Term of the Lease.
6. Landlord shall have no access to operating rooms or pharmaceutical storage areas within the Premises during the Term of the Lease.
7. Notwithstanding Rule 16, Tenant may purchase cleaning towels, supplies and other services from a company of its choice, without approval of Landlord, for maintenance of the interior of the Premises and operation of its medical facilities and practice in the Premises.
8. Tenant may leave any electrical equipment within the Premises turned-on after business hours if required by the nature of the equipment.
9. Notwithstanding Rule 20, Landlord acknowledges and agrees that sleeping shall be authorized within the Premises in connection with medical procedures and uses; for example, in connection with sedation of patients during surgical procedures. No patients will spend the night at the Premises.
10. Tenant may install televisions and television monitors in the operating rooms and exam rooms and in the café within the Premises. Tenant may install telecommunications equipment on the percentage of the roof of the Building equal to Tenant's Percentage Share of the Building, in locations selected by Tenant, provided that such equipment complies with all

applicable government rules, regulations, ordinances and codes. Tenant shall not be charged any additional rental or other charges for such use of the roof.

11. Notwithstanding Rule 38G, Landlord agrees that Tenant may establish valet parking or a shuttle service from the Parking Areas to the Premises for its patients.

12. Tenant shall have access to the Building, Premises and Parking Structure 24 hours per day, 7 days per week, 365 days per year.

The above authorized uses shall remain in effect during the entire Term of the Lease and may not be modified by Landlord without Tenant's consent, which consent may be given or withheld in the exercise of Tenant's sole discretion.

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EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

THIS MEMORANDUM OF COMMENCEMENT DATE is entered into this ___ day of _____, 2008 by and between RCC SOUTH, LLC, a Delaware limited liability company ("Landlord") and LASER SPINE SURGERY CENTER OF ARIZONA, LLC, an Arizona limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant have previously executed that certain Lease Agreement dated _____ ("Lease"), pursuant to which Tenant has leased from Landlord certain premises more particularly described therein.

B. Pursuant to the provisions of Article 2 of the Lease, Landlord and Tenant have agreed to execute this Memorandum of Commencement Date to specify the Commencement Date of the Lease term for the "Initial Premises" described in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals, the execution and delivery of the Lease and other good and valuable considerations, the receipt, sufficiency and validity which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Commencement Dates. The Commencement Date for the Initial Premises is _____, and the expiration date of the Lease is _____. The Rent Commencement Date is _____.

2. Area Measurements and Tenant's Proportionate Share. The Rentable Area of the Initial Premises is _____ square feet and Usable Area of the Initial Premises is _____ square feet. Tenant's Proportionate Share is _____ (%) for the Initial Premises.

3. Definitions. Capitalized terms used in this Memorandum of Commencement Date without definition shall have the meanings assigned to such terms in the Lease, unless the context requires otherwise.

4. Full Force and Effect. Except as specifically modified by this Memorandum of Commencement Date, the Lease remains in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Commencement Date as of the date and year first above written.

TENANT:

LASER SPINE SURGERY CENTER, LLC
an Arizona limited liability company

By: _____
Its: _____

LANDLORD:

RCC SOUTH, LLC,
a Delaware limited liability company

By: _____
Its: _____

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Notwithstanding the foregoing, Tenant shall be responsible for the cost of any blockage of sewer lines caused by Tenant's misuse and Tenant is responsible for janitorial services (but not maintenance of plumbing fixtures) for all restrooms located within clean-room areas and operating room areas of the Premises.

12.5 Interruptions. Landlord shall not be liable or responsible for breakdowns or temporary interruptions in access, services, or utilities, nor for interference with Tenant's business or Tenant's access to the Premises during the course of repairs or remedial work, unless such interruption is for five (5) consecutive business days. Rent and Operating Expenses shall be abated after the fifth (5th) business day until access, services and utilities are restored. After a continuous period of thirty (30) days or forty-five (45) days in any one calendar year affecting fifty percent (50%) or more of the then leased Premises, during which Landlord has failed to provide any one or more of the aforementioned services, then Tenant, at its option, may either (a) cancel the entire Lease or partially cancel the Lease for the specific floors so affected, at Tenant's option, upon giving written notice therefore to Landlord (b) offset against Base Rent, all actual costs incurred by Tenant to remedy the deficiencies, or (c) pursue its legal remedies to obtain specific performance or a money judgment against Landlord. Tenant shall identify certain critical areas within the Premises for which Tenant shall have the ability to provide its own services if Landlord fails to provide such services within twenty-four (24) hours after an interruption occurs, in which event Tenant shall have the right to offset against its payments of Base Rent the reasonable cost of providing such services so interrupted.

12.6 Access. Tenant shall have access to the Premises, the Building and Parking Areas 24 hours per day, 7 days per week, 365 days per year. Landlord at all times shall have access to the Premises for purposes of inspection and performing Landlord's repair, maintenance and janitorial obligations and exercising its rights under this Lease, provided, however, that Landlord shall not have access to Tenant's operating rooms or areas where pharmaceuticals are stored by Tenant without Tenant's prior notice and coordination of the entry and inspection with Tenant so as not to impair the sterile environment and security of such areas. Upon reasonable notice to Tenant and coordination of an appropriate time for the inspection with Tenant, Landlord shall have access to the Premises for purposes of showing the Premises to current or prospective lenders, to prospective purchasers of the Building, and, during the twelve-month period preceding the expiration of the Term of this Lease, to prospective tenants.

13. TENANT ALTERATIONS AND SIGNAGE

13.1 Alterations. Tenant may from time to time at its own expense make changes, additions and improvements in the Premises, provided that any such change, addition or improvement shall:

(a) comply with the requirements of any governmental or quasi-governmental authority having jurisdiction (including, without limitation, the ADA), with the requirements of Landlord's insurance carriers, and with Landlord's safety and access requirements, including restrictions on flammable materials and elevator usage;

(b) not be commenced until Landlord has received satisfactory evidence that all required permits have been obtained;

(c) be made only with the prior written consent of Landlord (which may be withheld in Landlord's sole discretion, to the extent it relates in Landlord's opinion to the structure or electrical, HVAC, plumbing or fire sprinkler systems of the Building, but which otherwise shall not be unreasonably withheld);

(d) be constructed in good workmanlike manner and conform to complete working drawings prepared by a licensed architect and submitted to and approved by Landlord;

(e) be of a quality that equals or exceeds the then current standard for the Building and comply with all building, fire and safety codes;

(f) be carried out only during hours approved by Landlord by licensed contractors selected by Tenant and approved in writing by Landlord, who shall deliver to Landlord, before commencement of the work, performance and payment bonds as well as proof of workers' compensation and general liability insurance coverage, including coverage for completed operations and contractual liability, with Landlord and its agents and designees named as additional insureds, in amounts, with companies, and in form reasonably satisfactory to Landlord, which shall remain in effect during the entire period in which the work shall be carried out. Notwithstanding the foregoing, only subcontractors specifically approved by Landlord may be used to make connection with the Building's main electrical, plumbing or HVAC systems, except connections to circuit panels, pipes or ducts within the Premises; and

(g) upon completion, be shown on accurate "as built" reproducible drawings delivered to Landlord.

Notwithstanding any provision herein, in no event shall Landlord's consent be required for Tenant alterations costing less than \$25,000 provided that such alterations comply with Sections 13.1 (a) - (f). Tenant shall notify Landlord of its intention to construct improvements.

13.2 Tenant Installations. Tenant may install in the Premises its usual trade fixtures and personal property in a proper manner, provided that no installation shall interfere with or damage the mechanical or electrical systems or the structure of the Building. Landlord may require that any work that may affect structural elements or mechanical, electrical, heating, air conditioning, plumbing or other systems be performed by Landlord at Tenant's cost or by a contractor designated by Landlord.

13.3 Signs. Tenant shall not place or permit to be placed any sign, picture, advertisement, notice, lettering or decoration on any part of the outside of the Premises or anywhere in the interior of the Premises which is visible from the outside of the Premises without Landlord's prior written approval. Tenant shall be entitled, at Landlord's expense, to an entry in the Building directory maintained by Landlord and, at Tenant's expense, to a building standard entry sign by the entry door to the Premises. Tenant shall also be entitled to install and maintain at Tenant's expense, including permits (which may be paid from the Tenant Improvement Allowance), one (1) exterior sign on the West side of the Building facing the 101 Freeway; one (1) exterior sign on the South facing side of the Building provided that City of Scottsdale approval is obtained; and signs on the west facing screen wall as and to the extent allowed by Scottsdale and subject to Landlord's reasonable approval as to location and design.

Landlord reserves the right to approve all signage prior to installation. See Exhibit F attached hereto for the approved locations of signage.

13.4 Mechanics Liens. Tenant shall pay before delinquent all costs for work done or caused to be done by Tenant in the Premises which could result in any lien or encumbrance on Landlord's interest in the Building or any part thereof, shall keep the title to the Building and every part thereof free and clear of any lien or encumbrance in respect of such work, and shall indemnify and hold harmless Landlord and Landlord's agents and employees against any claim, loss, cost, demand or legal or other expense, whether in respect of any lien or otherwise, arising out of the supply of material, services or labor for such work. Tenant immediately shall notify Landlord of any such lien, claim of lien or other action of which it has or reasonably should have knowledge and that affects the title to the Building or any part thereof and shall cause it to be removed by bonding or otherwise within ten (10) days, failing which Landlord may take such action as Landlord deems necessary to remove it and the entire cost thereof shall be immediately due and payable by Tenant to Landlord.

14. ASSIGNMENT AND SUBLETTING

14.1 Consent Required. Tenant shall not assign its interest under this Lease nor sublet all or any part of the Premises without Landlord's prior written consent, which shall not be unreasonably withheld and shall be delivered within ten (10) business days of Tenant's written submittal provided pursuant to Section 14.3. Tenant shall not at any time pledge, hypothecate, mortgage or otherwise encumber its interest under this Lease as security for the payment of a debt or the performance of a contract. Tenant shall not permit its interest under this Lease to be transferred by operation of law. Any purported assignment or sublease made without Landlord's consent shall be void. No consent shall constitute consent to any further assignment or subletting.

14.2 Indirect Transfers. Any change in the identities of the individuals owning or controlling Tenant (by transfers of interests or admission of new members or partners), such that less than fifty percent (50%) of such aggregate ownership and control is at any time held by the individuals who owned and controlled Tenant as of the date of this Lease, shall constitute an assignment subject to Landlord's prior consent for purposes of Section 14.1. Notwithstanding the foregoing, Tenant may assign or sublet all or any part of this Lease and/or the Premises without Landlord's consent, to related entities, that is, entities controlled by, controlling or under common control with Tenant including entities into which Tenant is merged or consolidated or to an entity to which a substantial portion of Tenant's assets are transferred.

14.3 Requests for Approval. Landlord shall be under no obligation to decide whether consent will be given or withheld unless Tenant has first paid to Landlord \$750 as a review fee and has provided to Landlord: (a) the name and legal composition of the proposed assignee or subtenant and the nature of its business; (b) the use to which the proposed assignee or subtenant intends to put the Premises; (c) the terms and conditions of the proposed assignment or sublease and of any related transaction between Tenant and the proposed assignee or subtenant; (d) information related to the experience, integrity and financial resources of the proposed assignee or subtenant; (e) such information as Landlord may request to supplement, explain or provide details of the matters submitted by Tenant pursuant to subparagraphs (a) through (d).

Landlord shall not unreasonably withhold or delay consent and Landlord's consent shall be deemed given if Landlord has not given notice of its objection in reasonable detail within ten (10) days of Tenant's request.

14.4 Continued Responsibility. Tenant shall remain liable for performance of this Lease, notwithstanding any assignment or sublease, for the entire Lease Term provided, however, that in the case of an assignment approved by Landlord or expressly authorized by this Lease, Tenant shall be secondarily liable and shall be responsible solely for payment of Rent that Landlord is not able to collect from the current Tenant.

14.5 Excess Proceeds. If consent to an assignment or sublease is given, Tenant shall pay to Landlord, as additional rent, one half of all amounts received from the assignee or subtenant in excess of the amounts otherwise payable by Tenant to Landlord with respect to the space involved, measured on a per square foot basis.

14.6 Limitations. Without limiting appropriate grounds for withholding consent, it shall not be unreasonable for Landlord to withhold consent: (i) if the proposed assignee or subtenant is a tenant in another building owned by Landlord, (ii) if the proposed assignee or subtenant is a governmental agency, (iii) if the proposed assignee or subtenant is a direct competitor of Landlord or an affiliate of Landlord; (iv) if the use by the proposed assignee or subtenant would contravene this Lease, applicable deed restriction, any underlying lease, any restrictive use covenant or exclusive rights granted by Landlord; (v) if the proposed assignee or subtenant does not intend to occupy the Premises for its own use; or (vi) if the nature of the proposed assignee or subtenant is not compatible with the character of the Building.

14.7 Recapture Option. At Landlord's option, instead of consenting or withholding consent to a proposed assignment, Landlord may elect, by written notice to Tenant, to terminate this Lease as of the date or estimated date that the assignment would have been effective, and Landlord may, but shall not be required to, enter into a direct lease with the proposed assignee. Upon any such termination, Tenant shall have no further liability to Landlord from and after the date of termination of this Lease.

14.8 Transfer by Landlord. Upon a sale or other transfer of the Building and/or Parking Areas by Landlord, Landlord's interest in this Lease shall automatically be transferred to the transferee, the transferee shall automatically assume all of Landlord's obligations under this Lease accruing from and after the date of transfer, and the transferor shall be released of all obligations under this Lease arising after the transfer. Landlord shall promptly notify Tenant of any sale or other transfer of the Building and/or Parking Areas. Tenant shall upon request attorn in writing to the transferee.

15. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT

15.1 Subordination. Landlord represents that as of the execution of this Lease, the only holder of a lien of any kind on RCC IV that is superior to this Lease (including, without limitation, any lessor under a ground lease) is currently iStar Financial, Inc. On or before the Commencement Date for the Initial Premises and as a condition to the effectiveness of Tenant's obligations under this Lease, Landlord will deliver to Tenant a commercially reasonably

subordination, non-disturbance and attornment agreement ("SNDA") executed by such superior lien holder agreeing in substance that, so long as Tenant is not in default under the terms of this Lease, its tenancy and all of its rights hereunder will not be disturbed through the term of this Lease and any extensions thereof, which agreement shall be substantially in the form of Exhibit G.

If Tenant is required to subordinate its interests under the Lease to the lien of any mortgage or deed of trust or to any lien holder in the future, Tenant's obligation to subordinate its interest is conditioned upon any such lien holder or prospective lien holder providing Tenant with a commercially reasonable non-disturbance agreement in the form attached hereto as Exhibit G or such other form as is reasonably satisfactory to Tenant which, in substance, agrees that so long as Tenant is not in default under the terms of this Lease, its tenancy for the use and purposes herein described and all rights granted to Tenant hereunder will not be disturbed and will remain in full force and effect throughout the Term of this Lease and any extensions thereof. If Landlord or its lien holders requests that Tenant enter into a SNDA more than once in any calendar year, Landlord shall pay to Tenant \$750 for Tenant's cost to review each such additional agreement.

Landlord shall reimburse Tenant for any attorneys' fees, reasonably incurred by Tenant: (i) as a result of Tenant having been involuntarily made a party to any civil action for the enforcement of loan documents by any lender holding a mortgage or deed of trust encumbering the Building; or (ii) in connection with any replacement lease that is entered into by Tenant and a successor owner of the Building pursuant to the terms of an SNDA.

15.2 Lender Protection. Upon a transfer in connection with foreclosure or trustee's sale proceedings or in connection with a default under an encumbrance, whether by deed to the holder of the encumbrance in lieu of foreclosure or otherwise, Tenant, if requested, shall in writing attorn to the transferee, but the transferee shall not be:

- (a) subject to any offsets or defenses which Tenant might have against Landlord;
- (b) bound by any prepayment by Tenant of more than one month's installment of rent;
- (c) obligated to perform any construction obligations; or
- (d) subject to any liability or obligation of Landlord except those arising after the transfer.

15.3 Documentation. The subordination provisions of this Article shall be self-operating and no further instrument shall be necessary. Nevertheless Tenant, on request, shall execute and deliver any and all instruments further evidencing such subordination, provided that the documents do not modify the terms of this Lease.

15.4 Other Transactions. Landlord may at any time and from time to time grant, receive, dedicate, relocate, modify, surrender or otherwise deal with easements, rights of way, restrictions, covenants, equitable servitudes or other matters affecting the Building without notice to or consent by Tenant, provided that the same do not have a material adverse affect on

Tenant or alter Tenant's right to use the Parking Areas and Building Common Areas existing on the Commencement Date for the Initial Premises.

16. ESTOPPEL CERTIFICATES AND FINANCIAL STATEMENTS

Tenant shall at any time within ten (10) business days after written request from Landlord execute, acknowledge and deliver to Landlord a statement in writing: (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any; (b) confirming the commencement and expiration dates of the Term; (c) confirming the amount of the security deposit held by Landlord; (d) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; (e) confirming, if tenant improvements to be installed by Landlord have not been completed, that Tenant will take possession of the Premises upon completion of such tenant improvements; and (f) confirming such other matters as to which Landlord may reasonably request confirmation. Any such statement may be conclusively relied upon by a prospective purchaser or lender with respect to the Building. If Landlord desires to finance or refinance the Building, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statement shall include the past three (3) years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

17. QUIET ENJOYMENT

If Tenant pays the rent and observes and performs the terms, covenants and conditions contained in this Lease, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord, or any other person lawfully claiming by, through or under Landlord.

18. SURRENDER AND HOLDOVER

18.1 Surrender. Upon the expiration or termination of this Lease or of Tenant's right to possession, Tenant shall surrender the Premises in a clean undamaged condition, reasonable wear and tear and damage by casualty excepted, and shall remove all of Tenant's equipment, fixtures and property, including without limitation all voice and data wiring and cabling installed by Tenant, and repair all damage caused by the removal. Tenant shall not remove permanent improvements that were provided by Landlord at the commencement of this Lease and shall not remove permanent improvements later installed by Tenant. Tenant shall not be required to remove any Tenant Improvements described in Exhibit C or to restore or remove any other alterations or improvements expressly authorized by Landlord or approved pursuant to this Lease, except for the Tenant's Building mounted and any monument signs.

18.2 Holdover. If Tenant holds over without Landlord's consent, Tenant shall, at Landlord's election, be a tenant at will or a tenant from month-to-month. In either case rent shall be payable monthly in advance at a rate of 100% the rate in effect immediately before the holdover began for the first three (3) months and 125% of such rate thereafter. A holdover

month-to-month or at will tenancy may be terminated by either party as of the first (1st) day of a calendar month upon at least thirty (30) days' prior notice. Upon a termination under this Section, unearned rent shall be refunded following the surrender of possession provided Tenant is not otherwise in breach of this Lease.

19. BREACH, DEFAULT, AND REMEDIES

19.1 **Default.** The following shall constitute "Events of Default" by Tenant:

- (a) Tenant fails to pay rent or any other amount due under this Lease within ten (10) days after notice of nonpayment; or
- (b) Tenant fails to execute, acknowledge and return a subordination agreement under Article 15 or an estoppel certificate or financial statements under Article 16 within thirty (30) days after request; or
- (c) Tenant breaches any other obligation under this Lease and fails to cure the breach within twenty (20) days after notice of nonperformance; provided, however, that if the breach is of such a nature that it cannot be cured within twenty (20) days, no Event of Default shall be deemed to have occurred by reason of the breach if cure is commenced promptly and diligently pursued to completion within a period not longer than ninety (90) days; and provided further, that in the event of a breach involving an imminent threat to health or safety, Landlord may in its notice of breach reduce the period for cure to such shorter period as may be reasonable under the circumstances.

19.2 **Remedies.** Upon the occurrence of an Event of Default, Landlord, at any time thereafter without further notice or demand may exercise any one or more of the following remedies concurrently or in succession:

- (a) Terminate Tenant's right to possession of the Premises by legal process or otherwise, with or without terminating this Lease, and retake exclusive possession of the Premises.
- (b) From time to time relet all or portions of the Premises, using reasonable efforts to mitigate Landlord's damages. In connection with any reletting, Landlord may relet for a period extending beyond the term of this Lease and may make alterations or improvements to the Premises without releasing Tenant of any liability. Upon a reletting of all or substantially all of the Premises, Landlord shall be entitled to recover all of its then prospective damages for the balance of the Lease Term measured by the difference between amounts payable under this Lease and the anticipated net proceeds of reletting.
- (c) From time to time recover accrued and unpaid rent and damages arising from Tenant's breach of the Lease, regardless of whether the Lease has been terminated, together with applicable late charges and interest at the rate of 15% per annum or the highest lawful rate, whichever is less.
- (d) Recover all costs, expenses and attorneys' fees incurred by Landlord in connection with enforcing this Lease, recovering possession, reletting the Premises or collecting

amounts owed, including, without limitation, costs of alterations, brokerage commissions, and other reasonable and customary costs incurred in connection with any reletting.

(e) Perform the obligation on Tenant's behalf and recover from Tenant, upon demand, the entire amount expended by Landlord.

(f) Pursue other remedies available at law or in equity.

19.3 Limited Recourse. Notwithstanding anything to the contrary in this Lease, neither Landlord nor Landlord's directors, officers, shareholders, employees, agents, constituent partners, beneficiaries, trustees, representatives, successors or assigns (collectively, "Landlord's Affiliates") shall be personally responsible or liable for any representation, warranty, covenant, undertaking or agreement contained in the Lease, and the sole right and remedy of the Tenant or any subsequent sublessee or assignee shall be against Landlord's interest in the Building. Neither Tenant nor any subsequent sublessor or assignee shall seek to obtain any judgment imposing personal liability against Landlord, Landlord's Affiliates, or their successors or assigns nor execute upon any judgment or place any lien against any property other than Landlord's interest in the Building.

19.4 Tenant's Self Help Rights. Except as provided in Section 12.5, with respect to Interruption of Services, if Landlord shall fail to perform any duties or obligations imposed upon it by this Lease and such default shall continue for a period of thirty (30) days after written notice is given by Tenant to Landlord, then Tenant may exercise all its remedies available at law or in equity. In addition, if a default by Landlord involves a condition within the Premises that is not cured within ten (10) business days after written notice from Tenant to Landlord of its intention to resort to self-help (or such longer period not to exceed thirty (30) days as is reasonably required to complete the cure) then, and in such event, Tenant may, at its option, cure such default at its own expense and either deduct the actual cost of such cure from future Base Rent payments or invoice Landlord for such amount, which invoice shall be paid within ten (10) days of Landlord's receipt of same; provided, however, that Tenant's right of self-help shall not extend to the repair or replacement of components of the Building's mechanical, electrical or plumbing systems. Any amount not paid by Landlord to Tenant when due shall bear interest at the rate set forth in Section 19.2.

20. NOTICES

Any notice or communication given under the terms of this Lease shall be in writing and shall be delivered in person, sent by any public or private express delivery service, or deposited with the United States Postal Service or a successor agency, certified or registered mail, return receipt requested, postage pre-paid, addressed (a) to Tenant at the address set forth in Section 1.14, or (b) to Landlord at the address set forth in Section 1.15 or at such other address as a party may from time to time designate by notice hereunder. Notice shall be effective upon delivery. The inability to deliver a notice because of a changed address of which no notice was given or a rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

21. BROKERAGE

Tenant warrants and represents to Landlord that no broker or other person is entitled to claim a commission, broker's fee or other compensation based on its representation of Tenant in connection with this Lease other than The Staubach Company. Landlord warrants and represents to Tenant that no broker or other person is entitled to claim a commission, broker's fee or other compensation based on its representation of Landlord in connection with this Lease other than Cavan Realty, Inc. Landlord and not Tenant is solely responsible to pay all brokerage commissions and/or other compensation payable to The Staubach Company and Cavan Realty, Inc. in connection with this Lease and Landlord hereby agrees to indemnify and hold Tenant harmless for, from and against liability for same. Tenant and Landlord shall each defend, indemnify and hold the other harmless for, from and against all claims or liabilities arising from any breach of its foregoing representations and warranties.

22. RELOCATION - INTENTIONALLY OMITTED

23. GENERAL

23.1 Severability. If any term, covenant or condition of this Lease, or the application thereof, is to any extent held or rendered invalid, it shall be and is hereby deemed to be independent of the remainder of the Lease and to be severable and divisible therefrom, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of the Lease or any part thereof.

23.2 No Waiver. The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or of any other term, covenant or condition contained in this Lease. The subsequent acceptance of rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of rent. No term, covenant or condition of this Lease shall be deemed to have been waived unless such waiver is in writing.

23.3 Effect of Payment. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly payment of rent herein stipulated is deemed to be other than on account of the earliest stipulated rent, nor is any endorsement or statement on any check or any letter accompanying any check or payment of rent deemed an acknowledgment of full payment or accord and satisfaction, and Landlord may accept and cash any check or payment without prejudice to Landlord's right to recover the balance of the rent due and pursue any other remedy provided in this Lease.

23.4 Force Majeure. If either party is delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reasons of strikes, labor troubles, inability to procure materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, acts or omissions of the other party, or other reason whether of a like nature or not that is beyond the control of the party affected, financial inability excepted, then the performance of that term, covenant or act is

excused for the period of the delay and the party delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. Nothing in this Section, however, shall excuse Tenant from the prompt payment of any amount payable under this Lease nor from the consequences of Tenant Delay as provided in Exhibit C.

23.5 Lender Notice. In the event of a material default by Landlord of a sufficiently serious nature that Tenant considers the utility of the Premises to Tenant to be significantly impaired, Tenant shall give written notice of the default to Landlord and shall simultaneously send a copy of the notice to the holder of any encumbrance, the name and address of whom has previously been furnished in writing to Tenant. If Landlord fails to cure the default within a reasonable time, Tenant shall send a second notice to that effect to the holder of the encumbrance, with a copy to Landlord, and the holder of the encumbrance then shall have a reasonable time, not less than thirty (30) days, to cause the default to be remedied. The foregoing shall not limit Tenant's "self help" remedies expressly provided in Section 19.4.

23.6 No Recording. Neither this Lease nor any memorandum thereof shall be recorded.

23.7 No Offer. The submission of this Lease for examination does not constitute a reservation of an option to lease the Premises, and this Lease becomes effective as a lease only upon its execution and delivery by Landlord and Tenant.

23.8 Successors. All rights and liabilities under this Lease extend to and bind the successors and assigns of Landlord and permitted successors and assigns of Tenant. No rights, however, shall inure to the benefit of any transferee of the Tenant unless (a) the transfer has been consented to by the Landlord in writing as provided in Section 14.1 or (b) consent of Landlord is not required by the express terms of this Lease. If there is more than one Tenant, they are all bound jointly and severally by the terms, covenants and conditions of this Lease.

23.9 Integration. This Lease and the Exhibits hereto attached, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no other covenants, promises, agreements, conditions or understandings, either oral or written, between them. No alteration, amendment or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by Tenant and Landlord.

23.10 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Arizona without regard to its conflict of law provisions.

23.11 Deadlines Enforceable. Time is of the essence of this Lease and of every part hereof.

23.12 Counterparts. This Lease may be executed in counterparts, which together shall constitute a single instrument.

24. MISCELLANEOUS

24.1 First Right of Refusal. Provided Tenant is not in default under the Lease, and subject to the prior rights of other tenants of the Building, Tenant shall have and is hereby granted an ongoing right of first refusal to lease any space available on the ground floor of the Building (the "Additional Space"). Tenant must accept or reject Landlord's written notice that Additional Space is available to Tenant for Lease within five (5) business days after delivery of such notice by Landlord. If Tenant accepts within the required time frame, Landlord and Tenant will promptly execute a Lease for the Additional Space. If Tenant does not accept within the required time frame, then, unless Landlord does not lease the Additional Space to the subject third party, Tenant's right of first refusal will lapse with regard to the Additional Space for such period of time that the Additional Space is being leased to the subject third party. If Tenant leases Additional Space within the first twenty four (24) months of the term, the terms and conditions by which the space is to be leased shall be the same as the terms of this Lease including, but not limited to, the rental rate and the pro-rated Tenant Improvement Allowance, concessions and leasing commissions. Thereafter, the terms and conditions shall be at Market Rate as described in Section 2.6.

24.2 Termination Option. Tenant shall have the right to terminate the Lease on all or a portion of the Premises then under lease at the end of the sixtieth (60th) month of the Lease Term subject to nine (9) months prior written notice from Tenant to Landlord. Landlord shall calculate a termination fee for unamortized Tenant Improvements and Brokerage Fees associated with the terminated space. The amortization shall be at an annual rate of 7%, with such amounts evenly amortized over the initial ten (10) year Term of the Lease. In such calculation, Tenant shall receive a credit for any amounts previously paid to Landlord as described in Section 1.13.

24.3 Backup Power Source. Landlord agrees that Tenant shall have, during the term of this Lease, a non-exclusive license (the "License") to install and thereafter maintain and operate a generator as a backup power source. Tenant shall provide Landlord with specifications that are prepared by Tenant's architect and/or engineers for its generator within thirty (30) days following the Date of Lease. Landlord shall install, at Landlord's expense, a pad for Tenant's generator that complies with Tenant's specifications, within ninety (90) days following receipt of Tenant's specifications for the generator. The location of the pad shall be approximately as shown on Exhibit B-1. Landlord and Tenant acknowledge and agree that the pad for Tenant's generator may also be used by another tenant for its generator provided that: (i) the conduit for each generator will be separate from the conduit for any other generators located within RCC IV; (ii) there will be a demising wall located between the two generators sharing the pad; (iii) Landlord shall also construct an enclosure wall around the pad with gates allowing separate access to each generator; and (iv) Tenant and the owner of the other generator will each pay one-half the cost of the demising wall, the enclosure walls and gates, which cost, in the case of Tenant, will be charged against the Tenant Improvement Allowance. Tenant will be responsible to insure the equipment being installed at the Landlord provided pad. The hours for power source testing of the generator, as part of Tenant's regular maintenance, is restricted to between 9:00am and 6:00pm. Tenant shall also be responsible for notifying Landlord of any chemical or gasoline spills associated with the generator caused by Tenant or its vendors. Tenant will also be responsible for the cost associated with environmental clean up if required by the governing agency. Landlord shall have the right to relocate Tenant's generator at the sole cost of the

Landlord provided that the new location is approved by Tenant and the efficiency and operation of the generator is not impaired by such relocation.

24.4 Move-In and Move-Out Charges. Tenant shall not be charged for any supervision, guard service or other fees for its initial move-in and move-out at the expiration of the Term.

TENANT:

LASER SPINE SURGERY CENTER OF ARIZONA, LLC, an Arizona limited liability company

By: Phil Garcia

Name: Phil Garcia

Its: Managing Member

LANDLORD:

RCC SOUTH, LLC,

a Delaware limited liability company

By: Cavan Management Services, L.L.C., an Arizona limited liability company, its Manager

By: George D. Matthew

Name: GEORGE D. MATTHEW

Its: V.P.

Confidentially Provided by
Bob Brittingham
CYPRESS Office Properties
74.87.28.94
06/25/2018 9:46 AM

EXHIBIT A

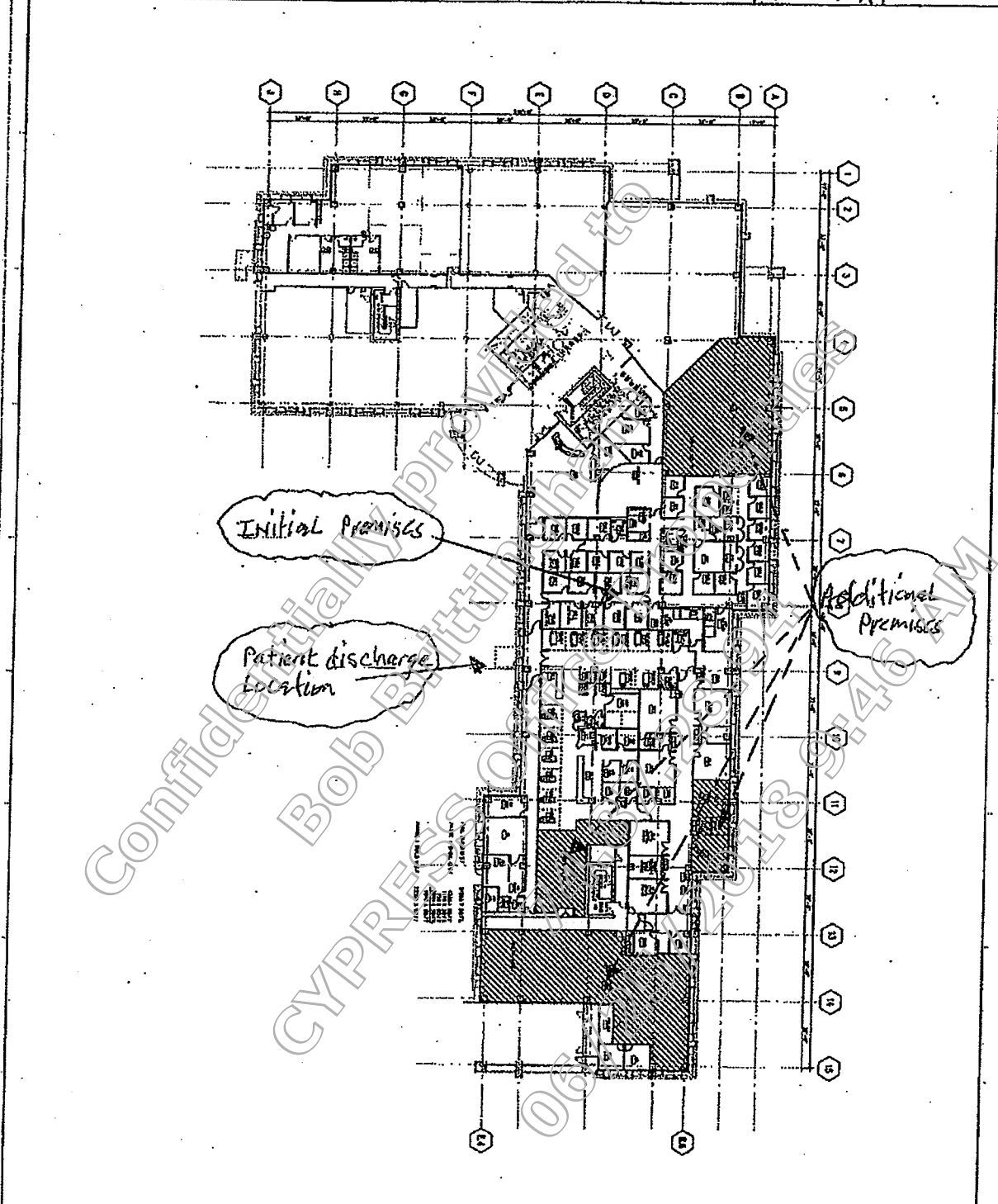
THE PREMISES

(Showing Initial Premises and Additional Premises)

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Bob Brittingham
CYPRESS Office Properties
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Exhibit A.



SK-1
CONCEPT PLAN
PHASE ONE

NOT FOR CONSTRUCTION

06-21-2013 13:46 AM

Lasert Spine
Institute

EXHIBIT B

**SITE PLAN, SHOWING THE BUILDING, PARKING AREAS AND PARKING
STRUCTURE**

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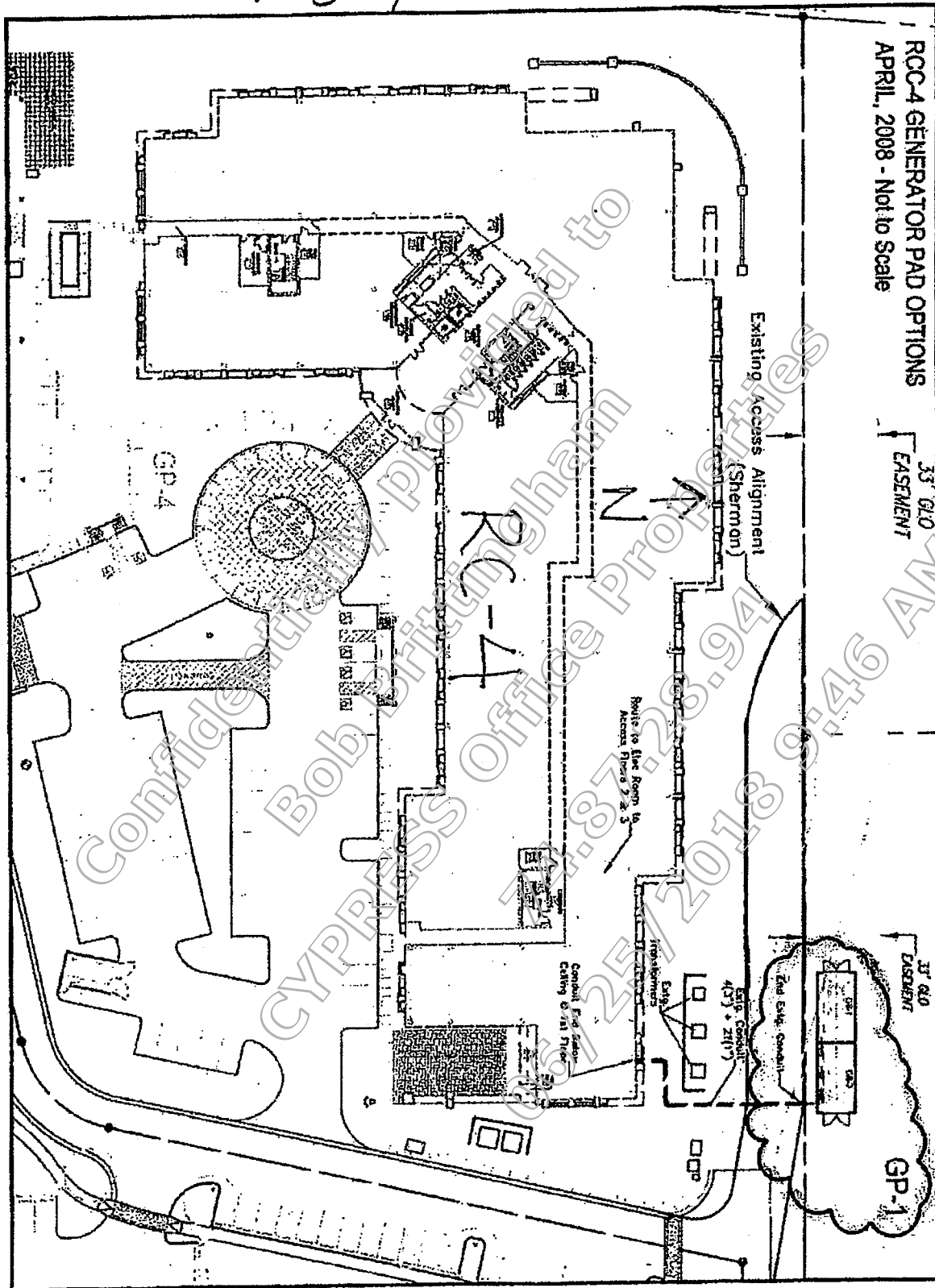


EXHIBIT C

CONSTRUCTION PROVISIONS

1. **Preliminary Space Plan.** Attached to this Lease as Exhibit A is a preliminary space plan approved by Landlord and Tenant showing the size, nature and location of the improvements to be constructed in the Premises (the "Tenant Improvements"). Promptly following execution of this Lease, Tenant shall meet with Tenant's architect and shall provide such information and make such selections as may be necessary for the expeditious completion of the planning process.

2. **Working Drawings.** Based upon the preliminary space plan and the information provided and selections made by Tenant, Tenant shall cause working drawings and specifications (collectively, the "Plans") to be prepared for the Tenant Improvements. The Plans shall be consistent with the Building design standards as established by Landlord and provided to Tenant prior to the Date of the Lease (unless a departure therefrom is approved by both parties). The Plans shall be subject to the reasonable approval of both parties. Landlord's architect shall review construction documents prior to permitting at a not to exceed cost of \$1,000.00. Such cost shall be paid out of the Tenant Improvement Allowance. Except as specifically noted on the approved Plans, all materials and finishes shall be those established as the standard for the Building. Tenant shall have the right to select a construction management consultant and the architect for space planning and the costs of same shall be included in the Tenant Improvement Allowance.

3. **Cooperation.** During the entire course of the process described above, both Landlord and Tenant shall review and respond to submissions by the other party with reasonable dispatch. Landlord shall respond with its approval or comments within five (5) business days after receipt of initial drawings, specifications, or other materials requiring Landlord's review or approval and within three (3) business days after receipt of revised versions of such documents or materials. Landlord's failure to provide timely approval or comments shall be deemed approval of Tenant's request. From time to time at the request of either party, Landlord and Tenant shall devise, and revise as necessary, working schedules for the preparation of the Plans and the construction of the Tenant Improvements. Tenant shall cause Contractor (defined below) to (a) coordinate with Landlord's contractors and their subcontractors and (b) not unreasonably interfere with or delay completion of the work to be performed by Landlord in the Premises or elsewhere in the Building. Subject to coordination with the Landlord, Contractor shall have a right of access to electrical equipment rooms, above ceiling areas and risers that are part of the Common Areas.

4. **Construction.**

(a) Landlord, at Landlord's sole cost and expense, shall deliver the Premises with the Base Building, including, without limitation, the base building structural and mechanical systems completed in a good, workmanlike manner on the Date of Lease. Landlord shall not charge any fees for the management of the Base Building improvements or Tenant Improvement Work or any future alterations or work required by Tenant.

(b) Tenant shall retain a contractor ("Contractor") approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Landlord hereby pre-approves any of Gilbane, Inc., Barton-Malow Company and Jokake Construction Company, as Contractor. Tenant shall submit to Landlord the construction contract between Tenant and Contractor for construction of the Tenant Improvements (the "TI Contract"). The TI Contract shall contain a lump sum, guaranteed maximum price or other estimate of the Costs of Construction (such amount, "Tenant's Estimate").

(c) From and after delivery of the Premises by Landlord pursuant to Section 4(a) above, Landlord agrees to provide Tenant with occupancy of the entire Premises for the purpose of constructing the Tenant Improvements, installing furniture, fixtures and equipment, or any other work that Tenant deems necessary to prepare the Premises. Such early occupancy shall also include access to and use of parking facilities and padded elevator(s), as well as access to and use of appropriate electrical and other systems and related facilities. Without liability for additional rental or any other charges therefore, except as expressly stated herein or in Section 7 of the Lease, Tenant and its vendors shall be permitted at its sole cost and expense to use the Building's risers, telecommunication areas and the percentage of the roof equal to Tenant's Percentage Share of the Building, in locations selected by Tenant, to install and operate communications equipment, including a satellite dish, provided that such equipment complies with all applicable governmental rules, regulations, ordinances and codes. Tenant shall not permit Contractor or any other supplier, installer, contractor or other person employed by Tenant to unreasonably disturb the other tenants of the Building. Tenant may initiate the Tenant Improvement work on both the Initial Premises and Additional Premises following the Date of Lease, subject to compliance with the terms of the Lease. Landlord will make the Tenant Improvement Allowance applicable to both the Initial Premises and Additional Premises available to Tenant following the Date of Lease.

(d) Landlord shall, at Landlord's expense, install a pad and conduit sleeves for Tenant's generator on grade near the Premises in approximately the location shown on Exhibit B-1 and in the time and manner described in Section 24.3. Additionally, Landlord shall make an area available for Tenant's supplemental HVAC equipment in approximately the location shown on Exhibit B-2. Tenant shall supply and maintain any generators, enclosures and HVAC equipment at Tenant's cost. Such items shall be included in the Costs of Construction.

(e) Tenant shall provide Landlord with invoices for Costs of Construction not incurred under the TI Contract. Landlord shall make payment on such invoices within (30) days of submittal so long as Landlord's payment obligations do not exceed the Tenant Improvement Allowance or the additional \$20.00 per rsf that may be amortized pursuant to Section 1.13.

(f) Tenant or Contractor shall provide Landlord with applications for payment as provided in the TI Contract. Landlord shall make payment on such applications for payment in compliance with the TI Contract and in no less than thirty (30) days of submittal, so long as Landlord's payment obligations do not exceed the Tenant Improvement Allowance or the additional \$20.00 per rsf that may be amortized pursuant to Section 1.13. Tenant shall be responsible for payment of any Costs of Construction that exceed the Tenant Improvement Allowance, including the additional \$20.00 per rsf allowance if Tenant elects to have Landlord

finance a portion of the excess expense as provided in Section 1.13, provided that the Tenant Improvement Allowance shall first be applied to payment of Costs of Construction.

(g) There shall be no charge to Tenant, its contractors or subcontractors for electricity, heating, ventilation, air conditioning, security, insurance (except as it relates to work that Tenant and/or its contractors or their subcontractors may undertake in the Premises), use of the loading dock and of freight elevators or the personnel required for operation thereof, prior to the Rent Commencement Dates applicable to the Initial Premises, Additional Premises and any other space leased by Tenant during the Term.

(h) Landlord agrees that Tenant may locate a shade structure outside the patient discharge exit door in compliance with applicable health laws provided that: (i) the structure is not attached to the Building, and (ii) Landlord approves the design of the structure, which approval will not be unreasonably withheld or delayed.

5. **Cost.** If Tenant's Estimate exceeds the Tenant Improvement Allowance, if Tenant elects to have Landlord finance a portion of such excess expense as set forth in Section 1.13, Landlord shall amortize the additional Tenant Improvement costs as provided in Section 1.13 of the Lease. Any difference between actual and estimated Costs of Construction shall be paid or refunded, as the case may be, within ten (10) days after delivery of an accounting of Costs of Construction by Tenant to Landlord. Tenant's records of Costs of Construction shall be available for inspection by Landlord upon request. "Costs of Construction" of the Improvements as used in this Article means all hard and soft costs and expenses incurred by Tenant to design and build the Tenant Improvements, including, without limitation, permit and inspection fees, management and supervision fees, taxes, amounts paid to contractors, subcontractors, and suppliers, architects' fees, engineering costs, communication cabling costs, premiums for bonds and insurance, utilities, equipment rental, demolition, labor, materials, and supplies. "Costs of Construction" shall not include the cost of work that constitutes part of the Base Building, as defined in Exhibit C-1, all of which shall be performed by Landlord at its sole cost and expense, but shall include costs of design or construction of alterations to the Base Building requested by Tenant.

6. **Punchlist.** Within ten (10) days after Tenant's notice to Landlord that the Tenant Improvements are substantially complete, Landlord and Tenant shall conduct a joint walk through and inspection of the portion of the Tenant Improvement work that connects with or otherwise affects common areas and Building systems including plumbing and mechanical equipment, and Landlord shall deliver to Tenant a written punchlist specifying all defects in materials or workmanship in such Tenant Improvements within five (5) business days of such walk through. Tenant shall promptly cause all matters appearing on the punchlist to be corrected.

7. **Delay.**

(a) If the Commencement Date is delayed by Tenant Delay, then the applicable Rent Commencement Date shall be determined as if the Commencement Date had not been delayed due to Tenant Delay and rent shall begin to accrue as of the date when the Rent Commencement Date would have occurred but for the Tenant Delay. "Tenant Delay" means

delay related to design or performance of alterations to the Base Building requested by Tenant that are not contemplated as Landlord obligations specified in Exhibit C.

(b) If completion of construction of Tenant Improvements or delivery of possession of the Premises is delayed by Landlord Delay, then Tenant shall receive one day of rent abatement for each day of Landlord Delay. "Landlord Delay" means delay as a result of: (i) Landlord's failure to provide comments on proposed Plans in a timely manner; (ii) Landlord's failure to deliver the Premises with the Base Building complete; (iii) Landlord's failure to timely provide Building design standards or (iv) Landlord's requested change in any Plans outside the scope of Landlord's initial comments.

8. **Moving.** Movement in and out of the Building by Tenant and Tenant's contractors of trade fixtures, equipment, furniture, merchandise or materials which require the use of stairways, elevators or the movement through Building entrances or corridors shall be restricted to 8:00am to 5:00pm, Monday through Friday and all such movement may be under supervision of Landlord at no cost to Tenant. Tenant assumes all risk of damage of said articles being moved through the Building and any injury to persons or public engaged or not engaged in such moving. Any handtrucks, carryalls or similar appliances used for delivery or receipt of merchandise or equipment shall be equipped with rubber tires, sideguards, and other safeguards as Landlord shall reasonably require.

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EXHIBIT C-1

BASE BUILDING DEFINITION

The following Base Building definition is a description of the construction obligations for which Landlord is responsible, the cost of which shall not be applied to or deducted from the Tenant Improvement Allowance, and limitations on those Landlord's construction obligations. Where types of materials or structures are described in the alternative, Landlord may make the selection. The Base Building does not include any portion of Tenant Improvements. If Landlord and Tenant subsequently agree that any Base Building improvements will be completed by Tenant's interior construction contractor, Landlord shall pay Tenant for the cost of such improvements Landlord is not required to provide and such amounts shall not be included in Costs of Construction.

A. Structure

The structural frame, columns and beams will be constructed with non-combustible materials (i.e. steel, heavy gauge metal studs) and will be designed to carry live and dead loads per plans.

B. Exterior Walls

The exterior walls shall be of concrete with brick veneer or such other material or materials as selected by Landlord.

C. Window Blinds

1" mini blinds installed inside exterior shell windows, still wrapped. (Tenant to unwrap)

D. Interior Finish

1. **Floors** - All floors will be reinforced concrete. Level concrete slab to a 1/8 inch rise or drop in 10 feet, as determined by a 10 foot straightedge placed anywhere on the slab in any direction. Any tile prep is at Tenant's expense.

2. **Ceilings** - All ceilings will be 2x2 tiles and grid or another ceiling material approved by Landlord. Landlord agrees to stockpile tile and grid for the tenant to install at Tenant's expense, or, at Tenant's option, Landlord shall provide Tenant with a credit in the amount equal to Landlord's cost, in lieu of stockpiling. Any credit shall not be included in the Costs of Construction.

3. **Lighting** - All building standard 2 X 4 parabolic light fixtures to be stockpiled, or, at Tenant's option, Landlord shall provide Tenant with a credit in the amount equal to Landlord's cost, in lieu of stockpiling. Light fixtures shall be the building standard or other lighting fixtures approved by Landlord. Any credit shall not be included in the Costs of Construction.

E. Electrical Work

Service - Landlord will provide electrical panels for standard office loads at 3 locations on each floor, with 277/480 volt 3-phase electrical service designed to provide a minimum of 23.9 watts per square foot per floor low voltage and RSF high voltage power for Tenant's sole use distributed to each floor of the Premises, including all necessary transformers, panels and breakers on the floor to support such required wattage.

F. Utilities

1. **Water** - Domestic water tie ins are available on each floor.
2. **Gas** - Not available.
3. **Sanitary Sewer** - Sewer tie in locations are available on each floor.
4. **Telephone** - Telephone rooms are provided at 3 locations on each floor.
5. **Fiber Optics** - One fiber optic room is provided on each floor.

G. Fire Sprinkler and Life Safety Systems - Fire sprinkler main line with branch line distribution and head locations per code on each floor. Distribution within Premises and adjustments to drops to ceiling tiles at Tenant's expense. All life safety systems installed per applicable codes and the ADA and fully operational.

H. Heating, Ventilation and Air-conditioning - Landlord will provide standard heating and air conditioning and heat pumps to the Premises sufficient for the space plan approved by Landlord and Tenant, excluding any 24-hour cooling area units. Distribution within the Premises will be at Tenant's expense. Any special 24 hour cooling units required for IT rooms will be at Tenant's expense.

I. Security System - Building security system installed and fully operational to control access to the Building and exterior entry and exit doors. The parking garage, elevators and security systems shall be accessed with the use of one common card.

J. Common Area Improvements - All common or public area improvements, including men's and women's restrooms, complete per code, including all building standard finishes, lobby areas including finishes.

SPECIFIC EXCLUSIONS

The following items are not part of the Base Building but are part of the Tenant Improvements:

1. **Ceilings**: All ceiling installation, including installation of ceiling grid and tiles provided by Landlord. Ceiling height between floor slab and ceiling grid will be approximately 9 feet except in areas where additional height is needed or desired by Tenant, such as café and operating rooms.

2. **Lighting:** Installation of all fixtures
3. **Interior Partitions:** All.
4. **Doors.** All doors within the interior of the Premises, excluding Tenant lobby entry doors, and any doors already installed with the base building.
5. **Floor.** Floating or additional leveling of floors is part of Tenant Improvements. All x-rays required for post tension slab.
6. **Water and Sewer.** Any extension or connection of water or sewer facilities within the Premises, such as connection to a coffee bar or to toilet rooms within the Premises.
7. **Additional Ventilation.** In addition to HVAC distribution within the Premises, any provision or equipment for special requirements for fresh air or exhaust air.
8. **Fire Sprinklers.** All additions or adaptations to the base building installation on account of Tenant's interior floor plan and special equipment installations.
9. **Communications.** All cabling and wiring, including connection to the Building's point of demarcation.
10. **Other Improvements.** All other improvements, alterations, and installations that are not specifically described as part of the Base Building in Paragraphs A through F above.

EXHIBIT D

RULES AND REGULATIONS

1. Unless otherwise specifically defined herein, all capitalized terms in these Rules and Regulations shall have the meaning set forth in the Lease to which these Rules and Regulations are attached.

2. The sidewalks, driveways, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building shall not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises demised to any tenant or occupant.

3. No awnings or other projection shall be attached to the outside walls or windows of the Building. No curtains, blinds, shades, or screens shall be attached to or hung in, or used in connection with, any window or door of the premises demised to any tenant or occupant which are visible from the exterior of the Premises, excepting the blinds provided by Landlord for the exterior windows of the Building and/or those approved by Landlord for lobby windows.

4. No tenant shall place objects against glass partitions, doors or windows that would be in sight from the Building corridors or from the exterior of the Building and such tenant will promptly remove any such objects when requested to do so by Landlord.

5. The windows and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed, nor shall any bottles, parcels, or other articles be placed on any window sills.

6. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors, walkways, landscaped areas, vestibules or other public parts of the Building.

7. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. No tenant shall bring or keep, or permit to be brought or kept, any inflammable, combustible, explosive or hazardous fluid, material, chemical or substance in or about the premises demised to such tenant. No open flames in the building including incense and candles. No live Christmas trees during the holidays.

8. No tenant or occupant shall mark, paint, drill into, or in any way deface any part of the Building or the premises demised to such tenant or occupant, except in connection with the hanging of pictures and other lightweight items on the interior walls of the Premises. No boring, cutting or strings of wires shall be permitted, except with the prior consent of Landlord, and as Landlord may direct. No tenant or occupant shall install any resilient tile or similar floor covering in the premises demised to such tenant or occupant except in a manner approved by Landlord.

9. Any carpeting cemented down by a tenant shall be installed with a releasable adhesive. In the event of a violation of the foregoing by a tenant, Landlord may charge the expense incurred in such removal to such tenant.

10. No bicycles, vehicles or animals of any kind (except assistance animals) shall be brought into or kept in or about the premises demised to any tenant. No cooking shall be done or permitted in the Building by any tenant without the written approval of Landlord, except for the use of microwave ovens in Tenants' employee break room, which shall be expressly permitted. No tenant shall cause or permit any unusual or objectionable odors to emanate from the premises demised to such tenant.

11. No space in the Building shall be used for manufacturing, for the storage of merchandise, or for the sale of merchandise, goods or property of any kind at auction.

12. No tenant shall make, or permit to be made, any unseemly or disturbing noises or vibrations or disturb or interfere with other tenants or occupants of the Building, whether by the use of any musical instrument, radio, television set broadcasting equipment or other audio device, unmusical noise, whistling, singing, or in any other way. Nothing shall be thrown out of any doors.

13. No additional locks or bolts of any kind shall be placed upon any of the doors, nor shall any changes be made in locks or the mechanism thereof. Each tenant must, upon the termination of its tenancy, return to Landlord all keys of stores, offices and toilet rooms, either furnished to, or otherwise procured by, such Tenant.

14. All removals from the Building, or the carrying in or out of the Building or from the premises demised to any tenant, of any safes, freight, furniture or bulky matter of any description must take place at such time and in such manner as Landlord or its agents may determine, from time to time. Landlord reserves the right to inspect all freight to be brought into the Building and to exclude from the Building all freight which violates any of the Rules and Regulations or the provisions of such tenant's lease.

15. No tenant or occupant shall engage or pay any employees in the Building, except those actually working for such tenant or occupant in the Building, nor advertise for day laborers giving an address at the Building.

16. No tenant or occupant shall purchase lighting maintenance, cleaning towels or other like service, from any company or person not approved in writing by Landlord.

17. Landlord shall have the right to prohibit any advertising by any tenant or occupant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon notice from Landlord, such tenant or occupant shall refrain from or discontinue such advertising.

18. Each tenant, before closing and leaving the premises demised to such tenant at any time, shall see that all entrance doors are locked and all electrical equipment and lighting fixtures are turned off. Corridor doors, when not in use, shall be kept closed.

19. Each tenant shall, at its expense, provide artificial light in the premises demised to such tenant for Landlord's agents, contractors and employees while performing janitorial or other cleaning services and making repairs or alterations in said premises.

20. No premises shall be used, or permitted to be used for lodging or sleeping, or for any immoral or illegal purposes.

21. The requirements of tenants will be attended to only upon application at the management office of Landlord. Building employees shall not be required to perform, and shall not be requested by any tenant or occupant to perform, and work outside of their regular duties, unless under specific instructions from the office of Landlord.

22. Canvassing, soliciting and peddling in the Building are prohibited and each tenant and occupant shall cooperate in seeking their prevention.

23. There shall not be used in the Building, either by any tenant or occupant or by their agents or contractors, in the delivery or receipt of merchandise, freight or other matter, any hand trucks or other means of conveyance except those equipped with rubber tires, rubber side guards and such other safeguards as Landlord may require.

24. If the premises demised to any tenant become infested with vermin, such tenant, at its sole cost and expense, shall cause its premises to be exterminated, from time to time, to the satisfaction of Landlord, and shall employ such exterminators therefor as shall be approved in writing by Landlord.

25. No premises shall be used, or permitted to be used, at any time, as a store for the sale or display of goods, wares or merchandise of any kind, or as a restaurant, shop, booth, bootblack or other stand, or for the conduct of any business or occupation which predominantly involves direct patronage of the general public in the premises demised to such tenant, or for manufacturing or for other similar purposes.

26. No tenant shall clean any window of the Building from the outside.

27. No tenant shall move, or permit to be moved, into or out of the Building or the premises demised to such tenant, any heavy or bulky matter, without the specific approval of Landlord. If any such matter requires special handling, only a qualified person shall be employed to perform such special handling. Landlord reserves the right to prescribe the weight and position of safes and other heavy objects, which must be placed so as to distribute the weight.

28. With respect to work being performed by a tenant in its premises with the approval of Landlord, the tenant shall refer all contractors, contractors' representatives and installation technicians to Landlord for its supervision, approval and control prior to the performance of any work or services. This provision shall apply to all work performed in the Building including installation of telephones, telegraph equipment, electrical devices and attachments, and installations of every nature affecting floors, walls, woodwork, trim, ceilings, equipment and any other physical portion of the Building.

EXHIBIT E

MEMORANDUM OF COMMENCEMENT DATE

THIS MEMORANDUM OF COMMENCEMENT DATE is entered into this ___ day of _____, 2008 by and between RCC SOUTH, LLC, a Delaware limited liability company (“Landlord”) and LASER SPINE SURGERY CENTER OF ARIZONA, LLC, an Arizona limited liability company (“Tenant”).

RECITALS

A. Landlord and Tenant have previously executed that certain Lease Agreement dated _____ (“Lease”), pursuant to which Tenant has leased from Landlord certain premises more particularly described therein.

B. Pursuant to the provisions of Article 2 of the Lease, Landlord and Tenant have agreed to execute this Memorandum of Commencement Date to specify the Commencement Date of the Lease term for the “Initial Premises” described in the Lease.

NOW, THEREFORE, in consideration of the foregoing recitals, the execution and delivery of the Lease and other good and valuable considerations, the receipt, sufficiency and validity which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Commencement Dates. The Commencement Date for the Initial Premises is _____, and the expiration date of the Lease is _____. The Rent Commencement Date is _____.

2. Area Measurements and Tenant’s Proportionate Share. The Rentable Area of the Initial Premises is _____ square feet and Usable Area of the Initial Premises is _____ square feet. Tenant’s Proportionate Share is _____ (_____ %) for the Initial Premises.

3. Definitions. Capitalized terms used in this Memorandum of Commencement Date without definition shall have the meanings assigned to such terms in the Lease, unless the context requires otherwise.

4. Full Force and Effect. Except as specifically modified by this Memorandum of Commencement Date, the Lease remains in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Commencement Date as of the date and year first above written.

TENANT:

LASER SPINE SURGERY CENTER, LLC
an Arizona limited liability company

By: _____
Its: _____

LANDLORD:

RCC SOUTH, LLC,
a Delaware limited liability company

By: _____
Its: _____

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EXHIBIT F
SIGN LOCATIONS

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06/25/2018 9:46 AM

LASER SPINE INSTITUTE

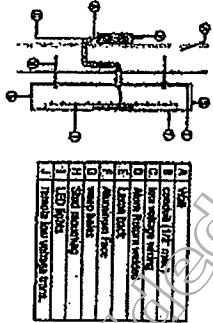
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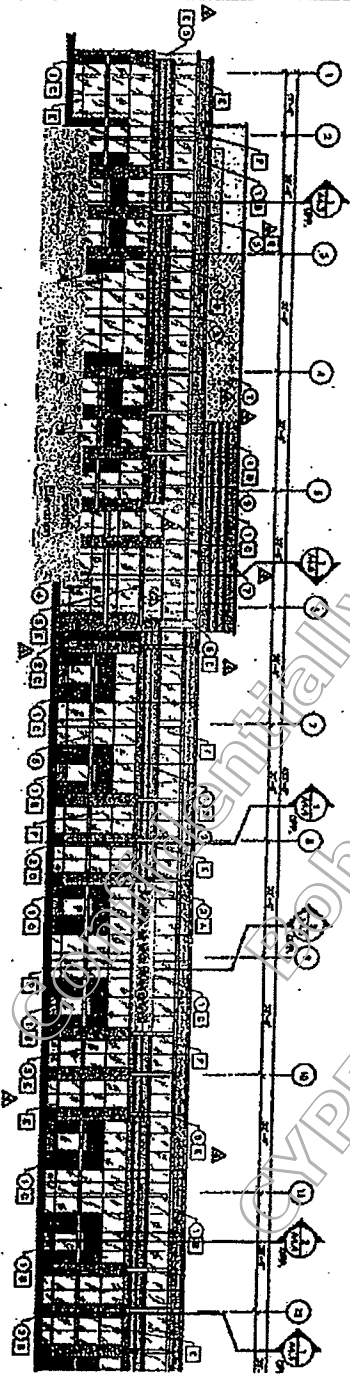
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NOTE: Red Work All Wall Sides Before Fabrication

RE: Laser Spine - Cross Section D-03



A	W/C
B	REINFORCING
C	CONCRETE
D	ALUMINUM SOG
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J	ALUMINUM SOG



LASER SPINE INSTITUTE
 10000 W. 10th Avenue, Suite 100
 Denver, CO 80231
 Phone: (303) 750-1000
 Fax: (303) 750-1001
 Website: www.laser-spine.com

08-0453

Location

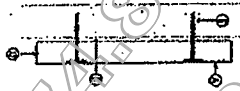
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LASERSPINE INSTITUTE



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Non-Illuminated RPS - Cross Section Detail



A	RPS REAR LETTER
B	REAR NUMBERING
C	REAR NUMBERING
D	REAR NUMBERING

TOP VIEW



Circle

LASER SPINE INSTITUTE

1001 N. 20th Ave. Aurora, CO 80012



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EXHIBIT G

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

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CYPRESS Office Properties
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EXHIBIT H

CLEANING SPECIFICATIONS

Prepared for:

Raintree Corporate Center
15333 N. Pima Drive
Scottsdale, AZ 85260

Areas to be Serviced

Entry, Lobby and Hallways

Office Areas

Restrooms

Kitchens/Break Rooms

Elevators and Stairwells

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Cleaning Specifications for:

Raintree Corporate Center

Area and Service Description	Frequency
Entry, Lobby and Hallways	
Dust and clean all fixtures and office furniture including file cabinets, desks, credenzos, countertops and display units. Properly position all furniture.	5/W
Empty all waste paper receptacles, refill and wipe down if necessary. Take all trash to designated location for removal.	5/W
Remove smudges and fingerprints from glass entrance doors and all internal glass partitions.	5/W
Vacuum all carpeted areas. Use spot cleaners on fresh spots. Note: Not all spots can be removed. Stubborn or old spots need to be shampooed.	5/W
Dust mop all hard floor surfaces.	5/W
Damp mop all hard floor surfaces.	5/W
Straighten magazines in lobby.	5/W
Dust window sills.	1/W
Sweep outside walkways.	1/W
Dust all Venetian/vertical blinds.	1/M
Office Areas	
Dust all exposed horizontal surfaces and fixtures, including desktops, files, chairs, tables, picnour and window sills.	5/W
Empty all waste paper receptacles, refill and wipe down if necessary. Take all trash to designated location for removal.	5/W
Remove smudges and fingerprints from internal glass partitions.	5/W
Glass table top desks to be cleaned with glass cleaner.	1/W
Remove spots from all doors, door frames and light switches.	1/W
+++Center Lobby Stairs 5/W	
Sweep and Damp mop, wipe metal handrails and wood bases. Spot clean partition glass.	

Cleaning Specifications for:

Raintree Corporate Center

Area and Service Description	Frequency
Office Areas con't.	
Brush down all fabric type furniture. Wipe down plastic and leather furniture.	1/M
Dust all high and low shelves, surfaces and corners beyond the reach of normal dusting.	1/M
Dust all Venetian/vertical blinds.	1/M
Dust all chairs and table legs. Clean and dust all base boards.	1/M
Clean and sanitize all telephones.	1/M
Kitchens/Break Rooms	
Clean and disinfect kitchen/lunch room tables, counters and sinks, clean outside of microwaves and refrigerators.	3/W
Remove spots from doors, door frames and light switches.	3/W
Dust all high and low shelves, surfaces and corners beyond the reach of normal dusting.	1/M
Brush down all fabric type furniture. Wipe down plastic and leather furniture.	1/M
Dust all chairs and table legs. Clean and dust base boards.	1/M
Empty waste paper receptacles, reline if necessary. Take all trash to designated location for removal. (Does not include infectious waste).	5/W
Vacuum all carpeted traffic areas, use spot cleaners on fresh spots. Note: Not all spots can be removed. Stubborn or old spots need to be shampooed.	3/W
Dust mop/steam mop all hard floor surfaces.	5/W
Restrooms	
Empty waste paper receptacles, reline if necessary. Take all trash to designated location for removal.	5/W

Cleaning Specifications for:

Raintree Corporate Center

Area and Service Description	Frequency
Restrooms con't.	
Dust mop, damp mop and disinfect all restroom floors.	3/W
Clean, disinfect and polish all restroom fixtures, dispensers, sinks, toilet bowls and urinals.	3/W
Clean all restroom mirrors and metallic surfaces.	3/W
Re-stock soap, toilet paper, paper towels, toilet seat covers and sanitary napkin dispensers.	3/W
Wash and sanitize restroom partitions.	1/W
Pour water into floor drains.	1/W
Dust window sills.	1/W
Dust all high and low surfaces beyond normal reach.	1/W
Clean and disinfect kitchen/food service tables, counters and sinks, clean outside of microwaves and refrigerators.	3/W
Elevators and Stairwells	
Clean elevator floors, walls, and push button plates.	
Remove all trash from stairwells.	
Damp wipe all handrails and ledges.	
Polish handrails, ledges and nos.	
Vacuum all carpeted stairs. Spot clean all fresh spots.	
Floor Care	
Mosby buffing of common area VCT tile.	1/M
Scrubbing of common area tile floors.	1/M
++Parking Garage 5/W	
Empty and reline trash cans	
Empty ash area	
(Includes 2 outside cans.)	

Cleaning Specifications for:

Raintree Corporate Center

Area and Service Description	Frequency
Entry, Lobby and Hallways	
Dust and clean all fixtures and office furniture including file cabinets, desks, credenzas, countertops and display units. Properly position all furniture.	5/W
Empty all waste paper receptacles, reline and wipe down if necessary. Take all trash to designated location for removal.	5/W
Remove smudges and fingerprints from glass entrance doors and all internal glass partitions.	5/W
Vacuum all carpeted areas. Use spot cleaners on fresh spots. Note: Not all spots can be removed. Stubborn or old spots need to be shampooed.	5/W
Dust mop all hard floor surfaces.	5/W
Damp mop all hard floor surfaces.	5/W
Straighten magazines in lobby.	5/W
Dust window sills.	1/W
Sweep outside walkways.	1/W
Dust all Venetian/vertical blinds.	1/M
Office Areas	
Dust all exposed horizontal surfaces and fixtures, including desktops, files, chairs, tables, pictures and window sills.	5/W
Empty all waste paper receptacles, reline and wipe down if necessary. Take all trash to designated location for removal.	5/W
Remove smudges and fingerprints from internal glass partitions.	5/W
Glass table top desks to be cleaned with glass cleaner.	1/W
Remove spots from all doors, door frames and light switches.	1/W
+++Center Lobby Stairs 5/W	
Sweep and Damp mop; wipe metal handrails and wood bases. Spot clean partition glass.	

Cleaning Specifications for:

Raintree Corporate Center

<u>Area and Service Description</u>	<u>Frequency</u>
Office Areas con't.	
Brush down all fabric type furniture. Wipe down plastic and leather furniture.	1/M
Dust all high and low shelves, surfaces and corners beyond the reach of normal dusting.	1/M
Dust all Venetian/vertical blinds.	1/M
Dust all chairs and table legs. Clean and dust all base boards.	1/M
Clean and sanitize all telephones.	1/M
Kitchens/Break Rooms	
Clean and disinfect kitchen/lunch room tables, counters and sinks, clean outside of microwaves and refrigerators.	5/W
Remove spots from doors, door frames and light switches.	5/W
Dust all high and low shelves, surfaces and corners beyond the reach of normal dusting.	1/M
Brush down all fabric type furniture. Wipe down plastic and leather furniture.	1/M
Dust all chairs and table legs. Clean and dust base boards.	1/M
Empty waste paper receptacles, reline if necessary. Take all trash to designated location for removal. (Does not include infectious waste).	5/W
Vacuum all carpeted traffic areas, use spot cleaners on fresh spots. Note: Not all spots can be removed. Stubborn or old spots need to be shampooed.	5/W
Dust mop/damp mop all hard floor surfaces.	5/W
Restrooms	
Empty waste paper receptacles, reline if necessary. Take all trash to designated location for removal.	5/W

Cleaning Specifications for:

Raintree Corporate Center

Area and Service Description	Frequency
Restrooms con't.	
Dust mop, damp mop and disinfect all restroom floors.	5/W
Clean, disinfect and polish all restroom fixtures, dispensers, sinks, toilet bowls and urinals.	5/W
Clean all restroom mirrors and metallic surfaces.	5/W
Re-stock soap, toilet paper, paper towels, toilet seat covers and sanitary napkin dispensers.	5/W
Wash and sanitize restroom partitions.	1/W
Pour water into floor drains.	1/W
Dust window sills.	1/W
Dust all high and low surfaces beyond normal reach.	1/W
Clean and disinfect kitchen/lunch room tables, counters and sinks, clean outside of microwaves and refrigerators.	5/W
Elevators and Stairwells	
Clean elevator doors, walls, and push button plates.	
Remove all trash from stairwells.	
Damp wipe all handrails and ledges.	
Dust handrails, ledges and risers.	
Vacuum all carpeted stairs. Spot clean all fresh spills.	
Floor Care	
Monthly buffing of common area VCT tile.	1/M
Scrubbing of common area tile floors.	1/M
+++Parking Garage 5/W	
Empty and reline Trash cans	
Empty ash urns	
(Includes 2 outside cans.)	