
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

INTREPID LANE ASC, LLC

TRANSCRIPT OF PROCEEDINGS

INTREPID LANE ENDOSCOPY & SURGERY CENTER PROJECT

CLOSING DATE: NOVEMBER 1, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

INTREPID LANE ASC, LLC

INTREPID LANE ENDOSCOPY & SURGERY CENTER PROJECT

INDEX OF CLOSING DOCUMENTS

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9	Company Certification re: Local Labor Policy
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14	Form ST-60 indicating appointment of the Company to act as the agent of the Agency
15	General Security Agreement
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	Items To Be Delivered By The Agency
17	General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no

litigation and continued existence, with the following items included as exhibits:

Exhibit “A” - Chapter 641 of the Laws of 1979 of the State of New York, as amended

Exhibit “B” - Certificate of Establishment of the Agency and Certificates of appointment of current members

Exhibit “C” - By-laws

Exhibit “D” - Public Hearing Resolution

Exhibit “E” - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions

Exhibit “F” - SEQRA Resolution

Exhibit “G” - Inducement Resolution

Exhibit “H” - Final Approving Resolution

Items To Be Delivered By The Company

- 18 General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:

Exhibit “A” - Articles of Organization

Exhibit “B” – Operating Agreement

Exhibit “C” - Certificate of Good Standing

Exhibit “D” – Ground Lease

Exhibit “E” – Company Resolution

Exhibit “F” - Local Access Agreement

Opinions of Counsel

- 19 Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency
- 20 Opinion of Cohen Compagni Beckman Appler & Knoll, PLLC, counsel to the Company, addressed to the Agency and the Company
- 21 Closing Memorandum

City of Syracuse Industrial Development Agency
Supplemental Application and Verification

Project Name:

Intrepid Lane Endoscopy and Surgery Center

Date:

09/03/2021

III. PROJECT COSTS & FINANCING

A. Estimated Project Costs

i. State the costs reasonably necessary for the acquisition, construction, and/or renovation of the Project:

Description of Cost Type	Total Budget Amount
Land Acquisition	0
Site Work/Demo	0
Building Construction & Renovation	3,500,000
Furniture & Fixtures	182,931
Equipment	2,748,859
Equipment Subject to NYS Production Sales Tax Exemption (Manufacturing)	
Engineering/Architects Fees	325,000
Financial Charges	35,000
Legal Fees	30,000
Other	40,000
Management /Developer Fee	0
Total Project Cost	6,861,790

ii. State the sources reasonably anticipated for the acquisition, construction, and/or renovation of the Project:

Amount of capital the Applicant has invested to date:	50,000
Amount of capital Applicant intends to invest in the Project through completion:	2,419,790
Total amount of public sector source funds allocated to the Project:	0
Identify each public sector source of funding:	
Percentage of the Project to be financed from private sector sources:	4,442,000
Total Project Cost	6,861,790

B. Financial Assistance sought (estimated values):

Applicants requesting exemptions and/or abatements from SIDA must provide the estimated value of the savings they anticipate receiving. **New York State regulations require SIDA to recapture any benefit that exceeds the amount listed in this application.**

i. Is the Applicant expecting that the financing of the Project will be secured by one or mortgages? Yes No

If yes, amount requested and name of lender:

NA

ii. Is the Applicant expecting to be appointed agent of the Agency for purposes of abating payments of NYS Sales and Use Tax? Yes No

If yes, what is the TOTAL amount of purchases subject to exemption based on taxable Project costs?

\$4,681,790

iii. Is the Applicant requesting a payment in lieu of tax agreement (PILOT) for the purpose of a real property tax abatement? Yes No

If yes, Category of PILOT requested:

iv. Is the Applicant requesting any real property tax abatement that is **inconsistent** with the Agency's UTEP?

Yes No

If yes, please contact the Executive Director prior to submission of this Application.

v. Upon acceptance of this Application, the Agency staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit based on anticipated tax rates and assessed valuation and attach such information as Exhibit A hereto. At such time, the Applicant will certify that it accepts the proposed PILOT schedule and requests such benefit be granted by the Agency.

**** This Application will not be deemed complete and final until Exhibit A hereto has been completed and executed****

C. Type of Exemption/Abatement Requested:

Amount of Exemption/Abatement Requested:

<input type="checkbox"/>	Real Property Tax Abatement (PILOT)	0
<input type="checkbox"/>	Mortgage Recording Tax Exemption (.75% of amount mortgaged)	0
<input checked="" type="checkbox"/>	Sales and Use Tax Exemption (\$4% Local, 4% State)	\$374,543
<input type="checkbox"/>	Tax Exempt Bond Financing (Amount Requested)	0
<input type="checkbox"/>	Taxable Bond Financing (Amount Requested)	0

D. Company's average yearly purchases or anticipated yearly purchases from vendors within Onondaga County, subject to sales tax:

E. Estimated capital investment over the next 5 years, beyond this Project, if available:

IV. EMPLOYMENT AND PAYROLL INFORMATION NO CHANGE FROM ORIGINAL APPLICATION

*** Full Time Equivalent (FTE) is defined as one employee working no less than 40 hours per week or two or more employees together working a total of 40 hours per week.**

A. Are there people currently employed at the Project site?

Yes No If yes, provide number of full time equivalent (FTE) jobs at the facility:

B. Complete the following:

Estimate the number of full time equivalent (FTE) jobs to be retained as a result of this Project:	<input type="text"/>
Estimate the number of construction jobs to be created by this Project:	<input type="text"/>
Estimate the average length of construction jobs to be created (months):	<input type="text"/>
Current annual payroll at facility:	<input type="text"/>
Average annual growth rate of wages:	<input type="text"/>
Please list, if any, benefits that will be available to either full and/or part time employees:	<input type="text"/>
Average annual benefit paid by the company (\$ or % salary) per FTE job:	<input type="text"/>
Average growth rate of benefit cost:	<input type="text"/>
Amount or percent of wage employees pay for benefits:	<input type="text"/>
Provide an estimate of the number of residents in the Economic Development Region (Onondaga, Madison, Cayuga, Oneida, Oswego, and Cortland Counties) to fill new FTE jobs:	100%

C. Complete the following chart indicating the number of FTE jobs presently employed at the Project and the number of FTE jobs that will be created at the Project site at the end of the first, second, third, fourth, and fifth years after the Project is completed. Jobs should be listed by title or category (see below), including FTE independent contractors or employees of independent contractors that work at the Project location. **Do not include construction workers.**

NO CHANGE FROM ORIGINAL APPLICATION

Current & Planned Full Time Occupations (Job Titles)	Current Number of FTEs	Annual Salary	Estimated Number of FTE Jobs After Project Completion					
			End of Year 1	End of Year 2	End of Year 3	End of Year 4	Total New Jobs After 5 Years	Total Retained Jobs After 5 Years

For purposes of completing the chart, refer to the following definitions, in lieu of current titles:

- **Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer).
- **Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise levels (examples: electrician, computer operator, administrative assistant, carpenter, sales representative).
- **Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk).

D. Are the employees of your company currently covered by a collective bargaining agreement?

Yes No If yes, provide the Name and Local:

V. Environmental Information

***An Environmental Assessment Form (EAF) MUST be completed and submitted along with this application. Please visit <https://www.dec.ny.gov/permits/6191.html> for the online EAF Mapper Application and EAF Forms.**

A. Have any environmental issues been identified on the property?

Yes No

If yes, please explain:

B. Has any public body issued a State Environmental Quality Review Act determination for this Project?

Yes No

If yes, please attach to this application.

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY APPLICATION

APPENDIX B

Verification

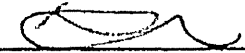
STATE OF New York)
) SS.:
COUNTY OF Onondaga)

Benjamin McHone, M.D.
(Name of Individual)


, deposes and says that s/he is the

Manager of Intrepid Lane ASC, LLC
(Title) (Applicant Name)

that s/he is the CEO or a person authorized to bind the company/applicant, and has personally completed and read the foregoing Application and knows the contents thereof and that the same is true, accurate, and complete to the best of her/his knowledge, as subscribed and affirmed under the penalties of perjury. The grounds of deponent's beliefs relative to all matters in the said Application which are not stated upon her/his own personal knowledge are investigations which the deponent has caused to be made concerning the subject matter of the Application as well as, if applicable, information acquired by deponent in the course of her/his duties/responsibilities for the Applicant and from the books and papers of the Applicant. The deponent also acknowledges the receipt of the schedules attached to the Application, including but not limited to the Agency's fee schedule and assumes responsibility for payment of any and all applicable fees as described therein. Deponent further acknowledges review and understanding of the Agency's published policies, including but not limited to the Agency's Recapture Policy, and agrees on behalf of the Applicant to be bound by and comply with, all such policies.


Applicant Representative's Signature
Medical Director.
Title

Subscribed and sworn to before me this
3 day of September, 2021


Notary Public

BRUCE A. SMITH
Notary Public, State of New York
No. 02SM1961729
Qualified in Onondaga County
Commission Expires 02/05/2022



CITY OF SYRACUSE SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY PROJECT APPLICATION INSTRUCTIONS

1. The person completing this application on behalf of the company/applicant shall be a person who is either the CEO of the company/applicant or a person authorized to bind the company/applicant and each statement contained in this application shall be made by such a person. Fill in all blanks, using "none", "not applicable" or "not available" where the question is not appropriate to the Project, which is the subject of this Application (the "Project"). If you have any questions about the way to respond, please call the City of Syracuse Industrial Development Agency ("SIDA" or the "Agency") at (315)473-3275.

2. If an estimate is given as the answer to a question, put "(est.)" after the figure or answer, which is estimated.

3. If more space is needed to answer any specific question, attach a separate sheet.

4. When completed, return this application by mail or fax to the Agency at the address indicated below. A signed application may also be submitted electronically in PDF format to Judith DeLaney, Economic Development Specialist at jdelaney@syrgov.net.

An application will not be considered by the Agency until the application fee has been received.

5. The Agency will not give final approval for this Application until the Agency receives a completed NYS Environmental Assessment Form concerning the Project, which is the subject of this Application. The form is available at <http://www.dec.ny.gov/permits/6191.html>

6. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the SIDA (with certain limited exceptions) are open to public inspection and copying. If the Applicant feels that there are elements of the Project which are in the nature of trade secrets which, if disclosed to the public or otherwise widely disseminated, would cause substantial injury to the Applicant's competitive position, this Applicant must identify such elements in writing and request that such elements be kept confidential. In accordance with Article 6 of the Public Officers Law, the SIDA may also redact personal, private, and/or proprietary information from publicly disseminated documents.

7. The Applicant will be required to pay the Agency application fee and legal fee deposit upon submission. If accepted as a project of the agency, the Applicant is responsible for all administrative and legal fees as stated in Appendix D.

8. A complete application consists of the following 8 items:

- This Application
- Conflict of Interest Statement - Appendix A
- Environmental Assessment Form
- Verification - Appendix B
- A Project description, including a feasibility statement indicating the need for the requested benefits
 - Provide site plans, sketches, and/or maps as necessary
- 10 year pro forma operating budget, including funding sources
- A check payable to the Agency in the amount of \$1,000
- A check payable to Bousquet Holstein PLLC in the amount of \$2,500

It is the policy of the Agency that any Project receiving benefits from the Agency will utilize 100% local contractors and local labor for the construction period of the Project unless a waiver is granted in writing by the Agency.

Return to:

City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, NY 13202
Phone: 315-473-3275
jdelaney@syrgov.net

**City of Syracuse Syracuse Industrial Development Agency
Application**

I. APPLICANT DATA

A. Contact Information

Company Name:	Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center ("Applicant")		
Mailing Address:	190 Intrepid Lane		
City:	Syracuse	State:	Zip: 13205
Phone:	3154784185	Fax:	
Contact Person:	Benjamin McHone, M.D.		
Email Address:	BMcHone@ampofny.com		
Industry Sector:	Health care		
NAICS Code:	621493	Federal Employer Identification Number:	85-1832565

B. Will the Applicant be the Project Beneficiary (i.e. Project tenant or owner/operator)

Yes No If No, Who will:

--

C. Principal Stakeholders

List principal owners/officers/directors owning 5% or more in equity holdings with percentage ownership. Public companies should list corporate officers.

Name	% Ownership	Business Address	Phone	Email
See Addendum				

D. Corporate Structure: Attach a schematic if Applicant is a subsidiary or otherwise affiliated with another entity.

- Corporation
 Private Public

Date and Location of Incorporation/Organization

June 23, 2020/New York

- Partnership
 General Limited

If a foreign corporation, is the Applicant authorized to do business in the State of New York?

--

- Other Sole Proprietorship

- Limited Liability Company/Partnership

E. Applicant's Counsel:

Name:	Bruce A. Smith		
Firm:	CCB Law		
Mailing Address:	507 Plum Street		
City:	Syracuse	State:	Zip: 13204
Phone:	3154776291	Fax:	
Email Address:	bsmith@ccblaw.com		

F. Applicant's Accountant:

Name:	Jeffrey Trubia		
Firm:	The Bonadio Group		
Mailing Address:	432 North Franklin Street, #60		
City:	Syracuse	State:	Zip: 13204
Phone:	3152142748	Fax:	
Email Address:	jtrubia@bonadio.com		

G. Applicant History: If the answer to any of the following is "Yes", please explain below. If necessary, attach additional information.

1. Is the Applicant, its management, or its principal owners now a plaintiff or defendant in any civil or criminal litigation? Yes No
2. Has any person listed in Section 1(c) ever been convicted of a criminal offense (other than a minor traffic violation)? Yes No
3. Has any person listed in Section 1 (C) or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes No

H. Has the Applicant, or any entity in which the Applicant or any of its members or officers are members or officers, received assistance from SIDA in the past? If yes, please give year, Project name, description of benefits, and address of Project.

- Yes No

II. PROJECT INFORMATION

A. Project Location

Address:	190 Intrepid Lane	Legal Address (if different)	
City:	Syracuse		
Zip Code:	13205		
Tax Map Parcel ID(s):	062.-02-18.0		
Current Assessment:	\$2,334,000	Square Footage /Acerage of Existing Site:	61,088
Square Footage of Existing Building, if any:	15,597	Census Tract: (Please See Appendix E for Census Tracts)	61.02

B. Type (Check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Commercial |
| <input type="checkbox"/> Expansion/Addition to Current Facility | <input type="checkbox"/> Brownfield/Remediated Brownfield |
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Residential/Mixed Use |
| <input type="checkbox"/> Warehouse/Distribution | |
| <input checked="" type="checkbox"/> Other | Ambulatory surgery center |

C. Description of Project: Please provide a detailed narrative of the proposed Project. This narrative should include, but not be limited to: (i) the size of the Project in square feet and a breakdown of square footage per each intended use; (ii) the size of the lot upon which the Project sits or is to be constructed; (iii) the current use of the site and the intended use of the site upon completion of the Project; (iv) the principal products to be produced and/or the principal activities that will occur on the Project site; and (v) an indication as to why the Applicant is undertaking the Project and the need for the requested benefits (Attach additional sheets if necessary). Attach copies of any site plans, sketches or maps.

See Addendum

D. Is the Applicant the owner of the property?

- Yes No

If not, who is the owner and by what means will the site be acquired? If leasing, when does the lease end?

SOS Real Estate Holding Company, LLC (successor by merger to Intrepid Lane Realty, LLC)/15 year lease

E. Infrastructure: Please indicate whether the following are onsite, need to be constructed, or need to be renovated/expanded:

Water	<input type="text"/>	Electric	<input type="text"/>
Sanitary/ Storm	<input type="text"/>	Private Roads	<input type="text"/>
Sewer Gas	<input type="text"/>	Telecommunication	<input type="text"/>

F. Zoning Classification: Please list the current zoning:

Current Zoning

CB

G. Are variances needed to complete the Project?

Yes No

If yes, please describe nature of variances and if municipal approvals have been granted:

H. Will the Project generate sales tax for the community?

Yes No

If yes, what is the company's average annual sales or estimated annual sales?

I. In accordance with N.Y. GML Sec. 862(1):

1. Will any other companies or related facilities within the state close or be subjected to reduced activity as a result of this Project? If so please list the town and county of the location(s):

Yes No

2. Will the completion of the Project result in the removal of a plant or facility of the Applicant from one area of the State New York to another area of the State of New York?

Yes No

3. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant located in the State of New York?

Yes No

i. If any answer to questions 1, 2 or 3 above is yes, is the Project reasonably necessary to discourage the Applicant from removing such other plant or facility to a location outside the State of New York?

Yes No

ii. If any answer to questions 1, 2 or 3 above is yes, is the Project reasonably necessary to preserve the competitive position of the Applicant in its respective industry?

Yes No

4. Will the Project primarily consist of retail facilities?

Yes No

i. If yes, will the cost of these facilities exceed one-third of the total Project cost?

Yes No

J. Is the Project located in a distressed Census Tract?

Yes No

61.02

Please see Appendix E for the map of distressed census tracts in the city of Syracuse.

K. Is the Project site designated as an Empire Zone?

Yes No

L. Construction

1. Project Timeline (approximate):

Construction Commencement August 31, 2021 Construction Completion 05/01/2022 Date of Occupancy 05/1/2022

2. Please list any other key Project milestones:

3. Has work begun? Yes No

If so, indicate the amount of funds expended in the past 3 years?

III. PROJECT COSTS & FINANCING

A. Estimated Project Costs

i. State the costs reasonably necessary for the acquisition, construction, and/or renovation of the Project:

Description of Cost Type	Total Budget Amount
Land Acquisition	-0-
Site Work/Demo	0
Building Construction & Renovation	2,420,000
Furniture & Fixtures	165,000
Equipment	2,157,000
Equipment Subject to NYS Production Sales Tax Exemption (Manufacturing)	0
Engineering/Architects Fees	275,000
Financial Charges	35,000
Legal Fees	30,000
Other	40,000
Management /Developer Fee	
Total Project Cost	5,122,000

ii. State the sources reasonably anticipated for the acquisition, construction, and/or renovation of the Project:

Amount of capital the Applicant has invested to date:	50,000
Amount of capital Applicant intends to invest in the Project through completion:	631,000
Total amount of public sector source funds allocated to the Project:	0
Identify each public sector source of funding:	
Percentage of the Project to be financed from private sector sources:	4,441,000
Total Project Cost	5,122,000

B. Financial Assistance sought (estimated values):

Applicants requesting exemptions and/or abatements from SIDA must provide the estimated value of the savings they anticipate receiving. **New York State regulations require SIDA to recapture any benefit that exceeds the amount listed in this application.**

i. Is the Applicant expecting that the financing of the Project will be secured by one or mortgages? Yes No

If yes, amount requested and name of lender:

ii. Is the Applicant expecting to be appointed agent of the Agency for purposes of abating payments of NYS Sales and Use Tax? Yes No

If yes, what is the TOTAL amount of purchases subject to exemption based on taxable Project costs?

iii. Is the Applicant requesting a payment in lieu of tax agreement (PILOT) for the purpose of a real property tax abatement? Yes No

If yes, Category of PILOT requested:

iv. Is the Applicant requesting any real property tax abatement that is inconsistent with the Agency's UTEP?

Yes No

If yes, please contact the Executive Director prior to submission of this Application.

v. Upon acceptance of this Application, the Agency staff will create a PILOT schedule and indicate the estimated amount of PILOT Benefit based on anticipated tax rates and assessed valuation and attach such information as Exhibit A hereto. At such time, the Applicant will certify that it accepts the proposed PILOT schedule and requests such benefit be granted by the Agency.

**** This Application will not be deemed complete and final until Exhibit A hereto has been completed and executed****

C. Type of Exemption/Abatement Requested:

Amount of Exemption/Abatement Requested:

<input type="checkbox"/>	Real Property Tax Abatement (PILOT)	
<input type="checkbox"/>	Mortgage Recording Tax Exemption (.75% of amount mortgaged)	
<input checked="" type="checkbox"/>	Sales and Use Tax Exemption (\$4% Local, 4% State)	288,000
<input type="checkbox"/>	Tax Exempt Bond Financing (Amount Requested)	
<input type="checkbox"/>	Taxable Bond Financing (Amount Requested)	

D. Company's average yearly purchases or anticipated yearly purchases from vendors within Onondaga County, subject to sales tax:

E. Estimated capital investment over the next 5 years, beyond this Project, if available:

IV. EMPLOYMENT AND PAYROLL INFORMATION

*** Full Time Equivalent (FTE) is defined as one employee working no less than 40 hours per week or two or more employees together working a total of 40 hours per week.**

A. Are there people currently employed at the Project site?

Yes No If yes, provide number of full time equivalent (FTE) jobs at the facility:

B. Complete the following:

Estimate the number of full time equivalent (FTE) jobs to be retained as a result of this Project:	0
Estimate the number of construction jobs to be created by this Project:	54
Estimate the average length of construction jobs to be created (months):	6 months
Current annual payroll at facility:	0 New facility, new employees
Average annual growth rate of wages:	
Please list, if any, benefits that will be available to either full and/or part time employees:	See Addendum
Average annual benefit paid by the company (\$ or % salary) per FTE job:	25%
Average growth rate of benefit cost:	
Amount or percent of wage employees pay for benefits:	
Provide an estimate of the number of residents in the Economic Development Region (Onondaga, Madison, Cayuga, Oneida, Oswego, and Cortland Counties) to fill new FTE jobs:	100%

C. Complete the following chart indicating the number of FTE jobs presently employed at the Project and the number of FTE jobs that will be created at the Project site at the end of the first, second, third, fourth, and fifth years after the Project is completed. Jobs should be listed by title or category (see below), including FTE independent contractors or employees of independent contractors that work at the Project location. **Do not include construction workers.**

Current & Planned Full Time Occupations (Job Titles)	Current Number of FTEs	Annual Salary	Estimated Number of FTE Jobs After Project Completion					
			End of Year 1	End of Year 2	End of Year 3	End of Year 4	Total New Jobs After 5 Years	Total Retained Jobs After 5 Years
Managerial	0	\$120,000	1	1	1	1	1	
Skilled	0	\$1,177,000	17	17	17	17	17	
Semi-Skilled	0	\$62,400	2	2	2	2	2	

For purposes of completing the chart, refer to the following definitions, in lieu of current titles:

- **Professional/Managerial/Technical** - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer).
- **Skilled** - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise levels (examples: electrician, computer operator, administrative assistant, carpenter, sales representative).
- **Unskilled or Semi-Skilled** - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk).

D. Are the employees of your company currently covered by a collective bargaining agreement?

Yes No If yes, provide the Name and Local:

N/A

V. Environmental Information

***An Environmental Assessment Form (EAF) MUST be completed and submitted along with this application. Please visit <https://www.dec.ny.gov/permits/6191.html> for the online EAF Mapper Application and EAF Forms.**

A. Have any environmental issues been identified on the property?

Yes No

If yes, please explain:

B. Has any public body issued a State Environmental Quality Review Act determination for this Project?


Yes No

If yes, please attach to this application.


VI. REPRESENTATIONS & AFFIRMATIONS BY THE APPLICANT

I hereby represent and warrant that I am [the CEO of the company/applicant] or [a person authorized to bind the company/applicant] and make the following representations and/or warranties and understand and agrees with the Agency as follows:

A. Jobs Listings: Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity of the service delivery area created by the Workforce Investment Act ("WIA") in which the Project is located.

Initial 


B. First Consideration for Employment: In accordance with §858-b (2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in WIA programs who shall be referred by the WIA for new employment opportunities created as a result of the Project.

Initial 


C. Other NYS Facilities: In accordance with §862 (1) of the New York General Municipal Law, the Applicant understands and agrees that projects which will result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the Project occupant within the state is ineligible for Agency Financial Assistance, unless otherwise approved by the Agency as reasonably necessary to preserve the competitive position of the Project in its respective industry.

Initial 


D. City Human Right Law: The Applicant agrees to endeavor to comply with the provisions of Article XI, Division 2 of the City Code, entitled "The Omnibus Human Rights Law," which prohibits discrimination in employment based upon age, race, sex, creed, color, religion, national origin, sexual orientation, disability or marital status. The Applicant hereby agrees to adhere to this policy or equal opportunity employment in the requirement, hiring, training, promotion, and termination of employees.

Initial 


E. City of Syracuse and MWBE Preference: The applicant understands and agrees that it is the preference of the Agency that the applicant provide, and use its best efforts to provide, opportunities for the purchase of equipment, goods and services from: (i) business enterprises located in the city of Syracuse; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents in the city of Syracuse. Consideration will be given by the Agency to the Project Applicant's efforts to comply, and compliance, with this objective at any time an extension of benefits awarded, or involvement by the Agency with the Project, is requested by the Project Applicant.

Initial 


F. Local Labor Policy: The applicant understands and agrees that local labor and contractors will be used for the construction, renovation, reconstruction, equipping of the Project unless a written waiver is received from the Agency. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency. For the purposes of the policy, "Local" is defined as Onondaga, Cayuga, Cortland, Madison, Oneida, and Oswego Counties.

Initial 


G. Annual Sales Tax Filings: In accordance with §874(8) of the New York General Municipal Law, the Applicant understands and agrees that if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors

Initial 


H. Annual Employment Reports and Outstanding Bonds: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency on an annual basis, reports regarding the number of FTE at this Project site. The Applicant also understands and agrees to provide on an annual basis any information regarding bonds, if any, issued by the Agency for the Project that is requested by the Comptroller of the State of New York.

Initial 


I. Absence of Conflicts of Interest: The Applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer or employee of the Agency has an interest, whether direct or indirect in any transaction contemplated by this Application, except as hereinafter described in Appendix B.

Initial 


J. Compliance: The Applicant understands and agrees that it is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.

Initial 

K. False or Misleading Information: The Applicant understands and agrees that the submission of knowingly false or knowingly misleading information in this Application may lead to the immediate termination of any financial assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of Agency involvement in the Project.

Initial 

L. GML Compliance: The Applicant certifies that, as of the date of the Application, the proposed project is in substantial compliance with all provisions of NYS General Municipal Law Article 18-A, including but not limited to Sections 859-a and 862(1).

Initial 

M. SIDA's Policies: The Applicant is familiar with all of SIDA's policies posted on its website (http://www.syr.gov.net/Syracuse_Industrial_Development_Agency.aspx) and agrees to comply with all applicable policies.

Initials **BM**

N. Disclosure: The Applicant has read paragraph 6 of the instructions contained on the cover of this Application and understands that the Applicant must identify in writing to SIDA any information it deems proprietary and seeks to have redacted.

Initials **BM**

O. Reliance: THE APPLICANT ACKNOWLEDGES THAT ALL ESTIMATES OF PROJECTED FINANCIAL IMPACTS, VALUE OF FINANCIAL ASSISTANCE REQUESTED, AND OTHER INFORMATION CONTAINED IN THIS APPLICATION WILL BE RELIED UPON BY SIDA AND ANY CHANGES IN SUCH INFORMATION MUST BE MADE IN WRITING AND MAY IMPACT THE GRANT OF FINANCIAL ASSISTANCE TO THE PROJECT.

Initials **BM**

I am the CEO or a person authorized to bind the company/applicant, and have read the foregoing and agree to comply with all the terms and conditions contained therein as well as the policies of the City of Syracuse Industrial Development Agency.

Name of Applicant Company

Intrepid Lane ASC, LLC

Signature of Officer or Authorized Representative

Ben McHone
Ben McHone (Aug 4, 2021 09:05 EDT)

Name & Title of Officer or Authorized Representative

Benjamin McHone
Benjamin McHone, M.D., Manager
Ben McHone (Aug 4, 2021 09:05 EDT)

Date

8/4/2021

VI. HOLD HARMLESS AGREEMENT

Applicant hereby releases the City of Syracuse Industrial Development Agency and the members, officers, servants, agents and employees thereof (collectively the "Agency" from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax-exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction, and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project, including without limiting the generality of the foregoing, all cause of action and attorney's fees and any other expenses incurred in defending any suits or action which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to reach final agreement with respect to the Project, or the inability of the Applicant, for any reason, to proceed with the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in the processing of or in connection with the Application, including attorney's fees, if any.

Name of Applicant Company

Intrepid Lane ASC, LLC

Signature of CEO or a person authorized to bind the company/applicant

Ben McHone
Ben McHone (Aug 4, 2021 09:05 EDT)

Name & Title of Officer or Authorized Representative

Benjamin McHone, M.D., Manager

Date

8/4/2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY APPLICATION
APPENDIX A
CONFLICT OF INTEREST STATEMENT

Agency Board Members

1. Kathleen Murphy
2. Steven P. Thompson
3. Rickey T. Brown
4. Kenneth J. Kinsey
5. Dirk Sonneborn

Agency Officers/Staff

1. Judith DeLaney
2. John Vavonese
3. Debra Ramsey-Burns

Agency Legal Counsel & Auditor

1. Susan Katzoff, Esq., Bousquet Holstein, PLLC
2. Grossman St. Amour, PLLC.

The Applicant has received from the Agency a list of members, officers and staff of the Agency. To the best of my knowledge, no member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:

Signature:

Benjamin McHone, M.D.

Authorized Representative:

Ben McHone

Title:

Manager

Date:

8/4/2021

City of Syracuse Industrial Development Agency

APPENDIX B

Agency Fee Schedule

(Revised 1/15/19)

Bond and Straight Lease Transactions:

Application & Processing Fee	\$1,000.00
Project Commitment/Legal Fee	\$2,500.00
(Due with fully executed Application; Amount applied to SIDA's counsel fee)	

Administrative Fee:

Issuance of Bonds	1% Project Cost
(Without regard to principal amount of bonds issued.)	
Straight Lease/Agency Appointment	1% Project Cost
(Exemption from one or more mortgage recording, real property or sales and use taxes)	
Refunding of Bonds	1% of Project Cost

New Money/Additional Financing on Existing Project:

- Refinancing of project where no additional Financial Assistance is sought (other than MRTE) – ¼ of new money financed (exclusive of original mortgage amount).
- Refinancing of project where additional Financial Assistance is sought (in addition to MRTE) – 1% of new money financed.

Post-Closing Items for Bond and Straight Lease Transactions:

Annual Administrative Reporting Fee	\$250.00
(Paid at time of closing and annually thereafter for duration of SIDA's interest in Project Facility)	
Extension of sales tax exemption	\$500.00
Modification or Amendment of Closing Documents*	\$1,000.00

*including but not limited to refinancing of original mortgage

Subsequent lender closing	\$250.00
---------------------------------	----------

In addition to the foregoing, Applicants are responsible for payment of all costs and expenses incurred by SIDA in connection with application or Project including without limitation publication, copying costs, SEQRA compliance and fees and costs to SIDA's attorneys, engineers, and consultants. SIDA reserves the right to require a deposit to cover anticipated costs. Application fees are payable at time application/request is submitted. All fees are non-refundable. Applicants for bond transactions are responsible for payment of Bond Issuance Charge payable to the State of New York. Applicants are also responsible for payment of post-closing fees and costs associated with the appointment of additional agents. SIDA reserves the right to modify this schedule at any time and to assess fees and charges in connection with other transactions such as grants of easement or lease of SIDA-owned property.

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY APPLICATION

APPENDIX B
Verification

STATE OF New York)
) SS.:
COUNTY OF Onondaga)

Benjamin McHone, M.D., deposes and says that s/he is the
(Name of Individual)

Manager of Intrepid Lane ASC, LLC
(Title) (Applicant Name)

that s/he is the CEO or a person authorized to bind the company/applicant, and has personally completed and read the foregoing Application and knows the contents thereof and that the same is true, accurate, and complete to the best of her/his knowledge, as subscribed and affirmed under the penalties of perjury. The grounds of deponent's beliefs relative to all matters in the said Application which are not stated upon her/his own personal knowledge are investigations which the deponent has caused to be made concerning the subject matter of the Application as well as, if applicable, information acquired by deponent in the course of her/his duties/responsibilities for the Applicant and from the books and papers of the Applicant. The deponent also acknowledges the receipt of the schedules attached to the Application, including but not limited to the Agency's fee schedule and assumes responsibility for payment of any and all applicable fees as described therein. Deponent further acknowledges review and understanding of the Agency's published policies, including but not limited to the Agency's Recapture Policy, and agrees on behalf of the Applicant to be bound by and comply with, all such policies.



Applicant Representative's Signature

Manager

Title

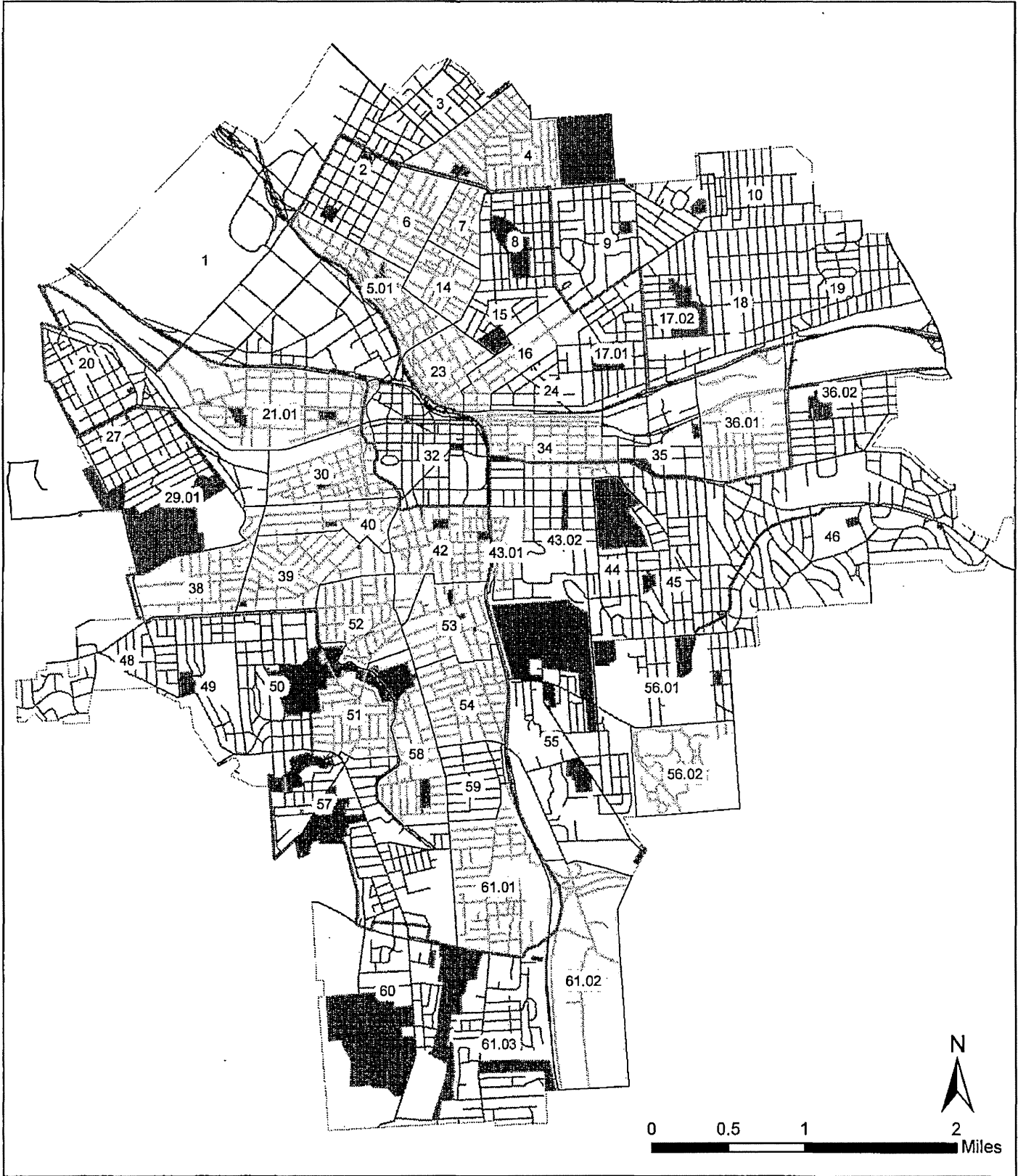
Subscribed and sworn to before me this

4th day of August, 20 21


Notary Public

LISA ANN CAVALLARO
NOTARY PUBLIC STATE OF NEW YORK
ONONDAGA COUNTY
LIC. #01CA6257472
COMM. EXP. MARCH 12, 2024


Highly Distressed Census Tracts



Legend

- Highly Distressed Census Tracts (2016)
- 2010 Census Tracts
- Parks & Cemeteries
- NRSA Boundaries

Map created 7/12/2016.
This map is for planning purposes only.
The City of Syracuse cannot guarantee its accuracy.



**ADDENDUM TO SIDA APPLICATION
INTREPID LANE ASC, LLC
d/b/a INTREPID LANE ENDOSCOPY AND SURGERY CENTER**

I. APPLICANT DATA

C. Principal Stakeholders

The Members of Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center (the "Company") and the ownership interest of each Member are as follows:

<u>Member</u>	<u>Membership Interest</u>
AMP ASC Holdings, LLC	72%
CRA ASC Holdings, LLC	<u>28%</u>
	100%

The members of AMP ASC Holdings, LLC are urologists affiliated with Associated Medical Professionals of NY, PLLC. The members of CRA ASC Holdings, LLC are colon rectal surgeons affiliated with Colon Rectal Associates of Central New York, LLP.

The members of AMP ASC Holdings, LLC are as follows:

David M. Albala, M.D.
Angelo R. Derosalia, M.D.
Po N. Lam, M.D.
Andres M. Madissoo, M.D.
Benjamin R. McHone, M.D.
Sasha Pavlov-Shapiro, M.D.
Harvey A. Sauer, M.D.
Christopher M. Pieczonka, M.D.
Nedim Ruhotina, M.D.
Elan W. Salzhauer, M.D.
Arnold P. Teo, M.D.
Wael F. Muakkassa, M.D.
Bashar Omarbasha, M.D.
Brent E. Carlyle, M.D.
Hadley W. Narins, M.D.
Ilija Aleksic, M.D.
Neil F. Mariados, M.D.
Elizabeth W. Bozeman, M.D.
Gary D. Bozeman, M.D.
Daniel R. Welchons, M.D.
Jeffrey J. Sekula, M.D.
Kenneth A. Beasley, M.D.

The members of CRA ASC Holdings, LLC are as follows:

David R. Halleran, M.D.
Michael A. Moffa, M.D.
Jack A. Ziegler, M.D.
David A. Nesbitt, M.D.
John Nicholson, M.D

II. Project Information

Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center (the "Company") has received approval from the New York State Department of Health and the Public Health and Health Planning Council to establish, construct and operate an Article 28 licensed, multi-specialty ambulatory surgery center with four operating rooms located at 190 Intrepid Lane, Syracuse, New York (the "Center"). The surgical specialties to be performed in the Center will initially be urology and colorectal and endoscopic surgery. Although there are other ambulatory surgery centers in the area providing endoscopy services, the Center will be the first ambulatory surgery center specializing in urology in Onondaga County.

The Center's medical staff will initially consist of approximately 30 physicians who are affiliated with Associated Medical Professionals of NY, PLLC and Colon Rectal Associates of Central New York, LLP. The Center projects its medical staff performing 5,625 procedures in its first full year of operations. Utilization is projected to increase by 3% per year. Approximately 76% of the procedures had been performed in another ambulatory surgery center, 18% in an office-based setting and 6% in a hospital. Notably, while the Company's certificate of need application was pending with the New York Department of Health North Medical Surgery Center located at North Medical Center and operated by St. Joseph's Hospital Health Center closed, leaving many urologists and colon rectal surgeons scrambling to find OR time, resulting in more procedures being performed in the higher-cost hospital setting and longer wait times for patients. The Center will help alleviate this surgical capacity problem.

The Company will lease the building, which is currently vacant, located at 190 Intrepid Lane, Syracuse constituting approximately 16,624 square feet. The Company will renovate the entire building to bring it up to current State Hospital Code standards and will have four fully-fit-out operating rooms and two shelled operating rooms for future use. The patient preparation, hold and recovery spaces plus support areas will be sized to accommodate six operating room.

The Company is undertaking this project to provide high quality, lower cost, state-of-the-art surgical services to patients of its medical staff members. Ambulatory surgical centers, like the Center, deliver high quality surgical services at a cost significantly lower than that charged by hospitals, providing savings to patients, insurers and taxpayers. Ambulatory surgery centers also provide efficiencies and are more patient-friendly and convenient for patients.

The Center will provide services to the underserved populations of Onondaga and surrounding counties by participating with traditional fee-for-service Medicaid and with all area Medicaid Managed Care plans. In addition, the Company will adopt a financial assistance policy with a sliding fee schedule to be used once the Center opens.

The Company has signed patient transfer agreements with both St. Joseph's Hospital Health Center and Crouse Hospital in the event of an emergency.

Attached are site plan and floor plan for the Center.

INTREPID LANE ASC, LLC**PROFORMA INCOME STATEMENTS
FOR THE YEARS ONE THROUGH FIVE**

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
REVENUE	<u>\$ 6,227,544</u>	<u>\$ 6,417,209</u>	<u>\$ 6,602,010</u>	<u>\$ 6,835,418</u>	<u>\$ 6,934,459</u>
OPERATING EXPENSES:					
Salaries and wages	1,210,600	1,246,918	1,283,236	1,586,080	1,633,662
Employee benefits	338,968	349,137	359,306	444,102	457,425
Medical & surgical supplies	1,191,445	911,272	937,814	965,948	994,926
Depreciation	588,285	588,285	588,285	588,285	588,285
Outside services	524,099	539,822	555,545	572,211	589,377
Rent	312,096	312,096	312,096	312,096	312,096
Miscellaneous expenses	261,595	269,443	277,291	285,610	294,178
Office supplies	87,479	90,103	92,728	95,510	98,375
Utilities	47,500	48,925	50,350	51,861	53,417
Professional fees	35,000	36,050	37,100	38,213	39,359
Total operating expenses	<u>4,597,067</u>	<u>4,392,051</u>	<u>4,493,751</u>	<u>4,939,916</u>	<u>5,061,100</u>
Operating income	<u>1,630,477</u>	<u>2,025,158</u>	<u>2,108,259</u>	<u>1,895,502</u>	<u>1,873,359</u>
OTHER EXPENSES:					
Interest expense	<u>274,425</u>	<u>239,756</u>	<u>205,087</u>	<u>175,307</u>	<u>144,333</u>
NET INCOME	<u>\$ 1,356,052</u>	<u>\$ 1,785,402</u>	<u>\$ 1,903,172</u>	<u>\$ 1,720,195</u>	<u>\$ 1,729,026</u>

LEASE

THIS LEASE is made as of the 15th day of August, 2020, by and between SOS REAL ESTATE HOLDING COMPANY, LLC, a New York limited liability company, with a mailing address at 5824 Widewaters Parkway, East Syracuse, New York 13057 ("Landlord") and INTREPID LANE ASC, LLC, a New York limited liability company, with an office at 100 Metropolitan Park Drive, Liverpool, New York 13088 ("Tenant").

RECITALS:

A. Tenant proposes to enter into a lease with Landlord under which the Tenant will occupy and lease the Premises as hereinafter defined.

B. Landlord is the owner of the Premises.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Landlord and Tenant agree as follows:

1. Premises. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the premises located at 190 Intrepid Lane, Syracuse New York (the "Premises") containing an approximately 15,597 square foot building (the "Building") and surrounding land (the "Land") being tax map parcel # 062.-02-18.0.

2. Representations by Landlord. Neither Landlord nor any agent or employee of Landlord has made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, privileges, easements or licenses shall be acquired by Tenant except as expressly set forth in this Lease. Tenant has inspected the Premises and accepts the same "AS IS" and "WHERE IS." Landlord represents and warrants that there are no existing violations of applicable codes, laws, rules or regulations with respect to the Premises, the Building or the Land.

3. Term. The term of this Lease shall commence on the Term Commencement Date, as hereinafter defined, and shall continue for a period of fifteen (15) years following the Rent Commencement Date. The Term Commencement Date shall be the date Landlord delivers possession of the Premises to Tenant following final Public Health and Health Planning Council approval of Tenant's Certificate of Need application for the establishment and construction of a multi-specialty ambulatory surgery center at the Premises ("CON Approval"). In the event Tenant does not receive its CON Approval by September 1, 2021, either Landlord or Tenant shall have the right to terminate this Lease. The Rent Commencement Date shall be the earlier of (a) the date on which Tenant receives an operating certificate from the New York State Department of Health to operate the Surgery Center, as hereinafter defined, as an Article 28 licensed freestanding ambulatory surgery center at the Premises or (b) twelve (12) months following the Term Commencement Date. Promptly following the Rent Commencement Date, Landlord and Tenant shall execute a stipulation as to the Term Commencement Date and Rent Commencement Date. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease at any time during the Pre-Approval Period (as defined herein) by providing written notice to Landlord (the

"Termination Notice"). For purposes hereof, the "Pre-Approval Period" shall mean the period commencing on the date hereof and ending on the date that is thirty (30) days after the receipt by Tenant of the initial Public Health and Health Planning Council approval of Tenant's Certificate of Need application for the establishment and construction of a multi-specialty ambulatory surgery center at the Premises ("Initial CON Approval"). Upon delivery of the Termination Notice during the Pre-Approval Period, this Lease shall be terminated and neither party shall have any further liability hereunder.

4. Renewal Term. Provided Tenant is not in default under this Lease beyond any applicable period of notice and grace at the time of exercise and at the commencement of the applicable Renewal Term (as hereinafter defined), Tenant may, at its option, renew the term of this Lease for two (2) terms of five (5) years (each a "Renewal Term", or collectively, the "Renewal Terms") at a Fixed Rent equal to the Fixed Rent determined in accordance with this section, and otherwise upon the same terms and conditions of this Lease, by giving notice to Landlord of its intention to renew at least six (6) months prior to the expiration of the initial Term (or first Renewal Term, as the case may be), and thereupon the Term of this Lease shall be extended without any further action by either party.

5. Use. Tenant shall use the Premises only for the operation of a multi-specialty ambulatory surgery center, related administrative uses and for no other purpose.

6. Rent. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord without prior demand, setoff or counterclaim monthly rent in the amount of \$26,008.00 ("Fixed Rent") in advance, on the first day of each calendar month during the term of this Lease.

7. Option to Purchase. Provided Tenant is not in default hereunder at the time of the exercise of the option, Tenant shall have the option to purchase the Premises, during the first seven (7) years of the term of this Lease, at a purchase price equal to the outstanding principal balance calculated under Section 6 - Rent above and as set forth on Schedule A attached hereto. If Tenant desires to exercise said option, Tenant shall give written notice thereof to Landlord during the option period. Tenant shall pay to Landlord the purchase price by certified or cashiers' check and Landlord shall deliver to Tenant a bargain and sale deed conveying the Premises to Tenant free of all monetary liens and subject to all easements, restrictions and covenants of record (provided the current Building and use of the Premises do not violate any such easements, restrictions or covenants); and any state of facts an updated survey would show. The closing of the purchase of the Premises shall be within ninety (90) days of the exercise of the option. Tenant shall have the right to assign its rights under this Section 7 to any entity owned in whole or in part by one or more of the owners of Tenant.

8. Late Payments. If any installment of Fixed Rent or additional rent is not paid within ten (10) days of its due date, Tenant shall pay to Landlord a late charge of five percent (5%) of the unpaid installment.

9. Additional Rent. All amounts whatsoever which Tenant shall be obligated to pay pursuant to this Lease shall be deemed additional rent, and in the event of the non-payment by Tenant of any sum of money which Tenant from time to time shall be obligated to pay under any

provisions of this Lease, Landlord shall have the same rights and remedies by reason of such non-payment as if Tenant had failed to pay any installment of Fixed Rent.

10. Real Estate Taxes. Commencing on the Term Commencement Date, Tenant covenants and agrees to pay to Landlord as additional rent, within twenty (20) days after receipt of a copy of a tax bill from Landlord, all real estate taxes, assessments, and other government levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind, which are assessed or imposed upon the tax parcel of which the Premises are a part (Tax Map No. 062-02-18.0) ("Real Estate Taxes"). Within thirty (30) days of the Term Commencement Date, Tenant shall reimburse Landlord for the Real Estate Taxes for the tax fiscal year prepaid by Landlord during the first year of the lease term.

11. Utilities. Commencing on the Term Commencement Date, Tenant shall pay for all utility services rendered or furnished to the Premises, including gas, water, electricity, and the like, as metered or submetered to the Premises.

12. Tenant to Construct Surgery Center. Tenant shall, at its sole cost and expense, construct all tenant improvements within the Premises constituting a multi-specialty ambulatory surgery center (the "Surgery Center") designed and constructed in compliance with 10 NYCRR Parts 711 and 715 and pursuant to plans and specifications provided by Tenant and approved by Landlord. All construction shall be performed in a first class and workmanlike manner in compliance with all applicable Federal, state and local laws, rules, regulations, orders and codes. Landlord shall engage a contractor reasonably acceptable to Tenant for to replace the roof in connection with the construction of the Surgery Center (at Landlord's sole cost and expense). Landlord shall coordinate the timing of the roof replacement with the Tenant's improvements and provide a full and final lien waiver from each contractor or material supplier used in connection with the roof replacement. Landlord shall assign all warranties associated with the roof to Tenant.

13. Repairs. Landlord shall have no responsibility for any repairs or replacements to the Premises. All repairs and replacements to the Premises shall be made by Tenant. Tenant shall maintain the Premises in good order and condition including, without limitation, all snow plowing, mowing, landscaping and maintenance of the parking areas.

14. Compliance with Orders of Public Authorities. Tenant shall comply with all laws, ordinances, rules, regulations or requirements of all federal, state or municipal governments, and every department or bureau thereof applicable to the Premises, and shall not do or permit to be done any act upon the Premises whereby the hazard of fire or the rate of fire insurance upon the Premises or the Building may be increased or which shall be in violation of the rules of the Board of Fire Underwriters or the provisions of the New York State standard form of fire insurance policies.

15. Alterations. Tenant shall not make or permit to be made any alterations, additions or improvements, structural or otherwise, in or to the Premises, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall not make or permit any defacement, injury or waste in, to or about the Premises. Tenant agrees that any alterations, additions or improvements made by Tenant shall, upon being made, become part of

the Premises and remain in the Premises at the expiration of the Lease or, at the option of Landlord, Tenant at the expiration of the Lease, may be required to restore the Premises to their original condition and remove the alterations, additions or improvements, which option Landlord shall exercise at the time it consents to such alterations, additions or improvements. Tenant shall have the right to remove, and shall remove, its trade fixtures at the expiration, or earlier termination, of the Lease and repair any damage caused thereby.

16. Signs. Tenant shall not erect, place or display any sign, advertisement or notice on any part of the Premises, except in accordance with the written consent of Landlord, which consent shall not be unreasonably withheld, and subject to compliance with local ordinances. Notwithstanding the foregoing, Tenant shall be permitted to replace the existing signage with its own signage of similar size.

17. Mechanics' Liens. If any mechanics' or other liens, or orders for payment of money shall be filed against the Premises by reason of or arising out of any labor or materials furnished or alleged to have been furnished, or to be furnished, to or for Tenant at the Premises, Tenant shall within thirty (30) days after notice of filing thereof cause the same to be canceled and discharged of record, by bond or otherwise at Tenant's expense.

18. Assignment and Subletting. Tenant shall not assign this Lease, or sublet the Premises, by operation of law or otherwise, in whole or in part, and shall not allow the Premises to be occupied by any person or entity other than Tenant, without the written consent of Landlord, such consent not to be unreasonably withheld. An assignment made by Tenant with the written consent of Landlord shall not release, discharge or otherwise effect the liability of Tenant under this Lease, nor shall any such assignment relieve Tenant from the requirement of obtaining the prior written consent of Landlord to any further assignment. If an event of default occurs, Tenant hereby assigns to Landlord the rent due from any assignee or subtenant of Tenant and hereby authorizes each assignee or subtenant to pay such rent directly to Landlord.

The transfer of all or a majority of its voting stock, if Tenant is a corporation, or a majority-in-interest of the membership interests in a in the partnership or limited liability company, if Tenant is a partnership or limited liability company, resulting in a change in the present effective voting control of Tenant by the person or persons owning a majority of said voting stock or a majority interest in the partnership or limited liability company, as the case may be, on the date of this Lease, shall constitute an assignment for the purposes of this Lease.

19. Subordination. This Lease shall be subject to and subordinate to any mortgage or mortgages now in force or which shall at any time affect the Premises or any part thereof and to all renewals, modifications, consolidations, replacements and extensions thereof, and advances thereunder, provided such mortgagee enters into a subordination, non-disturbance and attornments agreement with Tenant. Tenant agrees that it will, upon demand, execute and deliver such instruments as necessary to effect more fully such subordination of this Lease to the lien of any such mortgage or mortgages as shall be desired by any mortgagee or proposed mortgagee.

20. Estoppel Certificates. Tenant agrees, at any time and from time to time, upon not less than twenty (20) days prior notice by Landlord to execute, acknowledge and deliver to

Landlord or Landlord's mortgagee or proposed mortgagee an estoppel certificate in such form as may from time to time be provided. In the event of the failure of Tenant to execute and deliver such instrument to Landlord or Landlord's designee within such ten day period, Tenant hereby nominates and appoints Landlord attorney-in-fact for the purpose of executing any such estoppel certificate.

21. Notice to Mortgagees. If any mortgagee shall notify Tenant that it is the holder of a mortgage affecting the Premises, no notice, request or demand thereafter sent by Tenant to Landlord shall be effective unless and until a copy of the same shall also be sent to such mortgagee in the manner prescribed herein and to such address as such mortgagee shall designate.

22. Performance of Landlord's Obligations by Mortgagee. Tenant shall accept performance of any of Landlord's obligations hereunder by any mortgagee, provided such mortgagee elects to assume Landlord's obligations hereunder. This Section shall not be construed to mean that mortgagee is required to assume Landlord's obligations.

23. Attornment. If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, and if so requested or required by such successor in interest, Tenant shall attorn to such successor in interest and shall execute such agreement in confirmation of such attornment as such successor in interest shall reasonably request.

24. Damages. Tenant, in case of fire or other casualty, shall promptly give notice thereof to Landlord who shall thereupon cause the damages to the Premises to be repaired, but if the Premises are so damaged that Landlord decides not to rebuild, the term shall cease and the accrued rent shall be paid up to the time of the fire or other casualty. In case, however, the destruction of the Premises by fire or other casualty shall be only partial and a portion thereof shall during the period of repairs be fit for occupancy by Tenant, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.

25. Liability Insurance. Tenant shall, during the entire term of this Lease and any renewal thereof, keep in full force and effect workers compensation insurance and public liability insurance, from an insurance company qualified to do business in New York State in amounts not less than \$1,000,000 in case of bodily injury or death and \$500,000 in case of property damage, naming Landlord as an additional insured and containing an endorsement that the policy will not be canceled or reduced in scope of coverage or amount of coverage until thirty days after written notice to Landlord. Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy.

26. Landlord's Insurance. Landlord shall maintain property insurance on the Premises in an amount not less than the full replacement value of the Premises and as otherwise may be required by any mortgagee of the Premises. Tenant shall pay as Additional Rent Landlord's insurance premiums hereunder within fifteen (15) days after receipt of a bill in reasonable detail for same by Tenant.

27. Waiver of Subrogation. Landlord and Tenant hereby waive all rights of subrogation against each other with respect to loss by fire or other casualty, and any insurance policies kept and maintained by the parties, shall be so written as to recognize such waiver.

28. Limitation of Landlord's Liability. Landlord shall not be liable to Tenant for any loss, damage or expense of any kind resulting from, and no claim shall be made against Landlord by Tenant for (a) any injury or damage to personal property occurring in, on or about the Premises unless due to Landlord's negligence or misconduct; (b) theft, loss or destruction of any personal property contained in or on the Premises unless due to Landlord's negligence or misconduct; (c) necessity of repairing the Premises or any part thereof unless required to be made by Landlord hereunder; (d) fire or other casualty, however caused; (e) any overflow or leakage upon or into the Premises of water, rain, snow, steam, gas, electricity or any breakage or bursting of pipes, conduits or other plumbing fixtures or appliances unless due to Landlord's negligence or misconduct; or (f) any loss or damage to property of Tenant entrusted with Landlord or Landlord's employees. All references to Tenant in the preceding sentence shall be deemed to include Tenant's employees, agents and other persons claiming the right to be in the Premises or the Building under or through Tenant. All references to Landlord shall be deemed to include Landlord's employees, agents or invitees.

29. Indemnification. Tenant shall indemnify and save harmless Landlord from and against any and all liability, damages, expenses, fees, penalties, actions, causes of action, suits, costs, claims or judgments in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon or at the Premises, from or out of the occupancy or use by Tenant of the Premises or any part thereof, occasioned wholly or in part by any act or omission of Tenant, its agents, employees, customers and invitees or resulting from any breach of this Lease by Tenant. Tenant shall and will, at its own cost and expense, defend any and all suits, actions or proceedings that may be brought against Landlord or in which Landlord may be implicated with others upon any such above-mentioned claim or claims. In the event of the failure of Tenant to do so, Landlord may, at the cost and expense of Tenant and upon prior written notice to Tenant, defend any and all such suits, actions or proceedings.

Tenant shall and will satisfy, pay and discharge any and all judgments that may be recovered against Landlord in any such suit, action or proceeding in which Landlord may be a party or in which Landlord shall become liable as aforesaid, or in which Landlord may pay the same with any interests, costs or other charges which may have accrued thereon. The amount so paid by Landlord, with interest thereon at the rate of ten percent (10%) per annum from the date of payment shall become and be due and payable by Tenant as additional rent with the next installment of rent which shall become due after such payment by Landlord.

30. Condemnation. If any part of the Premises shall be taken, appropriated or condemned for any public purpose, at the option of Landlord or automatically if the whole of the Premises is so taken, the term of this Lease shall cease and terminate as of the date when possession of the property so taken shall be required to be delivered or when title shall vest in the taking authority, whichever first occurs and Tenant shall remain liable for rent up to such time. Tenant shall have no claim or interest in or to any award or recovery as damages or otherwise for such

taking and the Tenant hereby expressly assigns any such claim to Landlord. Tenant may make a separate claim to the condemning authority for its trade fixtures and moving expenses.

31. Default and Landlord's Rights. In the event of any default in the payment of rent ten (10) days after written notice of default, or in the event of any default in the observance or performance by Tenant of any other term, covenant or condition of this Lease or any rules or regulations governing the Premises for thirty (30) days after written notice, or if the Premises are abandoned or vacated, or if the Tenant shall make a general assignment for the benefit of creditors, or if a trustee or receiver of any of Tenant's property be appointed, or if Tenant shall file a voluntary petition for bankruptcy or arrangement or reorganization, or if an involuntary petition be filed against Tenant, Landlord may terminate this Lease at its option, by giving written notice thereof to Tenant and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. Notwithstanding anything contained herein to the contrary, Tenant shall not be in default hereunder in the event that a default, other than the payment of money, is capable of being cured but not within thirty (30) days and Tenant promptly commences to cure said default and diligently prosecutes same to completion.

Upon the termination of this Lease pursuant to the provisions of this section or otherwise as a result of Tenant's breach of this Lease, Landlord may reenter and repossess the Premises by summary proceeding or otherwise, to dispossess and remove therefrom any and all occupants and their effects without being liable to prosecution or damages therefor, to hold the Premises as if this Lease had ceased by expiration through maturity of the term above specified, and to relet the same, should the Landlord so elect, for the Tenant's account or otherwise, for such rent and upon such terms as shall be satisfactory to Landlord and whether or not the Premises are relet, Tenant shall remain liable for the equivalent of all rent and other charges provided for in this Lease to be paid by Tenant had this Lease not been terminated prior to the expiration of its term, which said amount shall be due and payable to Landlord as damages or rent, as the case may be, on the monthly rent days herein provided, plus any unamortized brokerage fees amortized over the term of this Lease, the reasonable cost of any reletting including, without limitation, the cost and expenses of any repairs, the cost and expense incurred in recovering possession of the Premises, including reasonable attorneys' fees, and the expenses of reletting including reasonable brokerage fees and attorneys' fees, if any, which said amount shall be due and payable to Landlord as damages upon demand. At the election of Landlord, Tenant shall pay to Landlord, such sum as at the time of such election represents the amount of the excess, if any, of the then present value of the total Fixed Rent and additional rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the term if the Lease had been fully complied with by Tenant over and above the then present rental value of the Leased Premises for the balance of said term. Landlord shall use commercially reasonable efforts to mitigate its damages hereunder.

If Landlord incurs any expense including reasonable attorneys' fees in any action or proceeding instituted by reason of any default of Tenant hereunder, such expense shall be due from Tenant to Landlord on the first date of the month following the incurring of such respective expenses.

32. Right of Landlord to Cure Tenant's Default. If Tenant defaults in the making of any payment or in doing any act required under this Lease, Landlord may make such payment or do

such act, any expense thereof shall be paid by Tenant with interest at the rate of ten percent (10%) per annum from the date paid and shall constitute additional rent and be payable with the next monthly installment of rent. Landlord shall not be estopped from the pursuit of any remedy to which it would otherwise be entitled.

33. Compliance with Environmental Laws. Tenant, its contractors, and invitees shall not store, spill, dump or maintain in, on or under the Premises any hazardous substances, wastes or materials; toxic substances, chemicals, mixtures or materials; or other regulated substances, chemicals or materials as defined in or pursuant to the New York Environmental Conservation Law, as amended, the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et. seq.), as amended ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et. seq.), as amended ("CERCLA"), the Toxic Substances Control Act (15 U.S.C. § 2601 et. seq.), as amended ("TSCA"), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et. seq.), as amended ("FIRFA") and other federal, state, and local laws, ordinances, rules or regulations, other than substances, chemicals, mixtures, wastes or materials transported, handled, stored or used in accordance with applicable law. Tenant shall indemnify and defend Landlord its agents, employees, officers and directors from and against any and all liabilities, obligations, losses and expenses (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach of this section. In case of violation of this paragraph and upon failure to discontinue and/or remedy such violation within ten days after notice to Tenant, it shall be a default hereunder and Landlord shall be entitled to any and all remedies available to Landlord for Tenant's violation of any covenant, agreement or condition of this Lease. The provisions of this paragraph shall survive the termination or expiration of this Lease. Landlord represents that it has no knowledge of any existing or prior violation at the Premises of the New York Environmental Conservation Law, as amended, the RCRA, CERCLA, TSCA, FIRFA and any other federal, state, and local laws, ordinances, rules or regulations.

34. Quiet Enjoyment. Tenant, upon paying the rent and additional rent and observing and performing all the terms, covenants and conditions contained in this Lease on Tenant's part to be observed and performed, shall peaceably and quietly enjoy the Premises without hindrance or molestation by Landlord or any party claiming through Landlord.

35. Notices. All notices required or permitted to be given under this Lease shall be in writing and sent by certified or registered mail, personal delivery or overnight delivery addressed to the party intended to be notified at the addresses set forth in the preamble to this Lease or at such other address as the parties may specify in written notice to the other. Notices shall be deemed given when delivery is received or refused.

36. Access to Premises. Landlord and its representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Premises for the purposes of performing Landlord's obligations hereunder, inspection or curing Tenant's default, or for the purpose of showing the Premises to prospective purchasers; and for a period of at least six months prior to the expiration of this Lease, shall have the right to post notices on said Premises offering the same "To Let" or "For Sale" which said notices Tenant shall permit to remain without molestation.

37. Surrender of Premises. Tenant covenants, at the expiration or other termination of this Lease, to remove its trade fixtures, furnishings, equipment and other personal property from the Premises and return the Premises and all keys thereto to Landlord, in good repair, order and condition, ordinary wear and tear and damage by fire or other casualty excepted. Any trade fixtures, furnishings, equipment or other personal property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned and Landlord may dispose of same or remove and store such property for the benefit of Tenant. Tenant shall pay to Landlord upon demand the cost of disposal and/or removal and storage of such property plus ten percent (10%) for administration.

38. Limitation on Personal Liability. Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to its interest in the Premises and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Premises and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's right to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law under this Lease.

39. When Lease Becomes Binding. The submission of this document for examination and negotiation does not constitute an offer to lease or an option to lease the Premises, and this document shall become effective and binding only upon the execution hereof by Landlord and Tenant.

40. No Waiver. No failure by Landlord to insist upon strict performance of any agreement, term, covenant, or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or any continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease shall constitute a waiver of any subsequent breach under this Lease.

41. Waiver of Right of Redemption. Tenant hereby expressly waives (to the extent legally permissible) for itself and all persons claiming by, through or under it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Tenant shall be dispossessed by summary proceeding.

42. Holdover. Should Tenant continue to occupy the Premises after the expiration of the term or after a forfeiture has occurred, no holdover or other tenancy shall be created unless Landlord accepts rent from Tenant and in such case such tenancy shall be a month-to-month tenancy under all the terms, conditions and covenants of this Lease excluding any option to renew the Lease or purchase the Premises and at double the Fixed Rent reserved herein.

43. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of New York. If any provisions of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of this Lease shall not be effected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

44. Entire Agreement. This Lease contains the entire agreement of the parties with regard to the Premises. There are no oral agreements existing between them.

45. Waiver of Jury Trial. Landlord and Tenant covenant and agree that in any action, proceeding or counterclaim brought by either Landlord or Tenant against the other on any matter whatsoever arising out of, under or by virtue of the terms of this Lease or Tenant's occupancy, Landlord and Tenant shall and do hereby waive trial by jury.

46. No Oral Changes. This Lease may not be changed or terminated orally

47. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

48. Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.

49. Captions and Headings. The captions and headings are for the convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

50. Triple Net Lease. This Lease is a triple net lease and Landlord shall not be required to provide any services or do any act or thing with respect to the Premises, except as may be specifically provided herein, and the rent and other charges required to be paid hereunder shall be paid to Landlord without any claim on the part of Tenant for diminution, set off, or abatement.

51. Right of Reentry. Notwithstanding the provisions of Section 31 hereof [Default and Landlord's Rights Section], Landlord acknowledges that its rights of reentry into the Premises do not confer on it the authority to operate a hospital as defined in Article 28 of the Public Health Law on the Premises and agrees that it will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237 notification by certified mail of its intent to reenter the Premises or to initiate dispossess proceedings or that this Lease is due to expire, at least 30 days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of this Lease. Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossess proceedings and 60 days prior to the expiration of this Lease, Tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that this Lease is about to expire.

52. Signatures. This Lease may be executed in counterparts, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Lease may be executed and exchanged by e-mail, facsimile or other electronic transmission, with the same legal effect as if the signatures were originals.

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

LANDLORD:

SOS REAL ESTATE HOLDING COMPANY,
LLC

By: 

Dr. Michael Fitzgerald
Member

TENANT:

INTREPID LANE ASC, LLC

By: 

Dr. Ben McKone
Member

Schedule A

See attached.

Compound Period: Monthly

Nominal Annual Rate: 4.500%

CASH FLOW DATA

Event	Amount	Number	Period
1 Loan	4,046,850.73	1	
2 Payment	26,008.00	234	Monthly

AMORTIZATION SCHEDULE - Normal Amortization

	Payment	Interest	Principal	Balance
Loan				4,046,850.73
9/1/2020	26,008.00	15,175.69	10,832.31	4,036,018.42
10/1/2020	26,008.00	15,135.07	10,872.93	4,025,145.49
11/1/2020	26,008.00	15,094.30	10,913.70	4,014,231.79
12/1/2020	26,008.00	15,053.37	10,954.63	4,003,277.16
1/1/2021	26,008.00	15,012.29	10,995.71	3,992,281.45
2/1/2021	26,008.00	14,971.06	11,036.94	3,981,244.51
3/1/2021	26,008.00	14,929.67	11,078.33	3,970,166.18
4/1/2021	26,008.00	14,888.12	11,119.88	3,959,046.30
5/1/2021	26,008.00	14,846.42	11,161.58	3,947,884.72
6/1/2021	26,008.00	14,804.57	11,203.43	3,936,681.29
7/1/2021	26,008.00	14,762.55	11,245.45	3,925,435.84
8/1/2021	26,008.00	14,720.38	11,287.62	3,914,148.22
9/1/2021	26,008.00	14,678.06	11,329.94	3,902,818.28
10/1/2021	26,008.00	14,635.57	11,372.43	3,891,445.85
11/1/2021	26,008.00	14,592.92	11,415.08	3,880,030.77
12/1/2021	26,008.00	14,550.12	11,457.88	3,868,572.89
1/1/2022	26,008.00	14,507.15	11,500.85	3,857,072.04
2/1/2022	26,008.00	14,464.02	11,543.98	3,845,528.06
3/1/2022	26,008.00	14,420.73	11,587.27	3,833,940.79
4/1/2022	26,008.00	14,377.28	11,630.72	3,822,310.07
5/1/2022	26,008.00	14,333.66	11,674.34	3,810,635.73
6/1/2022	26,008.00	14,289.88	11,718.12	3,798,917.61
7/1/2022	26,008.00	14,245.94	11,762.06	3,787,155.55
8/1/2022	26,008.00	14,201.83	11,806.17	3,775,349.38
9/1/2022	26,008.00	14,157.56	11,850.44	3,763,498.94
10/1/2022	26,008.00	14,113.12	11,894.88	3,751,604.06
11/1/2022	26,008.00	14,068.52	11,939.48	3,739,664.58
12/1/2022	26,008.00	14,023.74	11,984.26	3,727,680.32
1/1/2023	26,008.00	13,978.80	12,029.20	3,715,651.12
2/1/2023	26,008.00	13,933.69	12,074.31	3,703,576.81

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3/1/2023	26,008.00	13,888.41	12,119.59	3,691,457.92
4/1/2023	26,008.00	13,842.96	12,165.04	3,679,292.18
5/1/2023	26,008.00	13,797.35	12,210.65	3,667,081.53
6/1/2023	26,008.00	13,751.56	12,256.44	3,654,825.09
7/1/2023	26,008.00	13,705.59	12,302.41	3,642,522.68
8/1/2023	26,008.00	13,659.46	12,348.54	3,630,174.14
9/1/2023	26,008.00	13,613.15	12,394.85	3,617,779.29
10/1/2023	26,008.00	13,566.67	12,441.33	3,605,337.96
11/1/2023	26,008.00	13,520.02	12,487.98	3,592,849.98
12/1/2023	26,008.00	13,473.19	12,534.81	3,580,315.17
1/1/2024	26,008.00	13,426.18	12,581.82	3,567,733.35
2/1/2024	26,008.00	13,379.00	12,629.00	3,555,104.35
3/1/2024	26,008.00	13,331.64	12,676.36	3,542,427.99
4/1/2024	26,008.00	13,284.10	12,723.90	3,529,704.09
5/1/2024	26,008.00	13,236.39	12,771.61	3,516,932.48
6/1/2024	26,008.00	13,188.50	12,819.50	3,504,112.98
7/1/2024	26,008.00	13,140.42	12,867.58	3,491,245.40
8/1/2024	26,008.00	13,092.17	12,915.83	3,478,329.57
9/1/2024	26,008.00	13,043.74	12,964.26	3,465,365.31
10/1/2024	26,008.00	12,995.12	13,012.88	3,452,352.43
11/1/2024	26,008.00	12,946.32	13,061.68	3,439,290.75
12/1/2024	26,008.00	12,897.34	13,110.66	3,426,180.09
1/1/2025	26,008.00	12,848.18	13,159.82	3,413,020.27
2/1/2025	26,008.00	12,798.83	13,209.17	3,399,811.10
3/1/2025	26,008.00	12,749.29	13,258.71	3,386,552.39
4/1/2025	26,008.00	12,699.57	13,308.43	3,373,243.96
5/1/2025	26,008.00	12,649.66	13,358.34	3,359,885.62
6/1/2025	26,008.00	12,599.57	13,408.43	3,346,477.19
7/1/2025	26,008.00	12,549.29	13,458.71	3,333,018.48
8/1/2025	26,008.00	12,498.82	13,509.18	3,319,509.30
9/1/2025	26,008.00	12,448.16	13,559.84	3,305,949.46
10/1/2025	26,008.00	12,397.31	13,610.69	3,292,338.77
11/1/2025	26,008.00	12,346.27	13,661.73	3,278,677.04
12/1/2025	26,008.00	12,295.04	13,712.96	3,264,964.08
1/1/2026	26,008.00	12,243.62	13,764.38	3,251,199.70
2/1/2026	26,008.00	12,192.00	13,816.00	3,237,383.70
3/1/2026	26,008.00	12,140.19	13,867.81	3,223,515.89
4/1/2026	26,008.00	12,088.18	13,919.82	3,209,596.07
5/1/2026	26,008.00	12,035.99	13,972.01	3,195,624.06
6/1/2026	26,008.00	11,983.59	14,024.41	3,181,599.65
7/1/2026	26,008.00	11,931.00	14,077.00	3,167,522.65
8/1/2026	26,008.00	11,878.21	14,129.79	3,153,392.86
9/1/2026	26,008.00	11,825.22	14,182.78	3,139,210.08
10/1/2026	26,008.00	11,772.04	14,235.96	3,124,974.12
11/1/2026	26,008.00	11,718.65	14,289.35	3,110,684.77
12/1/2026	26,008.00	11,665.07	14,342.93	3,096,341.84
1/1/2027	26,008.00	11,611.28	14,396.72	3,081,945.12
2/1/2027	26,008.00	11,557.29	14,450.71	3,067,494.41
3/1/2027	26,008.00	11,503.10	14,504.90	3,052,989.51

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4/1/2027	26,008.00	11,448.71	14,559.29	3,038,430.825
5/1/2027	26,008.00	11,394.11	14,613.89	3,023,816.33
6/1/2027	26,008.00	11,339.31	14,668.69	3,009,147.64
7/1/2027	26,008.00	11,284.30	14,723.70	2,994,423.94
8/1/2027	26,008.00	11,229.09	14,778.91	2,979,645.03
9/1/2027	26,008.00	11,173.67	14,834.33	2,964,810.70
10/1/2027	26,008.00	11,118.04	14,889.96	2,949,920.74
11/1/2027	26,008.00	11,062.20	14,945.80	2,934,974.94
12/1/2027	26,008.00	11,006.16	15,001.84	2,919,973.10
1/1/2028	26,008.00	10,949.90	15,058.10	2,904,915.00
2/1/2028	26,008.00	10,893.43	15,114.57	2,889,800.43
3/1/2028	26,008.00	10,836.75	15,171.25	2,874,629.18
4/1/2028	26,008.00	10,779.86	15,228.14	2,859,401.04
5/1/2028	26,008.00	10,722.75	15,285.25	2,844,115.79
6/1/2028	26,008.00	10,665.43	15,342.57	2,828,773.22
7/1/2028	26,008.00	10,607.90	15,400.10	2,813,373.12
8/1/2028	26,008.00	10,550.15	15,457.85	2,797,915.27
9/1/2028	26,008.00	10,492.18	15,515.82	2,782,399.45
10/1/2028	26,008.00	10,434.00	15,574.00	2,766,825.45
11/1/2028	26,008.00	10,375.60	15,632.40	2,751,193.05
12/1/2028	26,008.00	10,316.97	15,691.03	2,735,502.02
1/1/2029	26,008.00	10,258.13	15,749.87	2,719,752.15
2/1/2029	26,008.00	10,199.07	15,808.93	2,703,943.22
3/1/2029	26,008.00	10,139.79	15,868.21	2,688,075.01
4/1/2029	26,008.00	10,080.28	15,927.72	2,672,147.29
5/1/2029	26,008.00	10,020.55	15,987.45	2,656,159.84
6/1/2029	26,008.00	9,960.60	16,047.40	2,640,112.44
7/1/2029	26,008.00	9,900.42	16,107.58	2,624,004.86
8/1/2029	26,008.00	9,840.02	16,167.98	2,607,836.88
9/1/2029	26,008.00	9,779.39	16,228.61	2,591,608.27
10/1/2029	26,008.00	9,718.53	16,289.47	2,575,318.80
11/1/2029	26,008.00	9,657.45	16,350.55	2,558,968.25
12/1/2029	26,008.00	9,596.13	16,411.87	2,542,556.38
1/1/2030	26,008.00	9,534.59	16,473.41	2,526,082.97
2/1/2030	26,008.00	9,472.81	16,535.19	2,509,547.78
3/1/2030	26,008.00	9,410.80	16,597.20	2,492,950.58
4/1/2030	26,008.00	9,348.56	16,659.44	2,476,291.14
5/1/2030	26,008.00	9,286.09	16,721.91	2,459,569.23
6/1/2030	26,008.00	9,223.38	16,784.62	2,442,784.61
7/1/2030	26,008.00	9,160.44	16,847.56	2,425,937.05
8/1/2030	26,008.00	9,097.26	16,910.74	2,409,026.31
9/1/2030	26,008.00	9,033.85	16,974.15	2,392,052.16
10/1/2030	26,008.00	8,970.20	17,037.80	2,375,014.36
11/1/2030	26,008.00	8,906.30	17,101.70	2,357,912.66
12/1/2030	26,008.00	8,842.17	17,165.83	2,340,746.83
1/1/2031	26,008.00	8,777.80	17,230.20	2,323,516.63
2/1/2031	26,008.00	8,713.19	17,294.81	2,306,221.82
3/1/2031	26,008.00	8,648.33	17,359.67	2,288,862.15
4/1/2031	26,008.00	8,583.23	17,424.77	2,271,437.38

5/1/2031 26,008.00 8,517.89 17,490.11 2,253,947.875/2020 5:00 PM Page 4
6/1/2031 26,008.00 8,452.30 17,555.70 2,236,391.57
7/1/2031 26,008.00 8,386.47 17,621.53 2,218,770.04
8/1/2031 26,008.00 8,320.39 17,687.61 2,201,082.43
9/1/2031 26,008.00 8,254.06 17,753.94 2,183,328.49
10/1/2031 26,008.00 8,187.48 17,820.52 2,165,507.97
11/1/2031 26,008.00 8,120.65 17,887.35 2,147,620.62
12/1/2031 26,008.00 8,053.58 17,954.42 2,129,666.20
1/1/2032 26,008.00 7,986.25 18,021.75 2,111,644.45
2/1/2032 26,008.00 7,918.67 18,089.33 2,093,555.12
3/1/2032 26,008.00 7,850.83 18,157.17 2,075,397.95
4/1/2032 26,008.00 7,782.74 18,225.26 2,057,172.69
5/1/2032 26,008.00 7,714.40 18,293.60 2,038,879.09
6/1/2032 26,008.00 7,645.80 18,362.20 2,020,516.89
7/1/2032 26,008.00 7,576.94 18,431.06 2,002,085.83
8/1/2032 26,008.00 7,507.82 18,500.18 1,983,585.65
9/1/2032 26,008.00 7,438.45 18,569.55 1,965,016.10
10/1/2032 26,008.00 7,368.81 18,639.19 1,946,376.91
11/1/2032 26,008.00 7,298.91 18,709.09 1,927,667.82
12/1/2032 26,008.00 7,228.75 18,779.25 1,908,888.57
1/1/2033 26,008.00 7,158.33 18,849.67 1,890,038.90
2/1/2033 26,008.00 7,087.65 18,920.35 1,871,118.55
3/1/2033 26,008.00 7,016.69 18,991.31 1,852,127.24
4/1/2033 26,008.00 6,945.48 19,062.52 1,833,064.72
5/1/2033 26,008.00 6,873.99 19,134.01 1,813,930.71
6/1/2033 26,008.00 6,802.24 19,205.76 1,794,724.95
7/1/2033 26,008.00 6,730.22 19,277.78 1,775,447.17
8/1/2033 26,008.00 6,657.93 19,350.07 1,756,097.10
9/1/2033 26,008.00 6,585.36 19,422.64 1,736,674.46
10/1/2033 26,008.00 6,512.53 19,495.47 1,717,178.99
11/1/2033 26,008.00 6,439.42 19,568.58 1,697,610.41
12/1/2033 26,008.00 6,366.04 19,641.96 1,677,968.45
1/1/2034 26,008.00 6,292.38 19,715.62 1,658,252.83
2/1/2034 26,008.00 6,218.45 19,789.55 1,638,463.28
3/1/2034 26,008.00 6,144.24 19,863.76 1,618,599.52
4/1/2034 26,008.00 6,069.75 19,938.25 1,598,661.27
5/1/2034 26,008.00 5,994.98 20,013.02 1,578,648.25
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7/1/2034 26,008.00 5,844.60 20,163.40 1,538,396.78
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10/1/2034 26,008.00 5,616.91 20,391.09 1,477,451.77
11/1/2034 26,008.00 5,540.44 20,467.56 1,456,984.21
12/1/2034 26,008.00 5,463.69 20,544.31 1,436,439.90
1/1/2035 26,008.00 5,386.65 20,621.35 1,415,818.55
2/1/2035 26,008.00 5,309.32 20,698.68 1,395,119.87
3/1/2035 26,008.00 5,231.70 20,776.30 1,374,343.57
4/1/2035 26,008.00 5,153.79 20,854.21 1,353,489.36
5/1/2035 26,008.00 5,075.59 20,932.41 1,332,556.95

6/1/2035 26,008.00 4,997.09 21,010.91 1,311,546.84/2020 5:00 PM Page 5
7/1/2035 26,008.00 4,918.30 21,089.70 1,290,456.34
8/1/2035 26,008.00 4,839.21 21,168.79 1,269,287.55
9/1/2035 26,008.00 4,759.83 21,248.17 1,248,039.38
10/1/2035 26,008.00 4,680.15 21,327.85 1,226,711.53
11/1/2035 26,008.00 4,600.17 21,407.83 1,205,303.70
12/1/2035 26,008.00 4,519.89 21,488.11 1,183,815.59
1/1/2036 26,008.00 4,439.31 21,568.69 1,162,246.90
2/1/2036 26,008.00 4,358.43 21,649.57 1,140,597.33
3/1/2036 26,008.00 4,277.24 21,730.76 1,118,866.57
4/1/2036 26,008.00 4,195.75 21,812.25 1,097,054.32
5/1/2036 26,008.00 4,113.95 21,894.05 1,075,160.27
6/1/2036 26,008.00 4,031.85 21,976.15 1,053,184.12
7/1/2036 26,008.00 3,949.44 22,058.56 1,031,125.56
8/1/2036 26,008.00 3,866.72 22,141.28 1,008,984.28
9/1/2036 26,008.00 3,783.69 22,224.31 986,759.97
10/1/2036 26,008.00 3,700.35 22,307.65 964,452.32
11/1/2036 26,008.00 3,616.70 22,391.30 942,061.02
12/1/2036 26,008.00 3,532.73 22,475.27 919,585.75
1/1/2037 26,008.00 3,448.45 22,559.55 897,026.20
2/1/2037 26,008.00 3,363.85 22,644.15 874,382.05
3/1/2037 26,008.00 3,278.93 22,729.07 851,652.98
4/1/2037 26,008.00 3,193.70 22,814.30 828,838.68
5/1/2037 26,008.00 3,108.15 22,899.85 805,938.83
6/1/2037 26,008.00 3,022.27 22,985.73 782,953.10
7/1/2037 26,008.00 2,936.07 23,071.93 759,881.17
8/1/2037 26,008.00 2,849.55 23,158.45 736,722.72
9/1/2037 26,008.00 2,762.71 23,245.29 713,477.43
10/1/2037 26,008.00 2,675.54 23,332.46 690,144.97
11/1/2037 26,008.00 2,588.04 23,419.96 666,725.01
12/1/2037 26,008.00 2,500.22 23,507.78 643,217.23
1/1/2038 26,008.00 2,412.06 23,595.94 619,621.29
2/1/2038 26,008.00 2,323.58 23,684.42 595,936.87
3/1/2038 26,008.00 2,234.76 23,773.24 572,163.63
4/1/2038 26,008.00 2,145.61 23,862.39 548,301.24
5/1/2038 26,008.00 2,056.13 23,951.87 524,349.37
6/1/2038 26,008.00 1,966.31 24,041.69 500,307.68
7/1/2038 26,008.00 1,876.15 24,131.85 476,175.83
8/1/2038 26,008.00 1,785.66 24,222.34 451,953.49
9/1/2038 26,008.00 1,694.83 24,313.17 427,640.32
10/1/2038 26,008.00 1,603.65 24,404.35 403,235.97
11/1/2038 26,008.00 1,512.13 24,495.87 378,740.10
12/1/2038 26,008.00 1,420.28 24,587.72 354,152.38
1/1/2039 26,008.00 1,328.07 24,679.93 329,472.45
2/1/2039 26,008.00 1,235.52 24,772.48 304,699.97
3/1/2039 26,008.00 1,142.62 24,865.38 279,834.59
4/1/2039 26,008.00 1,049.38 24,958.62 254,875.97
5/1/2039 26,008.00 955.78 25,052.22 229,823.75
6/1/2039 26,008.00 861.84 25,146.16 204,677.59

7/1/2039	26,008.00	767.54	25,240.46	179,437.85	5/2020 5:00 PM Page 6
8/1/2039	26,008.00	672.89	25,335.11	154,102.02	
9/1/2039	26,008.00	577.88	25,430.12	128,671.90	
10/1/2039	26,008.00	482.52	25,525.48	103,146.42	
11/1/2039	26,008.00	386.80	25,621.20	77,525.22	
12/1/2039	26,008.00	290.72	25,717.28	51,807.94	
1/1/2040	26,008.00	194.28	25,813.72	25,994.22	
2/1/2040	26,008.00	13.78	25,994.22	0.00	

Grand Totals 6,085,872.00 2,039,021.27 4,046,850.73

Last interest amount decreased by 83.70 due to rounding.

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the “*Project Agreement*”), is made as of October 1, 2021, by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 201 East Washington Street, 6th Floor, Syracuse, New York 13202 (the “*Agency*”), **INTREPID LANE ASC, LLC, D/B/A INTREPID LANE ENDOSCOPY AND SURGERY CENTER**, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 100 Metropolitan Park Drive, Liverpool, New York 13088 (the “*Company*”).

WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the “*Enabling Act*”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “*State*”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 641 of the Laws of 1979 of the State, as amended (collectively, with the Enabling Act, the “*Act*”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company submitted an application (the “*Application*”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the

exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "**Owner**") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long term lease agreement, which has a purchase option, dated August 25, 2020 (the "**Ground Lease**"); and

WHEREAS, by resolutions of its members adopted on September 21, 2021 (collectively, the "**Resolutions**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, reconstruction, renovation or equipping of the Project Facility in an amount not to exceed **\$374,543** (the "**Financial Assistance**"); and

WHEREAS, it has been estimated and confirmed by the Company within its Application for Financial Assistance that the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$4,681,790**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$374,543**. There are no real property tax or mortgage recording tax abatement benefits to be provided to the Company; and

WHEREAS, the Company proposes to (sub)lease the Land and Facility to the Agency, and the Agency desires to (sub)lease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of October 1, 2021 (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of October 1, 2021 from the Company (the "**Bill of Sale**"); and

WHEREAS, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of October 1, 2021 in favor of the Agency (the "**Environmental Compliance and Indemnification Agreement**"); and

WHEREAS, the Agency proposes to (sub)sublease the Project Facility to the Company, and the Company desires to (sub)sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of October 1, 2021 (the "*Agency Lease*"); and

WHEREAS, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking and completing the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein, in the Resolutions and in the Agency Lease; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in this Project Agreement, and to confer the approved Financial Assistance, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company. No Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I PROJECT AND TERM

Section 1.01 Recitals. The foregoing recitals are incorporated by referenced as if fully set forth herein.

Section 1.02 Defined terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit "C."

Section 1.03 Purpose of Project. It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and the entering by the Agency into the Company Lease, Agency Lease and this Project Agreement is in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of the City of Syracuse and to otherwise accomplish the public purpose of the Act.

Section 1.04 Term. The term of this Project Agreement shall be the longer of: (1) the term of the Agency Lease; or (2) five years following the Project's Completion Date as evidenced by a certificate of occupancy (the "*Term*"). The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the Term of this Project Agreement and the Company's reporting obligations

hereunder shall continue during the Term hereof. In addition, during the Term hereof, the Company and the Project shall be subject to Article V hereof.

ARTICLE II REAL PROPERTY TAX EXEMPTION

Section 2.01. PILOT Agreement. The Company is *not* receiving an exemption from real property taxes from the Agency; and notwithstanding the Agency’s interest in the Project Facility, the Company and the Owner shall pay real property taxes as if privately owned.

ARTICLE III SALES AND USE TAX EXEMPTION

Section 3.01. Scope of Agency. The Company agrees to limit its activities as agent for the Agency under the authority of the Resolutions and this Project Agreement to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of: **December 31, 2022**, or sixty days after the issuance of a certificate of occupancy, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Agency Lease. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.03(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

“This contract is being entered into by _____ (the “*Agent*”), as agent for and on behalf of the City of Syracuse Industrial Development Agency (the “*Agency*”), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 190 Intrepid Lane, in the City of Syracuse, New York (the “*Premises*”). The machinery, equipment and building materials (collectively, the “*Equipment*”) to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of October 1, 2021 by and between the Agency and the Company (the “*Project Agreement*”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor acknowledges and agrees to the terms and conditions set forth in this paragraph.”

Section 3.02. Appointment of Sub-Agents. Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the

Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “*Sub-Agent*”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit E to the Agency Lease (the “*Sub-Agent Agreement*”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.03(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

Section 3.03. Representations and Covenants of the Company.

(a) The Company hereby incorporates and restates its representations, covenants and warranties made in the Agency Lease.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to \$4,681,790, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$374,543.

(c) The Company further covenants and agrees to complete “IDA Appointment of Project Operator or Agent For Sales Tax Purposes” (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of: (1) the Company’s authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency.

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123, a copy of which is attached to the Sub-Agent Agreement), and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes

of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "I, [NAME OF AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my Project Agreement with the City of Syracuse Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: Intrepid Lane Endoscopy & Surgery Center Project, 190 Intrepid Lane, IDA Project No. 31022105.

(f) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

Section 3.04. Hold Harmless Provisions.

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any

contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.04, the Company agrees to provide for and insure, in the liability policies required by Section 3.05 of this Project Agreement, its liabilities assumed pursuant to this Section 3.04.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.04 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(e) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

Section 3.05. Insurance Required.

(a) The Company agrees that it shall maintain all insurance required under the Agency Lease.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of the Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Agency Lease as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Agency Lease with respect to the type, nature and proof of insurance required thereunder.

ARTICLE IV

COMMITMENTS AND REPORTING

Section 4.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year following the Completion Date of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following the Completion Date of the Project the new jobs set forth in and in accordance with the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continuing for a five (5) year period following the Completion Date of the Project (the "**Term**"):

(a) The total investment made with respect to the Project at the Project's Completion Date shall equal or exceed \$6,861,790, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) No full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's application estimated the creation of twenty (20) new FTEs (the "**New FTEs**") at the Project Facility within the first five (5) years following the Completion Date of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term (as defined in Section 1.03 above) hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "**Reporting Commitment**").

Section 4.02. Reporting Requirement. As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, by zip code, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit "A"** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act and/or its policies and to request such information more frequently than annually.

ARTICLE V

SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Section 5.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties that the Agency is entering into the Company Lease, the Agency Lease and this Project Agreement in order to ensure the completion of the Project and provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, this Agreement, the Agency Lease and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “*State-Mandated Recapture Event*”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a “*Deficit*”):

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);

- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or
- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with the terms hereof, the Agency Lease, as well as its Recapture Policy; and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- i. Whether the Company has proceeded in good faith.
- ii. Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- iii. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- iv. Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the City of Syracuse.

- v. The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- vi. Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "**Determination**"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of the Agency's interest in the Project Facility and all such payments after such termination shall be made upon demand of the party to whom such payment is due. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.04 hereof shall survive the termination of the Agency's interest in the Project Facility until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto. The obligations of the Company pursuant to Article IV hereunder shall survive the Agency's interest in the Project Facility, and for the

avoidance of doubt, the Agency's rights under Article V shall survive the termination of the Agency's interest in the Project Facility.

Section 6.02. Notices. All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202
Attn: Chair

With a copy to: Corporation Counsel
City of Syracuse
233 East Washington Street
Syracuse, New York 13202

and

Bousquet Holstein PLLC
One Lincoln Center
110 West Fayette Street, Suite 1000
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

If to the Company: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088
Attn: Benjamin McHone, M.D.

With a copy to: Cohen Compagni Beckman Appler & Knoll, PLLC
507 Plum Street
Syracuse, New York 13204
Attn: Bruce Smith, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

Section 6.03. Amendments. No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

Section 6.04. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

Section 6.05. Counterparts. This Project Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 6.06. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

Section 6.07. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney Executive Director

INTREPID LANE ASC, LLC

By: _____
Benjamin McHone, M.D., Manager

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

Benjamin McHone, being first duly sworn, deposes and says:

1. That I am a Manager of Intrepid Lane ASC, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

(Signature of Officer)

Subscribed and affirmed to me
under penalties of perjury
this ____ day of October, 2021.


(Notary Public)

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

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Judith DeLaney Executive Director

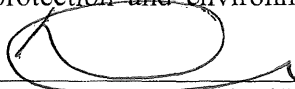
INTREPID LANE ASC, LLC

By:  _____
Benjamin McHone, M.D., Manager

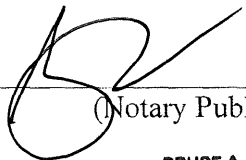
STATE OF NEW YORK)
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1. That I am a Manager of Intrepid Lane ASC, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

 _____
(Signature of Officer)

Subscribed and affirmed to me
under penalties of perjury
this 18 day of October, 2021.

 _____
(Notary Public)

BRUCE A. SMITH
Notary Public in the State of New York
Qualified in Onondaga Co. No. 02SM4961729
My Commission Expires February 5, 2024

EXHIBIT A

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY
201 East Washington Street, 6th Floor, Syracuse, New York 13202

Date

COMPANY
COMPANY ADDRESS

Dear _____:

Our auditors, _____, CPAs are conducting an audit of our financial statements for the year ended December 31, _____. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: _____

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ _____

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: _____, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

A. Job Retention/Creation:

I. Construction Jobs:

Provide the name of your general contractor: _____.

Provide the address (including county) of your general contractor: _____.

Is the general contractor MWBE qualified? _____.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) qualified? _____.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

***Must include county**

II. Permanent (non-construction) Jobs:

Number of FTEs retained at the Project prior to date of application: _____.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): _____.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

Professional/Managerial/Technical - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** _____.

Skilled - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** _____.

Unskilled or Semi-Skilled - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** _____.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$_____.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: _____.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: _____.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$_____.

B. Geographical Hiring Data:

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

Signature

Print Name

Title

Date

INTREPID LANE ASC, LLC

AND

**CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY**

COMPANY LEASE AGREEMENT

DATED AS OF OCTOBER 1, 2021

INTREPID LANE ENDOSCOPY AND SURGERY CENTER

COMPANY LEASE AGREEMENT

THIS COMPANY LEASE AGREEMENT (the “*Company Lease*”), is made and entered into as of October 1, 2021, by and between **INTREPID LANE ASC, LLC** (the “*Company*”), a limited liability company organized under the laws of the State of New York with an office at 190 Intrepid Lane, Syracuse, New York 13205 and **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the “*Agency*”), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 201 East Washington Street, 6th Floor, Syracuse, New York 13202.

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the New York General Municipal Law (the “*Enabling Act*”) was duly enacted into law as Chapter 1030 of the New York Laws of 1969; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State of New York and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 641 of the Laws of 1979 of the State of New York (collectively with the Enabling Act, the “*Act*”) and is empowered under the Act to undertake the Project (as hereinafter defined); and

WHEREAS, the Agency, by resolution adopted on September 21, 2021, agreed, at the request of the Company to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the

Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "*Owner*") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long term lease agreement, which has a purchase option, dated August 25, 2020 (the "*Ground Lease*"); and

WHEREAS, the Company has a long-term leasehold interest in the Land and the Facility pursuant to the Ground Lease; and

WHEREAS, the Agency proposes to assist the Company's acquisition, construction and equipping of the Project Facility, and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company, or its designee, as its agent with respect to undertaking and completing the Project Facility; (2) accepting a (sub)leasehold interest in the Land and Facility from the Company pursuant to this Company Lease and acquiring an interest in the Equipment pursuant to a bill of sale from the Company; and (3) (sub)subleasing the Project Facility to the Company pursuant to the Agency Lease; and

WHEREAS, the Agency now proposes to sublease the Land and Facility from the Company pursuant to the terms and conditions set forth herein; and

WHEREAS, all things necessary to constitute this Company Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Company Lease have, in all respects, been duly authorized.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I RECITALS AND DEFINITIONS

1.0 RECITALS.

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

1.1 DEFINITIONS.

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease Agreement dated as of October 1, 2021 between the Agency and the Company (the "*Agency Lease*") as Exhibit "C" thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

1.2 INTERPRETATION.

In this Company Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Company Lease refer to this Company Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease.

**ARTICLE II
DEMISE; PREMISES; TERM**

2.1 DEMISE.

The Company hereby subleases to the Agency, and the Agency hereby (sub)subleases from the Company, the Land and the Facility for the stated term for the rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

2.2 DESCRIPTION OF PREMISES LEASED.

The leased premises is the Land and the Facility described in the recitals of this Company Lease and as more fully described on **Exhibit "A"** attached hereto.

2.3 TERM.

The Project is leased for a term which shall commence as of October 1, 2021 and shall end on the expiration or earlier termination of the Agency Lease.

2.4 MANDATORY CONVEYANCE.

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of leases and bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project, all at the Company's sole cost and expense.

2.5 CONSIDERATION.

The Agency is paying to the Company concurrently with the execution hereof consideration of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company.

2.6 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(b) This Company Lease, the Ground Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company has a valid long term leasehold interest in the Project Facility and shall remain and retain such interests for the term of this Company Lease unless otherwise consented to in writing by the Agency.

(d) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization and Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under the Ground Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust indenture, commitment, guaranty or other

agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(e) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a “project” (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency’s counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a “project” (as such quoted term is defined in the Act).

(f) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(g) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.6.

(h) The Company acknowledges, restates and affirms the obligations, representations, warranties and covenants set forth in Sections 2.2 and 11.12 of the Agency Lease as if fully set forth herein.

ARTICLE III DISPUTE RESOLUTION

3.1 GOVERNING LAW.

This Company Lease shall be governed in all respects by the laws of the State of New York.

3.2 WAIVER OF TRIAL BY JURY.

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

**ARTICLE IV
MISCELLANEOUS CLAUSES**

4.1 NOTICES.

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) To the Agency: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202
Attn: Chair

With copies to: Corporation Counsel
City of Syracuse
233 East Washington Street
Syracuse, New York 13202

and

Bousquet Holstein PLLC
110 West Fayette Street, Suite 1000
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

(b) To the Company: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088
Attn: Benjamin McHone, M.D.

With a copy to: CCB Law
507 Plum Street
Syracuse, New York 13204
Attn: Bruce Smith, Esq.

4.2 NO RECOURSE UNDER THIS COMPANY LEASE.

No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Company Lease shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity.

4.3 ENTIRE AGREEMENT.

This Company Lease contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Company Lease. This Company Lease may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

4.4 AGENCY REPRESENTATIONS.

The Company expressly acknowledges that neither the Agency nor the Agency's directors, members, employees or agents has made or is making, and the Company, in executing and delivering this Company Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Company Lease.

4.5 BINDING EFFECT.

This Company Lease shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

4.6 PARAGRAPH HEADINGS.

Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Company Lease.

4.7 CONSENT TO AGENCY LEASE; SUBORDINATION.

The Company hereby consents to the sublease by the Agency of the Project Facility to the Company pursuant to the Agency Lease. The Company acknowledges and agrees that this Company Lease and the Agency Lease shall be subordinate in all respects to the Mortgages, if any.

4.8 HOLD HARMLESS PROVISIONS.

(a) The Company hereby releases the Agency and its members, officers, agents, and employees from, agree that the Agency and its members, officers, agents, and employees shall not be liable for, and agree to indemnify, defend, and hold the Agency and its members, officers, agents, and employees harmless from and against any and all claims arising as a result of the Agency's undertaking of the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease, the Company Lease or the Mortgage;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents, or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants, or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8 shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges

incurred by the Agency, or its officers, members, agents (other than the Company), or employees, relating thereto.

(d) For purposes of this Section 4.8, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

4.9 NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent, or employee of the Agency in his individual capacity; and the members, officers, agents, and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents, or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents, and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents, and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

(d) For purposes of this Section 4.9, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

4.10 MERGER OF AGENCY.

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

4.11 EXECUTION OF COUNTERPARTS.

This Company Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

4.12 EVENT OF DEFAULT.

A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Company Lease, the Agency Lease or the Project Agreement.

4.13 REMEDIES.

Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate the Company Lease; or
- 2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.


4.14 AMENDMENTS, CHANGES AND MODIFICATIONS.

This Company Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

INTREPID LANE ASC, LLC

By: 
Benjamin McHone, M.D., Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

INTREPID LANE ASC, LLC

By: _____
Benjamin McHone, M.D., Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being part of Farm Lot 121 in said City, being Lot 8 as shown on a Final Plan of Brighton Hill Business Park prepared by Phillips & Associates, Surveyors, P.C. dated October 10, 1989 and filed in Onondaga County Clerk's Office November 9, 1989 as Map No. 7197 and being more particularly described as follows:

BEGINNING at a point in the southwesterly boundary of Intrepid Lane, said point being the northwesterly corner of said Lot 8, said point also being 679.71 feet distant easterly and southeasterly, measured along the southerly and southwesterly boundary of Intrepid Lane, from the point of curvature of a small curve on the easterly side of East Brighton Avenue; running thence easterly and northeasterly along the boundary of Intrepid Lane, following a curve to the left, having a radius of 60.00 feet, an arc distance of 100.00 feet to a point, said point being the northeasterly corner of said Lot 8; thence S 38° 43' 17" E along the division line between Lot 7 on the northeast and said Lot 8 on the southwest, a distance of 610.88 feet to the southeasterly corner of said Lot 8; thence N 83° 25' 50" W along the southerly boundary of said Lot 8, a distance of 490.42 feet to the southwesterly corner of said Lot 8; thence N 2° 17' 13" E along the division line between Lot 9 on the west and Lot 8 on the east, a distance of 434.78 feet to the point of beginning.

Lisa Dell, County Clerk
401 Montgomery Street
Room 200
Syracuse, NY 13202
(315) 435-2229

Onondaga County Clerk Recording Cover Sheet

Received From :
CSC

Return To :
CSC

Method Returned : ERECORDING

First PARTY 1

INTREPID LANE ASC LLC

First PARTY 2

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Index Type : Land Records

Instr Number : 2021-00053478

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$80.50

Recording Pages : 7

The Property affected by this instrument is situated in Syracuse, in the
County of Onondaga, New York

Real Estate Transfer Tax

RETT # : 3916

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$80.50

State of New York

County of Onondaga

I hereby certify that the within and foregoing was
recorded in the Clerk's office for Onondaga
County, New York

On (Recorded Date) : 11/08/2021

At (Recorded Time) : 11:15:01 AM



Lisa Dell, County Clerk



**MEMORANDUM OF
COMPANY LEASE AGREEMENT**

NAME AND ADDRESS OF LESSOR: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088

NAME AND ADDRESS OF LESSEE: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202

DESCRIPTION OF LEASED PREMISES:

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

DATE OF EXECUTION OF COMPANY LEASE AGREEMENT:


As of October 1, 2021.

TERM OF COMPANY LEASE AGREEMENT:

The term of the Company Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) **December 31, 2022**; or (2) sixty days after the issuance of a certificate of occupancy by the City of Syracuse, New York, unless earlier terminated as provided in that certain Agency Lease dated of even date herewith between the same parties hereto.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of October, 2021.

INTREPID LANE ASC, LLC

By: 
Benjamin McHone, M.D., Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of October, 2021.

INTREPID LANE ASC, LLC

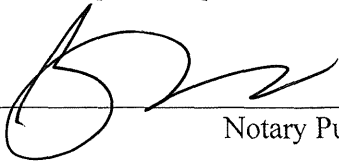
By: _____
Benjamin McHone, M.D., Manager

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On the 18 day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN McHONE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

BRUCE
Notary Public in the State of New York
Qualified in Onondaga Co. No. 02564501127
My Commission Expires February 5, 2024

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On this ____ day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On the _____ day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN McHONE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On this 18th day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L McRobbie

Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 22

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being part of Farm Lot 121 in said City, being Lot 8 as shown on a Final Plan of Brighton Hill Business Park prepared by Phillips & Associates, Surveyors, P.C. dated October 10, 1989 and filed in Onondaga County Clerk's Office November 9, 1989 as Map No. 7197 and being more particularly described as follows:

BEGINNING at a point in the southwesterly boundary of Intrepid Lane, said point being the northwesterly corner of said Lot 8, said point also being 679.71 feet distant easterly and southeasterly, measured along the southerly and southwesterly boundary of Intrepid Lane, from the point of curvature of a small curve on the easterly side of East Brighton Avenue; running thence easterly and northeasterly along the boundary of Intrepid Lane, following a curve to the left, having a radius of 60.00 feet, an arc distance of 100.00 feet to a point, said point being the northeasterly corner of said Lot 8; thence S 38° 43' 17" E along the division line between Lot 7 on the northeast and said Lot 8 on the southwest, a distance of 610.88 feet to the southeasterly corner of said Lot 8; thence N 83° 25' 50" W along the southerly boundary of said Lot 8, a distance of 490.42 feet to the southwesterly corner of said Lot 8; thence N 2° 17' 13" E along the division line between Lot 9 on the west and Lot 8 on the east, a distance of 434.78 feet to the point of beginning.



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, and Social Security number (SSN).

Location and description of property conveyed

Table with columns: Tax map designation - Section, block & lot, SWIS code, Street address, City, town, or village, County.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (One- to three-family house, Residential cooperative, etc.) and date of conveyance (10/01/2021).

Condition of conveyance (mark an X in all that apply)

Form with checkboxes for conditions of conveyance (a. Conveyance of fee interest, f. Conveyance which consists of a mere change of identity, etc.).

Table for recording officer's use with columns: Amount received, Date received, Transaction number.

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) <input checked="" type="checkbox"/> Exemption claimed	1.	0 00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	0 00
3	Taxable consideration (subtract line 2 from line 1)	3.	0 00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	0 00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.	0 00
6	Total tax due* (subtract line 5 from line 4)	6.	0 00

Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part 1, line 1)	1.	
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.	
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	

Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) k

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

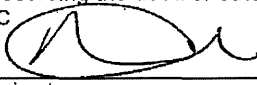
This is to certify that: (mark an X in the appropriate box)

1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.
- e Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Intrepid Lane ASC, LLC  _____ Grantor signature Benjamin McHone	M.D., Manager _____ Title	City of Syracuse Industrial Development Agency _____ Grantee signature Judith DeLaney	_____ Executive Director _____ Title
_____	_____	_____	_____
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

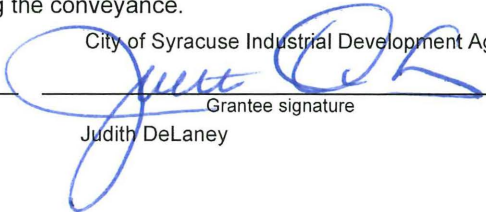
Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Intrepid Lane ASC, LLC

_____ Grantor signature Benjamin McHone	M.D., Manager Title	 _____ Grantee signature Judith DeLaney	City of Syracuse Industrial Development Agency _____ Executive Director Title
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ to _____ (see instructions).
Date Date
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

BILL OF SALE TO AGENCY

INTREPID LANE ASC, LLC, a limited liability company organized under the laws of the State of New York with an office to conduct business at 190 Intrepid Lane, Syracuse, New York 13205 (the "**Company**"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Company from the City of Syracuse Industrial Development Agency, a public benefit corporation organized and existing pursuant to the laws of the State of New York (the "**Agency**"), having its office at 201 East Washington Street, 6th Floor, Syracuse, New York 13202, the receipt of which is hereby acknowledged by the Company, hereby sells, transfers, and delivers unto the Agency, its successors and assigns, all those materials, machinery, equipment, fixtures and furnishings now owned or hereafter acquired by the Company in connection with the Project Facility, as described in the Agency Lease entered between the Agency and the Company dated as of October 1, 2021 (the "**Agency Lease**"), and as listed on "**Exhibit A**" attached hereto.

TO HAVE AND HOLD the same unto the Agency, its successors and assigns, forever.

The Company hereby represents and warrants that it is the true and lawful owner of the personal property being conveyed hereby, that all of the foregoing are free and clear of all liens, security interests, and encumbrances, except for Permitted Encumbrances, as defined in the Agency Lease, and that the Company has the right to sell the same as aforesaid; and the Company covenants that it will warrant and defend title to the same for the benefit of the Agency and its successors and assigns against the claims and demands of all persons.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed by its duly authorized representative on the date indicated beneath the signature of such representative and dated as of the 1st day of October, 2021.

INTREPID LANE ASC, LLC

By:



Benjamin McHone, M.D., Manager

EXHIBIT "A"

DESCRIPTION OF THE EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **INTEPID LANE ASC, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, racks, flagpoles, signs, waste containers, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

AND

INTREPID LANE ASC, LLC

AGENCY LEASE AGREEMENT

DATED AS OF OCTOBER 1, 2021

INTREPID LANE ENDOSCOPY AND SURGERY CENTER PROJECT

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AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT, dated as of October 1, 2021 (the "*Agency Lease*"), is by and between the **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**, a body corporate and politic and a public instrumentality of the State of New York, having its office at 201 East Washington Street, 6th Floor, Syracuse, New York 13202 (the "*Agency*"), and **INTREPID LANE ASC, LLC** a New York limited liability company having its office at 100 Metropolitan Park Drive, Liverpool, New York 13088 (the "*Company*").

WITNESSETH:

WHEREAS, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "*State*"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "*Act*"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

WHEREAS, the Agency, by resolution adopted on September 21, 2021, agreed, at the request of the Company to undertake a project (the "*Project*") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "*Land*"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the

Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "**Owner**") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long-term lease agreement, which has a purchase option, dated August 25, 2020 (the "**Ground Lease**"); and

WHEREAS, the Agency proposes to assist the Company's acquisition, reconstruction, renovation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to the undertaking and completing the Project; (2) accepting a (sub)leasehold interest in the Land and the Facility from the Company and a fee interest in the Equipment pursuant to a bill of sale from the Company; and (2) (sub)subleasing the Project Facility to the Company pursuant to this Agency Lease; and

WHEREAS, the Company has a long-term leasehold interest in the Land and the Facility and has subleased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of October 1, 2021 (the "**Company Lease**"); and

WHEREAS, the Company has conveyed title to the Equipment to the Agency pursuant to the Bill of Sale dated as of October 1, 2021 (the "**Bill of Sale**"); and

WHEREAS, the Agency now proposes to (sub)sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

WHEREAS, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Agency Lease have, in all respects, been duly authorized.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

**ARTICLE I
RECITALS AND DEFINITIONS**

1.0 RECITALS.

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

1.1 DEFINITIONS.

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit "C"** except as otherwise expressly defined herein or the context hereof otherwise requires.

1.2 INTERPRETATION.

In this Agency Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Agency Lease refer to this Agency Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

ARTICLE II REPRESENTATIONS AND COVENANTS

2.1 REPRESENTATIONS OF THE AGENCY.

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project Facility will constitute a "project," as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company acknowledges, represents, warrants and covenants to the Agency as follows:

(a) The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(b) This Agency Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company has a valid long term leasehold interest in the Project Facility and shall maintain its interest in the Project Facility for the term of this Agency Lease unless otherwise consented to in writing by the Agency.

(d) The Company shall complete the Project Facility on or before the Completion Date.

(e) This Project is located in a Highly Distressed Area (as that term is defined in the Act).

(f) For the duration of the term hereof, the Company shall maintain the Ground Lease and operate the Project Facility as the Project Facility and for the purposes presented herein and in the Application and Plans and Specifications presented to the Agency.

(g) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's Articles of Organization and Operating Agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under the Ground Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company or violate any Applicable Laws.

(h) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, reconstruct, renovate, equip and complete the Project Facility in the City of Syracuse;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will preserve or increase the overall number of permanent, private sector jobs in the State and the City.

(i) So long as the Agency holds a (sub)leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(j) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(k) The Project will not have a significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, reconstruction, renovation and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(l) The Company acknowledges the Agency's Local Access Policy and the Company's obligation to comply. The Company further understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The

Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

(m) The Company is ready to proceed with construction of the Project Facility.

(n) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility will promote employment opportunities in the City by the creation and/or preservation of both full and part-time jobs.

(o) The Company has, or will have as of the first date of reconstruction, renovation and equipping, all then necessary permits, licenses, and governmental approvals and consents (collectively, "**Approvals**") for the reconstruction, renovation and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the reconstruction, renovation and equipping of the Project Facility.

(p) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(q) No part of the Project Facility will be located outside of the City.

(r) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(s) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

(t) As a condition precedent to receiving or benefiting from any State sales and use tax exemption benefits, the Company acknowledges and agrees to all terms and conditions of Section 875(3) of the Act. Section 875(3) of the Act is herein incorporated by reference. As part of such conditions precedent:

(1) The Company shall not take any State or local Sales and Use Tax exemptions to which it is not entitled, which are in excess of the amount authorized by the Agency in reliance on the Company's Application or which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Agency Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Sales Tax Recapture Amount (as defined herein) and shall, upon the Agency's request, immediately pay to the Agency any Sales Tax Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The Company acknowledges and agrees that the failure of the Company to promptly pay any Sales Tax Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(u) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$374,543**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

(v) The Company hereby acknowledges that no exemption from mortgage recording tax nor from real property taxes has been authorized by the Agency as part of the Financial Assistance.

(w) The Company hereby acknowledges, agrees and covenants to timely pay all costs of reconstruction, renovation, equipping and completing the Project, and its obligations hereunder including, but not limited to, Article 4 hereof.

(x) The Company hereby represents, warrants and covenants that no properties owned or leased by the Company in the City are currently the subject of any violations, including but not limited to zoning and/or permitting, by any governmental agency nor are any such properties delinquent in any taxes or payments in lieu thereof to any municipality. The Company further represents, warrants and covenants that all Company owned or leased properties are in compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities and that there are no pending or threatened law suits against the City or County.

**ARTICLE III
CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.

The Company has conveyed to the Agency, pursuant to the Company Lease, a (sub)leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Agency Lease, the Agency will convey, or will cause to be conveyed, to the Company, a (sub)subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

3.2 USE OF PROJECT FACILITY.

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in accordance with the terms of this Agency Lease and for the purposes described in the third WHEREAS clause of this Agency Lease; provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

**ARTICLE IV
RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT**

4.1 RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT FACILITY.

(a) The Company shall promptly reconstruct, renovate, equip and complete the Project Facility, all in accordance with the Plans and Specifications on or before the Completion Date. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Local Access Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the reconstruction, renovation equipping and completion of the Project Facility. For purposes of this Agency Lease, and in particular this Section 4.1, the term "*local*" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided or for the benefit of the Project in the Agency's sole discretion.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform the following in compliance with the terms, purposes, and intent of this Agency Lease, the Act and the other Company Documents, and the Company hereby accepts such appointment:

(1) To reconstruction, renovation equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the reconstruction, renovation, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the reconstruction, renovation, equipping and completion of the Project Facility from funds made available therefore from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the reconstruction, renovation, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services relative to the Project from: (i) business enterprises located in the City; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. Consideration will be given by the Agency to the Company's efforts to comply, and compliance with, this objective at any time an extension of benefits is requested, or further involvement by the Agency with the Project, is requested by the Company.

4.2 COMPLETION OF PROJECT FACILITY.

(a) The Company shall proceed with due diligence to acquire, reconstruct, renovate, equip and complete the Project Facility on or before the Completion Date in accordance with the Plans and Specifications. Completion of the acquisition, reconstruction, renovation and equipping of the Project Facility shall be evidenced by a certificate signed by an

Authorized Representative of the Company and approved by the Agency, on or before the Completion Date, stating:

- (1) The date of such completion;
- (2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) That the Company has good and valid title to all Equipment and a valid leasehold interest in the Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and
- (4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

4.3 COSTS OF COMPLETION PAID BY COMPANY.

(a) The Company agrees to complete the Project in accordance with the terms hereof and to pay in full all costs of the reconstruction, renovation, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with reconstruction, renovation, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or

proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

4.5 . RESERVED.

**ARTICLE V
AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS**

5.1 AGREEMENT TO LEASE PROJECT FACILITY.

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to (sub)lease to the Company, and the Company hereby agrees to (sub)lease from the Agency, the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the (sub)leasehold interest in and to the Land and Facility pursuant to the Company Lease, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have, as applicable, an:

- (i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;
- (ii) unconditional obligation to keep the Project Facility in good condition and repair;
- (iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;
- (iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;
- (v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;

(vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until **December 31, 2022** (the "**Term**"), unless early terminated as provided herein. Notwithstanding anything herein to the contrary, the obligations of the Company to report hereunder and the Agency's rights to recapture shall continue during the Term of this Agency Lease, but in the event of an early termination as provided for herein, the Company's obligation to report and the Agency's right to recapture shall not be less than the Reporting Period (as defined herein). As a condition to the termination of this Agency Lease, the Company shall be obligated to execute and deliver the certification attached hereto at **Schedule "1"** regarding the Company's ongoing obligations.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Agency Lease, the Company Lease, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the Term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease and the Company Lease (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person:** an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency.

(f) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease and the Company Lease shall terminate; however, the Project Agreement shall survive in accordance with its terms.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease and the Agency Lease, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no uncured Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

(a) The Company shall pay basic rental payments for the Project Facility an amount sufficient to pay any and all other amounts due hereunder.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and

obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease, including, without limitation, reasonable fees and disbursements of Agency counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and shall constitute additional rent hereunder.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the reconstruction, renovation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

**ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss and damage, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner in general accordance with the Project description as set forth herein and in the Application and the Plans and Specifications the Company previously provided to the Agency in the Application or otherwise.

6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; and

(4) All payments in lieu of taxes, if any, required to be made to the Agency under the terms of any agreement with respect thereto.

(b) Subject to the terms of any payment in lieu of taxes agreement, the Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event

of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

(c) *Notwithstanding anything herein to the contrary, and notwithstanding the Agency's interest in the Project Facility, the Company and the Owner shall pay all taxes as if privately owned.*

6.3 INSURANCE REQUIRED.

During the Term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the Term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**ARTICLE VII
DAMAGE, DESTRUCTION, AND CONDEMNATION**

7.1 DAMAGE OR DESTRUCTION.

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency;
and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums due and payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts then due and payable under this Agency Lease, the Company Lease

and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

7.2 CONDEMNATION.

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency;
and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease and the other Agency Documents, shall be applied to payment of all amounts then due and payable to the Agency under this Agency Lease, the Company Lease and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts then

due and payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts then due and payable under this Agency Lease, the Company Lease and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

7.3 ADDITIONS TO PROJECT FACILITY.

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

ARTICLE VIII SPECIAL COVENANTS

8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

8.2 HOLD HARMLESS PROVISIONS.

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Project Facility or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, or employees by any employee of the Company, or any materialman or Additional Agent of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses

and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

8.3 RIGHT OF ACCESS TO PROJECT FACILITY.

During the Term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company and with the least disturbance of Project Facility tenants as reasonably possible.

8.4 MAINTENANCE OF EXISTENCE.

During the Term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets. In addition, the Company shall maintain its leasehold interest in the Project Facility pursuant to the terms of the Ground Lease.

8.5 AGREEMENT TO PROVIDE INFORMATION.

The Company shall have an obligation to report and provide information, as set forth herein during the Term hereof. However, in the event this Agency Lease is terminated early in accordance with Section 5.2 hereof, the Company's obligation to report shall be for a period of five (5) years from the termination date, unless the early termination occurs with less than five years from the expiration of the original Term hereof, in which case the Company shall continue to provide the required information for the remaining Term hereof (the "**Reporting Period**"), and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding job creation¹, Local Labor Requirements, exemptions from State and local sales and use tax, real property and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, those reports set forth in Section 8.12 hereof, and such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to §875 of the Act (all of the foregoing collectively, the "**Reporting Requirements**").

¹ To the extent the Project includes commercial space and/or tenants for which the Company calculated job creation as part of its projections in its Application, the Company is obligated, through its lease or other rental agreement with those commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

Notwithstanding anything herein to the contrary, the Agency's ability to recapture benefits in accordance with its policy and the terms hereof, shall be for a period of time no less than the Reporting Period.

8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.

During the Term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.

During the Term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect

the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.

8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

The parties agree that as between them, the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

8.11 EMPLOYMENT OPPORTUNITIES.

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

8.12 SALES AND USE TAX EXEMPTION.

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Agency Lease. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase.

(b) The Company may use and appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "*Additional Agents*") in furtherance of the completion of the Project. However, for each Additional Agent, the Company must first: (i) cause the each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit "E"**,

and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

(c) The Company acknowledges and agrees that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency's sales and use tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "**Annual Sales Tax Report**"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Agency Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

(e) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act for itself and any Additional Agent.

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "**Thirty-Day Sales Tax Report**"), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance consisting of State and local sales and use tax exemption (the "**Sales Tax Recapture Amount**") in accordance with the Agency's Recapture Policy, a copy of which is attached hereto at **Exhibit "H"**, this Agency Lease and the Project Agreement.

8.13. IDENTIFICATION OF THE EQUIPMENT.

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY

9.1 ASSIGNMENT OF AGENCY LEASE.

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency's sole and absolute discretion; provided however, that the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder.

9.2 TRANSFERS OF INTERESTS.

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency's sole and absolute discretion.

9.3 MERGER OF AGENCY.

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT DEFINED.

The following shall be “Events of Default” under this Agency Lease, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3 or 8.12(g); or

(b) Failure by the Company to maintain the insurance required by Section 6.3;
or

(c) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(d) A transfer in contravention of Article 9 hereof;

(e) The occurrence of an “Event of Default” under the Ground Lease, the Mortgage, the Company Lease, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(f) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due.

(g) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof; or

(h) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(i) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company

within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

(j) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

10.2 REMEDIES ON DEFAULT.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- 1) Terminate this Agency Lease;
- 2) Terminate the Company Lease;
- 3) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Company Lease, the Project Agreement and/or to enforce the Company's obligations and duties under the Company Documents and the Agency's rights under the Agency Documents, including but not limited to, specific performance;
- 4) Terminate the Company's appointment as agent of the Agency; or
- 5) Seek to recover all or some of the Recapture Amount in accordance with the Agency's Recapture Policy, this Agency Lease and the Project Agreement.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

10.3 REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the

Agency's right to terminate this Agency Lease and the Company Lease. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

The Company shall remit, upon the execution and delivery of this Agency Lease, all legal fees and costs incurred by the Agency in conjunction with the Project Facility, its approval, and the Financial Assistance. In the event the Company should Default under any of the provisions of this Agency Lease, or a dispute arises hereunder, and the Agency should employ attorneys or incur other expenses to preserve or enforce its rights hereunder or for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred.

10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI MISCELLANEOUS

11.1 NOTICES.

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

- (a) If to the Agency, to: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202
Attn: Chair

With a copy to: Corporation Counsel
City of Syracuse
233 East Washington Street
Syracuse, New York 13202

and

Bousquet Holstein PLLC
One Lincoln Center, Suite 1000
110 West Fayette Street
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

(b) If to the Company, to: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088
Attn: Benjamin McHone, M.D.

With a copy to: CCB Law
507 Plum Street
Syracuse, New York 13204
Attn: Bruce Smith, Esq.

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

11.2 BINDING EFFECT.

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

11.3 SEVERABILITY.

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

11.5 EXECUTION OF COUNTERPARTS.

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.6 APPLICABLE LAW.

This Agency Lease shall be governed exclusively by the applicable laws of the State of New York.

11.7 WAIVER OF TRIAL BY JURY.

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.

11.8 SUBORDINATION.

This Agency Lease shall be subject and subordinate to the Company Lease and the Mortgage and all Permitted Encumbrances in all respects. The Company Lease is deemed to be effective immediately prior to this Agency Lease.

11.9 SURVIVAL OF OBLIGATIONS.

(a) The obligations of the Company to repay, defend and/or provide the indemnity or information required by Sections 8.2, 8.5 and 8.12 hereof shall survive the termination of this Agency Lease and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2 and 8.12 shall survive the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Articles 4 and 5 and Sections 2.2, 8.4, 8.5, 10.4 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

11.11 NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.

(a) Contemporaneously with the termination of this Agency Lease in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Agency Lease and the other Company Documents. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing and delivering the bill of sale together with any other documents therewith, including lease terminations in accordance with Section 5.2 hereof, and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Equipment.

(b) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of a bill of sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfer of title.

(c) The Company agrees to prepare the bill of sale to Company and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that title to the Equipment is to be conveyed to the Company.

11.13 ENTIRE AGREEMENT.

This Agency Lease and the Company Lease contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

11.14 DISCLOSURE.

Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify

such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

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IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By: _____
Benjamin McHone, M.D., Manager

IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By:  _____
Benjamin McHone, M.D., Manager

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being part of Farm Lot 121 in said City, being Lot 8 as shown on a Final Plan of Brighton Hill Business Park prepared by Phillips & Associates, Surveyors, P.C. dated October 10, 1989 and filed in Onondaga County Clerk's Office November 9, 1989 as Map No. 7197 and being more particularly described as follows:

BEGINNING at a point in the southwesterly boundary of Intrepid Lane, said point being the northwesterly corner of said Lot 8, said point also being 679.71 feet distant easterly and southeasterly, measured along the southerly and southwesterly boundary of Intrepid Lane, from the point of curvature of a small curve on the easterly side of East Brighton Avenue; running thence easterly and northeasterly along the boundary of Intrepid Lane, following a curve to the left, having a radius of 60.00 feet, an arc distance of 100.00 feet to a point, said point being the northeasterly corner of said Lot 8; thence S 38° 43' 17" E along the division line between Lot 7 on the northeast and said Lot 8 on the southwest, a distance of 610.88 feet to the southeasterly corner of said Lot 8; thence N 83° 25' 50" W along the southerly boundary of said Lot 8, a distance of 490.42 feet to the southwesterly corner of said Lot 8; thence N 2° 17' 13" E along the division line between Lot 9 on the west and Lot 8 on the east, a distance of 434.78 feet to the point of beginning.

EXHIBIT "B"

DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **INTREPID LANE ASC, LLC** (the "*Company*") and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Agency Lease or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, furniture, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, freezers, rugs, movable partitions, cleaning equipment, maintenance equipment, restaurant supplies and equipment, shelving, racks, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT "C"

TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

Act: means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

Additional Agents: means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of the Agency Lease.

Agency: means the City of Syracuse Industrial Development Agency and its successors and assigns.

Agency Documents: means the Project Agreement, the Agency Lease, the Company Lease, the Mortgage and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

Agency Lease: means the Agency Lease Agreement dated as of October 1, 2021, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

Applicable Laws: means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

Application: means the application submitted by the Company to the Agency dated August 4, 2021, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

Authorized Representative: means for the Agency, the Chairman or Vice Chairman of the Agency; for the Company, its Member or its Managing Member (designated by resolution) or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

Bill of Sale: means that certain Bill of Sale from the Company to the Agency dated as of October 1, 2021 in connection with the Equipment.

City: means the City of Syracuse.

Closing Date: means November 1, 2021.

Closing Memorandum: means the closing memorandum of the Agency relating to the Project.

Code: means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

Company: means Intrepid Lane ASC, LLC, or Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, a limited liability company, organized and existing under the laws of the State of New York having an address at 100 Metropolitan Park Drive, New York 13088, and its permitted successors and assigns.

Company Documents: means the Ground Lease, the Company Lease, the Agency Lease, the Project Agreement, the Mortgage, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Company Certification and any other documents executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

Company Lease: means the Company Lease Agreement dated as of October 1, 2021 from the Company to the Agency, pursuant to which the Company subleased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

Completion Date: means November 30, 2022.

Condemnation: means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

County: means the County of Onondaga in the State of New York.

Environmental Compliance and Indemnification Agreement: means the Environmental Compliance and Indemnification Agreement dated as of October 1, 2021 by the Company to the Agency.

Equipment: means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in **Exhibit “B”** to the Agency Lease.

Facility: means the buildings and other improvements located or to be constructed on the Land.

Financial Assistance: has the meaning given to such term in Section 854(14) of the Act.

Financial Assistance Recapture Amounts: means any and all other components of Financial Assistance, including any payment in lieu of taxes benefits or mortgage recording tax exemptions provided to the Company.

Governmental Authority or Governmental Authorities: means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

Ground Lease: means the long-term lease agreement between the Company and SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC dated August 25, 2020.

Land: means the improved real property located at 190 Intrepid Lane in the City of Syracuse, County of Onondaga, State of New York, more particularly described on **Exhibit “A”** attached to the Agency Lease.

Lien: means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

Mortgage: means one or more mortgages from the Agency and the Company to the Mortgagee and recorded in the Onondaga County Clerk’s office subsequent to the filing and recording of the Memorandum of Agency Lease, securing construction and/or permanent

financing for the Project Facility, executed in accordance with Section 4.5 of the Agency Lease, and securing the Note.

Mortgagee: means a lender, its successors and assigns, providing financing pursuant to the Note and Mortgage, relative to the costs of construction and/or equipping of the Project Facility.

Net Proceeds: means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

Note: means one or more notes given by the Company to the Mortgagee in connection with the Mortgage for construction or permanent financing relative to the Project Facility.

Owner: means SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC.

Permitted Encumbrances: means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Agency Lease, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Agency Lease and the Mortgage, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagee and the Agency.

Person: means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

Plans and Specifications: means all representations, plans and specifications presented by the Company to the Agency in its Application and as described in the Project description in the third WHEREAS cause of this Agency Lease, and any other presentation or representations made by the Company to the Agency relating to the construction, reconstruction, renovation,

equipping and completion of the Project Facility; and any additional plans and specifications approved by the Mortgagee.

Project: shall have the meaning ascribed thereto in the third *WHEREAS* clause of this Agency Lease.

Project Agreement: means the Project Agreement dated as of October 1, 2021 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance, as the same may be amended or supplemented from time to time.

Project Facility: means the Land, the Facility and the Equipment.

Property: means any interest in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

Recapture Amount: means collectively, the Sales Tax Recapture Amount and the Financial Assistance Recapture Amounts.

Resolution or Resolutions: means the Agency's resolutions adopted on September 21, 2021 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

Sales and Use Tax or State Sales and Use Taxes: means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

Sales Tax Recapture Amount: means the portion of the Financial Assistance consisting of State and local sales and use tax exemption the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, in accordance with the Agency's Recapture Policy.

SEQRA: means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

State: means the State of New York.

Unassigned Rights: means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under the Agency Lease;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Agency Lease;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified “project” as defined in and as contemplated by the Act;

(iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(m), 2.2(q), 4.1, 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 8.12, 10.2, 10.4, 11.9, 11.11 and 11.12 of the Agency Lease and Sections 2.6(g), 4.8 and 4.9 of the Company Lease; and

(vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of the Agency Lease or with respect to any of the Agency’s Unassigned Rights.

EXHIBIT "D"

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY
201 East Washington Street, 6th Floor, Syracuse, New York 13202

Date

COMPANY
COMPANY ADDRESS

Dear _____:

Our auditors, _____, CPAs are conducting an audit of our financial statements for the year ended December 31, _____. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project: _____

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ _____

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: _____, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

A. Job Retention/Creation:

I. Construction Jobs:

Provide the name of your general contractor: _____.

Provide the address (including county) of your general contractor: _____.

Is the general contractor MWBE qualified? _____.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) qualified? _____.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

***Must include county**

II. Permanent (non-construction) Jobs:

Number of FTEs retained at the Project prior to date of application: _____.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): _____.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

Professional/Managerial/Technical - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** _____.

Skilled - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** _____.

Unskilled or Semi-Skilled - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** _____.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$_____.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: _____.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: _____.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$_____.

B. Geographical Hiring Data:

1. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

2. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

Signature

Print Name

Title

Date

EXHIBIT "E"

FORM OF SUB-AGENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "**Agreement**"), dated as of _____, 20__, is by and between INTREPID LANE ASC, LLC (the "**Company**"), with a mailing address of 100 Metropolitan Park Drive, Liverpool, New York 13088, and _____, a _____ of the State of New York, having an office for the transaction of business at _____ (the "**Sub-Agent**").

WITNESSETH:

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") was created by Chapter 641 of the Laws of 1979 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**") as a body corporate and politic and as a public benefit corporation of the State of New York (the "**State**"); and

WHEREAS, by resolution of its members adopted on September 21, 2021 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, under the Resolution and in the Agency Lease Agreement by and between the Company and the Agency dated as of October 1, 2021 (the "**Agency Lease**") the Agency appointed the Company as its agent for purposes of completing the Project and delegated to the

Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the “*Additional Agents*” or “*Sub-Agents*”), for the purpose of completing the Project and benefitting from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolution and the Agency Lease; and

WHEREAS, the Company and the Agency entered into a Project Agreement dated as of October 1, 2021 (the “*Project Agreement*”).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent represents, warrants, covenants, agrees and acknowledges:

a. that the undersigned is an authorized representative of the Sub-Agent with authority to bind the Sub-Agent and upon execution of this Agreement by the undersigned, same shall be binding upon the Sub-Agent.

b. to make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

c. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s Suspension, Discontinuation and Recapture of Benefits Policy (the “*Recapture Policy*”), a copy of which is attached hereto as **Schedule “A”**.

d. that the failure of the Sub-Agent to promptly pay any Sales Tax Recapture Amount in accordance with the Recapture Policy, the Agency Lease and/or the Resolution to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from

State sales and use taxation, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

e. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Schedule “B”**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

f. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, “I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the City of Syracuse Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement.” The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: INTREPID LAND ENDOSCOPY AND SURGERY CENTER PROJECT, 190 INTREPID LANE, IDA PROJECT NO. 31022105.

g. that for purposes of any exemption from the State sales and use taxation as part of any Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

h. that the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent’s work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

i. that as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

j. that Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

k. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Onondaga, Oswego, Madison, Cayuga, Cortland and Oneida Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency.

l. that the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

m. that the failure to comply with the foregoing will result in the loss of the exemption.

n. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the general contractor.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the general contractor is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the general contractor who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the effective date of this Agreement, the general contractor shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) Certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the general contractor covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the general contractor shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the execution of this Agreement.

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

o. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Agency Lease or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

INTREPID LANE ASC, LLC

By: _____
Benjamin McHone, M.D., Manager

[NAME OF SUB-AGENT]

By: _____
Name:
Title:

SCHEDULE "A"
To Sub-Agent Agreement

RECAPTURE POLICY

City of Syracuse
Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, NY 13202
Tel (315) 473-3275 Fax (315) 435-3669

RECAPTURE POLICY

I. STATEMENT OF PURPOSE

The City of Syracuse Industrial Development Agency (the “Agency”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- a) To which the project was not entitled;
- b) In excess of the amounts authorized by the Agency;
- c) For property or services not authorized by the Agency; and/or
- d) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- a) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- b) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- c) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- a) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- b) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- c) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- d) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

- e) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- a) Whether the company has proceeded in good faith.
- b) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- c) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- d) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- e) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- f) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

IV. RECAPTURE PERIOD

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

SCHEDULE "B"
to Sub-Agent Agreement

FORM ST-123



New York State Department of Taxation and Finance
New York State Sales and Use Tax

ST-123
(7/14)

**IDA Agent or Project Operator
Exempt Purchase Certificate**
Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one: Single-purchase certificate Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (see DSC numbers)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	/	/

Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I rendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1939 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1118(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1. Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 64, Privacy Notification. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center: (518) 455-2699

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY): (518) 455-5692

EXHIBIT "F"
RECAPTURE POLICY

City of Syracuse
Industrial Development Agency
201 East Washington Street, 7th Floor
Syracuse, NY 13202
Tel (315) 473-3275 Fax (315) 435-3669

RECAPTURE POLICY

I. STATEMENT OF PURPOSE

The City of Syracuse Industrial Development Agency (the “*Agency*”) has adopted this Recapture Policy (the “*Recapture Policy*”) in accordance with Sections 874(10) and 874(11) of the New York State General Municipal Law. This Recapture Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”) and Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (said Chapter and the Enabling Act being hereinafter collectively referred to as the “*Act*”), and any other applicable law.

II. MANDATORY RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX

The Agency shall recapture from project applicants New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized State sales and use tax exemptions:

- e) To which the project was not entitled;
- f) In excess of the amounts authorized by the Agency;
- g) For property or services not authorized by the Agency; and/or
- h) For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents between the company and the Agency.

The approving resolution(s) and project documents granting financial assistance in the form of State sales and use tax exemption benefits shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) days of the recapture, the recapture amount shall be remitted to the New York State Department of Taxation and Finance. Such remittances shall include interest, at the legal rate, imposed by the Agency. The failure to pay over such amounts to the Agency shall be grounds for the New York State Tax Commissioner to assess and

determine State sales and use taxes due from the company under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

In order to determine if one of the foregoing events have occurred (a “*State Mandated Recapture Event*”) and to effectuate this recapture of New York State sales and use tax benefits the Agency shall:

- d) Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- e) Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
- f) The Agency shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

III. SUSPENSION, DISCONTINUATION, RECAPTURE AND TERMINATION OF OTHER FORMS OF FINANCIAL ASSISTANCE

With respect to all other financial assistance provided to a project (other than the State portion of sales and use tax exemptions) the Agency shall have the right to suspend, discontinue, recapture or terminate financial assistance to any company for a project to the extent that:

- f) for projects that utilized local sales and use tax exemptions, the project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “*Local Sales Tax Benefit Violation*”);
- g) the company, upon completion of the project, fails to reach and maintain at least 85 percent of its employment requirements for job creation and/or retention (“*Job Deficit*”);
- h) the total investment actually made with respect to the project at the project’s completion date is less than 85 percent of its investment requirement (“*Investment Deficit*”);
- i) the company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“*Reporting Failure*”); or

- j) there otherwise occurs any event of default under any project document (each, an “Event of Default”) or a material violation of the terms and conditions of any project document (a “*Material Violation*”).

IV. ANNUAL ASSESSMENT

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State Mandated Recapture Event, a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “*Noncompliance Event*”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event (other than a State Mandated Recapture Event), the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the financial assistance provided to a project, and shall consider the following in making its determination:

- g) Whether the company has proceeded in good faith.
- h) Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the company.
- i) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create a more adverse situation for the company, such as the company going out of business or declaring bankruptcy, which would not occur if the Agency’s rights were not exercised.
- j) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance would create an adverse situation for the residents of the City of Syracuse.
- k) The assessment prepared in accordance with the Agency’s Annual Assessment Policy.
- l) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of financial assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the financial assistance (the “*Determination*”). The Determination shall provide terms, if any, by which a company may remedy any Noncompliance Event (other than a State Mandated Recapture Event) upon which the Determination was based. The

company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume financial assistance to the company (which will be at the Agency's sole discretion).

The project agreement entered into between the Agency and the company (the "*Project Agreement*") shall include the terms and conditions of the foregoing provisions. The Agency shall also include in the Project Agreement a requirement that the company comply with the Agency's right to suspend, discontinue, recapture or terminate the financial assistance and that the company shall repay all or a portion of the financial assistance granted by the Agency to the company pursuant to any Determination.

Any such amount constituting local tax exemptions shall be redistributed to the appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction.

IV. RECAPTURE PERIOD

Except as otherwise provided by the General Municipal Law, the recapture period will be the longer of: (1) the term of the Lease Agreement; or (2) five years following the project's completion date. A project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of the Project Agreement.

Adopted: June 21, 2016

SCHEDULE 1

FORM OF CERTIFICATION REGARDING ONGOING OBLIGATIONS UPON TERMINATION OF LEASES

CERTIFICATION

In _____, at the request of Intrepid Lane ASC, LLC (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**") undertook a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

The meaning of capitalized terms not otherwise defined herein shall have the meanings attached to them in the agency lease, dated as of October 1, 2021 between the Agency and the Company (the "**Agency Lease**").

On October __, 2021 the Agency and the Company closed on a straight lease transaction with respect to the Project and the Financial Assistance (the "**Original Closing**") pursuant to which the parties executed and delivered the Company Documents and the Agency Documents (collectively the "**Lease Documents**").

Pursuant to the Company's request, the Agency terminated their leasehold interest in the Project Facility as of _____, 20__ (the "**Termination**").

Pursuant to the terms of the Agency lease, the Company has ongoing obligations, including to perform certain reporting requirements to the Agency, as more particularly described below:

- (1) certain provisions and obligations of the Lease Documents survive the Termination, including: Article 4 of the Agency Lease and Sections 2.2, 8.2, 8.5, 8.12, 10.4, 11.7 and 11.14 of the Agency Lease;
- (2) in accordance with its terms, the entire Project Agreement, and the Company's obligations thereunder, shall survive the Termination;
- (3) the Company is familiar with all of the Agency's policies, including but not limited to, its Recapture Policy, and is bound thereby; and
- (4) in furtherance of (i) above, but without limiting the foregoing, the Company continues to be obligated to comply with the following reporting obligation in accordance with Article 4 of the Project Agreement:

Section 4.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year after completion of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following completion of the Project the new jobs set forth in the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continuing for a five (5) year period following completion of the Project (the "**Term**"):

(a) The total investment made with respect to the Project at the Project's completion date shall equal to or exceed \$6,861,790, being the total project cost as stated in the Company's Application for Financial Assistance (the "**Investment Commitment**").

(b) There were no full time equivalent ("**FTE**") employees were retained by the Project Facility as of the date of the Application. The Company's application estimated the creation of twenty (20) new FTEs (the "**New FTEs**") at the Project Facility within the first five (5) years following completion of the Project Facility. The Company shall be required to meet and maintain all of the foregoing employment commitments during the Term hereof (the "**Employment Commitment**").

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "**Reporting Commitment**").

Section 4.02. Reporting Requirement. As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial

Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit A** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

Dated as of _____, 20__

INTREPID LANE ASC, LLC

By: _____
Name:
Title:

EXHIBIT A
(to Form of Certification)

FORM OF ANNUAL REPORTING QUESTIONNAIRE

SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY
201 East Washington Street, 6th Floor, Syracuse, New York 13202

Date

COMPANY
COMPANY ADDRESS

Dear _____:

Our auditors, _____, CPAs are conducting an audit of our financial statements for the year ended December 31, _____. In connection with that audit, we request that you furnish certain information directly to our auditor with regard to the following security issued by/through the City of Syracuse Industrial Development Agency:

Sale - Leaseback Financing

Project:

Date of Financing:

Principal Amount Financed:

Maturity Date:

Original Interest Rate:

Please provide the following information as of December 31, [year]:

Name of Lender

Debt Retired in [year] Yes/No

Debt Refinanced in [year] Yes/No

(If Yes, please update information in Paragraph 1 above)

Debt in Default as of [date] Yes/No

Current Interest Rate(s)

Rate range, if Variable

Principal balance outstanding as of [date]

Principal payments made during [year]

Payments in Lieu of Taxes (PILOT)

paid in [year]

Total cost of goods/services purchased: \$ _____

New York State Sales Tax Exemptions Claimed [year]

New York Local Sales Tax Exemptions Claimed: [year]

New York State Mortgage Recording

Tax Exemption: [year]

Form of Syracuse Industrial Development Agency — Project Jobs Data [year]

From:

To: _____, CPAs

Re:

The following jobs information is furnished to you with regard to the above cited project:

A. Job Retention/Creation:

III. Construction Jobs:

Provide the name of your general contractor: _____.

Provide the address (including county) of your general contractor: _____.

Is the general contractor MWBE qualified? _____.

Is the general contractor Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) qualified? _____.

For each contractor and/or sub-contractor, provide the following information for the reporting period:

Bid awarded to (Name/Address/County*)	Value of contract	MWBE (Yes/No)	SDVOBE (Yes/No)	Number of jobs (FTE)

***Must include county**

IV. Permanent (non-construction) Jobs:

Number of FTEs retained at the Project prior to date of application: _____.

Number of FTEs created by the Project during the reporting calendar year (*exclusive of construction jobs*): _____.

Of the jobs created by the Project during the reporting year (*exclusive of construction jobs*) identify how many are in each of the following categories:

Professional/Managerial/Technical - includes jobs which involve skill or competence of extraordinary degree and may include supervisory responsibilities (examples: architect, engineer, accountant, scientist, medical doctor, financial manager, programmer). **Number of jobs created in reporting year** _____.

Skilled - includes jobs that require specific skill sets, education, training, and experience and are generally characterized by high education or expertise level (examples: electrician, computer operator, administrative assistant, carpenter, sales representative). **Number of jobs created in reporting year** _____.

Unskilled or Semi-Skilled - includes jobs that require little or no prior acquired skills and involve the performance of simple duties that require the exercise of little or no independent judgment (examples: general cleaner, truck driver, typist, gardener, parking lot attendant, line operator, messenger, information desk clerk, crop harvester, retail salesperson, security guard, telephone solicitor, file clerk). **Number of jobs created in reporting year** _____.

Identify:

the average annual salary range of the FTEs (*exclusive of construction jobs*) created during the reporting year: \$_____.

the total number of jobs (*exclusive of construction jobs*) created by the Project from the date of application through the reporting date: _____.

the total number of jobs (retained and created, *but exclusive of construction jobs*) at the Project from the date of application through the reporting date: _____.

What is the annual average salary range of the FTEs (*exclusive of construction jobs*) created at the Project to date: \$_____.

B. Geographical Hiring Data:

3. Construction jobs:

Of the construction jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

4. FTEs hired (*exclusive of construction jobs*)

Of the FTE jobs created during the reporting period, provide the zip codes for the hires (based upon hire's residence); and, if more than one (1) FTE hired during the reporting period, identify the number of FTEs hired from each zip code.

Provide the same information reflecting FTEs hired from the date of application through the reporting date at the Project.

Comments:

Signature

Print Name

Title

Date

Lisa Dell, County Clerk
401 Montgomery Street
Room 200
Syracuse, NY 13202
(315) 435-2229

Onondaga County Clerk Recording Cover Sheet

Received From :
CSC

Return To :
CSC

Method Returned : ERECORDING

First PARTY 1

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

First PARTY 2

INTREPID LANE ASC LLC

Index Type : Land Records

Instr Number : 2021-00053479

Book : Page :

Type of Instrument : Memorandum Of Lease

Type of Transaction : Deed Misc

Recording Fee: \$80.50

Recording Pages : 7

The Property affected by this instrument is situated in Syracuse, in the
County of Onondaga, New York

Real Estate Transfer Tax

RETT # : 3917

Deed Amount : \$0.00

RETT Amount : \$0.00

Total Fees : \$80.50

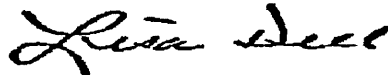
State of New York

County of Onondaga

I hereby certify that the within and foregoing was
recorded in the Clerk's office for Onondaga
County, New York

On (Recorded Date) : 11/08/2021

At (Recorded Time) : 11:17:58 AM



Lisa Dell, County Clerk



6

**MEMORANDUM OF
AGENCY LEASE AGREEMENT**

NAME AND ADDRESS OF LESSOR: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202

NAME AND ADDRESS OF LESSEE: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088

DESCRIPTION OF LEASED PREMISES:

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being more particularly described in **Exhibit "A"** annexed hereto, together with the improvements thereon.

DATE OF EXECUTION OF AGENCY LEASE AGREEMENT:

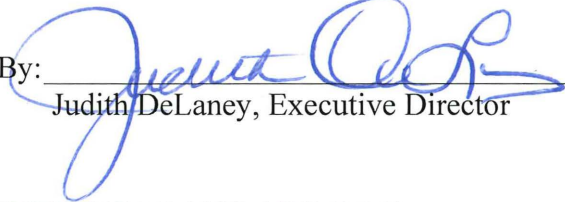
As of October 1, 2021

TERM OF AGENCY LEASE AGREEMENT:

The term of the Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) **December 31, 2022**; or (2) sixty days after the issuance of a certificate of occupancy by the City of Syracuse, New York, unless earlier terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of October, 2021.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC


By: _____
Benjamin McHone, M.D., Manager

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum as of the 1st day of October, 2021.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By:  _____
Benjamin McHone, M.D., Manager

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On this 18th day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Lori L. McRobbie

Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 2022

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On the ____ day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN McHONE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

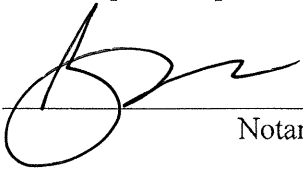
STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On this ____ day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **JUDITH DELANEY**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

On the 18 day of October, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **BENJAMIN McHONE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

BRUCE A. SMITH
Notary Public in the State of New York
Qualified in Onondaga Co. No. 02SM4961729
My Commission Expires February 5, 2024

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being part of Farm Lot 121 in said City, being Lot 8 as shown on a Final Plan of Brighton Hill Business Park prepared by Phillips & Associates, Surveyors, P.C. dated October 10, 1989 and filed in Onondaga County Clerk's Office November 9, 1989 as Map No. 7197 and being more particularly described as follows:

BEGINNING at a point in the southwesterly boundary of Intrepid Lane, said point being the northwesterly corner of said Lot 8, said point also being 679.71 feet distant easterly and southeasterly, measured along the southerly and southwesterly boundary of Intrepid Lane, from the point of curvature of a small curve on the easterly side of East Brighton Avenue; running thence easterly and northeasterly along the boundary of Intrepid Lane, following a curve to the left, having a radius of 60.00 feet, an arc distance of 100.00 feet to a point, said point being the northeasterly corner of said Lot 8; thence S 38° 43' 17" E along the division line between Lot 7 on the northeast and said Lot 8 on the southwest, a distance of 610.88 feet to the southeasterly corner of said Lot 8; thence N 83° 25' 50" W along the southerly boundary of said Lot 8, a distance of 490.42 feet to the southwesterly corner of said Lot 8; thence N 2° 17' 13" E along the division line between Lot 9 on the west and Lot 8 on the east, a distance of 434.78 feet to the point of beginning.



Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

See Form TP-584-I, Instructions for Form TP-584, before completing this form. Print or type.

Schedule A - Information relating to conveyance

Form with sections for Grantor/Transferor and Grantee/Transferee, including fields for Name, Mailing address, City, State, ZIP code, and Social Security number (SSN).

Location and description of property conveyed

Table with 5 columns: Tax map designation, SWIS code, Street address, City, town, or village, and County. Row 1: 062.-02-18.0, 311500, 190 Intrepid Lane, Syracuse, Onondaga.

Type of property conveyed (mark an X in applicable box)

Form with checkboxes for property types (1-9) and a date of conveyance field (10/01/2021). Includes a percentage field for residential real property.

Condition of conveyance (mark an X in all that apply)

Form with checkboxes for various conditions of conveyance (a-s), including fee interest, acquisition of interest, cooperative housing, syndication, and contract assignment.

Table for recording officer's use with columns: Amount received (Schedule B, Part 1 and Part 2), Date received, and Transaction number.

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) <input checked="" type="checkbox"/> Exemption claimed	1.	0 00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	0 00
3	Taxable consideration (subtract line 2 from line 1)	3.	0 00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	0 00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.	0 00
6	Total tax due* (subtract line 5 from line 4)	6.	0 00

Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part 1, line 1)	1.	
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A) ...	2.	
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	

Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition..... g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property..... i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim)See Schedule "A"..... k

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

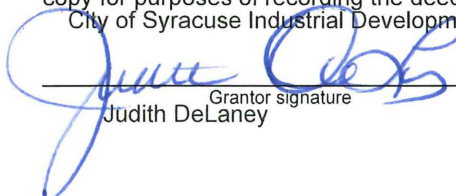
1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a. The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b. The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c. The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d. The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e. Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a. A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b. A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

City of Syracuse Industrial Development Agency  _____ Grantor signature Judith DeLaney	Intrepid Lane ASC, LLC _____ Executive Director Title	_____ Grantee signature Benjamin McHone M.D., Manager Title
Grantor signature	Title	Grantee signature Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.

This is to certify that: (mark an X in the appropriate box)

1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.
- e Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

City of Syracuse Industrial Development Agency _____ Grantor signature Judith DeLaney	Intrepid Lane ASC, LLC _____ Executive Director Title Benjamin McHone	_____ Grantee signature M.D., Manager Title
Grantor signature	Title	Grantee signature
Grantor signature	Title	Grantee signature

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date to _____ Date (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

SCHEDULE "A"

The document being recorded for which this NYS Form TP-584 is being provided is a Memorandum of Lease between the Grantor and the Grantee. The sum of the term of the lease and any options for renewal do not exceed forty-nine (49) years, and therefore said lease is not a Conveyance within the meaning of Article 31 of the Tax Law.

CERTIFICATION

Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement by and between the parties dated as of October 1, 2021.

The undersigned, Benjamin McHone, M.D., Manager and authorized signatory of Intrepid Lane ASC, LLC (the "**Company**"), does hereby certify and confirm:

(1) that the Company has reviewed and understands the Agency's Local Access Policy (the "**Policy**") which states as follows:

The Company understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation and equipping of the Project unless a written waiver is first received in accordance with the terms of the Policy. Failure to comply may result in the revocation or recapture of benefits awarded to the Project by the Agency.

For purposes of this Policy, the term "local" shall mean: Cayuga, Cortland, Madison, Onondaga, Oneida and Oswego Counties.

(2) that the Company has complied, and will, for so long as the Agency has an interest in the Project, continue to comply with, the Agency's Local Labor Policy.

Dated: October 18, 2021

INTREPID LANE ASC, LLC

By: _____

Benjamin McHone, M.D., Manager

**EVIDENCE OF
PROPERTY INSURANCE**



EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
10/18/2021

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY CH Insurance Brokerage Services Co., Inc. 100 S. Salina St. Suite 370 Syracuse, NY 13202		PHONE (A/C, No, Ext): (315) 234-7500	COMPANY Allianz Global Risks	
FAX (A/C, No): (315) 234-7508		E-MAIL ADDRESS:		
CODE:		SUB CODE:		
AGENCY CUSTOMER ID #: INTRLAN-01				
INSURED Intrepid Lane ASC, LLC 100 Metropolitan Park Dr Liverpool, NY 13088		LOAN NUMBER		POLICY NUMBER MZI93088093
		EFFECTIVE DATE 10/14/2021	EXPIRATION DATE 10/14/2022	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	PERILS INSURED					AMOUNT OF INSURANCE	DEDUCTIBLE
	BASIC	BROAD	SPECIAL				
Limit at any one location Limit - Includes Tenant Improvements/Betterments and Equipment						\$3,800,000	2,500
Limit at temporary location Limit						\$380,000	
Transit limit Limit						\$380,000	
Earthquake Limit						\$1,000,000	25,000
Flood Limit						\$1,000,000	25,000

REMARKS (Including Special Conditions)

Special Conditions:
Regarding: 190 Intrepid Lane, Syracuse NY 13205

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS City of Syracuse Industrial Development Agency 201 E Washington Street, 6th Floor Syracuse, NY 13202	ADDITIONAL INSURED	LENDER'S LOSS PAYABLE	<input checked="" type="checkbox"/> LOSS PAYEE
	MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE <i>John M. Coy</i>			

**CERTIFICATE OF
LIABILITY INSURANCE**



INTRLAN-01

APHILLIPS

CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
10/26/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CH Insurance Brokerage Services Co., Inc. 100 S. Salina St. Suite 370 Syracuse, NY 13202	CONTACT NAME: Angela Phillips
	PHONE (A/C, No, Ext): (315) 234-7500 FAX (A/C, No): (315) 234-7508
E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE	
INSURER A: Colony Insurance Co.	NAIC # 39993
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED

Intrepid Lane ASC, LLC
100 Metropolitan Park Dr
Livorpool, NY 13088

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY							
<input checked="" type="checkbox"/>	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>		1409339	10/27/2021	10/27/2022	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
GEN'L AGGREGATE LIMIT APPLIES PER:								
<input checked="" type="checkbox"/>	<input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC							\$
	OTHER:							\$
	AUTOMOBILE LIABILITY							
<input type="checkbox"/>	ANY AUTO OWNED AUTOS ONLY		<input type="checkbox"/>	SCHEDULED AUTOS			COMBINED SINGLE LIMIT (Ea accident)	\$
<input type="checkbox"/>	HIRED AUTOS ONLY		<input type="checkbox"/>	NON-OWNED AUTOS ONLY			BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB		<input type="checkbox"/>	OCCUR			EACH OCCURRENCE	\$
	EXCESS LIAB		<input type="checkbox"/>	CLAIMS-MADE			AGGREGATE	\$
	DED			RETENTION \$				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		<input type="checkbox"/>	N/A			E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Regarding: 190 Intrepid Lane, Syracuse NY 13205

City of Syracuse Industrial Development Agency is listed as an additional insured on a primary and non-contributory basis

CERTIFICATE HOLDER**CANCELLATION**

City of Syracuse Industrial Development Agency
201 E Washington Street, 6th Floor
Syracuse, NY 13202

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

JL Covatta

ENDORSEMENTS



Binder Revision 2
 Printed: 10/28/2021
 Policy Number: 600 GL 0205529-00
 Submission Number: 001000677318

INSURANCE BINDER FOR: Intrepid Lane ASC, LLC

Deductible:					
Deductible	Deductible Type	Deductible Applies			
\$10,000	BI/PD/PI & AI	Per Occurrence			
Includes Loss Adjustment Expenses & Defense Costs					
PREMIUM BASIS:					
Class Code	Description	Exposure	Exposure Basis	Rate	
91582	Contractors - subcontracted work - in connection with building construction, reconstruction, repair or erection - apartment or office buildings	3,800,000	Project Cost	\$4.95	

ADDITIONAL COVERAGE(S)	
Coverage(s) & Fees:	Forms
Additional Insureds - \$500.00	CG2011-1219 ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES Applies to: SOS Real Estate Holdings for 190 Intrepid Lane, Syracuse, NY 13205 Flat and Fully Earned Premium CG2012-1219 ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS Applies to: Syracuse Industrial Development Agency for 190 Intrepid Lane, Syracuse, NY 13205 Flat and Fully Earned Premium CG2018-1219 ADDITIONAL INSURED – MORTGAGEE, ASSIGNEE OR RECEIVER Applies to: As required by written contract with the Named Insured that is executed by the parties to the contract prior to the commencement of work that is called for in the contract. All locations which are afforded coverage under this policy. U407-0116 PRIMARY AND NON-CONTRIBUTORY - OTHER INSURANCE CONDITION - DESIGNATED ENTITY Applies to: Syracuse Industrial Development Agency for 190 Intrepid Lane, Syracuse, NY 13205
Extended Completed Operations - \$2,765.00	U446-1007 EXTENDED PRODUCTS-COMPLETED OPERATIONS HAZARD ENDORSEMENT Number of Years - 6 Flat and Fully Earned Premium
Pollution Liability - \$250.00	CG2155-0999 TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION Flat and Fully Earned Premium



Binder Revision 2
 Printed: 10/28/2021
 Policy Number: 600 GL 0205529-00
 Submission Number: 001000677318

INSURANCE BINDER FOR: Intrepid Lane ASC, LLC

FORMS: In addition to the standard policy terms and conditions, the following endorsements and/or exclusion will be attached to the policy.

FORMS LISTING	
Form Number	Form Title & Notes
ILP001-0104	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS
PRIVACYNOTICE-0820	NOTICE OF INSURANCE INFORMATION PRACTICES
U094-0415	SERVICE OF SUIT
SIGCIC-0817	SIGNATURE PAGE
DCJ6550-0921	COMMON POLICY DECLARATIONS
U001-1004	SCHEDULE OF FORMS AND ENDORSEMENTS
DCJ6553-0702	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
CG0001-0413	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
IL0017-1198	COMMON POLICY CONDITIONS
UCG2175-0121	TERRORISM EXCLUSION
CG2109-0615	EXCLUSION - UNMANNED AIRCRAFT
CG2144-0417	LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION Owners Interest for 1 story/nonstructural/interior buildout reno only - taking an existing one day orthopedic surgery center and updating & outfitting to a urology one day surgery center located at 190 Intrepid Lane, Syracuse, NY 13205.
CG2153-0196	EXCLUSION - DESIGNATED ONGOING OPERATIONS Any part of the designated project that has become occupied or part of the project or location that has been put to use for its intended purpose.
CG2167-1204	FUNGI OR BACTERIA EXCLUSION
CG2186-1204	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS
CG2196-0305	SILICA OR SILICA-RELATED DUST EXCLUSION
CG2243-0413	EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY
CG2621-1091	NEW YORK CHANGES - TRANSFER OF DUTIES WHEN A LIMIT OF INS IS USED UP
IL0021-0908	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
U002A-0916	MINIMUM EARNED PREMIUM
U009-0310	AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION
U018-0520	EXCLUSION - COMMUNICABLE DISEASE, VIRUS OR BACTERIA
U048-0310	EMPLOYMENT RELATED PRACTICES EXCLUSION
U070AS-0512	DEDUCTIBLE LIABILITY INSURANCE



Binder Revision 2
 Printed: 10/28/2021
 Policy Number: 600 GL 0205529-00
 Submission Number: 001000677318

INSURANCE BINDER FOR: Intrepid Lane ASC, LLC

U1009-0819	EXCLUSION – CYBER INJURY, ELECTRONIC DATA, AND CONFIDENTIAL OR PERSONAL INFORMATION – WITH LIMITED BODILY INJURY EXCEPTION
U173AS-0708	CANCELLATION Number of Days Cancellation: 30 days
U250-0310	COMPOSITE RATE ENDORSEMENT Project Cost: "Project Cost" means the total cost of construction including: a) Labor: the cost of all labor, work or sublet: b) Material: cost of all materials, transportations, delivery fees and warehousing; equipment furnished used or delivered for use in the execution of the work; and c) Overhead: overhead costs, general conditions and contingencies.
U266-0510	EXCLUSION - USL&H, JONES ACT OR OTHER MARITIME LAWS
U267A-0813	CROSS SUITS EXCLUSION
U276-0310	EXCLUSION - BREACH OF CONTRACT
U464-0310	EXCLUSION - CONDOMINIUM / COOPERATIVE / COMMON INTEREST DEVELOPMENT CONVERSION
U466-0212	EXCLUSION - LEAD
U467-0212	EXCLUSION - ASBESTOS
U483NY-0620	EXCLUSION – DEDICATED INSURANCE PROGRAM(S) – NEW YORK
U608-0309	NEW YORK CHANGES - CONDITIONS
U638-0210	EXCLUSION - IMPORTED DRYWALL DAMAGE - RESIDENTIAL CONSTRUCTION
U650-0116	EXCLUSION - DESIGNATED ONGOING OPERATIONS AND PRODUCTS-COMPLETED OPERATIONS HAZARD 1. All work or activities performed by the name insured's employee or laborer, whether day laborer or temporary worker or part-time or full-time worker. 2. All work or activities involving the use of a tower crane. 3. All work or activities performed prior to inception of this policy
U658OI-0419	DESIGNATED CONTRACTOR WARRANTY Contractor: Each Occurrence Limit: \$6,000,000 General Aggregate Limit: \$7,000,000 Products/Completed Operations Aggregate Limit: \$7,000,000
U730-0212	EXCLUSION - BENZENE
U984-0916	MINIMUM EARNED PREMIUM - PROJECT SPECIFIC
U985-0916	PREMIUM AND AUDIT
SLBDATA-0314	SURPLUS LINES BROKER DATA

SUBJECTIVITIES: This binder is subject to the following conditions. If any of these conditions are not met, this binder or insurance policy issued pursuant to it are invalid, and we reserve the right to withdraw, rescind, or to revise the bound terms and conditions for this insurance policy, including, but not limited to, the amount of the bound premium. Your failure to



Binder Revision 2
Printed: 10/28/2021
Policy Number: 600 GL 0205529-00
Submission Number: 001000677318

INSURANCE BINDER FOR: Intrepid Lane ASC, LLC

comply with these conditions may result in any insurance policy that has been bound or issued by us being cancelled. The following information/documentation must be received by us from you on or before the date indicated below.

SUBJECTIVITIES	
Need By	Subjectivities
Within 30 Days of Binding	Requirement for GC to maintain PCO limits up to statue in Executed Contract or endorsed on Project Policy
Within 30 Days of Binding	GL and XS Endorsement listing showing nonrestrictive coverage
Within 30 Days of Binding	Fully executed contract containing hh/indem/ai language in favor of our Named Insured.
Within 30 Days of Binding	Note: We need to review and approve the outstanding items below from the General Contractor in order to name on U658OI as the one direct hired contractor. Until such time, no work should commence until the conditions of form U658OI are well understood.
Within 30 Days of Binding	COI with minimum required limits of \$11/12/12M.
11/10/2021	Who is responsible for sidewalk/site maintenance

NOTES:

- This is a Non Admitted binder.
- The Broker is responsible for handling all Surplus Lines filings and fees.
- This binder is subject to receipt of current application signed by the insured.
- This binder is offered in reliance on the information submitted to us by the applicant. By accepting this quote and/or the binding of this risk, the applicant warrants that the information is true and complete and that no material facts have been misrepresented, omitted or suppressed.
- This binder does not necessarily provide the terms and/or coverage requested in your submission application.

The proposed insurance coverages are intended to be provided by COLONY INSURANCE COMPANY; all policy, endorsement and forms are subject to the terms, exclusions, conditions, and limitations that are included with such policy, endorsement and forms. All policies, endorsements and forms should be reviewed by you as to their contents, including, but not limited to, audit, cancellation and payment provisions. Specimen copies of our insurance policies, endorsements and forms are available, upon request, from your insurance broker.

Insured: Intrepid Lane ASC, LLC
Policy Number: 600 GL 0205529-00

U001 (10/04)

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

NUMBER	TITLE
ILP001-0104	U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS
PRIVACYNOTICE-0820	NOTICE OF INSURANCE INFORMATION PRACTICES
U094-0415	SERVICE OF SUIT
SIGCIC-0817	SIGNATURE PAGE
DCJ6550-0921	COMMON POLICY DECLARATIONS
U001-1004	SCHEDULE OF FORMS AND ENDORSEMENTS
DCJ6553-0702	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
CG0001-0413	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
IL0017-1198	COMMON POLICY CONDITIONS
U446-1007	EXTENDED PRODUCTS-COMPLETED OPERATIONS HAZARD ENDORSEMENT
UCG2175-0121	TERRORISM EXCLUSION
CG2011-1219	ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES
CG2012-1219	ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS
CG2018-1219	ADDITIONAL INSURED - MORTGAGEE, ASSIGNEE OR RECEIVER
CG2109-0615	EXCLUSION - UNMANNED AIRCRAFT
CG2144-0417	LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION
CG2153-0196	EXCLUSION - DESIGNATED ONGOING OPERATIONS
CG2155-0999	TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION
CG2167-1204	FUNGI OR BACTERIA EXCLUSION
CG2186-1204	EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS
CG2196-0305	SILICA OR SILICA-RELATED DUST EXCLUSION
CG2243-0413	EXCLUSION - ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY
CG2621-1091	NEW YORK CHANGES - TRANSFER OF DUTIES WHEN A LIMIT OF INS IS USED UP
IL0021-0908	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)
U002A-0916	MINIMUM EARNED PREMIUM
U009-0310	AIRCRAFT PRODUCTS AND GROUNDING EXCLUSION
U018-0520	EXCLUSION - COMMUNICABLE DISEASE, VIRUS OR BACTERIA
U048-0310	EMPLOYMENT RELATED PRACTICES EXCLUSION
U070AS-0512	DEDUCTIBLE LIABILITY INSURANCE
U1009-0819	EXCLUSION - CYBER INJURY, ELECTRONIC DATA, AND CONFIDENTIAL OR PERSONAL INFORMATION - WITH LIMITED BODILY INJURY EXCEPTION
U173AS-0708	CANCELLATION
U250-0310	COMPOSITE RATE ENDORSEMENT
U266-0510	EXCLUSION - USL&H, JONES ACT OR OTHER MARITIME LAWS
U267A-0813	CROSS SUITS EXCLUSION
U276-0310	EXCLUSION - BREACH OF CONTRACT
U407-0116	PRIMARY AND NON-CONTRIBUTORY - OTHER INSURANCE CONDITION - DESIGNATED ENTITY
U464-0310	EXCLUSION - CONDOMINIUM / COOPERATIVE / COMMON INTEREST DEVELOPMENT CONVERSION
U466-0212	EXCLUSION - LEAD
U467-0212	EXCLUSION - ASBESTOS
U483NY-0620	EXCLUSION - DEDICATED INSURANCE PROGRAM(S) - NEW YORK

NUMBER	TITLE
U608-0309	NEW YORK CHANGES - CONDITIONS
U638-0210	EXCLUSION - IMPORTED DRYWALL DAMAGE - RESIDENTIAL CONSTRUCTION
U650-0116	EXCLUSION - DESIGNATED ONGOING OPERATIONS AND PRODUCTS-COMPLETED OPERATIONS HAZARD
U6580I-0419	DESIGNATED CONTRACTOR WARRANTY
U730-0212	EXCLUSION - BENZENE
U984-0916	MINIMUM EARNED PREMIUM - PROJECT SPECIFIC
U985-0916	PREMIUM AND AUDIT

ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT (the "*Agreement*") is made as of the 1st day of October, 2021, between INTREPID LANE ASC, LLC (the "*Indemnitor*" or the "*Company*"), for the benefit of the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY (the "*Agency*").

RECITALS

WHEREAS, the Agency has undertaken at the request of the Indemnitor, a project (the "*Project*") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0), as more fully described on Schedule A annexed hereto (the "*Land*"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "*Owner*") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long-term lease agreement, which has a purchase option, dated August 25, 2020 (the "*Ground Lease*").

NOW, THEREFORE, in consideration of the premises, Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor, intending to be legally bound, hereby agrees as follows:

1. **Recitals; Definitions.**

(a) The foregoing recitals are incorporated into this Agreement by this reference.

(b) Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Agency Lease as Exhibit "C."

2. **Representations and Warranties.**

(a) Except as disclosed in Schedule B annexed hereto, Indemnitor represents and warrants that it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of oil, petroleum or chemical liquids or solids, liquid or gaseous products or any hazardous wastes or hazardous substances (collectively, "***Hazardous Substances***"), as those terms are used in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "***Hazardous Waste Laws***"), at, upon, under or within the Project Facility or any contiguous real estate, and (ii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Project Facility or on any contiguous real estate.

(b) Except as disclosed in the reports listed on Schedule B annexed hereto, Indemnitor further represents and warrants that (i) it has not been nor will be involved in operations at or near the Project Facility which operations could lead to (A) the imposition of liability on Indemnitor or on any subsequent or former owner of the Project Facility or (B) the creation of a lien on the Project Facility under the Hazardous Waste Laws or under any similar laws or regulations; and (ii) it has not permitted, and will not permit, any tenant or occupant of the Project Facility to engage in any activity that could impose liability under the Hazardous Waste Laws on such tenant or occupant, on Agency, the Indemnitor or on any other owner of any of the Project Facility.

3. **Covenants.**

(a) Indemnitor shall comply strictly and in all respects with the requirements of the Hazardous Waste Laws and related regulations and with all similar laws and regulations and shall notify Agency immediately in the event of any discharge or discovery of any Hazardous Substance at, upon, under or within the Project Facility which is not otherwise already disclosed in Schedule B. Indemnitor shall promptly forward to Agency copies of all orders, notices, permits, applications or other communications and reports in connection with any discharge or the presence of any Hazardous Substance or any other matters relating to the Hazardous Waste Laws or any similar laws or regulations, as they may affect the Project Facility.

(b) Promptly upon the written request of Agency, Indemnitor shall provide Agency, at Indemnitor's expense, with an environmental site assessment or environmental audit report prepared by an environmental engineering firm acceptable to the requesting Person, to assess with a reasonable degree of certainty the presence or absence of any Hazardous Substances and the potential costs in connection with abatement, cleanup or removal of any Hazardous Substances found on, under, at or within the Project Facility.

4. **Indemnity.**

(a) Indemnitor shall at all times indemnify and hold harmless Agency against and from any and all claims, suits, actions, debts, damages, costs, losses, obligations, judgments,

charges, and expenses, of any nature whatsoever suffered or incurred by Agency, whether as contract vendor, owner, mortgagee, as mortgagee in possession, or as successor-in-interest to Indemnitor by foreclosure deed or deed in lieu of foreclosure, under or on account of the Hazardous Waste Laws or any similar laws or regulations, including the assertion of any lien thereunder, with respect to:

(1) any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility whether or not the same originates or emanates from the Project Facility or any contiguous real estate including any loss of value of the Project Facility as a result of any of the foregoing;

(2) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to any Hazardous Waste Laws;

(3) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Project Facility; and/or

(4) any other environmental matter affecting the Project Facility within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local agency.

The obligations of Indemnitor under this Agreement shall arise whether or not the Environmental Protection Agency, any other federal agency or any state or local agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(b) In the event of any discharge of Hazardous Substances, the threat of a discharge of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Project Facility, whether or not the same originates or emanates from the Project Facility or any contiguous real estate, and/or if Indemnitor shall fail to comply with any of the requirements of the Hazardous Waste Laws or related regulations or any other environmental law or regulation, Agency may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Project Facility and/or take any and all other actions as Agency shall deem necessary or advisable in order to abate the discharge of any Hazardous Substance, remove the Hazardous Substance or cure the noncompliance of Indemnitor.

(c) Indemnitor acknowledges that Agency has relied upon the representations, warranties, covenants and indemnities of Indemnitor in this Agreement. All of the representations, warranties, covenants and indemnities of this Agreement shall survive the repayment of Indemnitor's obligations under the Agency Lease or other Company Documents.

5. **Attorney's Fees.** If Agency retains the services of any attorney in connection with the subject of the indemnity herein, Indemnitor shall pay Agency's costs and reasonable attorneys' fees thereby incurred. Agency may employ an attorney of its own choice.

6. **Interest.** In the event that Agency incurs any obligations, costs or expenses under this Agreement, Indemnitor shall pay such Person immediately on demand, and if such payment is not received within ten (10) days, interest on such amount shall, after the expiration of the ten-day period, accrue at the interest rate set forth in the Agency Lease until such amount, plus interest, is paid in full.

7. **No Waiver.** Notwithstanding any terms of the Company Documents to the contrary, the liability of Indemnitor under this Agreement shall in no way be limited or impaired by: (i) any extensions of time for performance required by any of the Company Documents; (ii) any sale, assignment or foreclosure of the Agency Lease or any sale or transfer of all or part of the Project Facility; (iii) the accuracy or inaccuracy of the representations and warranties made by Indemnitor under any of the Company Documents; or (iv) the release of Indemnitor or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in the Company Documents by operation of law, Agency's voluntary act, or otherwise; and, in any such case, whether with or without notice to Indemnitor and with or without consideration.

8. **Waiver by Indemnitor.** Indemnitor waives any right or claim of right to cause a marshalling of Indemnitor's assets or to cause Agency to proceed against any of the security for the Agency Lease before proceeding under this Agreement against Indemnitor or to proceed against Indemnitor in any particular order; Indemnitor agrees that any payments required to be made hereunder shall become due on demand; Indemnitor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

9. **Releases.** Any one or more of Indemnitor and any other party liable upon or in respect of this Agreement or the Agency Lease may be released without affecting the liability of any party not so released.

10. **Amendments.** No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

11. **Joint and Several Liability.** In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each Indemnitor, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

12. **Consent to Jurisdiction.** Indemnitor consents to the exercise of personal jurisdiction over Indemnitor by any federal or state court in the State of New York and consent

to the laying of venue in any jurisdiction or locality in the City of Syracuse. Service shall be effected by any means permitted by the court in which any action is filed.

13. **Notices.** All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to: City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202
Attention: Chair

With a copy to: City of Syracuse
233 East Washington Street
Syracuse, New York 13202
Attn: Corporation Counsel

and

Bousquet Holstein PLLC
110 West Fayette Street, Suite 1000
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

(b) To the Company: Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088
Attn: Benjamin McHone, M.D.

With a copy to: Cohen Compagni Beckman Appler & Knoll, PLLC
507 Plum Street
Syracuse, New York 13204
Attn: Bruce Smith, Esq.

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

14. **Waivers.** The parties waive trial by jury in any action brought on, under or by virtue of this Agreement. Indemnitor waives any right to require Agency at any time to pursue any remedy in such Person's power whatsoever. The failure of Agency to insist upon strict compliance with any of the terms hereof shall not be considered to be a waiver of any such

terms, nor shall it prevent Agency from insisting upon strict compliance with this Agreement or any other Company Document at any time thereafter.

15. **Severability**. If any clause or provisions herein contained operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision shall be held for naught as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

16. **Inconsistencies Among the Company Documents**. Nothing contained herein is intended to modify in any way the obligations of Indemnitor under the Agency Lease or any other Company Document. Any inconsistencies among the Company Documents shall be construed, interpreted and resolved so as to benefit Agency.


17. **Successors and Assigns**. This Agreement shall be binding upon Indemnitor's successors, assigns, heirs, personal representatives and estate and shall inure to the benefit of Agency and its successors and assigns.

18. **Controlling Laws**. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

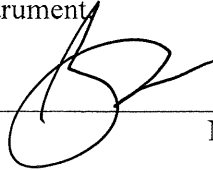
IN WITNESS WHEREOF, Indemnitor has executed this Agreement as of the date first above written.

INTREPID LANE ASC, LLC

By: 
Benjamin McHone, M.D., Manager

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

On the 18 day of October, in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **Benjamin McHone**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

BRUCE A. SMITH
Notary Public in the State of New York
Qualified in Onondaga Co. No. 02SM4961729
My Commission Expires February 5, 20 21

SCHEDULE "A"

LEGAL DESCRIPTION

All that tract or parcel of land situate in the City of Syracuse, County of Onondaga and State of New York, being part of Farm Lot 121 in said City, being Lot 8 as shown on a Final Plan of Brighton Hill Business Park prepared by Phillips & Associates, Surveyors, P.C. dated October 10, 1989 and filed in Onondaga County Clerk's Office November 9, 1989 as Map No. 7197 and being more particularly described as follows:

BEGINNING at a point in the southwesterly boundary of Intrepid Lane, said point being the northwesterly corner of said Lot 8, said point also being 679.71 feet distant easterly and southeasterly, measured along the southerly and southwesterly boundary of Intrepid Lane, from the point of curvature of a small curve on the easterly side of East Brighton Avenue; running thence easterly and northeasterly along the boundary of Intrepid Lane, following a curve to the left, having a radius of 60.00 feet, an arc distance of 100.00 feet to a point, said point being the northeasterly corner of said Lot 8; thence S 38° 43' 17" E along the division line between Lot 7 on the northeast and said Lot 8 on the southwest, a distance of 610.88 feet to the southeasterly corner of said Lot 8; thence N 83° 25' 50" W along the southerly boundary of said Lot 8, a distance of 490.42 feet to the southwesterly corner of said Lot 8; thence N 2° 17' 13" E along the division line between Lot 9 on the west and Lot 8 on the east, a distance of 434.78 feet to the point of beginning.

SCHEDULE "B"

EXCEPTIONS

NONE

CLOSING RECEIPT

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY LEASE/SUBLEASE TRANSACTION INTREPID LANE ENDOSCOPY & SURGERY CENTER PROJECT

CLOSING RECEIPT executed November 1, 2021 by the City of Syracuse Industrial Development Agency (the “*Agency*”) and Intrepid Lane ASC, LLC (the “*Company*”) in connection with a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

WITNESSETH:

(1) The Agency has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party, and acknowledges receipt from the Company of its administrative fee.

(2) The Company has executed, delivered, sealed and acknowledged, where appropriate, the documents to which it is a party. The Company acknowledges that it is responsible for remitting, at closing, all of the Agency's legal fees associated with the Project and the Company Documents to date.

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By: _____
Benjamin McHone, M.D., Manager

(Signature page to Closing Receipt)

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By:  _____
Benjamin McHone, M.D., Manager

City of Syracuse
Industrial Development Agency
City Hall Commons, 6th Floor
201 East Washington Street
Syracuse, NY 13202
Tel (315) 448-8100 Fax (315) 435-3669

October 1, 2021

Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088
Attn: Benjamin McHone, M.D.

Re: City of Syracuse Industrial Development Agency
Intrepid Lane ASC, LLC
Intrepid Lane Endoscopy and Surgery Center
Sales Tax Appointment Letter

Dear Dr. McHone:

Pursuant to a resolution duly adopted on September 21, 2021, the City of Syracuse Industrial Development Agency (the “*Agency*”) appointed Intrepid Lane ASC, LLC (the “*Company*”) the true and lawful agent of the Agency to undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved by the Agency for the benefit of the Project shall not exceed **\$374,543**.

This appointment includes, and this letter evidences, authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project Facility and the following activities as they relate to any renovation, improvement, equipping and completion of any of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with renovation, improvement and equipping; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with renovation, improvement and equipping; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under such building or facility, including all repairs and replacements of such property, and with respect to such specific purchases or rentals, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

This agency appointment includes the power to delegate such agency, in whole or in part, to a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**"). Additional Agents must be specifically appointed by the Company in accordance and compliance with the terms of the Agency Lease dated as of October 1, 2021 by and between the Agency and the Company (the "**Agency Lease**"). The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Additional Agent who provide materials, equipment, supplies or services to the Project Facility and deliver said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment. The Agency's obligation to execute any Form ST-60 relative to an Additional Agent is subject to the satisfaction of the conditions in the Agency Lease relative to such appointments.

The Company agrees, whenever requested by the Agency, to provide, or cause its Additional Agents to provide and certify, or cause to be certified, such information regarding use of local labor, job creation, exemptions from State and local sales and use tax, real property taxes and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation, including but not limited to those required by §875 of the Act.

The Company acknowledges and agrees that pursuant to Section 875(3) of the Act, and in conjunction with the Agency's Recapture of Benefits Policy (the "**Recapture Policy**") dated as of June 21, 2016 and the Project Agreement between the Agency and the Company dated as of October 1, 2021, the Agency shall, and in some circumstances may, recover, recapture, receive

or otherwise obtain from the Company some or all of the Financial Assistance (the “*Recapture Amount*”).

Each supplier or vendor should identify the Project Facility on each bill or invoice and indicate thereon which of the Company or its Additional Agents acted as agent for the Agency in making the purchase.

In order to be entitled to use this exemption, you and each Additional Agent should present to the supplier or other vendor of materials for the Project Facility, a completed “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123).

In addition, General Municipal Law §874(8) requires you to file an Annual Statement with the New York State Department of Taxation and Finance (“*NYS DTF*”) on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions you and your Additional Agents have claimed pursuant to the agency we have conferred on you with respect to this Project. The penalty for failure to file such statement is the removal of your authority to act as our agent. In addition, you must provide a copy of the completed Form ST-340 to the Agency within ten (10) days of the date it is due to be filed with the NYS DTF.

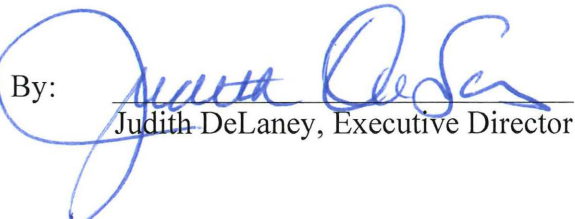
The agency created by this letter is limited to the Project Facility and will expire on the earlier of: (i) sixty (60) days after the issuance of a certificate of occupancy or similar document by the applicable municipality in which the Project Facility is located; or (i) **December 31, 2022**; unless the Agency Lease is terminated early in accordance with its terms in which case this appointment shall terminate at that time.

This letter is provided for the sole purpose of evidencing, in part, the exemption from New York State Sales and Use Taxes for this project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

The Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

Very truly yours,

CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Judith DeLaney, Executive Director



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

IDA information

Name of IDA City of Syracuse Industrial Development Agency			IDA project number (use OSC numbering system for projects after 1998) 31022105
Street address 201 E. Washington Street, 6th Floor			Telephone number (315) 473-3275
City Syracuse	State NY	ZIP code 13202	Email address (optional)

Project operator or agent information

Name of IDA project operator or agent Intrepid Lane ASC, LLC		Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or Social Security number 85-1832565
Street address 100 Metropolitan Park Drive		Telephone number (315) 478-4185	Primary operator or agent? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
City Liverpool	State NY	ZIP code 13088	Email address (optional)

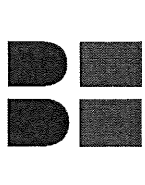
Project information

Name of project Intrepid Lane Endoscopy & Surgery Center Project			
Street address of project site 190 Intrepid Lane			
City Syracuse	State NY	ZIP code 13105	Email address (optional)
Purpose of project other - commercial			

Description of goods and services intended to be exempted from New York State and local sales and use taxes building materials, equipment, fixtures and furnishings installed in and around the Project Facility			
Date project operator or agent appointed (mmddyy) 100121	Date project operator or agent status ends (mmddyy) 123122	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: 4,681,790.00		Estimated value of New York State and local sales and use tax exemption provided: 374,543.00	

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA Judith DeLaney		Print title Executive Director	
Signature 		Date 10-18-2021	Telephone number (315) 448-8127



BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET ▪ ONE LINCOLN CENTER ▪ SUITE 1000 ▪ SYRACUSE, NEW YORK 13202 ▪ PH: 315.422.1500 ▪ FX: 315.422.3549

November 3, 2021

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7018 3090 0001 3255 63561

New York State Tax Department
IDA Unit
Building 8, Room 738
W.A. Harriman Campus
Albany, New York 12227

Re: IDA Appointment of Project Operator or Agent for Sales Tax Purposes
City of Syracuse Industrial Development Agency Appointment of
Intrepid Lane ASC, LLC Project, IDA Project No. 31022105

Dear Ladies and Gentlemen:

Enclosed for filing on behalf of the City of Syracuse Industrial Development Agency, please find a form ST-60 in connection with the appointment by the IDA of Intrepid Lane ASC, LLC as its agent for sales tax purposes in connection with the IDA project identified therein.

Please do not hesitate to contact me with any questions. Thank you.


Very truly yours,

/s/ Susan R. Katzoff

Susan R. Katzoff

SRK:llm
Enclosure

5450567_1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p> <p>B. Received by (Printed Name) C. Date of Delivery</p>
<p>1. Article Addressed to:</p> <p style="text-align: center;">New York State Tax Department IDA Unit Building 8, Room 738 W.A. Harriman Campus Albany, New York 12227</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p style="text-align: center; font-size: 1.2em;">NOV 03 2021</p>
<div style="text-align: center;">  9590 9402 6543 1028 3274 45 <small>Transfer from service label</small> 7018 3090 0001 3255 6361 </div>	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™</p> <p> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail™ <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery </p>

Inrepid

7018 3090 0001 3255 6361

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GENERAL SECURITY AGREEMENT
New York

Debtor: Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center, a New York limited liability company having its chief executive office at 190 Intrepid Lane, Syracuse, New 13205.

Agency: City of Syracuse Industrial Development Agency, a New York public benefit corporation having its chief executive office at 201 East Washington Street, 6th Floor, Syracuse, New York 13202.

Bank/Secured Party: M&T Bank, a New York banking corporation with its banking offices at One M&T Plaza, Buffalo, New York 14203 Attention: Office of General Counsel.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, Debtor agrees with Secured Party as follows:

1. Security Interests.

1.1 Grant. As security for the prompt and complete payment and performance when due of all of the Obligations, Debtor does hereby grant to Secured Party a continuing security interest ("Security Interest") in all personal property and fixtures of Debtor, wherever located, whether now existing or owned or hereafter arising or acquired, whether or not subject to the Uniform Commercial Code, as the same may be in effect in the State of New York, as amended from time to time ("UCC"), and whether or not affixed to any realty, including, without limitation, (i) all accounts, chattel paper, investment property, deposit accounts, documents, goods, equipment, farm products, general intangibles (including trademarks, service marks, trade names, patents, copyrights, licenses and franchises), instruments, inventory, money, letter of credit rights, causes of action (including tort claims) and other personal property (including agreements and instruments not constituting chattel paper or a document, general intangible or instrument); (ii) all additions to, accessions to, substitutions for, replacements of and supporting obligations of the foregoing; (iii) all proceeds, products, rents, issues, profits and accounts arising from the foregoing and substitutions therefore, including, without limitation, insurance proceeds; and (iv) all business records and information relating to any of the foregoing and any software or other programs for accessing and manipulating such information (collectively, the "Collateral"). As further security for the Obligations, the Agency does hereby grant to Secured Party a continuing security interest in all Collateral that relates to, or is located at the Project (as defined in the Agency Lease hereinafter defined) and only to the extent of the Agency's ownership, leasehold or other interest in such Collateral. Debtor acknowledges and agrees that the foregoing collateral description is intended to cover all assets of Debtor.

1.2 Obligations. The term "Obligations" means any and all indebtedness or other obligations of Debtor to Secured Party in any capacity, now existing or hereafter incurred, however created or evidenced, regardless of kind, class or form, whether direct, indirect, absolute or contingent (including obligations pursuant to any guaranty, endorsement, other assurance of payment or otherwise), whether joint or several, whether from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, together with all extensions, renewals and replacements thereof, and all interest, fees, charges, costs or expenses which accrue on or in connection with the foregoing, including, without limitation, any indebtedness or obligations (i) not yet outstanding but contracted for, or with regard to which any other commitment by Secured Party exists; (ii) arising prior to, during or after any pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding; (iii) owed by Debtor to others and which Secured Party obtained, or may obtain, by assignment or otherwise; or (iv) payable under this Agreement.

1.3 Flood Zone Provisions. If, now or in the future, any of the obligations secured pursuant to any security interest or lien created by this Agreement include any Special Flood Zone Loan, then the following shall apply: any such Special Flood Zone Loan shall not be secured pursuant to any security interest or lien created by this Agreement in personal property that would constitute "contents" located within Flood Zone Improvements securing such Special Flood Zone Loan, where, for purposes of the foregoing, "Flood Zone Improvements" means any "improved" real property that is located within a Special Flood Hazard Area, a "Special Flood Zone Loan" means a loan, line of credit or other credit facility which is secured by Flood Zone Improvements, and the terms "improved" real property, "Special Flood Hazard Area," and "contents" shall have the meaning ascribed to them by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq., and implementing regulations, 44 C.F.R. Parts 59 et seq., and/or the Federal Emergency Management Agency, all as may be amended from time to time.

1.4 Agency Joinder. The Agency hereby joins in this Agreement solely for the purpose of subjecting its interest in the Collateral to the Security Interest, excepting therefrom the Agency's Unassigned Rights (as defined in the Agency Lease, dated as of October 1, 2021, by and between the Agency and the Debtor, as amended, supplemented and/or restated from time to time (the "Agency Lease")), which Security Interest is hereby granted by the Agency and Debtor, as amended, supplemented and/or restated from time to time. Except as specifically set forth herein, the Agency does not make any representations or warranties hereunder.

2. Covenants. Debtor covenants and agrees as follows:

2.1 Perfection of Security Interest. Debtor and the Agency shall execute and deliver to Secured Party such financing statements, control agreements or other documents, in form and content satisfactory to Secured Party, as Secured Party may from time to time request to perfect and continue the Security Interest. Upon the request of Secured Party, Debtor shall deliver to Secured Party any and all instruments, chattel paper, negotiable documents or other documents evidencing or constituting any part of the Collateral properly endorsed or assigned, in a manner satisfactory to Secured Party. Until such delivery, Debtor shall hold such portion of the Collateral in trust for Secured Party. Debtor shall pay all expenses for the preparation, filing, searches and related costs in connection with the grant and perfection of the Security Interest. Debtor authorizes (both prospectively and retroactively) Secured Party to file financing statements, and any continuations and amendments thereof, with respect to the Collateral without Debtor's signature. A photocopy or other reproduction of any financing statement or this Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

2.2 Negative Pledge; Disposition of Collateral. Except for Permitted Liens (as defined in Section 3.1 below), neither Debtor nor the Agency shall grant or allow the imposition of any lien, security interest or encumbrance on, or assignment of, the Collateral unless consented to in writing by Secured Party. Debtor shall not make or permit to be made any sale, transfer or other disposition of the Collateral; provided, however, prior to the occurrence of an Event of Default, Debtor may in the ordinary course of business consistent with its past practices and with prudent and standard practices used in the industry that is the same or similar to that in which Debtor is engaged: (i) dispose of any Collateral consisting of equipment that is obsolete or worn-out; (ii) sell or exchange any Collateral consisting of equipment in connection with the acquisition of other equipment that is at least as valuable as such equipment, that Debtor intends to use for substantially the same purposes as such equipment and that is not subject to any security interest or other lien or encumbrance; (iii) collect Collateral consisting of accounts or assign such Collateral for purposes of collection; or (iv) sell or lease Collateral consisting of inventory. A sale, lease or other transfer of such Collateral consisting of inventory in the ordinary course of Debtor's business does not include a transfer in partial or complete satisfaction of any liability or obligation or any bulk sale.

2.3 Condition of Collateral; Impermissible Use. Debtor shall keep the Collateral consisting of goods in good condition and shall not commit or permit damage or destruction (other than ordinary wear and tear) to such Collateral. Debtor shall not permit any Collateral consisting of goods (i) to be used in such a manner that would violate any insurance policy or warranty covering the Collateral or that would violate any applicable law of any governmental authority (including any environmental law) now or hereafter in effect; (ii) to become fixtures on any real property on which Secured Party does not have a first priority mortgage lien (unless Secured Party has been provided with an acceptable landlord/mortgagee waiver) or become an accession to any goods not included in the Collateral; or (iii) to be placed in any warehouse that may issue a negotiable document with regard to such Collateral.

2.4 Modification to Collateral. Debtor shall not, without Secured Party's prior written consent, grant any extension on, compound, settle for less than the full amount of, release (in whole or in part), modify, cancel, or allow for any substitution, credit or adjustment on Collateral consisting of accounts, chattel paper, general intangibles, instruments, documents or investment property, except that in the absence of an Event of Default, Debtor may grant to account debtors, or other persons obligated with respect to the Collateral, extensions, credits, discounts, compromises or settlements in the ordinary course of business consistent with its past practices and consistent with prudent and standard practices used in the industries that are the same or similar to those in which Debtor is engaged.

2.5 Titled Goods. Debtor shall cause all goods included in the Collateral to be properly titled and registered to the extent required by applicable law. Upon the request of Secured Party, Debtor shall cause the interest of Secured Party to be properly indicated on any certificate of title relating to such goods and deliver to Secured Party each such certificate, and any additional evidence of ownership, certificates of origin or other documents evidencing any interest in such goods.

2.6 Insurance. Debtor shall, at its own expense and at all times, maintain effective insurance policies covering damage to persons and against fire, flood, theft and all other risks to which the Collateral may be subject, all in such amounts, with such deductibles and issued by such insurance company as shall be satisfactory to Secured Party. Such insurance policies shall have all endorsements that Secured Party may require and shall further (i) name Secured Party, exclusively, as the additional insured on the casualty insurance and the lender's loss payee and/or mortgagee on the hazard insurance; (ii) provide that Secured Party shall receive a minimum of thirty (30) days prior written notice of any amendment or cancellation; and (iii) insure Secured Party notwithstanding any act or neglect of Debtor or other owner of the property described in such insurance. If Debtor fails to obtain the required insurance as provided herein, Secured Party may, but is not obligated, to obtain such insurance as Secured Party may deem appropriate, including, without limitation, if Secured Party so chooses, "single interest insurance" which will cover only Secured Party's interest in the Collateral. Debtor shall pay or reimburse to Secured Party the cost of such insurance. Secured Party shall have the option, in its sole discretion, to hold insurance proceeds as part of the Collateral, apply any insurance proceeds toward the Obligations or allow the Debtor to apply the insurance proceeds towards repair or replacement of the item of Collateral in respect of which such proceeds were received. Upon the request of Secured Party, Debtor shall from time to time deliver to Secured Party such insurance policies, or other evidence of such policies satisfactory to Secured Party, and such other related information Secured Party may request.

2.7 Collateral Information. Debtor shall provide all information, in form and substance satisfactory to Secured Party, that Secured Party shall from time to time request to (i) identify the nature, extent, value, age and location of any of the Collateral, or (ii) identify any account debtor or other party obligated with respect to any chattel paper, general intangible, instrument, investment property, document or deposit account included in the Collateral.

2.8 Financial Information. Debtor shall furnish to Secured Party the financial statements and other information required by that certain Credit Agreement between Debtor and Secured Party dated the date hereof, as the same may be amended, modified or replaced from time to time (the "Credit Agreement") plus any additional financial information that Secured Party may request. All such financial statements shall be in conformity with generally accepted accounting principles consistently applied.

2.9 Taxes; Licenses; Compliance with Laws. Before the end of any applicable grace period, Debtor shall pay each tax, assessment, fee and charge imposed by any governmental authority upon the Collateral, the ownership, disposition or use of any of the Collateral, this Agreement or any instrument evidencing any of the Obligations. Debtor shall maintain in full force and effect each license, franchise or other authorization needed for any ownership, disposition or use of the Collateral and the conduct of its business, operations or affairs. Debtor shall comply with all applicable law of any governmental authority (including any environmental law), now or hereafter in effect, applicable to the ownership, disposition or use of the Collateral or the conduct of its business, operations or affairs.

2.10 Records; Legend. Debtor shall maintain accurate and complete books and records relating to the Collateral in conformity with generally accepted accounting principles consistently applied. At Secured Party's request, Debtor will legend, in form and manner satisfactory to Secured Party, its books and records to indicate the Security Interest.

2.11 Additional Collateral. If at any time the liquidation value of any of the Collateral is unsatisfactory to Secured Party, then, on demand of Secured Party, Debtor shall immediately (i) furnish such additional collateral satisfactory to Secured Party to be held by Secured Party as if originally pledged hereunder and execute such additional security agreements, financing statements or other agreements as requested by Secured Party, or (ii) repay the Obligations to bring the outstanding amount of the Obligations to within a satisfactory relationship to the liquidation value of the Collateral.

2.12 Debtor Notices. Immediately upon acquiring knowledge or reason to know of any of the following, Debtor shall notify Secured Party of the occurrence or existence of (i) any Event of Default; (ii) any event or condition that, after notice, lapse of time or after both notice and lapse of time, would constitute an Event of Default; (iii) any account or general intangible that arises out of a contract with any governmental authority (including the United States); (iv) any event or condition that has or (so far as can be foreseen) will or might have any material adverse effect on the Collateral (including a material loss, destruction or theft of, or of any damage to, the Collateral, material decline in value of the Collateral or a material default by an account debtor or other party's performance of obligations with respect to the Collateral), on Debtor or its business, operations, affairs or condition (financial or otherwise).

2.13 Lien Law. If any account or general intangible included in the Collateral represents money owing pursuant to any contract for the improvement of real property or for a public improvement for purposes of the Lien Law of the State of New York (the "Lien Law"), Debtor shall (i) give Secured Party notice of such fact; (ii) receive and hold any money advanced by Secured Party with respect to such account or general intangible as a trust fund to be first applied to the payment of trust claims as such term and/or concept is defined in the Lien Law (in Section 71 thereof, or otherwise); and (iii) until such trust claim is paid, not use or permit the use of any such money for any purpose other than the payment of such trust claims.

2.14 Protection of Collateral; Further Assurances. Debtor shall, at its own cost, faithfully preserve, defend and protect the Security Interest as a prior perfected security interest in the Collateral under the UCC and other applicable law, superior and prior to the rights of all third parties (other than those permitted pursuant to Section 3.1) and shall defend the Collateral against all setoffs, claims, counterclaims, demands and defenses. Debtor shall, and shall cause its affiliates to take such action and execute and deliver to the Secured Party such additional documents, instruments, certificates, and agreements as the Secured Party may reasonably request from time to time to effectuate the purposes and intent of the transaction(s) contemplated hereby, including, without limitation, (i) to attach, continue, preserve, perfect or protect the Security Interest and Secured Party's interests in the Collateral and rights hereunder, including obtaining waivers (in form and content acceptable to Secured Party) from landlords, warehousemen and mortgagees and (ii) causing any affiliate, entity or series of entities it may create hereafter through merger, division or otherwise, to execute agreements, in form and substance acceptable to Secured Party, (a) assuming or guarantying the Debtor's obligations under this Agreement and all related agreements and (b) pledging assets to the Secured Party to the same extent as the Debtor. Debtor and the Agency hereby irrevocably appoint Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor and the Agency with full power and authority in the place and stead of Debtor and the Agency and in the name of Debtor and the Agency or its own name from time to time in Secured Party's discretion, to perform all acts which Secured Party deems appropriate to attach, continue, preserve or perfect and continue the Security Interest, including signing for Debtor and the Agency (to the extent such signature may be required by applicable law) UCC-1 financing statements, UCC-3 amendment or other instruments and documents to accomplish the purposes of this Agreement. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor or the Agency.

3. Representations and Warranties. Debtor represents, warrants and agrees as follows:

3.1 Title. Debtor holds good and marketable title to the Collateral free and clear from any security interest or other lien or encumbrance of any party, other than the Security Interest or such liens, security interests or other liens or encumbrances specifically permitted by Secured Party and set forth on Exhibit A hereto ("Permitted Liens"). Debtor has not made any prior sale, pledge, encumbrance, assignment or other disposition of any of the Collateral except for the Permitted Liens.

3.2 Authority. If Debtor is a business entity, it is duly organized, validly existing and in good standing under the laws of the above-named state of organization. Debtor has the full power and authority to grant the Security Interest and to execute, deliver and perform its obligations in accordance with this Agreement. The execution and delivery of this Agreement will not (i) violate any applicable law of any governmental authority or any judgment or order of any court, other governmental authority or arbitrator; (ii) violate any agreement governing Debtor or to which Debtor is a

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party; or (iii) result in a security interest or other lien or encumbrance on any of Debtor's assets, except in favor of Secured Party. Debtor's certificate of incorporation, by-laws or other organizational documents do not prohibit any term or condition of this Agreement. Each authorization, approval or consent from, each registration and filing with, each declaration and notice to, and each other act by or relating to, any party required as a condition of Debtor's execution, delivery or performance of this Agreement (including any shareholder or board of directors or similar approvals) has been duly obtained and is in full force and effect. Debtor has the power and authority to transact the business in which it is engaged and is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business or ownership of property requires such licensing or such qualifications.

3.3 Judgments and Litigation. There is no pending or threatened claim, audit, investigation, action or other legal proceeding or judgment or order of any court, agency or other governmental authority or arbitrator which involves Debtor or the Collateral and which might have a material adverse effect upon the Collateral, the Debtor, its business, operations, affairs or condition (financial or otherwise), or threaten the validity of this Agreement or any related document or action. Debtor will immediately notify Secured Party upon acquiring knowledge of the foregoing.

3.4 Enforceability of Collateral. Instruments, chattel paper, accounts or documents which constitute any part of the Collateral are genuine and enforceable in accordance with their terms, comply with the applicable law of any governmental authority concerning form, content, manner of preparation and execution, and all persons appearing to be obligated on such Collateral have authority and capacity to contract and are in fact obligated as they appear to be on such Collateral. There are no restrictions on any assignment or other transfer or grant of the Security Interest by Debtor. Each sum represented by Debtor from time to time as owing on accounts, instruments, deposit accounts, chattel paper and general intangibles constituting any part of the Collateral by account debtors and other parties with respect to such Collateral is the sum actually and unconditionally owing by account debtors and other parties with respect thereto at such time, except for applicable normal cash discounts. None of the Collateral is subject to any defense, set-off, claim or counterclaim of a material nature against Debtor except as to which Debtor has notified Secured Party in writing.

3.5 Location of Chief Executive Office, Records, Collateral. The locations of the following are listed on page one of this Agreement or, if different or additional, on Exhibit A hereto: (i) Debtor's residence, principal place of business and chief executive office; (ii) the office in which Debtor maintains its books or records relating to the Collateral; (iii) the facility (including any storage facility) at which now owned or subsequently acquired inventory, equipment, goods, fixtures and other tangible personal property constituting any part of the Collateral shall be kept; and (iv) the real property on which any crop included in the Collateral is growing or is to be grown, or on which any timber constituting any part of the Collateral is or is to be standing. Debtor will not effect or permit any change in any of the foregoing locations (or remove or permit the removal of the records or Collateral therefrom, except for mobile equipment included in the Collateral which may be moved to another location for not more than thirty (30) days) without thirty (30) days prior written notice to Secured Party and all actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken. All of the locations listed on page one or Exhibit A are owned by Debtor, or if not, by the party(ies) identified on Exhibit A.

3.6 Structure; Name. Debtor's and the Agency's respective organizational structure, state of registration and organizational identification number (if any) are stated accurately on page one of this Agreement, and its full legal name and any trade name used to identify it are stated accurately on page one of this Agreement, or if different or additional are listed on Exhibit A hereto. Debtor will not change its name, any trade names or its identity, its organizational structure, state of registration or organizational identification number without thirty (30) days prior written notice to Secured Party. All actions deemed necessary by Secured Party to maintain the Security Interest intended to be granted hereby at all times fully perfected and in full force and effect have been taken.

4. Performance and Expenditures by Secured Party. If Debtor fails to perform or comply with any of the terms hereof, Secured Party, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such terms including the payment or discharge of all taxes, fees, security interest or other liens, encumbrances or claims, at any time levied or placed on the Collateral. An election to make expenditures or to take action or perform an obligation of Debtor under this Agreement, after Debtor's failure to perform, shall not affect Secured Party's right to declare an Event of Default and to exercise its remedies. Nor shall the provisions of this Section relieve Debtor of any of its obligations hereunder with respect to the Collateral or impose any obligation on Secured Party to proceed in any particular manner with respect to the Collateral. Interest on any judgment entered against Debtor related to this Agreement shall accrue at the highest default rate specified in any instrument evidencing any of the Obligations.

5. Duty of Secured Party. Secured Party's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Secured Party deals with similar property for its own account. Neither Secured Party nor its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of the Collateral upon the request of Debtor or any other person or to take any other action whatsoever with regard to the Collateral. The powers conferred on Secured Party hereunder are solely to protect Secured Party's interests in the Collateral and shall not impose any duty upon any Secured Party to exercise any such powers. Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of its powers under this Agreement, and neither it nor its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

6. Certain Rights and Remedies.

6.1 Inspection; Verification. Secured Party, and such persons as it may designate, shall have the right from time to time to (i) audit and inspect (a) the Collateral, (b) all books and records related thereto (and make extracts and copies from such records), and (c) the premises upon which any of the Collateral or books and records may be located; (ii) discuss Debtor's business, operations, affairs or condition (financial or otherwise) with its officers, accountants; and (iii) verify the validity, amount, quality, quantity, value, condition and status of, or any other matter relating to the

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Collateral in any manner and through any medium Secured Party may consider appropriate (including contacting account debtors or third party possessing the Collateral for purpose of making such verification). Debtor shall furnish all assistance and information and perform any acts Secured Party may require regarding thereto. Debtor shall bear the cost and expense of any such inspection and verification.

6.2 Notification of Security Interest. Secured Party may notify any or all account debtors and other person obligated with respect to the Collateral of the Security Interest therein. Upon the request of Secured Party, Debtor agrees to enter into such warehousing, lockbox or other custodial arrangement with respect to any of the Collateral that Secured Party shall deem necessary or desirable.

6.3 Application of Proceeds. Secured Party may apply the proceeds from the sale, lease or other disposition or realization upon the Collateral to the Obligations in such order and manner and at such time as Secured Party shall, in its sole discretion, determine. Debtor shall remain liable for any deficiency if the proceeds of any sale, lease or other disposition or realization upon the Collateral are insufficient to pay the Obligations. Any proceeds received by Debtor from the Collateral after an Event of Default shall (i) be held by Debtor in trust for Secured Party in the same medium in which received; (ii) not be commingled with any assets of Debtor; and (iii) be delivered to Secured Party in the form received, properly indorsed to permit collection. After an Event of Default, Debtor shall promptly notify Secured Party of the return to or repossession by Debtor of goods constituting part of the Collateral, and Debtor shall hold the same in trust for Secured Party and shall dispose of the same as Secured Party directs.

6.4 Income and Proceeds of Instruments and Investment Property. Until the occurrence of an Event of Default, Debtor reserves the right to request to receive all cash income or cash distribution (whether in cash or evidenced by check) payable on account of any instrument or investment property constituting part of the Collateral (collectively, "Cash Distribution"). Until actually paid, all rights in the foregoing shall remain subject to the Security Interest. Any other income, dividend, distribution, increase in or profits (including any stock issued as a result of any stock split or dividend, any capital distributions and the like) on account of any instrument or investment property constituting part of the Collateral and, upon the occurrence of an Event of Default, all Cash Distributions, shall be delivered to Secured Party immediately upon receipt, in the exact form received and without commingling with other property which may be received by, paid or delivered to Debtor or for Debtor's account, whether as an addition to, in discharge of, in substitution of, or in exchange of the Collateral. Until delivery, such Collateral shall be held in trust for Secured Party.

6.5 Registered Holder of the Collateral. Secured Party shall have the right to transfer to or register (with or without reference to this Agreement) in the name of Secured Party or its nominee any investment property, general intangible, instrument or deposit account constituting part of the Collateral so that Secured Party or such nominee shall appear as the sole owner of record thereof; provided, however, that so long as no Event of Default has occurred, Secured Party shall deliver to Debtor all notices, statements or other communications received by it or its nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give to Debtor or its designee a proxy or proxies to vote and take all action with respect to such Collateral. After the occurrence of any Event of Default, Debtor waives all rights to be advised of or to receive any notices, statements or communications received by Secured Party or its nominee as such record owner, and agrees that no proxy or proxies given by Secured Party to Debtor or its designee as aforesaid shall thereafter be effective.

7. **Default.**

7.1 Events of Default. Any of the following events or conditions shall constitute an "Event of Default": (i) failure by Debtor to make any payment when due (whether at the stated maturity, by acceleration or otherwise) related to the Obligations, or any part thereof, or there occurs any event or condition which after notice, lapse of time or both will permit such acceleration of any Obligation; (ii) Debtor defaults in the performance of any obligation, condition, covenant or other provision of this Agreement, the Credit Agreement or any other agreement between Debtor and the Secured Party or any of its affiliates or subsidiaries (collectively, "Affiliates"); (iii) Debtor fails to pay when due (whether at the stated maturity, by acceleration or otherwise) any indebtedness for borrowed money owing to the Secured Party (other than under this Agreement), any third party or Affiliate or the occurrence of any event which could result in acceleration of payment of any such indebtedness or the failure to perform any agreement with any third party or Affiliate; (iv) the sale, assignment transfer or delivery, by operation of law or otherwise, of all or substantially all of the assets of the Debtor to a third party; (v) a non-individual Debtor, without the Secured Party's prior written consent, engages in, agrees to or approves a plan for (a) reorganization, (b) merger or consolidation, (c) division into (or of) one or more entities or series of entities or allocation or transfer of any of Debtor's assets or liabilities as a result of such a division, (d) conversion to another form of business entity, or (e) dissolution of Debtor or cessation by Debtor as a going business concern; (vi) the death or judicial declaration of incompetency of Debtor, if an individual; (vii) failure to pay, withhold or collect any tax as required by law; the service or filing against Debtor or any of its assets of any lien (other than a lien permitted in writing by the Secured Party), judgment, garnishment, order or award; (viii) if Debtor becomes insolvent or is generally not paying its debts as such debts become due; (ix) the making of any general assignment by Debtor for the benefit of creditors; the appointment of a receiver or similar trustee for Debtor or its assets; or the making of any, or sending notice of any intended, bulk sale; (x) Debtor commences (or has commenced against it and not dismissed or stayed within forty-five (45) days) any proceeding or request for relief under any bankruptcy, insolvency or similar laws now or hereafter in effect in the United States of America or any state or territory thereof or any foreign jurisdiction or any formal or informal proceeding for the dissolution or liquidation of, settlement of claims against or winding up of affairs of Debtor; (xi) any representation or warranty made in this Agreement, any related document, any agreement between Debtor and the Secured Party or any Affiliate or in any financial statement of Debtor or elsewhere was misleading in any material respect when made; Debtor omits to state a material fact necessary to make the statements made in this Agreement, any related document, any agreement between Debtor and the Secured Party or any Affiliate or any financial statement of Debtor or elsewhere not misleading in light of the circumstances in which they were made; or, if upon the date of execution of this Agreement, there shall have been any material adverse change in any of the facts disclosed in any financial statement, representation, warranty or elsewhere that was not disclosed in writing to the Secured Party at or prior to the time of execution hereof; (xii) any pension plan of Debtor fails to comply with applicable law or has vested unfunded liabilities that, in the opinion of the Secured Party, might have a material adverse effect on Debtor's ability to repay its debts; (xiii) an adverse change in the Collateral, or the Debtor, its business, assets, operations, management, ownership, affairs or condition (financial or otherwise) from the status shown on any financial statement or other document submitted to the Secured Party or any Affiliate, and which change

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the Secured Party determines will have a material adverse effect on (a) the Collateral, or the Debtor, its business, assets, operations or condition (financial or otherwise), or (b) the ability of the Debtor to pay or perform any obligation to the Secured Party; (xiv) any indication or evidence received by the Secured Party that the Debtor may have directly or indirectly engaged in any type of activity which, in the Secured Party's discretion, might result in the forfeiture of any property of the Debtor to any governmental authority; (xv) the occurrence of any event described in subparagraph (i) through and including (xiv) hereof with respect to any endorser, guarantor or any other party liable for, or whose assets or any interest therein secures, payment of any of the Obligations; or (xvi) the Secured Party in good faith deems itself insecure with respect to payment or performance of any of the Obligations.

7.2 Rights and Remedies Upon Default. Upon the occurrence of any Event of Default, Secured Party without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law) to or upon Debtor, the Agency or any other person (all and each of which demands, presentments, protests, advertisements and notices are hereby waived), may exercise all rights and remedies of a secured party under the UCC, under other applicable law, in equity or otherwise or available under in this Agreement including:

7.2.1 Obligations Immediately Due; Termination of Lending. Secured Party may declare all or any part of any Obligations not payable on demand to be immediately due and payable without demand or notice of any kind. All or any part of any Obligations whether or not payable on demand, shall be immediately due and payable automatically upon the occurrence of an Event of Default in Section 7.1 (ix) or (x) above. The provisions hereof are not intended in any way to affect any rights of Secured Party with respect to any Obligations which may now or hereafter be payable on demand. Secured Party may terminate any obligation it may have to grant any additional loan, credit or other financial accommodation to Debtor.

7.2.2 Access to Collateral. Secured Party, or its agents, may peaceably retake possession of the Collateral with or without notice or process of law, and for that purpose may enter upon any premises where the Collateral is located and remove the same. At Secured Party's request, Debtor shall assemble the Collateral and deliver it to Secured Party or any place designated by Secured Party, at Debtor's expense.

7.2.3 Sell Collateral. Secured Party shall have the right to sell, lease or otherwise dispose of the Collateral in one or more parcels at public or private sale or sales upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Debtor. Debtor hereby waives (to the extent permitted by law) all rights of redemption, stay and appraisal which Debtor now has or may at any time in the future have under any applicable law now existing or hereafter enacted. Secured Party shall have the right to use Debtor's premises and any materials or rights of Debtor (including any intellectual property rights) without charge for such sales or disposition of the Collateral or the completion of any work in progress for such times as Secured Party may see fit. Without in any way requiring notice to be given in the following time and manner, Debtor agrees that with respect to any notice by Secured Party of any sale, lease or other disposition or realization or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, such notice shall be deemed reasonable and proper if given at least five (5) days before such action in the manner described below in the Section entitled "Notices".

7.2.4 Collect Revenues. Secured Party may either directly or through a receiver (i) demand, collect and sue on any Collateral consisting of accounts or any other Collateral including notifying account debtors or any other persons obligated on the Collateral to make payment on the Collateral directly to Secured Party; (ii) file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Secured Party with respect to the Collateral or to enforce any other right in respect of the Collateral; (iii) take control, in any manner, of any payment or proceeds from the Collateral; (iv) prosecute or defend any suit, action or proceeding brought against Debtor or the Agency with respect to the Collateral; (v) settle, compromise or adjust any and all claims arising under the Collateral or, to give such discharges or releases as Secured Party may deem appropriate; (vi) receive and collect all mail addressed to Debtor, direct the place of delivery thereof to any location designated by Secured Party; to open such mail; to remove all contents therefrom; to retain all contents thereof constituting or relating to the Collateral; (vii) execute, sign or endorse any and all claims, endorsements, assignments, checks or other instruments with respect to the Collateral; or (viii) generally, use, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral; and Debtor hereby irrevocably appoints Secured Party, its officers, employees and agents, or any of them, as attorneys-in-fact for Debtor with full power and authority in the place and stead of Debtor and in the name of Debtor or in its own name from time to time in Secured Party's discretion, to take any and all appropriate action Secured Party deems necessary or desirable to accomplish any of the foregoing or otherwise to protect, preserve, collect or realize upon the Collateral or to accomplish the purposes of this Agreement. Debtor revokes each power of attorney (including any proxy) heretofore granted by Debtor with regard to the Collateral. This power of attorney, being coupled with an interest, is irrevocable and shall not be affected by the subsequent disability or incompetence of Debtor.

7.2.5 Setoff. Secured Party may place an administrative hold on and set off against the Obligations any property held in a deposit or other account with Secured Party or any of its Affiliates or otherwise owing by Secured Party or any of its Affiliates in any capacity to Debtor. Such set-off shall be deemed to have been exercised immediately at the time Secured Party or such Affiliate elects to do so.

7.2.6 Appointment of Receiver. Secured Party, upon occurrence of an Event of Default, shall be entitled, and Debtor and the Agency hereby consent, without notice or demand and without regard to the adequacy of any security for the indebtedness and other Obligations or the solvency or insolvency of any person liable for the payment thereof, to the appointment of a receiver for the Collateral. The receiver shall have all rights and powers permitted under applicable law and such other powers as the court making such appointment shall confer. The expenses, including, without limitation, receiver's fees, attorneys' fees, court costs, and agent's compensation, incurred pursuant to or arising from the powers herein contained shall be secured by the Collateral. The right of a receiver, among other rights and powers, to enter and take possession of and to manage and operate the Collateral, and to collect the rents, issues, profits and proceeds thereof shall be cumulative to any other rights or remedies hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof.

Notwithstanding the appointment of any receiver or other custodian, Secured Party shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments or other Collateral at the time held by, or payable or deliverable under the terms of this Agreement to Secured Party.

8. Expenses. Debtor shall pay to Secured Party on demand all costs and expenses (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose and of any experts or agents it may retain), which Secured Party may incur in connection with (i) the administration of this Agreement, including any administrative fees Secured Party may impose for the preparation of discharges, releases or assignments to third-parties; (ii) the custody or preservation of, or the sale, lease or other disposition or realization on the Collateral; (iii) the enforcement and collection of any Obligations or any guaranty thereof; (iv) the exercise, performance, enforcement or protection of any of the rights of Secured Party hereunder; or (v) the failure of Debtor or the Agency to perform or observe any provisions hereof. After such demand for payment of any cost, expense or fee under this Section or elsewhere under this Agreement, Debtor shall pay interest at the highest default rate specified in any instrument evidencing any of the Obligations from the date payment is demanded by Secured Party to the date reimbursed by Debtor. All such costs, expenses or fees under this Agreement shall be added to the Obligations.

9. Indemnification. Debtor shall indemnify Secured Party and its Affiliates and each officer, employee, accountant, attorney and other agent thereof (each such person being an "Indemnified Party") on demand, without any limitation as to amount, against each liability, cost and expense (including all reasonable fees and disbursements of all counsel retained for advice, suit, appeal or other proceedings or purpose, and of any expert or agents an Indemnified Party may retain) heretofore or hereafter imposed on, incurred by or asserted against any Indemnified Party (including any claim involving any allegation of any violation of applicable law of any governmental authority (including any environmental law or criminal law)), however asserted and whether now existing or hereafter arising, arising out of any ownership, disposition or use of any of the Collateral; provided, however, the foregoing indemnity shall not apply to liability, cost or expense solely attributable to an Indemnified Party's gross negligence or willful misconduct. This indemnity agreement shall survive the termination of this Agreement. Any amounts payable under this or any other section of this Agreement shall be additional Obligations secured hereby.

10. USA PATRIOT Act Notice. Secured Party hereby notifies the Debtor that pursuant to the requirements of the USA PATRIOT Act ("Patriot Act"), it is required to obtain, verify and record information that identifies the Debtor, which information includes the name and address of the Debtor and other information that will allow Secured Party to identify the Debtor in accordance with the Patriot Act. The Debtor agrees to, promptly following a request by Secured Party, provide all such other documentation and information that Secured Party requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

11. Miscellaneous.

11.1 Notices. Any demand or notice hereunder or under any applicable law pertaining hereto shall be in writing and duly given if delivered to Debtor or the Agency (at its address on Secured Party's records or as provided herein) or to Secured Party (at the address on page one and separately to Secured Party's officer responsible for Debtor's relationship with Secured Party). Such notice or demand shall be deemed sufficiently given for all purposes when delivered (i) by personal delivery and shall be deemed effective when delivered, or (ii) by mail or courier and shall be deemed effective three (3) business days after deposit in an official depository maintained by the United States Post Office for the collection of mail or one (1) business day after delivery to a nationally recognized overnight courier service (e.g., Federal Express). Notice by e-mail is not valid notice under this or any other agreement between Debtor and Secured Party.

11.2 Governing Law; Jurisdiction. This Agreement has been delivered to and accepted by Secured Party and will be deemed to be made in the State of New York. Except as otherwise provided under federal law, this Agreement will be interpreted in accordance with the laws of the State of New York excluding its conflict of laws rules. **DEBTOR HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN THE STATE OF NEW YORK IN A COUNTY OR JUDICIAL DISTRICT WHERE SECURED PARTY MAINTAINS A BRANCH AND CONSENTS THAT SECURED PARTY MAY EFFECT ANY SERVICE OF PROCESS IN THE MANNER AND AT DEBTOR'S ADDRESS SET FORTH ABOVE FOR PROVIDING NOTICE OR DEMAND; PROVIDED THAT NOTHING CONTAINED IN THIS AGREEMENT WILL PREVENT SECURED PARTY FROM BRINGING ANY ACTION, ENFORCING ANY AWARD OR JUDGMENT OR EXERCISING ANY RIGHTS AGAINST DEBTOR INDIVIDUALLY, AGAINST ANY SECURITY OR AGAINST ANY PROPERTY OF DEBTOR WITHIN ANY OTHER COUNTY, STATE OR OTHER FOREIGN OR DOMESTIC JURISDICTION.** Debtor acknowledges and agrees that the venue provided above is the most convenient forum for both Secured Party and Debtor. Debtor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

11.3 Security Interest Absolute. All rights of Secured Party hereunder, the Security Interest and all obligations of Debtor hereunder shall be absolute and unconditional irrespective of (i) any filing by or against Debtor of any petition in bankruptcy or any action under federal or state law for the relief of debtors or the seeking or consenting to of the appointment of an administrator, receiver, custodian or similar officer for the wind up of its business; (ii) any lack of validity or enforceability of any agreement with respect to any of the Obligations, (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any agreement or instrument with respect to the Obligations, (iv) any exchange, release or non-perfection of any lien or any release or amendment or waiver of or consent under or departure from any guarantee, securing or guaranteeing all or any of the Obligations, or (v) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Debtor in respect of the Obligations or this Agreement. If, after receipt of any payment of all or any part of the Obligations, Secured Party is for any reason compelled to surrender such payment to any person or entity, because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, such payment shall be reinstated as part of the Obligations and this Agreement shall continue in full force notwithstanding any contrary action which may

have been taken by Secured Party in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Secured Party's rights under this Agreement and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

11.4 Remedies Cumulative; Preservation of Rights. The rights and remedies herein are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies which Secured Party may have under other agreements now or hereafter in effect between Debtor, the Agency and Secured Party, at law (including under the UCC) or in equity. No failure or delay of Secured Party in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. Debtor expressly disclaims any reliance on any course of dealing or usage of trade or oral representation of Secured Party including representations to make loans to Debtor. No notice to or demand on Debtor in any case shall entitle Debtor to any other or further notice or demand in similar or other circumstances.

11.5 Joint and Several; Successors and Assigns. If there is more than one Debtor, each of them shall be jointly and severally liable for all amounts, which become due, and the performance of all obligations under this Agreement and the term "Debtor" shall include each as well as all of them. This Agreement shall be binding upon Debtor, the Agency and upon their respective heirs and legal representatives, their successors and assignees, and shall inure to the benefit of, and be enforceable by, Secured Party, its successors and assignees and each direct or indirect assignee or other transferee of any of the Obligations; provided, however, that this Agreement may not be assigned by Debtor or the Agency without the prior written consent of Secured Party. For the avoidance of doubt, the Agency shall not be considered a Debtor hereunder and is not jointly and severally liable for any indebtedness or other obligations of the Debtor.

11.6 Waivers; Changes in Writing. No course of dealing or other conduct, no oral agreement or representation made by Secured Party or usage of trade shall operate as a waiver of any right or remedy of Secured Party. No waiver of any provision of this Agreement or consent to any departure by Debtor therefrom shall in any event be effective unless made specifically in writing by Secured Party and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No modification to any provision of this Agreement shall be effective unless made in writing in an agreement signed by Debtor and Secured Party.

11.7 Interpretation. Unless the context otherwise clearly requires, references to plural includes the singular and references to the singular include the plural; the word "or" has the inclusive meaning represented by the phrase "and/or"; the word "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and captions or section headings are solely for convenience and not part of the substance of this Agreement. Any representation, warranty, covenant or agreement herein shall survive execution and delivery of this Agreement and shall be deemed continuous. Each provision of this Agreement shall be interpreted as consistent with existing law and shall be deemed amended to the extent necessary to comply with any conflicting law. If any provision nevertheless is held invalid, the other provisions shall remain in effect. Debtor and the Agency agree that in any legal proceeding, a photocopy of this Agreement kept in Secured Party's course of business may be admitted into evidence as an original. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the UCC.

11.8 Waiver of Jury Trial. **DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY DEBTOR AND SECURED PARTY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTIONS RELATED HERETO. DEBTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SECURED PARTY WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. DEBTOR ACKNOWLEDGES THAT SECURED PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.**

12. Agency Provisions.

12.1 Exculpation of the Agency. The obligations and agreements of the Agency contained in this Agreement and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York or of the City of Syracuse, and neither the State of New York nor the City of Syracuse shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Collateral excepting therefrom the Agency's Unassigned Rights (as defined in the Company Lease). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(i) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(ii) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

{H4476581.3}

CLB-107-NY (11/20)

(iii) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

12.2 No Agency or Employee Relationship. For purposes of this Section 12, neither Debtor nor any agent of Debtor shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

12.3 Limited Obligations. This Agreement is executed by the Agency solely for the purpose of subjecting its interest in the Collateral, and in the Event of Default, the holder of this Agreement shall look, only with respect to the Agency, solely to the Collateral described in this Agreement in satisfaction of the Obligations and will not seek or obtain any deficiency or personal judgment against the Agency or any members or officers thereof except such judgment or decree as may be necessary to foreclose its interest in the Collateral as pledged hereunder and all other property mortgaged, pledged, conveyed or assigned to secure payment of the Obligations.

12.4 Debtor's Obligations to comply with the Company Lease and the Agency Lease. Debtor shall: (i) pay the all other sums of money due and payable at any time and from time to time under the Company Lease (as defined in the Agency Lease) and the Agency Lease when such sums become due and payable, but in any event, before the expiration of any grace period provided in the Company Lease and the Agency Lease for the payment of any such sum; and (ii) at all times fully perform, observe and comply with all other terms, covenants and conditions of the Company Lease and the Agency Lease to be performed, observed or complied with by Debtor as lessor under the Company Lease, and lessee under the Agency Lease. If the Company Lease or the Agency Lease do not provide for a grace period for the payment of a sum of money, Debtor shall make the payment on or before the date on which the payment becomes due and payable. Debtor shall deliver evidence of the payment to Secured Party within ten (10) days after receipt of a written request from Secured Party for evidence of the payment.

12.5 Agency Executing at the Direction of Debtor. Debtor directs the Agency to execute and deliver this Agreement to Secured Party, and further agrees to indemnify the Agency (and its members, officers, directors, agents, servants and employees) for all fees and costs incurred in connection with the execution, delivery, recording, performing and enforcing of this Agreement, including but not limited to attorney's fees and costs.

12.6 Hold Harmless Provisions. Debtor hereby acknowledges that the terms of the Company Lease and the Agency Lease, as amended and restated from time to time, are in full force and effect, including but not limited to the "Hold Harmless Provisions" contained in Section 8.2 of the Agency Lease and incorporates same in this instrument and makes same applicable hereto as if fully set forth herein.

12.7 Agency's Obligations. The Agency's obligations hereunder shall remain in effect until the earlier of: (i) the termination of the Agency Lease; or (ii) the termination of this Agreement. Upon the occurrence of either (i) or (ii) hereof, the Agency's obligations hereunder shall terminate without need for any further action by any party hereto.

12.8 Other Agreements. Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 12 shall not alter the full force and effect of any Event of Default under any agreement between Debtor and the Agency.

Dated: November ____, 2021

[Signature Pages Follow]

**INTREPID LANE ASC, LLC d/b/a INTREPID LANE
ENDOSCOPY AND SURGERY CENTER**



By: _____
Benjamin R. McHone, Manager

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : SS.
COUNTY OF ONONDAGA)

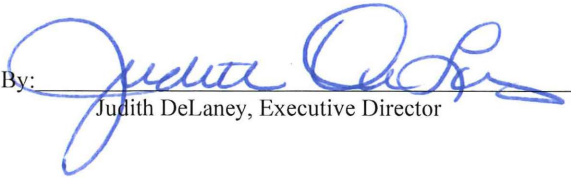
On the 18 day of November in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Benjamin R. McHone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

BRUCE A. SMITH
Notary Public in the State of New York
Qualified in Onondaga Co. No. 02SM4961729
My Commission Expires February 5, 2024

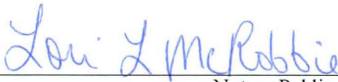
**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Judith DeLaney, Executive Director

ACKNOWLEDGMENT

STATE OF NEW YORK)
 : SS.
COUNTY OF ONONDAGA)

On the 18th day of October in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Judith DeLaney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 20 22

FOR SECURED PARTY USE ONLY:
Authorization confirmed: _____
If Debtor's Obligations arise under a guaranty in favor of Secured Party, list the name whose indebtedness is being guaranteed under such guaranty:

Exhibit A

1. **Permitted Liens (§3.1)**

- Liens securing purchase money and capital lease obligations of Borrower that are permitted under the Credit Agreement

2. **Residence, principal place of business or chief executive office (§3.5(i))**

190 Intrepid Lane
Syracuse, New York 13205

3. **Location of Books and Records (§3.5(ii))**

190 Intrepid Lane
Syracuse, New York 13205

1226 East Water Street
Syracuse, New York 13210

100 Metropolitan Park Drive
Liverpool, New York 13088

5100 W. Taft Road, #4A
Liverpool, New York 13088

4. **Location of Inventory, Equipment, Fixtures, Crops or Timber (§3.5(iii) and §3.5(iv))**

190 Intrepid Lane
Syracuse, New York 13205

5. **Locations Not Owned by Debtor and Name of Record Owner (§3.5)**

Location

Record Owner

190 Intrepid Lane
Syracuse, New York 13205

SOS Real Estate Holding Company, LLC

100 Metropolitan Park Drive
Liverpool, New York 13088

100 Metropolitan Park, LLC

1226 East Water Street
Syracuse, New York 13210

East Water Street Group, LLC

5100 W. Taft Road, #4A
Liverpool, New York 13088

Physician's Realty Trust

6. **Trade Name, "Doing Business As" Name or Assumed Name (§3.6)**

Intrepid Lane Endoscopy and Surgery Center

City of Syracuse
Industrial Development Agency
City Hall Commons, 6th Floor
201 East Washington Street
Syracuse, NY 13202
Tel (315) 473-3275 Fax (315) 435-3669

October 7, 2021

Honorable Benjamin Walsh
Mayor, City of Syracuse
City Hall
233 East Washington Street
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency
Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center
Project

Dear Mayor Walsh:

The City of Syracuse Industrial Development Agency (the "**Agency**") has agreed to undertake, at the request of Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center (the "**Applicant**" and/or "**Company**") a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

The Agency conducted a public hearing with respect to the Project as required by Section 859-a of the New York General Municipal Law on September 21, 2021, 2021, at which persons

October 7, 2021

Page 2

interested and desiring to be heard were heard, and the Agency considered all statements or comments received, if any.

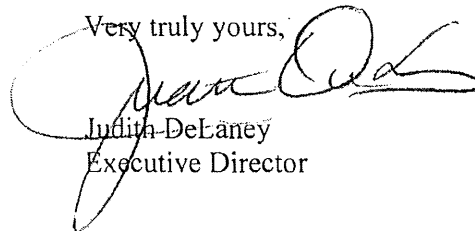
At a meeting of the Agency conducted on September 21, 2021, the Agency took action to approve its undertaking of the Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center Project, and based upon, inter alia, the representations made by the Company to the Agency, the Agency made the following findings and determinations:

- a) The Project Facility constitutes a "project" within the meaning of the Act.
- b) The granting of the Financial Assistance will be an inducement to the Company to develop the Project Facility in the City of Syracuse, New York (the "**City**").
- c) The acquisition, reconstruction, renovation, equipping, completion and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the City of Syracuse through, among other things, the creation of full and/or part time jobs.
- d) The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as permitted under the New York State General Municipal Law (the "**GML**").
- e) The Project is located in a Highly Distressed Area (as that term is defined in the GML) and makes available goods or services which would not, but for the project, be reasonably accessible to the residents of the City because of a lack of reasonably accessible retail trade facilities offering such goods or services.

If such services are deemed to be "retail" under the NYS Tax Law, Section 862(2)(c) of the General Municipal Law requires that the chief executive officer of the municipality for whose benefit the Agency was created confirm the proposed action of the Agency.

Accordingly, out of an abundance of caution, we hereby respectfully request that you sign the enclosed confirmation to evidence such confirmation.

Very truly yours,



Judith DeLaney
Executive Director

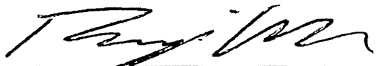
Enclosure

October 7, 2021
Page 2

**CONFIRMATION OF CHIEF EXECUTIVE OFFICER OF THE CITY OF SYRACUSE
PURSUANT TO SECTION 862(2)(c) OF THE GENERAL MUNICIPAL LAW**

I hereby confirm the action and findings taken by the City of Syracuse Industrial Development Agency at its meeting on September 21, 2021 with respect to its approval of the undertaking of the Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center Project.

October __, 2021


Honorable Benjamin Walsh

**GENERAL CERTIFICATE OF THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

This certificate is made in connection with the execution by the City of Syracuse Industrial Development Agency (the "**Agency**") of the Project Agreement, the Company Lease, the Agency Lease and any other document now or hereafter executed by the Agency (collectively, the "**Agency Documents**") with respect to a project (the "**Project**") undertaken at the request of Intrepid Lane ASC, LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

Capitalized terms used herein which are not otherwise defined herein and which are defined in the Agency Lease Agreement dated as of September 1, 2021 (the "**Agency Lease**"), between the Agency and the Company, and shall have the meanings ascribed to such terms in the Agency Lease except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

I, the undersigned Chair of the Agency, Do Hereby Certify:

1. I am an officer of the Agency and am duly authorized to execute and deliver this certificate in the name of the Agency.

2. The Agency is an industrial development agency duly established under Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended (the "**Enabling Act**") and Chapter 641 of the Laws of 1979 of the State (said Chapter with the Enabling Act, the "**Act**") (a certified copy of Chapter 641 of the Laws of 1979 of the State is

attached hereto as **Exhibit “A”**), and it is a corporate governmental agency constituting a public benefit corporation of the State.

3. The Act empowers the Agency, among other things, to acquire, construct reconstruct, lease, improve, maintain, equip, sell and dispose of land and any building or other improvement, and all real and personal property, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the City of Syracuse and the State and to improve their standard of living. The Act further authorizes the Agency to lease any and all of its facilities on such terms and conditions as it deems advisable, to acquire, construct, lease, improve, and equip one or more projects as defined in the Act, to mortgage any or all of its facilities and to pledge the revenues and receipts from the sale or transfer of its facilities.

4. The Agency has full legal power and authority to own its property, conduct its business and execute, deliver, and perform its obligations under the Agency Documents and has taken all actions and obtained all approvals required in connection therewith by the Act and any other applicable laws and regulations, and no legislation has been enacted affecting the powers or authority of the Agency to execute and deliver the Agency Documents, affecting the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the members and officers of the Agency to their respective offices.

5. Pursuant to the Act, the governing body of the City of Syracuse, New York, for whose benefit the Agency was established, duly filed or caused to be filed within six (6) months after the effective date of Chapter 641 of the Laws of 1979 of the State in the office of the Secretary of State of the State the Certificate of Establishment of the Agency pursuant to Section 926 of the New York General Municipal Law. The Certificate of Establishment of the Agency described in the preceding sentence also named the members and officers of the Agency as appointed by the Mayor of the City of Syracuse. Attached hereto as **Exhibit “B”** are certified copies of said Certificates of Establishment and copies of the Certificates of Appointment relating to all of the current members of the Agency, who are:

Kathleen Murphy, Chair
Steven Thompson, Vice Chair
Rickey T. Brown, Secretary
Kenneth Kinsey, Treasurer
Dirk Sonneborn, Member

6. Attached hereto as **Exhibit “C”** is a true, correct and complete copy of the by-laws of the Agency, together with all amendments thereto or modifications thereof; and said by-laws as so amended and modified are in full force and effect in accordance with their terms as of the date of this certificate.

7. That a resolution determining that the acquisition, construction and equipping of the Project constitutes a Project and describing the financial assistance in connection therewith and authorizing a public hearing (the "**Public Hearing Resolution**") was adopted by the Agency on August 17, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Public Hearing Resolution is attached hereto at **Exhibit "D."**

8. Attached hereto as **Exhibit "E"** is proof of publication of a notice of the public hearing with respect to the Project (the "**Public Hearing Notice**"), required pursuant to Section 859-a of the Act and held on September 21, 2021, and provided proof of notice thereof pursuant to Section 859-a of the Act to the chief executive officers of the affected tax jurisdictions (as defined in Section 854(16) of the Act) on September 8, 2021.

9. That a resolution classifying the Project as an Unlisted Action pursuant to SEQRA, declaring the Agency Lead Agency for the purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment (the "**SEQRA Resolution**") was adopted by the Agency on September 21, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the SEQRA Resolution is attached hereto at **Exhibit "F."**

10. That a resolution approving the undertaking of the acquisition, reconstruction, renovation and equipping of the Project, appointing the Company as agent of the Agency for the purpose of the acquisition, reconstruction, renovation and equipping of the Project, and authorizing the execution and delivery of an agreement between the Agency and the Company (the "**Inducement Resolution**") was adopted by the Agency on September 21, 2021 and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Inducement Resolution is attached hereto at **Exhibit "G."**

11. That a resolution authorizing the execution and delivery of certain documents by the Agency in connection with the Project was adopted by the Agency on September 21, 2021 (the "**Final Approving Resolution**") and remains in full force and effect and has not been rescinded, repealed or modified. A copy of the Final Approving Resolution is attached hereto at **Exhibit "H"**.

12. The execution, delivery and performance of all Agency Documents, certificates and documents required to be executed, delivered and performed by the Agency in order to carry out, give effect to and consummate the transactions contemplated by the Agency Documents have been duly authorized by all necessary action of the Agency, and the Agency Documents have been duly authorized, executed and delivered. The Agency Documents are in full force and effect on and as of the date hereof, and no authority or proceeding for the execution, delivery or performance of the Agency Documents has been materially amended, repealed, revoked or rescinded; and no event or circumstance has occurred or exists which constitutes, or with the giving of notice or the passage of time would constitute, a default on the part of the Agency under the Agency Documents.

13. The execution, delivery, and performance of the Agency Documents, the consummation of the transactions therein contemplated and compliance with the provisions of each do not and will not: (a) violate the Act or the by-laws of the Agency; (b) require consent (which

has not heretofore been received) under or result in a breach or default of any credit agreement, purchase agreement, indenture, deed of trust, commitment, guaranty, lease, or other agreement or instrument to which the Agency is a party or by which the Agency may be bound or affected; or (c) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any government, governmental instrumentality, or court, domestic or foreign, having jurisdiction over the Agency or any of its Property.

14. The Agency has not received written notice that any event of default has occurred and is continuing, or that any event has occurred which with the lapse of time or the giving of notice or both would constitute an event of default by any party to the Agency Documents.

15. There is no action, suit, proceeding or investigation at law or in equity, before or by any court, public board or body of the United States of America or the State of New York, pending or, to the best of my knowledge, threatened against or affecting the Agency (or to my knowledge any basis therefor): (a) wherein an unfavorable decision or finding would adversely affect (i) the Inducement Resolution, the Final Approving Resolution, the Company Lease, the Agency Lease or the other Agency Documents; or (ii) the existence or organization of the Agency; or (iii) restrain or enjoin the financing, acquisition or construction of the Project or the performance by the Agency of the Agency Documents; or (b) in any manner questioning the proceedings or authority of the financing of the Project, or affecting the validity thereof or of the Agency Documents, or contesting the existence and powers of the Agency or the appointment of the directors and officers of the Agency to their respective offices.

16. November 1, 2021 has been duly designated as the date for the Closing.

17. The Agency has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Date.

18. In accordance with the Act, the Agency has determined:

(a) to assist the Company's acquisition, reconstruction, renovation, equipping and completion of the Project Facility;

(b) to grant the Financial Assistance to the Company;

(c) to designate the Company as the Agency's agent for the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and to authorize the Company to appoint additional agents;

(d) that the Project will promote employment opportunities in the City by the preservation and/or the creation of both full and part-time jobs; and

19. That I did officially cause all certificates necessary for the granting of the Financial Assistance and included in the official transcript of closing, to be executed, as required, in the name of the Agency by the signing of each of such certificates with the signature of the Executive Director of the Agency.

20. That I did officially cause the following Agency Documents to be executed in the name of the Agency by the signing of each of such Agency Documents with the signature of the Judith DeLaney, Executive Director of the Agency:

(a) a Project Agreement between the Agency and the Company;

(b) a Company Lease from the Company to the Agency pursuant to which the Company agrees to lease the Land and the Facility to the Agency;

(b) an Agency Lease from the Agency to the Company pursuant to which the Agency agrees to sublease the Project Facility to the Company; and

No member, officer or employee of the Agency having power to: (i) negotiate, prepare, authorize or approve any of the Agency Documents; (ii) audit bills or claims under any of the Agency Documents; or (iii) appoint an officer or employee who has any of the powers or duties set forth in (i) or (ii):

(a) directly or indirectly owns any stock of the Company;

(b) is a partner, director or employee of the Company;

(c) is related to the Company within the meaning of Section 800.3(a) of the New York General Municipal Law.

No member, officer, or employee of the Agency has publicly disclosed, in a writing included as part of the official minutes of the Agency, any Interest (as defined in Section 800.3 of the New York General Municipal Law), direct or indirect, in the Company.

WITNESS, as of the 1st day of October, 2021.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:  _____
Judith DeLaney, Executive Director

EXHIBIT "A"

**CHAPTER 641 OF THE LAWS OF 1979
OF THE STATE OF NEW YORK**

LAWS OF NEW YORK, 1979

CHAPTER 641

AN ACT to amend the general municipal law, in relation to creating and establishing for the city of Syracuse industrial development agency and, providing for its functions and duties

Became a law July 11, 1979, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2 (b) (2) of the Constitution, by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general municipal law is amended by adding a new section nine hundred twenty-six to read as follows:

§ 926. *City of Syracuse industrial development agency. (a) For the benefit of the city of Syracuse and the inhabitants thereof, an industrial development agency, to be known as the CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall consist of five members who shall be appointed by the mayor of the city of Syracuse and its chairman shall be designated by such mayor. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies. It shall organize in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. The agency, its members, officers and employees, and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

(b) The city shall have the power to make, or contract to make grants or loans, including but not limited to grants or loans of money, to the agency in such amounts, upon such terms and conditions and for such period or periods of time as in the judgment of the city and the agency are necessary or appropriate for the accomplishment of any of the purposes of the agency.

§ 2. This act shall take effect immediately.

EXHIBIT "B"

**AGENCY'S CERTIFICATE OF ESTABLISHMENT
AND
CERTIFICATES OF APPOINTMENT OF CURRENT MEMBERS**

CERTIFICATE OF THE CITY OF SYRACUSE
INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law, Lee Alexander, Mayor of the City of Syracuse, certifies as follows:

1) The name of the industrial development agency herein is the City of Syracuse Industrial Development Agency.

2) Chapter 641 of the Laws of 1979, the special act of the New York State Legislature establishing the City of Syracuse Industrial Development Agency, was adopted by the New York State Legislature on June 16, 1979 and signed by the Governor on July 18, 1979. 11th

3) The names of the Chairman and the Members, respectively, of the City of Syracuse Industrial Development Agency and their terms of office are as follows:

(a)	Frank L. Canino	Chairman
	David M. Garber	Member
	David S. Michel	Member
	Erwin G. Schultz	Member
	Irwin L. Davis	Member

(b) The term of office of the Chairman and of the Members of the City of Syracuse Industrial Development Agency is at the pleasure of the Mayor and continues until a successor is appointed and has qualified.

4) The facts establishing the need for the creation of a City of Syracuse Industrial Development Agency are as follows:

Expansion of its industrial-commercial base is essential to the City of Syracuse, especially in a time of mounting economic pressures. To achieve this goal of expansion, the City has designed a comprehensive economic development program, requiring an Industrial Development Agency.

The existing potential for economic development will be augmented by the financial incentives of an Industrial Development Agency. Various City agencies and departments, such as the Department of Community Development and the Office of Federal and State Aid Coordination will interface with the Syracuse Industrial Development Agency to strengthen the business and industrial climate of the community.

Access to the Department of Community Development will make available to the Syracuse Industrial Development Agency an array of staff assistance, technical expertise, and various other development services. The City's Office of Federal and State Aid Coordination will provide assistance to it in locating, analyzing, and obtaining various forms of federal and state assistance and participation.

STATE OF NEW YORK
DEPARTMENT OF STATE


FILED JUL 20 1979

Carl F. Peterson

Secretary of State

The Syracuse Industrial Development Agency, in combination with, and utilizing these and other resources, will greatly enhance the City's ability to compete for, and successfully attract, the commercial and industrial enterprises necessary for continued economic health and growth.

July 20, 1979


Lee Alexander
Mayor

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 20 1979


Secretary of State

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
February 25, 2020.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED
STATE RECORDS

FEB 04 2019

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Ms. Kathleen Murphy - Member/Chair

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Ms. Kathleen Murphy - Member/Treasurer

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

Office of the Mayor
233 E. Washington St.
201 City Hall
Syracuse, N.Y. 13202

Office 315 448 8005
Fax 315 448 8067

www.syr.gov.net

Ben Walsh

Mayor

GROWTH. DIVERSITY. OPPORTUNITY FOR ALL.

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
April 10, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan Fitzgerald
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

Ben Walsh, Mayor

FILED
STATE RECORDS

JAN 29 2018

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

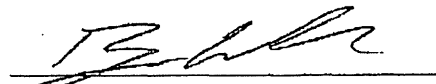
Mr. Steven P. Thompson - Member/Vice Chair

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency :

Mr. Steven P. Thompson - Member/Secretary

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.


Ben Walsh
Mayor, City of Syracuse

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



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Department of State, at the City of Albany, on
April 10, 2018.

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Brendan Fitzgerald
Executive Deputy Secretary of State



FILED
STATE RECORDS

OFFICE OF THE MAYOR

JAN 29 2018

Ben Walsh, Mayor

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE
CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as a member of the City of Syracuse Industrial Development Agency:

Mr. Rickey Brown - Member/Secretary

The following Member and Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Member or Officer of said Agency :

Ms. M. Catherine Richardson - Member/Vice-Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 16, 2018.

Ben Walsh
Mayor, City of Syracuse

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on February 25, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED
STATE RECORDS
FEB 04 2019

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Kenneth J. Kinsey - Member/Treasurer

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Mr. Kenneth J. Kinsey - Member

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

Office of the Mayor
233 E. Washington St.
201 City Hall
Syracuse, N.Y. 13202

Office 315 448 8005
Fax 315 448 8067

www.syr.gov.net

Ben Walsh
Mayor

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany, on
February 25, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State



OFFICE OF THE MAYOR

MAYOR BEN WALSH

FILED
STATE RECORDS

FEB 04 2019

DEPARTMENT OF STATE

CERTIFICATE OF APPOINTMENT TO THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

Pursuant to Article 18-A of the General Municipal Law of the State of New York, Ben Walsh, Mayor of the City of Syracuse, hereby certifies the appointment of the following person as an Officer of the City of Syracuse Industrial Development Agency:

Mr. Dirk Sonneborn - Member

The following Officer of the City of Syracuse Industrial Development Agency shall no longer serve as Officer of said Agency:

Mr. Michael Frame - Member/Chair

No Member or Officer of the City of Syracuse Industrial Development Agency shall receive any compensation for the discharge of their duties as Member or Officer of the Agency, but shall be entitled to necessary expenses incurred in the discharge of their duties as such Member or Officer.

The appointment herein set forth shall be effective as of January 17, 2020.

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Ben Walsh

Mayor

EXHIBIT "C"

AGENCY'S BY-LAWS

**BY-LAWS OF
THE CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY
(as amended August 18, 2009)**

Article I

THE AGENCY

Section 1. Name

The name of the agency shall be "City of Syracuse Industrial Development Agency", and it shall be referred to in these by-laws as the Agency.

Section 2. Seal

The seal of the Agency shall be in such form as may be determined by the members of the Agency.

Section 3. Office

The principal office of the Agency shall be located in the City of Syracuse, New York, County of Onondaga, and State of New York. The Agency may have such other offices at such other places as the members of the Agency may, from time to time, designate by resolution.

Article II

MEMBERS

Section 1. Members

(a) There shall be five members of the Agency. All references in these by-laws to members shall be references to Members of the Agency. The persons designated in the certificates of appointment filed in the office of the Secretary of State as members of the Agency and their successors in office and such other persons as may, from time to time, be appointed as

Members of the Agency by the Mayor of the City of Syracuse, or by special act of the Legislature, shall constitute all the members.

(b) Members shall hold office at the pleasure of the Mayor and shall continue to hold office until his or her successor is appointed and has qualified. The Mayor may remove any Member at his discretion, with or without cause.

(c) Upon the resignation or removal of a Member, a successor shall be selected by the Mayor.

(d) Members may resign at any time by giving written notice to the Mayor and to the Chairman of the Agency. Unless otherwise specified in the notice the resignation shall take effect upon receipt of the notice by the Chairman or the Mayor. Acceptance of the resignation shall not be necessary to make it effective.

Section 2. Meeting of the Members

(a) The Annual Meeting of the members shall be held on such date or dates as shall be fixed, from time to time, by the Members of the Agency. The first Annual Meeting of Members shall be held on a date within twelve (12) months after the filing of the Certificate of the Agency with the Secretary of State as required by General Municipal Law §856 (1) (a). Each successive Annual Meeting of Members shall be held on a date not more than twelve (12) months following the preceding Annual Meeting of Members.

(b) Regular meetings of the Agency may be held at such time and place as, from time to time, may be determined by the Members.

(c) Upon the written request of the Mayor, the Chairman or two (2) Members of the Agency, the Chairman of the Agency shall call a special meeting of the Members. Special meetings may be held on such date or dates as may be fixed in the call for such special meetings.

The call for a special meeting may be personally delivered to each Member of the Agency or may be mailed to the business or home address of such Member. A waiver of notice may be signed by any Member failing to receive a proper notice.

Section 3. Procedure at Meetings of Members

(a) The Chairman shall preside over the meetings of the Agency. In the absence of the Chairman, the Vice-Chairman shall preside. In the absence of both the Chairman and Vice-Chairman, any Member directed by the Chairman may preside.

(b) At all meetings of Members, a majority of the Members of the Agency shall constitute a quorum for the purpose of transacting business. If less than a quorum is present for any meeting, the Members then present may adjourn the meeting to such other time or until a quorum is present. Except to the extent provided for by law, all actions shall be by a majority of the votes cast, provided that the majority of the votes cast shall be at least equal to a quorum.

(c) When determined by the Agency that a matter pending before it is confidential in nature, it may, upon motion, establish an executive session and exclude any non-member from such session.

(d) Order of business

At all meetings of the Agency, the following shall be the order of business:

- (1) Roll Call;
- (2) Proof of Notice of Meeting;
- (3) Reading and approval of the minutes of the previous meeting;
- (4) bills and communications;
- (5) Report of the Treasurer;
- (6) Reports of Committees;

- (7) Unfinished business;
- (8) New business;
- (9) Adjournment.

The order of business may be altered or suspended at any meeting by the Members of the Agency.

(e) All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency.

Article III

OFFICERS AND PERSONNEL

Section 1. Officers

The officers of the Agency shall be Chairman or Co-Chairman, Vice-Chairman, Secretary and Treasurer and such other offices as may be prescribed, from time to time, by the Agency. The Chairman or Co-Chairman and other officers shall be appointed by the Mayor of the City of Syracuse and may be removed with or without cause at his discretion. Each officer shall be a Member of the Agency during his or her term of office.

Section 2. Chairman or Co-Chairmen

The Chairman shall be chief executive officer of the Agency, and shall serve as an ex officio member of all duly constituted committees, shall supervise the general management and the affairs of the Agency, and shall carry out the orders and resolutions of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall execute (manually and by facsimile signature) all agreements, contracts, deeds, bonds, notes or other evidence of indebtedness and any other instruments of the Agency on behalf of the Agency. The Mayor may from time to time appoint two Co-Chairmen in place of the Chairman. During their term of office the Co-

Chairmen shall share equally the duties, rights, powers and responsibilities of the Chairman. The action of either Co-Chairman or execution (manually or by facsimile signature) by either Co-Chairman of any agreement, contract, deed, bond, note or other evidence of indebtedness or any other instrument of the Agency on behalf of the Agency shall have the same force and effect as such action or execution by the Chairman.

Section 3. Vice-Chairman

The Vice-Chairman shall have all the powers and functions of the Chairman or Co-Chairmen in the absence or disability of the Chairman or Co-Chairmen, as the case may be. The Vice-Chairman shall perform such other duties as the Members of the Agency shall prescribe or as delegated by the Chairman or Co-Chairmen.

Section 4. Secretary

The Secretary shall keep the minutes of the Agency, shall have the custody of the seal of the Agency and shall affix and attest the same to documents when duly authorized by the Agency, shall attest to the giving or serving of all notices of the Agency, shall have charge of such books and papers as the Members of the Agency may order, shall attest to such correspondence as may be assigned, and shall perform all the duties incidental to his office.

Section 5. Treasurer

The Treasurer shall have the care and custody of all the funds and securities of the Agency, shall deposit such funds in the name of the Agency, in such bank or trust company as the members of the Agency may elect, shall sign such instrument as may require the Treasurer's signature, but only with the approval of the Chairman or Co-Chairman, as the case may be, shall at all reasonable times exhibit the books and accounts of the Agency to the Mayor or any Member of

the Agency, and at the end of each fiscal year shall present an annual report setting forth in full the financial condition of the Agency.

Section 6. Additional Personnel

The Agency, with the consent of the Mayor, may appoint an Administrative or Executive Director to supervise the administration of the business and affairs of the Agency, subject to the direction of the Agency. The Agency may, from time to time, employ such other personnel as it deems necessary to execute its powers, duties and functions as prescribed by the New York State Industrial Development Agency Act (General Municipal Law, Article 18-A), as amended, and all other laws of the State of New York applicable thereto.

Section 7. Compensation of Chairman, Co-Chairmen, Members, Officers, and Other Personnel

The Chairman, Co-Chairmen, Members and Officers shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties. The compensation of other personnel, including the Administrative Director, shall be determined by the Members of the Agency.

Article IV

AMENDMENTS

Section I. Amendments to By-Laws

These by-laws may be amended or revised, from time to time, by a two-third (2/3) vote of the Agency, but no such amendment or revision shall be adopted unless written notice of the proposed action shall have been given by mail to each Member and the Mayor at least ten (10) days prior to the date of the meeting at which it is proposed that such action be taken; provided, however,

that this provision and other provisions relating to the appointment, renewal and terms of office of Members and officers may be amended only with the prior written approval of the Mayor.

Article V

MISCELLANEOUS

Section 1. Sureties and Bonds

In case the Agency shall so require, any officer, employee or agent of the Agency shall execute to the Agency a bond in such sum and with such surety or sureties as the Agency may direct, conditioned upon the faithful performance of his or her duties to the Agency and including responsibility for negligence and for the accounting for all property, funds or securities of the Agency which may come into the hands of the officer, employee or agent.

Section 2. Indemnification

(a) Upon compliance by a Member or Officer of the Agency (including a former Member or Officer, the estate of a Member or Officer or a judicially appointed personal representative thereof) (referred to in this Section 2 collectively as "Member") with the provisions of subdivision (i) of this Section 2, the Agency shall provide for the defense of the Member in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the Member was acting within the scope of the public employment or duties of such Member. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the Agency.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the Member shall be entitled to be represented by private counsel of the Member's choice in any civil action or proceeding whenever the chief legal officer of the Agency or other counsel designated by the

Agency determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the Member is entitled to be represented by counsel of the Member's choice, provided, however, that the chief legal officer or other counsel designated by the Agency may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such Members be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of a majority of the Members of the Agency eligible to vote thereon.

(c) Any dispute with respect to representation of multiple Members by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the Member delivers process and a written request for a defense to the Agency under subdivision (i) of this Section 2, the Agency shall take the necessary steps on behalf of the Member to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

(e) The Agency shall indemnify and save harmless its Members in the amount of any judgment obtained against such Members in a State or Federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the Member was acting within the scope of the Member's public employment or duties; provided further that in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by a majority of the Members of the Agency eligible to vote thereon.

(f) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this Section 2 shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the Member seeking indemnification.

(g) Nothing in this subdivision shall authorize the Agency to indemnify or save harmless any Member with respect to punitive or exemplary damages, fines or penalties; provided, however, that the Agency shall indemnify and save harmless its Members in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that the Member, acting within the scope of the Member's public employment or duties, has, without willfulness or intent on the Member's part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of the State or of the United States.

(h) Upon entry of a final judgment against the Member, or upon the settlement of the claim, the Member shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty (30) days of the date of entry or settlement, upon the Chairman and the chief administrative officer of the Agency; and if not inconsistent with the provisions of this Section 2, the amount of such judgment or settlement shall be paid by the Agency.

(i) The duty to defend or indemnify and save harmless prescribed by this Section 2 shall be conditioned upon: (i) delivery by the Member to the Chairman of the Agency and the chief legal officer of the Agency or to its chief administrative officer of a written request to provide for such Member's defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after the Member is served with such document, and (ii) the full cooperation of the Member in the defense of such action or

proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

(j) The benefits of this Section shall inure only to Members as defined in subdivision (a) of this Section 2 and shall not enlarge or diminish the rights of any other party.

(k) This Section 2 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section 10 of the Court of Claims Act, Section 880 of the General Municipal Law, or any other provision of law.

(l) The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of the State, or authorized by law to transact business in the State, against any liability imposed by the provisions of this Section 2, or to act as a self-insurer with respect thereto. The provisions of this Section 2 shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

(m) All payments made under the terms of this Section 2, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

(n) Except as otherwise specifically provided in this Section 2, the provisions of this Section 2 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any Member of the Agency by, in accordance with, or by reason of, any other provision of State or Federal statutory or common law. The benefits under this Section 2 shall supplement, and be available in addition to, defense or indemnification protection conferred by any law or enactment. This Section 2 is intended to confer upon Members of the Agency all of the benefits of Section 18 of the Public Officers Law

and to impose upon the Agency liability for costs incurred under the provisions hereof and thereof.

Section 3. Fiscal Year

The fiscal year of the Agency shall be fixed by the Members, subject to the applicable law.

Section 4. Powers of the Agency

The Agency shall have all the powers of an Industrial Development Agency authorized by Article 18-A of the General Municipal Law and shall have the power to do all things necessary or convenient to carry out its purposes and exercise the powers authorized herein.

EXHIBIT "D"

PUBLIC HEARING RESOLUTION

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on August 17, 2021 at 8:00 a.m. at the Agency's offices in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT: Kathleen Murphy, Steven Thompson, Dirk Sonneborn and Rickey T. Brown, Kenneth Kinsey

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; Others Present: Bruce Smith, Esq., Dr. Benjamin McHone, Jason Evans, Matt Rayo, Rick Moriarty

The following resolution was offered by Steven Thompson and seconded by Kenneth Kinsey:

RESOLUTION DETERMINING THAT THE ACQUISITION, RENOVATION, EQUIPPING AND COMPLETION OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE IN CONNECTION THEREWITH; AND AUTHORIZING A PUBLIC HEARING

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant "financial assistance" (as defined in the Act) in connection with the acquisition, reconstruction and equipping of one or more "projects" (as defined in the Act); and

WHEREAS, by application dated on or about August 4, 2021 (the "**Application**"), Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the "**Company**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest or license in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane (Tax

Map No. 062.-02-18.0) (the “**Land**”); (ii) the renovation of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms and masonry and related painting to the exterior of the building (collectively, the “**Facility**”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

WHEREAS, the Agency has not yet made a determination under SEQRA; and

WHEREAS, the Agency has not approved undertaking the Project or granting the Financial Assistance; and

WHEREAS, the grant of Financial Assistance to the Project is subject to, among other things, the Agency finding after a public hearing pursuant to Section 859-a of the Act that the Project will serve the public purposes of the Act by promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State or increasing the overall number of permanent, private sector jobs in the State.

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency makes the following findings and determinations:

- (A) The Project constitutes a “project” within the meaning of the Act;
- (B) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act.
- (C) The Financial Assistance contemplated with respect to the Project consists

of assistance in the form of an exemption from State and local sales and use taxation; and

(2) The Agency hereby directs that pursuant to Section 859-a of the Act, a public hearing with respect to the Project and Financial Assistance shall be scheduled with notice thereof published, and such notice, as applicable, shall further be sent to affected tax jurisdictions within which the Project is located.

(3) The Secretary or the Executive Director of the Agency is hereby authorized to and may distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Dirk Sonneborn	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on August 17, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency on 9/7/2021.

City of Syracuse Industrial Development Agency

9/7/2021

Rickey T. Brown, Secretary

(S E A L)

EXHIBIT "E"

**NOTICE OF PUBLIC HEARING WITH EVIDENCE OF PUBLICATION AND COPIES
OF LETTERS TO AFFECTED TAX JURISDICTIONS PURSUANT TO SECTIONS
859-a OF THE ACT**

NOTICE OF PUBLIC HEARING

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law as extended by Governor Hochul on September 2, 2021, **NOTICE IS HEREBY GIVEN** that a public hearing, in accordance with the foregoing and pursuant to Section 859-a of the New York General Municipal Law, will be held **electronically** via Webex by the City of Syracuse Industrial Development Agency (the "Agency") on the 21st day of September, 2021, at 8:00 a.m., local time, in conjunction with the matter set forth below. **NO PUBLIC APPEARANCES WILL BE PERMITTED.** Members of the public may listen to the Public Hearing and provide comment by either logging into the Webex meeting at: <https://syrgov.webex.com/syrgov/j.php?MTID=m68e0506ae935c870124e56ec0509ec24>, or by accessing the link on the Agency's website, using meeting number 2333 537 5163 and password wpDQu6wE5a6 *or* via telephone at (408) 418-9388, access code: 2333 537 5163.

Comments may also be submitted to the Agency in writing delivered to City of Syracuse Industrial Development Agency, 201 E. Washington Street, 6th Floor, Syracuse, N.Y. 13202 Attn: Judith DeLaney **OR** submitted electronically to business@syrgov.net, in either case **TO BE RECEIVED BY NO LATER THAN SEPTEMBER 17, 2021. ANY WRITTEN COMMENTS SO RECEIVED WILL BE READ INTO THE RECORD OF THE PUBLIC HEARING.** Minutes of the Public Hearing will be transcribed and posted on the Agency's website.

The following project is the subject of this public hearing:

Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq.ft one-story building located at 190 Intrepid Lane (Tax Map No. 062.-02-18.0) (the "Land"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "Financial Assistance"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

The Company shall be the initial owner or operator of the Project Facility.

The Agency will at the above-stated time hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project.

A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York.

Dated: September 8, 2021

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY



110 WEST FAYETTE STREET ▪ ONE LINCOLN CENTER ▪ SUITE 1000 ▪ SYRACUSE, NEW YORK 13202 ▪ PH: 315.422.1500 ▪ FX: 315.422.3549

September 8, 2021

VIA EMAIL¹

bwalsh@SyrGov.net

Honorable Benjamin Walsh
Mayor, City of Syracuse
City Hall
233 East Washington Street
Syracuse, New York 13202

VIA EMAIL¹

RyanMcMahon@ongov.net

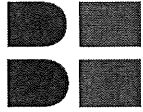
Honorable J. Ryan McMahon, II
County Executive, Onondaga County
John Mulroy Civic Center, 14th Floor
421 Montgomery Street
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency (the “*Agency*”)
Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center (the “*Company*”)
Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center Project

Dear Mayor and County Executive:

Enclosed herewith please find a Notice of Public Hearing in relation to the above-referenced project. The proposed project (the “*Project*”) consists of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq.ft one-story building located at 190 Intrepid Lane (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the

¹ Due to ongoing infection rates and reduced office hours caused by the COVID-19 virus, we have opted to email this notice for the safety of our staff. Once we have resumed normal working conditions, we will return to our prior method of mailing such notices.



Honorable Benjamin Walsh
Honorable J. Ryan McMahon, II
September 8, 2021
Page 2

granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

General Municipal Law Section 859-a requires that notice of the Public Hearing be given to the chief executive officer of each affected tax jurisdiction in which the Project is located.

As stated in the notice, the public hearing is scheduled for **September 21, 2021 at 8:00 a.m.** in the manner outlined in the enclosed Public Hearing Notice.

Very truly yours,

/s/ Susan R. Katzoff

SRK/llm
Enclosure

cc: Judy DeLaney, Executive Director, City of Syracuse Industrial Development Agency,
via email (w/Enclosure)

McRobbie, Lori L.

From: Microsoft Outlook
To: RyanMcMahon@ongov.net
Sent: Wednesday, September 8, 2021 12:46 PM
Subject: Relayed: City of Syracuse IDA/Intrepid Lane ASC d/b/a Intrepid Lane Endoscopy and Surgery Center - public hearing

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

RyanMcMahon@ongov.net (RyanMcMahon@ongov.net)

Subject: City of Syracuse IDA/Intrepid Lane ASC d/b/a Intrepid Lane Endoscopy and Surgery Center - public hearing

McRobbie, Lori L.

From: Microsoft Outlook
To: bwalsh@syr.gov.net; Judith A. DeLaney - City of Syracuse Economic Development Office (jdelaney@syr.gov.net)
Sent: Wednesday, September 8, 2021 12:47 PM
Subject: Relayed: City of Syracuse IDA/Intrepid Lane ASC d/b/a Intrepid Lane Endoscopy and Surgery Center - public hearing

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

bwalsh@syr.gov.net (bwalsh@syr.gov.net)

[Judith A. DeLaney - City of Syracuse Economic Development Office \(jdelaney@syr.gov.net\)](#) (jdelaney@syr.gov.net)

Subject: City of Syracuse IDA/Intrepid Lane ASC d/b/a Intrepid Lane Endoscopy and Surgery Center - public hearing

THE POST-STANDARD

LEGAL AFFIDAVIT

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BOUSQUET HOLSTEIN PLLC
KAREN KELLER
110 W FAYETTE ST STE 1000
SYRACUSE, NY 13202

Name: BOUSQUET HOLSTEIN PLLC

Sales Rep: Pamela Gallagher

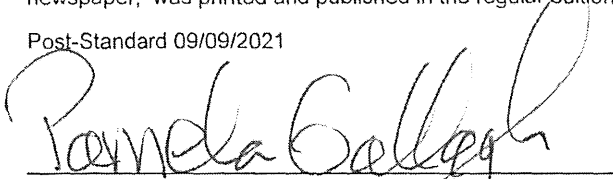
Account Number: 12145

INV#: 0010093865

Date	Position	Description	P.O. Number	Ad Size
09/09/2021	Other Legals NY	NOTICE OF PUBLIC HEARING As a result of the public health	C2147L.00051	1 x 192.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

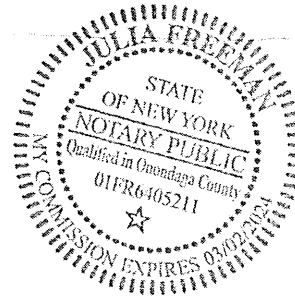
Post-Standard 09/09/2021



Pamela Gallagher
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy
Subscribed and sworn to before me, this 9th day of September
2021

NOTARY PUBLIC



FOR QUESTIONS CONCERNING THIS AFFIDAVIT,
PLEASE CONTACT PAMELA GALLAGHER AT
(315) 470-2051 OR Legals@Syracuse.com

Date	Position	Description	P.O. Number	Ad Size
09/09/2021	Other Legals NY	NOTICE OF PUBLIC HEARING As a result of the public health emergency	C2147L.00051	1 x 192.00 CL

NOTICE OF PUBLIC HEARING As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law as extended by Governor Hochul on September 2, 2021, NOTICE IS HEREBY GIVEN that a public hearing, in accordance with the foregoing and pursuant to Section 859-a of the New York General Municipal Law, will be held electronically via Webex by the City of Syracuse Industrial Development Agency (the "Agency") on the 21st day of September, 2021, at 8:00 a.m., local time, in conjunction with the matter set forth below. NO PUBLIC APPEARANCES WILL BE PERMITTED. Members of the public may listen to the Public Hearing and provide comment by either logging into the Webex meeting at: <https://syr.gov/webex.com/syrgov/j.php?MTID=m68e0506ae935c870124e56ec0509ec24>, or by accessing the link on the Agency's website, using meeting number 2333 537 5163 and password wpDQu6wE5a6 or via telephone at (408) 418-9388, access code: 2333 537 5163. Comments may also be submitted to the Agency in writing delivered to City of Syracuse Industrial Development Agency, 201 E. Washington Street, 6th Floor, Syracuse, N.Y. 13202 Attn: Judith DeLaney OR submitted electronically to busines@syrgov.net, in either case TO BE RECEIVED BY NO LATER

THAN SEPTEMBER 17, 2021. ANY WRITTEN COMMENTS SO RECEIVED WILL BE READ INTO THE RECORD OF THE PUBLIC HEARING. Minutes of the Public Hearing will be transcribed and posted on the Agency's website. The following project is the subject of this public hearing: Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the "Company"), requested the Agency undertake a project (the "Project") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq.ft one-story building located at 190 Intrepid Lane (Tax Map No. 062.-02-18.0) (the "Land"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "Facility"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "Equipment" and together with the Land and the Facility, the "Project Facility"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "Financial Assistance");

(C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary. The Company shall be the initial owner or operator of the Project Facility. The Agency will at the above-stated time hear all persons with views with respect to the proposed Financial Assistance to the Company, the proposed owner/operator, the location of the Project Facility and the nature of the Project. A copy of the application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, are available for public inspection during the business hours at the office of the Agency located at 201 East Washington Street, 6th Floor, Syracuse, New York. Dated: September 8, 2021 CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

EXHIBIT "F"

SEQRA RESOLUTION

SEQRA RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended by Governor Hochul on September 2, 2021, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 21st day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m68e0506ae935c870124e56ec0509ec24>; (or by accessing the link on the Agency's website) and using meeting number 2333 537 5163 and password wpDQu6wE5a6; or via telephone at (408) 418-9388 with access code: 2333 537 5163, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

EXCUSED: Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; **Others Present:** Bruce Smith, Esq., Dr. Benjamin McHone, John Lenio, Matthew Oja, Sarah Stevens, Timothy Lynn, Esq., Randy Hadzor, Christopher Bianchi, Irfan Elahi, Jeremy Thurston, Bill Hider, Rick Moriarty

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of

New York, as amended from time to time (collectively, the “*Act*”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, by application dated on or about August 4, 2021 (the “*Application*”), Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “*SEQRA*”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the Project constitutes such an action; and

WHEREAS, to aid the Agency in determining whether the action described above may have a significant adverse impact upon the environment, an Environmental Assessment Form (the “*EAF*”) was prepared by the Company, a copy of which is on file at the office of the Agency; and

WHEREAS, the Agency has examined and reviewed the EAF in order to classify the action and make a determination as to the potential significance of the action pursuant to SEQRA; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

- (1) Based upon an examination of the materials provided by the Company in furtherance

of the Project, the criteria contained in 6 NYCRR §617.7(c), and based further upon the Agency’s knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(a) The action constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA);

(b) The Agency declares itself “Lead Agency” (as said quoted term is defined in SEQRA) with respect to an uncoordinated review pursuant to SEQRA;

(c) The action will not have a significant adverse effect on the environment, and the Agency hereby issues a negative declaration pursuant to SEQRA, attached hereto as *Exhibit A*, which shall be filed in the office of the Agency in a file that is readily accessible to the public.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately. The Secretary of the Agency is hereby authorized and directed to distribute copies of this Resolution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(4) The Agency hereby authorizes Agency staff to take all further actions deemed necessary and appropriate to fulfill the Agency’s responsibilities under SEQRA.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

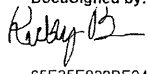
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on September 21, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

10/19/2021 **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency on _____.

City of Syracuse Industrial Development Agency

DocuSigned by:

65E35E032BE24D9...

Rickey T. Brown, Secretary

(S E A L)

EXHIBIT "A"

Short Environmental Assessment Form

Part 1 - Project Information

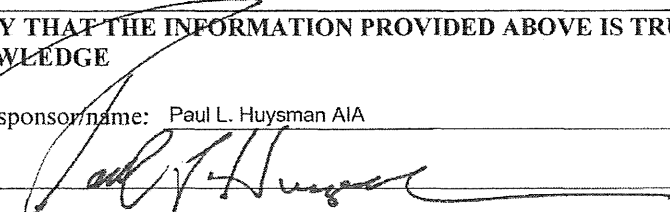
Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information				
Intrepid Lane ASC, LLC dba Intrepid Lane Endoscopy and Surgery Center				
Name of Action or Project: Intrepid Lane Endoscopy & Surgery Center				
Project Location (describe, and attach a location map): 190 Intrepid Lane, Syracuse, NY				
Brief Description of Proposed Action: The Intrepid Lane Endoscopy & Surgery Center Project involves the interior renovation of an existing Ambulatory Surgery Center. Exterior work will be limited to painting and brick masonry joint pointing of mortar.				
Name of Applicant or Sponsor: Paul L. Huysman, AIA, Architect		Telephone: 315-427-3161 E-Mail: phuysman@bennettshuysman.com		
Address: 8104 Cazenovia Road				
City/PO: Manlius		State: NY	Zip Code: 13104	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: New York State Department of Health Certificate of Need			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		1.4 acres		
b. Total acreage to be physically disturbed?		0.0 acres		
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		1.4 acres		
4. Check all land uses that occur on, are adjoining or near the proposed action:				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):				
<input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If Yes, briefly describe: There will not be any changes to existing stormwater collection and disposal which is currently connected to municipal system.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</p> <p>Applicant/sponsor name: Paul L. Huysman AIA Date: June 29, 2021</p> <p>Signature:  Title: Architect</p>		

Project:	Intrepid Lane ASC, LLC Project
Date:	September 21, 2021

**Short Environmental Assessment Form
Part 2 - Impact Assessment**

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:		
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Project: Intrepid Lane ASC, LLC

Date: September 21 2021

**Short Environmental Assessment Form
Part 3 Determination of Significance**

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

City of Syracuse Industrial Development Agency

September 19, 2021

Name of Lead Agency

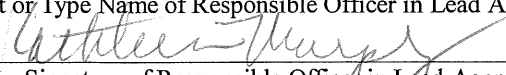
Date

Kathleen Murphy

Chair

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer



Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

EXHIBIT "G"

INDUCEMENT RESOLUTION

INDUCEMENT RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended by Governor Hochul on September 2, 2021, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 21st day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m68e0506ae935c870124e56ec0509ec24>; (or by accessing the link on the Agency's website) and using meeting number 2333 537 5163 and password wpDQu6wE5a6; or via telephone at (408) 418-9388 with access code: 2333 537 5163, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

EXCUSED: Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; **Others Present:** Bruce Smith, Esq., Dr. Benjamin McHone, John Lenio, Matthew Oja, Sarah Stevens, Timothy Lynn, Esq., Randy Hadzor, Christopher Bianchi, Irfan Elahi, Jeremy Thurston, Bill Hider, Rick Moriarty

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of

industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more “projects” (as defined in the Act); and

WHEREAS, by application dated on or about August 4, 2021 (the “*Application*”), Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the “*Company*”), requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, the Company affirmed in its application that the Project will create twenty (20) new full time equivalent jobs; and

WHEREAS, the Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act; and

WHEREAS, the Agency adopted a resolution on August 17, 2021, describing the Project and the proposed Financial Assistance and authorizing a public hearing with respect thereto (“*Public Hearing Resolution*”); and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on September 21, 2021 pursuant to Section 859-a of the Act, notice of which was originally published on September 9, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of

the affected tax jurisdictions by letters dated September 8, 2021; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake the Project constitutes such an action; and

WHEREAS, by resolution adopted September 21, 2021 (the “**SEQRA Resolution**”), the Agency determined that the Project will not have a significant adverse effect on the environment; and

WHEREAS, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the Project; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse (the “**City**”); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

- (A) Ratifies the findings in its Public Hearing Resolution and SEQRA Resolution;
- (B) The Project constitutes a “*project*” within the meaning of the Act;

(C) The Project is located in a “Highly Distressed Area” as defined in Section 854(18) of the Act.

(D) The acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to the Company to acquire, construct, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;

(E) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(F) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes and mortgage recording taxes and the appointment of the Company as agent of the Agency as further set forth herein.

Section 3. The Company shall execute and deliver a copy of the agreement attached hereto at **Exhibit "A"** to the Agency within fourteen (14) business days from the date of this Resolution (the "**Agreement**"). The Agency shall have no obligation to confer any approved benefits authorized herein or in any other resolution adopted by the Agency with respect to the Project, and all such approvals shall be subject to rescission should the Company fail to execute and deliver the Agreement in accordance with the terms hereof.

Section 4. As a condition to the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) a project agreement in substantially the same form used by the Agency in similar transactions (the "**Project Agreement**"); (ii) the Agreement; and (iii) the Lease Documents (as defined herein) unless otherwise authorized by the Agency. The Chair, Vice Chair or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Project Agreement, the Agreement and the Lease Documents (as defined herein), in form and substance similar to other such agreements and documents used by the Agency for similar transactions, with changes in terms and form as shall be consistent with this Resolution and as the Chair or Vice Chair shall approve. The execution thereof by the Chair, Vice Chair and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Project Agreement, the Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees and costs of the Agency, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the reconstruction, renovation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$374,543**.

Section 5. Subject to the terms of this Resolution and the execution and delivery of, and the conditions set forth in, the Agreement and the Project Agreement the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the “***Lease***”) to be entered into between the Company and the Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the “***Bill of Sale***”); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the “***Sublease***” and with the Lease and the Bill of Sale, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, the “***Lease Documents***”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance; and (iv) provided that no default shall have occurred and be continuing under the Agreement and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency’s undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance, in form and substance acceptable to the Agency.

Section 6. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

Section 7. Subject to the terms of this Resolution, the Agreement and the Project Agreement, the Company may utilize, and is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “***Additional Agents***”) to proceed with the reconstruction, renovation, restoration, preservation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the “***Commissioner***”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the “***State***”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

Section 8. The Chair, Vice Chair and/or the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the

Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred herein as the (Vice) Chair deems appropriate, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Agreement and/or the Project Agreement.

Section 9. The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of the Lease Documents and the documents set forth in Sections 3, 4 and 5 hereof.

Section 10. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 11. Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 12. Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

Section 13. The Secretary and/or the Executive Director of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 14. This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

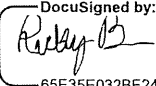
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on September 21, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("**EO 202.1**"), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

10/19/2021 **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency on _____.

City of Syracuse Industrial Development Agency

DocuSigned by:


65E35E032BE24D9...

Rickey T. Brown, Secretary

(S E A L)

EXHIBIT "A"

AGENCY/COMPANY AGREEMENT

THIS AGREEMENT is between **CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), with an office at 201 East Washington Street, 6th Floor, Syracuse, New York 13202 and **INTREPID LANE ASC, LLC, D/B/A INTREPID LANE ENDOSCOPY AND SURGERY CENTER**, with a mailing address of 190 Intrepid Lane, Syracuse, New York 13205 (the "**Company**").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this agreement are the following:

1.01. The Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, and Chapter 641 of the Laws of 1979 of the State (collectively, the "**Act**") to designate an agent for constructing, renovating and equipping "projects" (as defined in the Act).

1.02. The purposes of the Act are to promote, attract, encourage and develop recreation and economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes, including the power to acquire and dispose of interests in real property and to appoint agents for the purpose of completion of projects undertaken by the Agency.

The Company, by application dated August 4, 2021 (the "**Application**"), requested the Agency undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D)

the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary. The Company affirmed in its application that the Project would create twenty (20) new full time equivalent jobs.

1.03(a). All documents necessary to effectuate the Agency's undertaking of the Project and the granting of the approved Financial Assistance between the Agency and the Company, including but not limited to, a project agreement, a company lease agreement, an agency lease agreement, a bill of sale and an environmental compliance and indemnification agreement, shall be collectively referred to herein as the "***Lease Documents***".

1.03. The Company hereby represents to the Agency that undertaking the Project, the designation of the Company as the Agency's agent for the renovation, equipping and completion of the Project Facility, and the use and appointment, as necessary, by the Company of a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "***Additional Agents***"): (i) will be an inducement to it to construct and equip the Project Facility in the City of Syracuse (the "***City***"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another or in the abandonment of one or more plants or facilities of the Company or of any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) undertaking the Project Facility will promote, create and/or preserve private sector jobs in the State. The Company further represents that Project is located in a "Highly Distressed Area" as defined in Section 854(18) of the Act.

1.04. The Agency has determined that the acquisition of a controlling interest in, and the reconstruction, renovation and equipping of the Project Facility and the subleasing of the same to the Company will promote and further the purposes of the Act.

1.05. September 21, 2021, the Agency adopted a resolution (the "***Inducement Resolution***") agreeing, subject to the satisfaction of all conditions precedent set forth in such Resolution, to designate the Company as the Agency's agent for the acquisition, renovation and equipping of the Project Facility and determining that the leasing of the same to the Company will promote further purposes of the Act. For purposes of that designation, the Agency authorized as part of the approved Financial Assistance, State and local sales and use tax exemption benefits in an amount not to exceed **\$374,543**.

1.06. In the Resolution, subject to the execution of, and compliance with, this Agreement by the Company, the execution and delivery of a project agreement by the Company, and other conditions set forth in the Resolution and herein, the Agency appointed the Company as its agent for the purposes of reconstruction, renovation and equipping the Project Facility, entering into contracts and doing all things requisite and proper for reconstruction, renovation and equipping the Project Facility.

Article 2. Undertakings on the Part of the Agency. Based upon the statement,

representations and undertakings of the Company and subject to the conditions set forth herein, the Agency agrees as follows:

2.01. The Agency confirms that it has authorized and designated, pursuant to the terms hereof, the Company as the Agency's agent for reconstructing, renovating and equipping the Project Facility.

2.02. The Agency will adopt such proceedings and authorize the execution of such Agency documents as may be necessary or advisable for: (i) acquisition of a controlling interest in the Project Facility; (ii) designation by the Company of Additional Agents for reconstruction, renovation and equipping of the Project Facility subject to the terms hereof; and (iii) the leasing or subleasing of the Project Facility to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

2.03. Nothing contained in this Agreement shall require the Agency to apply its funds to Project costs.

2.04. After satisfying the conditions precedent set forth in the Sections 2.05, 3.06 and 4.02 hereof and in the Inducement Resolution, the Company may proceed with the reconstruction, renovation and equipping of the Project Facility and the utilization of and, as necessary the appointment of, Additional Agents.

2.05. Subject to the execution of the Lease Documents and Section 4.02 hereof, the Company is appointed the true and lawful agent of the Agency: (i) for the reconstruction, renovation and equipping of the Project Facility; and (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for the reconstruction, renovation and equipping of the Project Facility, all with the same powers and the same validity as if the Agency were acting in its own behalf.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof. The Agency may in accordance with Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), undertake supplemental review of the Project. Such review to be limited to specific significant adverse environmental impacts not addressed or inadequately addressed in the Agency's review under SEQRA that arise from changes in the proposed Project, newly discovered information or a change in the circumstances related to the Project.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein the Company agrees as follows:

3.01. (a) The Company shall indemnify and hold the Agency harmless from all

losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of a controlling interest in, and reconstruction, renovation and equipping of the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company or Additional Agents acting as agent for the Agency pursuant to this Agreement or otherwise.

(b) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Project Facility for labor or material furnished in connection with the acquisition, reconstruction, renovation and equipping of the Project Facility.

(c) The Company shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(d) The Company shall defend, indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on the non-disclosure of information, if any, requested by the Company in accordance with Section 4.05 hereof.

(e) The defense and indemnities provided for in this Article 3 shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

(f) The Company shall provide and carry: (i) worker's compensation and disability insurance as required by law; and (ii) comprehensive liability and property insurance with such coverages (including without limitation, owner's protective coverage for the benefit of the Agency, naming the Agency as an additional insured on all policies of coverage regarding the Project; providing the coverage with respect to the Agency be primary and non-contributory; and contractual coverage covering the indemnities herein provided for), with such limits and which such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates, endorsements, binders and/or policies of insurance in form satisfactory to the Agency evidencing such insurance.

(g) The Company shall apply and diligently pursue all approvals, permits and consents from the State of New York, the City, the City Planning Commission and any other governmental authority which approvals, permits and consents are required under applicable law

for the development, reconstruction, renovation and equipping of the Project and any related site improvements. The Company acknowledges and agrees that the Agency's findings and determinations under SEQRA do not and shall not in and of themselves (except as specifically set forth in SEQRA) satisfy or be deemed to satisfy applicable laws, regulations, rules and procedural requirements applicable to such approvals, permits and consents.

(h) The Company shall complete a Local Access Agreement to be obtained from the City of Syracuse Industrial Development Agency and agrees to utilize, and cause its Additional Agents to utilize, local contractors and suppliers for the reconstruction, renovation, equipping and completion of the Project unless a waiver is received from the Agency in writing. For purposes of this Agency Agreement, the term "**Local**" shall mean Onondaga, Oswego, Oneida, Madison, Cayuga and Cortland Counties. The Company agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project Facility.

3.02. The Company agrees that, as agent for the Agency or otherwise, it will comply at the Company's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or Company with respect to the Project Facility, the acquisition of a controlling interest therein, reconstruction, renovation and equipping thereof, the operation and maintenance of the Project Facility, supplemental review of adverse environmental impacts in accordance with SEQRA and the financing of the Project. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full, including, but not limited to, Section 875 of the Act; and upon the request of either party, this Agreement shall be amended to specifically set forth any such provision or provisions.

3.03. The Company agrees that, as agent for the Agency or otherwise, to the extent that such provisions of law are in fact applicable (without creating an obligation by contract beyond that which is created by statute) it will comply with the requirements of Section 220 of the Labor Law of the State of New York, as amended.

3.04. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.05. If it should be determined that any State or local sales or compensatory use taxes are payable with respect to the acquisition, purchase or rental or machinery or equipment, materials or supplies in connection with the Project Facility, or are in any manner otherwise payable directly or indirectly in connection with the Project Facility, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

3.06 The Company shall proceed with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility and advance such funds as may be necessary to accomplish such purposes. The Company may appoint Additional Agents as agents of the Agency in furtherance thereof. Any appointment of an Additional Agent is conditioned upon the Company first obtaining and providing the Agency the following:

(1) A written, executed agreement, in form and substance acceptable to the Agency, from each Additional Agent which provides for the assumption by the Additional Agent, for itself, certain of the obligations under this Agreement relative to the appointment, work and purchases done and made by each Additional Agent; (ii) a commitment to utilize local contractors and suppliers for the reconstruction, renovation and equipping of the Project (“local” being defined in Section 3.01(h) hereof); (iii) an acknowledgement that the Additional Agent is obligated, to timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the Agency and the New York State Department of Taxation and Finance on “Annual Report of Sales and Use Tax Exemptions” (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project; (iv) an acknowledgment by the Additional Agent that the failure to comply with the foregoing will result in the loss of the exemption; and (v) such other terms and conditions as the Agency deems necessary; and

(2) A completed “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each Additional Agent appointed within fifteen (15) days of the appointment of each Additional Agent such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment of each such Additional Agent.

Failure of the Company to comply with the foregoing shall nullify the appointment of any Additional Agent and may result in the loss of the Company’s exemption with respect to the Project at the sole discretion of the Agency.

The Company acknowledges that the assumption by the Additional Agent in accordance with Section 3.06(1) above, does not relieve the Company of its obligations under those provisions or any other provisions of this Agreement with respect to the Project.

3.07 The Company ratifies and confirms its obligations to pay an annual administrative reporting fee in accordance with the Agency’s fee schedule to cover administrative and reporting requirements to comply with New York State reporting regulations on Agency assisted projects. In addition, the Company ratifies and confirms its absolute obligation to pay on demand all of the Agency's legal fees associated with the undertaking of the Project, including but not limited to, review of the application, preparation of resolutions and attendance at meetings and to correspondence and calls, regardless of whether benefits are ultimately conferred on the Project.

Article 4. General Provisions.

4.01. This Agreement shall take effect on the date of the execution hereof by the Agency and the Company and, subject to Section 4.04 hereof, shall remain in effect until the Lease Documents become effective. It is the intent of the Agency and the Company that, except as to those provisions that survive, this Agreement be superseded in its entirety by the Lease Documents.

4.02. (a) It is understood and agreed by the Agency and the Company that the grant of Financial Assistance and the execution of the Lease Documents and related documents are subject to: (i) payment by the Company of the Agency's fee and Agency's counsel fees; (ii) obtaining all necessary governmental approvals, permits and consents of any kind required in connection with the Project Facility; (iii) approval by the members of the Agency; (iv) approval by the Company; and (v) the condition that there are no changes in New York State Law, including regulations, which prohibit or limit the Agency from fulfilling its obligations hereunder; and

(b) the Company, by executing this agreement, acknowledges and agrees to make, or cause its Additional Agents, to make, all records and information regarding State and local sales and use tax exemption benefits given to the Project as part of the Financial Assistance available to the Agency upon request, including but not limited to the Form ST-340 for itself and each Additional Agent; and

(c) the Company, by executing this Agreement, acknowledges and agrees to the terms and conditions of Section 875(3) of the Act as if such section were fully set forth herein and further agrees to cause all of its Additional Agents to acknowledge, agree and consent to same. Without limiting the scope of the foregoing the Company acknowledges that pursuant to Section 875(3) of the Act, and in accordance with the Agency's Recapture of Benefits Policy, the Agency shall, and in some instances may, recover, recapture, receive or otherwise obtain from the Company some or all of the Financial Assistance (the "**Recapture Amount**") including, but not limited to: (1) (a) that portion of the State and local sales and use tax exemption to which the Company was not entitled, which is in excess of the amount of the State and local sales and use tax exemption authorized by the Agency or which is for property or services not authorized by the Agency; or (b) the full amount of such State and local sales and use tax exemption, if the Company fails to comply with a material term or condition regarding the use of the property or services as represented to the Agency in its Application or otherwise; or (c) the full amount of such State and local sales and use tax exemption in the event the Company fails to execute and deliver the Lease Documents in accordance herewith or fails to complete the Project; and (2) any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise; and (d) the failure of the Company to promptly pay such Recapture Amount to the Agency will be grounds for the Commissioner to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties. In addition to the foregoing, the Company acknowledges and agrees that for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes

imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. In addition to the foregoing, the Agency may recapture other benefits comprising the Financial Assistance in accordance with the Agency's Recapture Policy (a copy of which is on the Agency's website).

4.03. The Company agrees that it will, within thirty (30) days of a written request for same, regardless of whether or not this matter closes or the Project Facility is completed: (i) reimburse the Agency for all reasonable and necessary expenses, including without limitation the fees and expenses of counsel to the Agency arising from, out of or in connection with the Project, and/or any documents executed in connection therewith, including, but not limited to any claims or actions taken by the Agency against the Company, Additional Agents or third parties; and (ii) indemnify the Agency from all losses, claims, damages and liabilities, in each case which the Agency may incur as a consequence of executing this Agreement or performing its obligations hereunder, including but not limited to, any obligations related to Additional Agents.

4.04. If for any reason the Lease Documents are not executed and delivered by the Company and the Agency on or before **September 21, 2022**, the provisions of this Agreement (other than the provisions of Articles 1.04, 2.02, 2.04, 3.01, 3.02, 3.03, 3.05, 3.06, 4.02, 4.03, 4.04, 4.05 and 4.06, which shall survive) shall unless extended by agreement of the Agency and the Company, terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses incurred by the Agency in connection with the acquisition, renovation and equipping of the Project Facility;

(b) The Company shall assume and be responsible for any contracts for the construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project Facility; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency and counsel for the Agency incurred in connection with the Project Facility and will pay the fees of counsel for the Agency for legal services relating to the Project Facility, Additional Agents or the proposed financing thereof.

4.05. **The Company acknowledges that Section 875(7) of the New York General Municipal Law ("GML") requires the Agency to post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency: (i) with respect to this Agreement, prior to or**

contemporaneously with the execution hereof; and (ii) with respect to all other agreements executed in connection with the Project, on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

4.06 That every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflict-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Company irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the 21st day of September, 2021.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Judith DeLaney, Executive Director

INTREPID LANE ASC, LLC

By: _____
Name:
Title:

EXHIBIT "H"

FINAL APPROVING RESOLUTION

FINAL APPROVING RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, as extended by Governor Hochul on September 2, 2021, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 21st day of September, 2021, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m68e0506ae935c870124e56ec0509ec24>; (or by accessing the link on the Agency's website) and using meeting number 2333 537 5163 and password wpDQu6wE5a6; or via telephone at (408) 418-9388 with access code: 2333 537 5163, in conjunction with the matter set forth below.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson Rickey T. Brown and Kenneth Kinsey

EXCUSED: Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): **Staff Present:** Judith DeLaney, Susan Katzoff, Esq., Lori McRobbie and John Vavonese; **Others Present:** Bruce Smith, Esq., Dr. Benjamin McHone, John Lenio, Matthew Oja, Sarah Stevens, Timothy Lynn, Esq., Randy Hadzor, Christopher Bianchi, Irfan Elahi, Jeremy Thurston, Bill Hider, Rick Moriarty

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A COMMERCIAL PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, Intrepid Lane ASC, LLC, d/b/a Intrepid Lane Endoscopy and Surgery Center, or an entity to be formed (the “**Company**”), by application dated August 4, 2021 (the “**Application**”), requested that the Agency undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “**Land**”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “**Facility**”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on September 21, 2021 pursuant to Section 859-a of the Act, notice of which was originally published on September 9, 2021, in the Post-Standard, a newspaper of general circulation in the City of Syracuse, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated September 8, 2021; and

WHEREAS, pursuant to Article 8 of the State Environmental Conservation Law, as amended and the regulations promulgated thereunder (collectively “**SEQRA**”), the Agency is required to make a determination with respect to the environmental impact of any “action” (as defined by SEQRA) to be taken by the Agency and the approval of the Project and grant of Financial Assistance constitute such an action; and

WHEREAS, the Agency adopted a resolution on September 21, 2021 (the “**SEQRA Resolution**”) entitled:

RESOLUTION CLASSIFYING A CERTAIN PROJECT AS AN UNLISTED ACTION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT, DECLARING THE AGENCY LEAD AGENCY FOR PURPOSES OF AN UNCOORDINATED REVIEW THEREUNDER AND DETERMINING THAT THE ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT

which resolution is in full force and effect and has not been amended or modified; and

WHEREAS, the Agency adopted a resolution on September 21, 2021 (the “*Inducement Resolution*”) entitled:

RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

which resolution is in full force and effect and has not been amended or modified; and

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency, as follows:

Section 1. Based upon the representations made by the Company to the Agency and after consideration of the comments received at the public hearing, if any, the Agency hereby ratifies all of its prior resolutions adopted in conjunction with the Project, including but not limited to the SEQRA Resolution, the Inducement Resolution and all other action with respect to the Project and Financial Assistance taken by the Agency, and makes the following findings and determinations:

(a) The acquisition of a controlling interest in the Project Facility by the Agency, the granting of the Financial Assistance and the designation of the Company as the Agency’s agent for completion of the Project will be an inducement to, and permit, the Company to develop and operate the Project Facility in the City of Syracuse, thus serving the public purposes of Article 18-A of the General Municipal Law of New York State by promoting and preserving the job opportunities, general prosperity, health and economic welfare of the inhabitants of the City of Syracuse (the “*City*”) in furtherance of the purposes of the Act.

(b) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

(c) The commitment of the Agency to provide Financial Assistance to the Company will enable and induce the Company to reconstruct, renovate, equip and complete the Project Facility.

(d) The acquisition, reconstruction, renovation, equipping and completion of the Project Facility and the attendant promotion of the local economy will advance the job

opportunities, health, prosperity and economic welfare of the people of the City and the granting of the Financial Assistance is a necessary component to the financing of the Project.

(e) The Project Facility constitutes a “project” within the meaning of the Act.

(f) It is desirable and in the public interest for the Agency to grant Financial Assistance in connection with the Project.

Section 2. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. The Project will serve the public purposes of Article 18-A of the General Municipal Law of the State of New York by advancing job opportunities and promoting economic development.

Section 3. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 4. Subject to the conditions set forth in this and prior resolutions adopted by the Agency, the Project Agreement, and the Agreement (each as defined in the Inducement Resolution), the Agency will: (A) acquire a controlling interest in the Project Facility; (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “*Company Lease*”); acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “*Bill of Sale*”); and sublease the Project Facility to the Company pursuant to a sublease agreement (the “*Agency Lease*”); (C) subject to the terms of the Agency Lease and other documents, secure the Company’s borrowings with respect to the Project Facility by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lenders; (D) execute and deliver any and all necessary documents to confer the approved Financial Assistance; and (E) execute and deliver any other documents necessary to effectuate the actions contemplated by and consistent with this Resolution upon the advice of counsel to the Agency.

Section 5. The Chair, Vice Chair and the Executive Director of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified in Section 4 of this Resolution as well as the Lease Documents (as defined in the Inducement Resolution) and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this Resolution, as approved by the Chair or Vice Chair, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

Section 6. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 7. Bousquet Holstein, PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice) Chair and/or Executive Director for execution and delivery, all documents necessary to effect the undertaking of the Project and the grant of Financial Assistance in connection with the Project.

Section 8. The approvals provided for herein are contingent upon the Company’s payment of all of the Agency’s fees and costs, including but not limited to attorneys' fees.

Section 9. The Secretary and/or Executive Director of the Agency is hereby authorized to distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

The question of the adoption of the foregoing resolution was duly put to vote on a roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

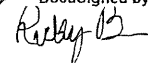
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on September 21, 2021, with the original thereof on file in my office, and that the same (including all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 (“*EO 202.1*”), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and (iv) there was a quorum present throughout.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or rescinded.

10/19/2021 **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency on _____.

City of Syracuse Industrial Development Agency

DocuSigned by:

65E35E032BE24D9...

Rickey T. Brown, Secretary

(S E A L)

**GENERAL CERTIFICATE OF
INTREPID LANE ASC, LLC**

This certificate is made in connection with the execution by Intrepid Lane ASC, LLC, a New York limited liability company (the “**Company**”) of the Project Agreement, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement and any other document now or hereafter executed by the Company in connection with the City of Syracuse Industrial Development Agency (the “**Agency**”) agreeing, at the Company’s request, to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “**Land**”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “**Facility**”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the “**Owner**”) is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long-term lease agreement dated August 25, 2020 (the “**Ground Lease**”). The Company will sublease the Land and Facility to the Agency pursuant to a Company Lease Agreement dated as of October 1, 2021 (the “**Company Lease**”) and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of September 1, 2021 (the “**Bill of Sale**”) and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of October 1, 2021 (the “**Agency Lease**”).

Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agency Lease, except that, for purposes of this certificate: (A) all definitions with respect to any document shall be deemed to refer to such document only as it exists as of the date of this Certificate and not as of any future date; and (B) all definitions with respect to any Person shall be deemed to refer to such Person only as it exists as of the date of this certificate and not as of any future date or to any successor or assign.

The undersigned does hereby certify as follows:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Articles of Organization of the Company and any amendments thereto filed with the New York State Secretary of State with proof of publication thereof attached thereto, which Articles (including any amendments) are in full force and effect on the date hereof.

2. Attached hereto as **Exhibit "B"** is a true, correct and complete copy of the Company's Operating Agreement, and any amendments thereto, and such Operating Agreement, as may have been amended, is in full force and effect on the date hereof.

3. The Company is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of New York State and authorized and licensed under the laws of New York State to transact business as a business corporation for the purpose of owning and operating the Project Facility in the State of New York. Attached hereto as **Exhibit "C"** is a true and correct copy of a Certificate of Good Standing of the Company issued by the New York State Secretary of State.

4. Attached hereto as **Exhibit "D"** is a true and correct copy of the Ground Lease. The Ground Lease is in full force and effect and has not been amended or modified. There are no approvals nor authorizations required under the Ground Lease that have not already been obtained in order to carry out the transactions contemplated by the Company Documents.

5. The Company has full legal right, power and authority to execute and deliver the Company Documents and to consummate the transactions on the part of the Company contemplated by the Company Documents. The Company Documents have been duly authorized, executed, and delivered by a Manager on behalf of the Company and are in full force and effect as of the date hereof. Attached hereto as **Exhibit "E"** is a true, correct and complete copy of the authorizing resolution of the Managing Member of the Company (the "**Resolution**") in respect of the execution, delivery and performance of the Company Documents.

6. The Company understands and agrees that, unless a written waiver is first obtained from the Agency, the Company and its Additional Agents shall utilize local labor, contractors and suppliers for the construction, renovation, reconstruction and equipping of the Project Facility. The term "**local**" shall mean Onondaga, Oswego, Madison, Cayuga, Oneida and Cortland Counties. The Company further understands and agrees that failure to comply with these local labor requirements may result in the revocation or recapture of benefits provided/approved to the Project by the Agency. In furtherance thereof, Appendix I to the Agency's Application entitled "Local Access Agreement" has been completed and is attached hereto as **Exhibit "F"**.

7. The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in the City; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of the City. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's

efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

8. All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Company or for the execution and delivery by the Company of the Company Documents or the consummation on the part of the Company of the transactions contemplated thereby have been obtained.

9. After performing due diligence, there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Company or, to the knowledge of the Company, any basis therefor: (i) in any way affecting the organization, existence or good standing of the Company; (ii) contesting or materially affecting the validity or enforceability of the Company Documents; (iii) contesting the powers of the Company or its authority with respect to the Company Documents; (iv) contesting the authority of the Company to act on behalf of the Company or the authority of the representatives of the Company to act on behalf of the Company; (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on: (A) the financial condition or operations of the Company; or (B) the consummation on the part of the Company of the transactions contemplated by any Company Documents.

10. The execution and delivery by the Company of the Company Documents and the consummation by the Company of the transactions contemplated thereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under: (i) the organizational documents of the Company; (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Company is subject; or (iii) any contract, agreement, mortgage, lease, guaranty, commitment or other obligation or instrument to which the Company is a party or by which the Company or its properties is bound.

11. All information concerning the Project Facility and the Company submitted to the Agency and any Mortgagee by the Company is true and correct in all material respects and does not omit to state a material fact necessary to make the statements therein not misleading.

12. Assuming the valid authorization, execution and delivery of the Agency Lease and the other Company Documents by the other parties thereto, the Agency Lease and the other Company Documents are the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally or by the exercise of judicial discretion in accordance with general principles of equity. No default by the Company or, to the best of knowledge of the undersigned, no event of default on the part of any other party to the Company Documents has occurred or is continuing and no event has occurred which, with the giving of notice or passage of time or both, would be such an event of default. The Company has duly authorized the taking of and has taken

all actions necessary to carry out and give effect to the transactions contemplated to be performed on its part by the Company Documents.


13. All permits (including building permits), licenses and authorizations necessary for the construction, ownership and operation of the Project in the manner contemplated by each of the Company Documents have been obtained or will be obtained, and said construction, ownership and operation will not, to the best knowledge of the Company, conflict with any zoning or similar ordinance applicable to the Project. To the best of the Company's knowledge, the Project conforms to all material environmental regulations.

14. There is no Event of Default or default on the part of the Company under the Project Agreement, the Ground Lease, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement or any other Company Document, and no event has occurred and is continuing which, after notice or passage of time or both, would give rise to a default under any thereof.

15. The Project Agreement, the Company Lease, the Agency Lease, the Environmental Compliance and Indemnification Agreement and the other Company Documents are in full force and effect and the Company has not assigned or pledged any of its rights under these documents.

16. The Company restates and affirms all of the obligations, representations and covenants in the Agency Lease and the Project Agreement and incorporates same herein by reference as if fully set forth herein.

17. The authorized representatives of the Company who, pursuant to the Resolution, are authorized to execute the Company Documents and the office held by each person are as set forth below. The signature set opposite the name of such officer, if any, is a genuine specimen of such officer's signature:

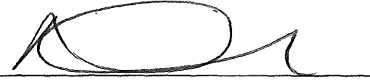
<u>Name</u>	<u>Signature</u>	<u>Office/Title</u>
Benjamin McHone		M.D., Manager

18. The Company represents and warrants that it has no employees and therefore is not now required to carry worker's compensation insurance. The Company represents and acknowledges that in the event it hires any employees in the future, it has an obligation pursuant to the Agency Lease, dated as of October 1, 2021 by and between the Company and the Agency, to obtain worker's compensation insurance and provide proof of same to the Agency.

IN WITNESS WHEREOF, I have set my hand and signature as officer of the Company as of October 1, 2021.

INTREPID LANE ASC, LLC

By:



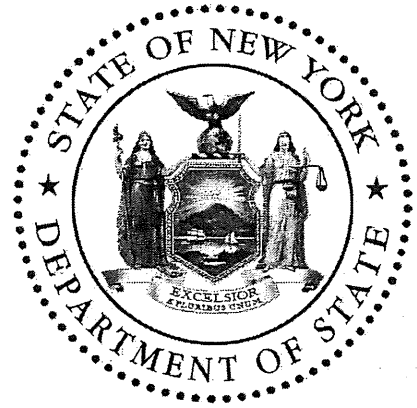
Benjamin McHone, M.D., Manager

EXHIBIT "A"
ARTICLES OF ORGANIZATION

**NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF CORPORATIONS, STATE RECORDS AND UNIFORM COMMERCIAL CODE
FILING RECEIPT**

ENTITY NAME : INTREPID LANE ASC, LLC
DOCUMENT TYPE : RESTATED CERTIFICATE
ENTITY TYPE : DOMESTIC LIMITED LIABILITY COMPANY

DOS ID : 5772421
FILE DATE : 09/24/2021
FILE NUMBER : 210924002929
TRANSACTION NUMBER : 202109240002297-228415
EXISTENCE DATE : 06/23/2020
DURATION/DISSOLUTION : PERPETUAL
COUNTY : ONONDAGA



SERVICE OF PROCESS ADDRESS : THE LLC
100 METROPOLITAN PARK DRIVE,
LIVERPOOL, NY, 13088, USA

FILER : COHEN COMPAGNI BECKMAN APPLER & KNOLL, PLLC
507 PLUM STREET, SUITE 310
SYRACUSE, NY, 13204, USA

SERVICE COMPANY : UNITED CORPORATE SERVICES, INC.
SERVICE COMPANY ACCOUNT : 37
CUSTOMER REFERENCE : INTRE53779

You may verify this document online at : <http://ecorp.dos.ny.gov>
AUTHENTICATION NUMBER : 100000408150

TOTAL FEES:	\$95.00	TOTAL PAYMENTS RECEIVED:	\$95.00
FILING FEE:	\$60.00	CASH:	\$0.00
CERTIFICATE OF STATUS:	\$0.00	CHECK/MONEY ORDER:	\$0.00
CERTIFIED COPY:	\$10.00	CREDIT CARD:	\$0.00
COPY REQUEST:	\$0.00	DRAWDOWN ACCOUNT:	\$95.00
EXPEDITED HANDLING:	\$25.00	REFUND DUE:	\$0.00

**STATE OF NEW YORK
DEPARTMENT OF STATE**

I hereby certify that the annexed copy for INTREPID LANE ASC, LLC, File Number 210924002929 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on September 24, 2021.



Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

**RESTATED
ARTICLES OF ORGANIZATION
OF
INTREPID LANE ASC, LLC**

Under Section 214 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is Intrepid Lane ASC, LLC.
2. The date of the filing of the Articles of Organization is June 23, 2020.
3. The amendments effected by these Restated Articles of Organization are as follows:
 - a. To change the address to which the Secretary of State shall mail a copy of any process against the Company served upon the Secretary.
 - b. To subject any change in the management structure of the Company to the prior approval of the New York State Department of Health;
 - c. To limit the powers and purposes of the Company to the ownership and operation of a multi-specialty ambulatory surgery center licensed pursuant to New York Public Health Law Article 28 located at 190 Intrepid Lane, Syracuse, New York;
 - d. To subject changes to membership interests and voting rights in the Company to the provisions set forth in New York Public Health Law Section 2801-a(4)(b); and
 - e. To identify the principal office of the Company pursuant to the approval requirements of the New York State Department of Health.
4. To accomplish amendment 3(a), as stated above, Article 3 of the Articles of Organization shall be amended to read as follows:

"3. The Secretary of State is designated as agent of the Company upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Company served upon the Secretary is:

c/o the Company
100 Metropolitan Park Drive
Liverpool, New York 13088

5. To accomplish amendment 3(b), as stated above, Article 4 of the Articles of Organization shall be amended to read as follows:

"4. The Company shall be managed by a Board of Managers. Notwithstanding anything to the contrary in these Articles of Organization or the Operating Agreement, neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the prior written approval of the New York State Department of Health."

6. To accomplish amendment 3(c), as stated above, a new Article 5 of the Articles of Organization is hereby added to read as follows:

"5. The Company is formed for the sole purpose of owning and operating a multi-specialty ambulatory surgery center licensed pursuant to New York Public Health Law Article 28 located at 190 Intrepid Lane, Syracuse, New York."

7. To accomplish amendment 3(d), as stated above, a new Article 6 of the Articles of Organization is hereby added to read as follows:

"6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the approval of the New York State Department of Health."

8. To accomplish amendment 3(e), as stated above, a new Article 7 of the Articles of Organization is hereby added to read as follows:

"7. Pursuant to the approval requirements of the New York State Department of Health, these Restated Articles of Organization state that the address of the principal office of the Company is 190 Intrepid Lane, Syracuse, New York."

9. The Articles of Organization are hereby restated to set forth its entire text as amended:

**ARTICLES OF ORGANIZATION
OF
INTREPID LANE ASC, LLC**

Under Section 203 of the Limited Liability Company Law

1. The name of the limited liability company (the "Company") is: Intrepid Lane ASC, LLC.
2. The office of the Company is to be located in the County of Onondaga, State of New York.
3. The Secretary of State is designated as agent of the Company upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Company served upon the Secretary is:

c/o the Company
100 Metropolitan Park Drive
Liverpool, New York 13088

4. The Company shall be managed by a Board of Managers. Notwithstanding anything to the contrary in these Articles of Organization or the Operating Agreement, neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the prior written approval of the New York State Department of Health.
5. The Company is formed for the sole purpose of owning and operating a multi-specialty ambulatory surgery center licensed pursuant to New York Public Health Law Article 28 located at 190 Intrepid Lane, Syracuse, New York.
6. Notwithstanding anything in the Articles of Organization or Operating Agreement to the contrary, any transfer, assignment or other disposition of any membership interest or voting rights in the Company shall be effectuated in accordance with Section 2801-a(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the approval of the New York State Department of Health.
7. Pursuant to the approval requirements of the New York State Department of Health, these Restated Articles of Organization state that the address of the principal office of the Company is 190 Intrepid Lane, Syracuse, New York.

IN WITNESS WHEREOF, these Restated Articles of Organization have been subscribed to as of June 30, 2020.



Benjamin McHone, M.D., a Manager



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

September 16, 2021

Bruce Smith
CCBLAW
507 Plum Street, Suite 310
Syracuse, New York 13204

Re: 202090 B
Intrepid Lane ASC, LLC d/b/a Intrepid Lane
Endoscopy and Surgery Center
(Onondaga County)
Establish and construct a multi-specialty
ambulatory surgery center with four
operating rooms located at 190 Intrepid Lane,
Syracuse

Dear Mr. Smith:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center is APPROVED, the contingencies having now been fulfilled satisfactorily, for a limited life duration of five years from the date the operating certificate is issued. The Public Health and Health Planning Council had considered this application and imposed the contingencies at its meeting of April 8, 2021. You are expected to comply with the conditions listed on the April 12, 2021 letter from Tracy R. Raleigh.

Public Health and Health Planning Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete/finalize the requirements for approval, you must contact the Regional Office using the "Regional Office" tab in NYSE-CON. Please note that due to the ongoing COVID-19 pandemic, Regional Office activities for this project may be delayed. If this project includes a Change of Ownership you MUST contact the Regional Office before the transfer transaction occurs to coordinate the effective date of the transaction with the change in operating certificate. Failure to do so may result in an inability to bill for services under the new provider.

The "Regional Office" tab enables entry of additional applicant contact information, electronic communications, and requests for survey dates, as applicable. If appropriate, the Regional Office will schedule an on-site visit within sixty (60) days of receiving your request. If you have questions regarding the "Regional Office" tab please contact the New York State Department of Health Central New York Regional Office, 217 South Salina Street, Syracuse, New York 13202, utilizing the "Regional Office" tab in NYSE-CON within 30 days of receipt of this letter.

Sincerely,

Colleen M. Leonard

Colleen M. Leonard
Executive Secretary



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

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Dear Mr. Smith:

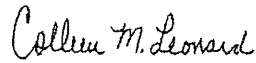
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Sincerely,



Colleen M. Leonard
Executive Secretary

UNI-37

RESTATED

ARTICLES OF ORGANIZATION

OF

Intrepid Lane ASC, LLC

Under Section 214 of the Limited Liability Company Law of the State of New York

Cohen Compagni Beckman Appler & Knoll, PLLC
507 Plum Street, Suite 310
Syracuse, NY 13204

Customer Reference # INTRE53779

DRAWDOWN

Filed with the NYS Department of State on 09/24/2021
Filing Number: 210924002929 DOS ID: 5772421

EXHIBIT "B"
OPERATING AGREEMENT

INTREPID LANE ASC, LLC OPERATING AGREEMENT

THIS OPERATING AGREEMENT is entered into as of June 23, 2020 between AMP ASC HOLDINGS, LLC (“AMP Holdings”), a New York limited liability company and CRA ASC HOLDINGS, LLC (“CRA Holdings”), a New York limited liability company.

In consideration of the mutual promises contained herein the parties hereby agree as follows:

1. DEFINITIONS

Unless the context requires otherwise, the following terms used in this Agreement shall have the meanings set forth below:

- 1.1. “Act” shall mean the New York Limited Liability Company Law, as the same may be amended from time to time.
- 1.2. “Affiliate” shall mean, when used with reference to a specified Person, (a) any Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person, (b) any Person that is an officer, member or trustee of, or serves in a similar capacity with respect to, the specified Person or of which the specified Person is an officer, member or trustee, or with respect to which the specified Person serves in a similar capacity, (c) any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of the specified Person and (d) any relative or spouse of the specified Person. For the avoidance of doubt, Associated Medical Professionals of NY, PLLC is an Affiliate of AMP Holdings and Colon Rectal Associates of Central New York, LLP is an Affiliate of CRA Holdings.
- 1.3. “Agreement” shall mean this Operating Agreement as amended from time to time.
- 1.4. “Articles of Organization” shall mean the Articles of Organization filed with the New York Secretary of State for the purpose of forming the Company as amended from time to time. The Articles of Organization will be amended and restated by the Restated Articles of Organization
- 1.5. “Capital Account” shall mean the individual accounts established and maintained pursuant to Section 5.5 hereof.
- 1.6. “Capital Contribution” shall mean any cash, property, services rendered or other binding obligation to contribute cash or property that a Member contributes to the Company.
- 1.7. “Center” shall mean the Article 28-licensed multispecialty ambulatory surgery center to be known as "Intrepid Lane Endoscopy and Surgery Center" located at 190 Intrepid Lane, Syracuse, New York.
- 1.8. “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time or corresponding provisions of subsequent laws.

- 1.9. "Company" shall mean Intrepid Lane ASC, LLC, a New York limited liability company and its successors.
- 1.10. "CON Application" shall mean the establishment and construction certificate of need application submitted by the Company to the Health Department.
- 1.11. "Constituent Member(s)" shall mean the individuals who are members of AMP Holdings or CRA Holdings.
- 1.12. "Defaulting Member" shall have the meaning set forth in Section 5.4 hereof
- 1.13. "Effective Date" shall mean the date on which the Company has received the Project Approval and has filed its Restated Articles of Organization with the Secretary of State in the form approved by the Health Department.
- 1.14. "Event of Bankruptcy" shall mean (i) filing of a voluntary petition in bankruptcy or reorganization or order of relief being entered under US Bankruptcy Code or similar law or (ii) making assignment for the benefit of creditors.
- 1.15. "Excess Funding Member" shall have the meaning set forth in Section 5.5(b) hereof.
- 1.16. "Fiscal Year" shall mean the calendar year unless otherwise established or changed by the Members, including any period of less than a calendar year in the year of formation or dissolution of the Company.
- 1.17. "Health Department" shall mean the New York State Department of Health.
- 1.18. "Indemnitee" shall have the meaning set forth in Section 10.1 hereof.
- 1.19. "Imputed Underpayment" shall have the meaning set forth in Section 6.11(b) hereof.
- 1.20. "Interested Party" shall have the meaning set forth in Section 12.1 hereof.
- 1.21. "Initial Capital Contributions" shall have the meaning set forth in Section 5.2 hereof.
- 1.22. "Managers" or "Board of Managers" shall mean the persons appointed by the Members to manage the affairs of the Company under Article 4 hereof.
- 1.23. "Member" shall mean AMP Holdings and CRA Holdings and such other Persons who are admitted to the Company as additional or substitute Members.
- 1.24. "Member Guaranty" shall have the meaning set forth in Section 5.5(a) hereof.
- 1.25. "Membership Interest" shall mean a Member's rights in the Company including the Member's share of Net Profits and Net Losses, the right to receive distributions of the Company's assets and the right, if any, to vote or participate in management of the Company.

- 1.26. “Net Profits” and “Net Losses” shall mean the income, gain, loss, deductions and credits of the Company in the aggregate or separately stated, as appropriate, determined at the close of each fiscal year on the Company’s information tax return filed for Federal income tax purposes.
- 1.27. “Nonrecourse Deductions” shall have the meaning set forth in Section 1.704-2(b) (1) of the Treasury Regulations computed in accordance with Section 1.704-2(c) of the Treasury Regulations.
- 1.28. “Nonrecourse Liability” shall have the meaning set forth in Section 1.704-2(b) (3) of the Treasury Regulations.
- 1.29. “Partner Minimum Gain” shall mean an amount with respect to each Member Nonrecourse Debt equal to the Membership Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Treasury Regulations.
- 1.30. “Partner Nonrecourse Debt” shall have the meaning set forth in Section 1.704-2(b) (4) of the Treasury Regulations.
- 1.31. “Partnership Audit Rules” shall mean Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015, and any Treasury Regulations or other guidance that may be promulgated in the future relating thereto.
- 1.32. “Partnership Representative” shall have the meaning set forth in Section 6.11 hereof.
- 1.33. “Person” shall mean an individual, corporation, membership, limited liability company or any organization permitted to be a member of a New York limited liability company.
- 1.34. “Purchase Price” shall have the meaning set forth in Section 8.5 hereof.
- 1.35. “Project Approval” shall mean the final approval by the New York Public Health and Health Planning Council to establish the Company as an Article 28 operator and construct, own and operate the Center.
- 1.36. “Restated Articles of Organization” shall mean the Company’s Restated Articles of Organization which shall be filed with the New York Secretary of State following receipt of Project Approval which, among other things, will provide the Company with the power to construct, own and operate the Center.
- 1.37. “Selling Member” shall have the meaning set forth in Section 8.4 hereof.
- 1.38. “Sharing Ratio” shall mean the ratio (expressed as a percentage) of (a) the number of Units owned by a Member to (b) the aggregate number of Units owned by all Members.
- 1.39. “Super-Majority Vote” shall mean a vote of four Managers.
- 1.40. “Tax Return” shall mean any income, franchise, sales and other material tax returns, reports, forms and other such documents relating to taxes.

- 1.41. “Transfer” shall mean a sale, assignment, gift or other disposition, or the pledge, grant of a security interest or lien in or other encumbrance, whether voluntary or by operation of law, of all or a part of a Member’s Membership Interest.
- 1.42. “Triggering Event” shall have the meaning set forth in Section 8.4 hereof.
- 1.43. “Treasury Regulation” shall mean the Income Tax Regulations, including temporary regulations, promulgated under the Code, as amended from time to time.
- 1.44. “Underpaying Member” shall have the meaning set forth in Section 5.5(b) hereof
- 1.45. “Unit” shall mean a Unit of Membership Interest issued under this Agreement.
- 1.46. “Withdrawal Note” shall have the meaning set forth in Section 8.6 hereof.

2. FORMATION OF THE COMPANY

- 2.1. Formation and Term. The Company was formed pursuant to the Act, as evidenced by the filing of its Articles of Organization with the New York Secretary of State on June __, 2020 and shall continue until such time as it shall be terminated under the provisions of Section 9.1 hereof.
- 2.2. Name. The name of the Company shall be “Intrepid Lane ASC, LLC” with such variations as may be necessary to comply with statutory requirements. All business of the Company shall be conducted under such name. The Company shall hold its assets in the name of the Company and not any Member.
- 2.3. Purpose.
 - a. Prior to Project Approval. Prior to Project Approval and until such time as the Company’s Restated Articles of Organization have been filed, the Company’s purpose shall be to engage in development activities with respect to the Center including, without limitation, preparing, submitting and prosecuting the CON Application and to carry on, conduct or transact any business or other activities which a limited liability company formed under the Act may carry on, conduct or transact.
 - b. Upon Obtaining Project Approval. Upon obtaining Project Approval and the filing of the Company’s Restated Articles of Organization the Company’s sole and exclusive purpose shall be to construct, own and operate the Center.

3. MEMBERS

- 3.1. Membership Interest. The number of Units of Membership Interest owned by each Member and their respective Sharing Ratios is set forth on Exhibit A attached hereto.
- 3.2. Limited Liability. Except as otherwise required by law, no Member shall be personally liable for any debts, liabilities or obligations of the Company.
- 3.3. No Management Responsibility. No Member, when acting solely in that capacity, shall take part in the management of the business or transact any business for the Company. All of the Company's management responsibility is vested in the Managers subject to the rights of the Members set forth in this Agreement or under the Act.
- 3.4. No Authority to Act. No Member, when acting solely in that capacity, shall have the power to sign for or bind the Company.
- 3.5. Action by Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by all of the Members.
- 3.6. Member Representations and Warranties.
 - a. AMP Holdings represents and warrants that at all times during which AMP Holdings is a Member each of its Constituent Members shall be an individual (i) who is a member or employed physician of Associated Medical Professionals of NY, PLLC or its successor, (ii) who agrees to fund his or her pro rata share of AMP Holdings' Initial Capital Contribution and to guaranty his or her pro rata share of Center obligations guaranteed by AMP Holdings, and (iii) whose membership in AMP Holdings does not disqualify (and, without further action, would not disqualify) the Company or the Center from engaging in operations as a Medicare certified ambulatory surgery center for any reason, or from having such Constituent Member perform cases at the Center.
 - b. CRA Holdings represents and warrants that at all times during which CRA Holdings is a Member each of its Constituent Members shall be an individual (i) who is a partner or employed physician of Colon Rectal Associates of Central New York, LLP or its successor, (ii) who agrees to fund his or her pro rata share of CRA Holdings' Initial Capital Contribution and to guaranty his or her pro rata share of Center obligations guaranteed by CRA Holdings, and (iii) whose membership in CRA Holdings does not disqualify (and, without further action, would not disqualify) the Company or the Center from engaging in operations as a Medicare certified ambulatory surgery center for any reason, or from having such Constituent Member perform cases at the Center.
 - c. All representations, warranties and agreements made by the Members pursuant to this Section shall survive the execution and delivery of this Agreement.

4. CONTROL AND MANAGEMENT

- 4.1. Management of the Company. The business and affairs of the Company shall be managed by a Board of Managers. Except for those decisions requiring a Super-Majority Vote or the approval of the Members under Section 4.5 or the Act, all decisions concerning the business, operations and affairs of the Company and the Center shall be made by the Board of Managers and the Board of Managers shall have all the rights and powers that are necessary or advisable for the discharge of its duties hereunder. **Notwithstanding anything to the contrary in the Articles of Organization or this Agreement, neither the management structure nor the provisions setting forth such structure may be deleted, modified or amended without the prior written approval of the Health Department.**
- 4.2. Certain Powers of the Board of Managers. Without limiting the generality of Section 4.1 but subject to obtaining additional approvals pursuant to Section 4.5, if required, the Board of Managers is expressly authorized on behalf of the Company to do, or cause the Company's agents or employees to do, the following:
- a. To prepare, submit and prosecute the CON Application to establish and construct the Center;
 - b. To build, equip and operate the Center;
 - c. To institute, prosecute and defend any proceeding in the Company's name, and make decisions relating to compliance matters, including decisions to self-disclose to governmental agencies or carriers or enter into settlements, provided that the Members shall be notified of any such, proceedings, self-disclosures and settlements as soon as practicable but not necessarily in advance;
 - d. To borrow money and incur liabilities or obligations on behalf of the Company in accordance with the approved budget;
 - e. To make calls for Initial Capital Contributions;
 - f. To mortgage, pledge, assign or otherwise encumber the Company's assets to secure the Company's obligations;
 - g. To enter into leases, contracts and guaranties;
 - h. To invest and reinvest the Company's funds;
 - i. To hire and engage employees, agents, attorneys, managers, accountants and others, to define their duties and establish their compensation on such terms as the Managers shall determine;
 - j. To establish pension plans, profit sharing plans, and benefit and incentive plans for employees of the Company;

- k. To purchase liability and other insurance to protect the Company's business and property;
- l. To establish bank accounts in the name of the Company and to designate all signatories on such accounts;
- m. To establish reserve funds of the Company to provide for future requirements for operations, contingencies or any other purpose that the Managers deem necessary or appropriate;

4.3. Number, Election and Qualifications.

- a. The Board of Managers shall consist of five Managers.
- b. AMP Holdings shall have the right to appoint three Managers, each of whom shall be a Constituent Member in AMP Holdings and appointed by AMP Holdings.
- c. CRA Holdings shall have the right to appoint two Managers, each of whom shall be a Constituent Member in CRA Holdings and appointed by CRA Holdings.
- d. Each of the Members shall be entitled to remove and replace its appointed Managers at any time and for any reason, by giving written notice thereof to the Company and the other Member, which notice shall designate a Person who shall fill the position of the removed Manager.
- e. A Manager may resign at any time by giving a written resignation to the Company, in which case such Manager shall be replaced by the applicable Member.
- f. The initial Board of Managers is set forth on Exhibit B attached hereto.

4.4. Meetings, Quorum; Action by Board of Managers.

- a. Each Manager shall be entitled to cast one vote. Except as provided in Section 4.5(a), approval of any decision by the Board of Managers will require a minimum of three affirmative votes, at least two of which shall be by Managers appointed by AMP Holdings.
- b. A quorum of the Board of Managers shall consist of three Managers.
- c. One or more Managers may participate in a meeting by means of a telephone conference or similar communications equipment through which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.
- d. Meetings of the Board of Managers shall be held at the Center or at such other place as may be agreed by the Managers from time to time.
- e. Regular meetings of the Board of Managers shall be held on a quarterly basis or on a more frequent basis as may be determined by the Managers. Special meetings of the Board of Managers may be called by any two Managers upon notice given to the other Managers in

accordance with Section 4.4(f). At such meetings, the Managers shall transact such business as may be properly brought before it, whether or not any notice of such meeting referenced action to be taken thereat.

- f. Written notice of a regular meeting of the Board of Managers is not required if the meeting is held in accordance with a schedule previously approved by the Board of Managers. Written notice of each special meeting of the Board of Managers shall be given to all Managers stating the place, date, and hour. The notice shall indicate who is requesting the meeting and shall state the purpose or purposes for which it is being called. Notice of any special meeting shall be delivered to each Manager personally, by first class certified mail, return receipt requested, by overnight courier, or by electronic mail to the Manager at his or her address designated for such purposes in writing to the Company, not less than five nor more than 60 days before the date of the meeting. Such notices or communications shall be deemed to be received by the addressee upon delivery if personally delivered, on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Notices sent by electronic mail shall be deemed given and received one business day following the notice being sent. Notice of meeting need not be given to any Manager who submits a signed waiver of notice whether before or after the meeting.
- g. Any action required or permitted to be taken by the Managers may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by all of the Managers.
- h. A Manager may cast or authorize the casting of a vote by written proxy. The proxy must be another Constituent Member. Every proxy must be signed by the Manager or his attorney-in-fact.

4.5. Specific Limitations on Board of Managers. Notwithstanding anything to the contrary contained in this Agreement, the Board of Managers shall have no right, power or authority to perform or authorize any of the following acts unless the Board of Managers has approved by Super-Majority Vote with respect to the acts identified in subsection (a) below and the unanimous written consent of all Members with respect to the acts identified in subsection (b) below:

a. Actions Requiring the Approval by Super-Majority Vote.

- i. Mortgage, pledge, assign or otherwise encumber the Company's assets to secure the Company's obligations;
- ii. Approve the capital and operating budgets of the Company;
- iii. Borrow money from any source in any single transaction or related series of transactions in excess of \$150,000;
- iv. File a certificate of need application, except the CON Application and a CON application seeking indefinite life;
- v. Approve of settlements of administrative proceedings to litigation to which the Company is a party; and
- vi. Approve transactions with an Interested Party.

b. Actions Requiring the Approval of All Members.

- i. Approve Initial Capital Contributions in excess of the amounts set forth on Exhibit C.
- ii. Make a call for mandatory additional Capital Contributions after the Members' Initial Capital Contributions;
- iii. Borrow money from any source in any single transaction or related series of transactions in excess of \$500,000;
- iv. Approve fees or compensation to be paid to the Managers or Medical Director;
- v. Sale of all or substantially all of the assets of the Company;
- vi. Cause the Company to acquire all or any part of the business of another Person or merge or consolidate with another Person;
- vii. Approve the dissolution of the Company;
- viii. Knowingly perform any act that would subject the Members to liability;
- ix. Do any act that would make it impossible to carry on the business of the Company;

- x. Commit any act that would constitute an Event of Bankruptcy;
 - xi. Amend the Articles of Organization (other than through the Restated Articles of Organization) or this Agreement;
 - xii. Approve the Transfer of a Membership Interest;
 - xiii. Admit a new Member; and
 - xiv. Allow any Member to withdraw any Capital Contributions or any money or other property from the Company.
- 4.6. No Exclusive Duty. The Managers shall not be required to manage the Company as their exclusive function and may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Operating Agreement, to share or participate in such other investments or activities of the Managers or to the income or proceeds derived therefrom. The Managers shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture.
- 4.7. Limitation of Liability. A Manager of the Company shall have no personal liability to the Company or the Members for any act or omission performed by such Manager in good faith on behalf of the Company and in a manner reasonably believed by him/her to be within the scope of authority granted to him/her by this Agreement as a Manager and in the best interests of the Company provided that such Manager is not guilty of gross negligence, intentional misconduct or any breach of his/her fiduciary duty with respect to such acts or omissions. Any loss or damage incurred by such Manager any act or omission performed by such Manager in good faith on behalf of the Company and in a manner reasonably believed by him/her to be within the scope of authority granted to him/her by this Agreement as a Manager and in the best interests of the Company shall be paid from Company assets to the extent available; provided, however that the foregoing provisions shall not apply to any loss or damage incurred by such Manager by reasons of gross negligence, intentional misconduct or any breach of his/her fiduciary duty with respect to any acts or omissions..
- 4.8. Transactions with the Company. Subject to Section 4.5(b)(3), the Managers may be compensated for services provided to the Company and reimbursed for reasonable costs and expenses incurred in furtherance of their duties.
- 4.9. Officers.
- a. The Board of Managers may designate one or more individuals to serve as officers of the Company, who shall have such titles and exercise and perform such powers and duties as shall be assigned to them from time to time by the Board of Managers, consistent with the provisions of this Agreement.
 - b. Any officer may be removed by the Board of Managers at any time, with or without cause.
 - c. The salaries and other compensation of the officers shall be fixed by the Board of Managers

and must be consistent with fair market value.

5. MEMBERSHIP INTERESTS; CAPITAL CONTRIBUTIONS

- 5.1. Units Issued. The number of Units of Membership Interest issued to each Member is set forth on Exhibit A. Exhibit A shall be modified from time to time to reflect the issuance of additional Units and changes in ownership of Units.
- 5.2. Initial Capital Contributions. The Members shall make Capital Contributions to the Company at the times designated by the Managers in amounts sufficient to fund (a) the Company's development activities prior to Project Approval and commencement of construction activities including, without limitation, funding consulting fees, legal fees, accounting fees, equipment deposits, architectural fees and filing fees and (b) following Project Approval, the Company's equity contribution for the construction and equipping of the Center, other project costs and opening day working capital requirements (the "Initial Capital Contributions"). All Initial Capital Contributions shall be made pro rata to the Members' Sharing Ratios. The aggregate Initial Capital Contributions shall not exceed the amounts set forth on Exhibit C without the prior written approval of all Members.
- 5.3. No Mandatory Additional Capital Contributions. No Member shall be required to make additional Capital Contributions without the approval of all Members. If additional funds are necessary or desirable to accomplish the purposes or satisfy the obligations of the Company, the Board of Managers may, among other things, offer all Members the opportunity to make loans to the Company with such commercially reasonable interest rate, repayment terms and preferences as may be necessary to attract the required funds.
- 5.4. Remedies for Failure to Fund. If any Member shall fail to pay its Capital Contribution when due the Company shall give written notice of such default to such Member (a "Defaulting Member") and the Defaulting Member shall have 10 days in which to cure such default. If, after 10 days, the Defaulting Member has not cured such default, then the Company may (a) purchase the Defaulting Member's Membership Interest pursuant to Section 8.4; (b) apply any distributions payable to the Defaulting Member to fund any unpaid amount plus interest at 15% per annum; and/or (c) enforce the Defaulting Member's obligation to pay its Capital Contribution and recover attorneys' fees and costs of collection in addition to interest at 15% per annum accruing from the date the Capital Contribution was first required to have been paid.
- 5.5. Member Guaranties.
 - a. Each Member shall execute and deliver, and if required by the lender shall cause its Constituent Members to execute and deliver, one or more limited/several guaranties to guaranty the bank financing to be provided for the construction, equipping and working capital of the Center in such amounts, at such times and in such form as directed by the Board of Managers (a "Member Guaranty"). If any Member shall fail to deliver its Member Guaranty within 10 days following request, the Member shall be in default and (a) the Company or the remaining Member may exercise its option to purchase the defaulting Member's membership Interest under Section 8.4 or (b) the Company may enforce the Member's obligation to deliver its Member Guaranty and recover attorneys' fees in connection with any enforcement action.

- b. In the event a Member or Constituent Member who has delivered a Member Guaranty pays in excess of its share of the liability (based on the Member's Sharing Ratio and/or Constituent Member's pro-rata interest in Member) under the guaranty (an "Excess Funding Member"), such Member or Constituent Member shall have the right to seek payment of such excess from the other Member or Constituent Members (an "Underpaying Member"). Any amount not paid by an Underpaying Member within 10 business days following demand by an Excess Funding Member shall accrue interest at 15% per annum. An Excess Funding Member seeking to recover excess payments from an Underpaying Member shall be entitled to receive reasonable attorneys' fees and costs of collection.
- 5.6. Capital Accounts. A Capital Account shall be established and maintained for each Member. The Capital Account of each Member shall be increased by (a) the amount of cash contributed as a capital contribution by the Member to the Company, plus (b) the agreed fair market value of any property such Member has contributed to the Company, net of any liabilities assumed by the Company or to which such property is subject plus (c) the amount of profits or income (including tax-exempt income) allocated to such Member and shall be decreased by the sum of (x) the fair market value of any property distributed to such Member, including cash, net of any liability assumed by such Member or to which such property is subject, (y) allocations of Company loss and deduction (or items thereof) to such Member and (z) such Member's share of any other expenditures which are not deductible by the Company for Federal income tax purposes or which are not allowable as additions to the basis of Company property.
- 5.7. No Interest on Capital Contributions. No interest shall be paid or credited to the Members on their Capital Accounts.
- 5.8. No Obligation to Restore Deficit Balance. Except as required by law, no Member shall be required to restore any deficit balance in the Member's Capital Account.

6. ALLOCATIONS AND DISTRIBUTIONS

- 6.1. Allocation of Net Profits and Losses. All items of Net Profits, Net Losses and each item of Company income, gain, loss, deduction, credit and tax preference shall be allocated among the Members in proportion to their respective Sharing Ratios.
- 6.2. Accounting Principles. The profits and losses of the Company shall be determined in accordance with accounting principles applied on a consistent basis. It is intended that the Company will elect those accounting methods that provide the Member's with the greatest tax benefits.
- 6.3. Distributions.
- a. Net available cash flow of the Company shall be distributed to the Members pro rata to their Sharing Ratios at such times and in such amounts as the Board of Managers shall determine.
 - b. If a Member is required to bear the financial burden specified in Section 6.11(b), any amounts otherwise distributable under this Section shall be adjusted to cause the Member

to bear such burden; provided, however, that if the amount of any Imputed Underpayment is modified in accordance with Section 6225(c) of the Code, as amended by the Bi-partisan Budget Act of 2015, amounts otherwise distributable under this Article 6 shall be adjusted so that each Member who or which files an amended return and pays the resulting tax and interest due, or whose status as tax-exempt, foreign or being subject to a lower tax rate, results in a modification of the Imputed Underpayment otherwise payable by the Company, realizes the benefit of such modification.

- 6.4. Changes in Sharing Ratios. If there are changes in the Members' Sharing Ratios during a Fiscal Year as a result of the admission of new Members, issuance of additional Units, transfer of Units or otherwise, allocations shall be made to the Members in accordance with their varying Sharing Ratios during such year in accordance with Code Section 706 using any convention permitted by law and selected by the Members. Distributions shall be treated in a similar manner based on the periods to which they are attributable, irrespective of the date on which they are paid.
- 6.5. Member Minimum Gain Chargeback. If there is a net decrease in Member Minimum Gain attributable to Member Nonrecourse Debt during any fiscal year, any Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt determined in accordance with Section 1.704-2(i)(4) of the Treasury Regulations, shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Section 1.704-2(i)(5) as is necessary to meet the requirements for a minimum gain chargeback as is provided in that Treasury Regulation.
- 6.6. Member Nonrecourse Deductions. Any Member Nonrecourse Deduction shall be allocated pursuant to Section 1.704-2(i) of the Treasury Regulations to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which it is attributable.
- 6.7. Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation, or distribution described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Treasury Regulations, items of Membership income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the deficit balances in the Member's Capital Account created by such adjustments, allocations, or distributions as quickly as possible.
- 6.8. Compliance with Regulations. The provisions of this Agreement are intended to comply with Code Sections 704(b) and 704(c) and the Treasury Regulations promulgated thereunder. Some of the language in this Agreement is taken directly from or is based on such Treasury Regulations. These provisions are intended to be interpreted in such manner as to comply with such Treasury Regulations. The Members may modify the manner in which the Capital Accounts are maintained if the Members determine is appropriate in order to comply with such Treasury Regulations.
- 6.9. Loans to Company. Nothing in this Operating Agreement shall prevent any Member from making secured or unsecured loans to the Company by agreement with the Company.
- 6.10. Returns and Other Elections. The Members shall cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns

deemed necessary and required in each jurisdiction in which the Company does business. Copies of those returns, or pertinent information from the returns, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year. All elections permitted to be made by the Company under federal or state laws shall be made by the Members.

6.11. Certain Tax Matters.

- a. The Company shall appoint a "partnership representative" as defined in Section 6223 of the Code, as amended by the Bi-partisan Budget Act of 2015 (the "Partnership Representative"). The Partnership Representative need not be a Member or Manager. The Partnership Representative shall have all the powers and duties assigned to the Partnership Representative pursuant to the Partnership Audit Rules and shall perform any similar role or function under any state and local laws. The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in all disputes, controversies or proceedings with the Internal Revenue Service and, in the Partnership Representative's sole discretion, is authorized to make any available election with respect to the Partnership Audit Rules. Each Member and former Member will cooperate fully with the Partnership Representative with respect to any such disputes, controversies or proceedings with the Internal Revenue Service, including providing the Partnership Representative with any information reasonably requested to comply with and make elections under the Partnership Audit Rules. The Partnership Representative shall keep the Members fully and timely informed by written notice of any pending or threatened audit, as well as the commencement of any audit, the current development and status of any audit, and the availability of elections, options and different possible actions involving any audit.
- b. The Members and former Members shall bear the financial burden of (i) any underpayment or tax imputed to the Company ("Imputed Underpayment"), (ii) any associated interest, (iii) adjustments to tax and penalties arising from a partnership adjustment that are imposed on the Company and (iv) the cost of contesting any such partnership adjustment based on the extent to which the amount of Imputed Underpayment is attributable to each such Member and former Member in respect of such Member's or former Member's Interest in the Company during the applicable "reviewed year" (within the meaning of Section 6225(d) of the Code). The portion of an Imputed Underpayment attributable to each Member and/or former Member shall be determined reasonably by the Partnership Representative. Any portion of an Imputed Underpayment that is attributed to a former Member of the Company shall be the sole obligation of such former Member and any third-party transferee or assignee of such former Member. To the extent feasible, this shall be implemented through adjustments to distributions in accordance with Section 6.3, but Members and former Members shall be obligated to indemnify and hold harmless the Company to the extent that this cannot be accomplished.
- c. The provisions of this Section shall survive the termination of the Company or the termination of any Member's Membership Interest and shall remain binding on the Members and former Members for as long a period of time as is necessary to resolve with the Internal Revenue Service any and all matters regarding the U.S. federal income taxation of the Company or the Members and former Members.

7. BOOKS AND RECORDS

- 7.1. Books and Records. The Company shall keep and maintain at its principal office adequate books and records setting forth a true and accurate account of all business transactions arising out of and in connection with the conduct of the Company. Any Manager or Member or his/her designated representative shall have the right, at any reasonable time and at its own expense to have access to and inspect and copy the contents of such books or records.
- 7.2. Reports. Within a reasonable period after the end of each Fiscal Year quarter, each Member shall be furnished with a report containing a balance sheet as of the end of such quarter and statement of earnings. Annually, the Members will receive a balance sheet, statement of earnings, and changes in Member's equity and statement of cash flow for the year ended.
- 7.3. Tax Information. Necessary tax information shall be delivered to each Member as soon after the end of each Fiscal Year as is practicable, but no later than April 1.

8. WITHDRAWAL; TRANSFER OF MEMBERSHIP INTERESTS

- 8.1. Covenant Against Withdrawal. No Member shall withdraw from the Company prior to the dissolution and winding-up of the Company.
- 8.2. Restriction on Transfer; Conditions to Transfer. No Member shall make or attempt to make a Transfer of all or any portion of its Membership Interest, or any interest therein, unless (i) the Transfer is to the Company or to a Person approved by all Members and (ii) the conditions set forth in this Section have been satisfied. Any Transfer or attempted Transfer in violation of this Article shall be null and void and shall not transfer any interest to the proposed transferee. The following shall be satisfied as conditions to any such Transfer:
 - a. **Notwithstanding anything to the contrary in the Articles of Organization or this Agreement, all transfers, assignments or other dispositions of Membership Interests or voting rights shall be effectuated in accordance with section 2801-a(4)(b) of the Public Health Law and this provision may not be deleted, modified or amended without the prior approval of the Health Department.**
 - b. The transferee shall have assumed the obligations, if any, of the transferor to the Company.
 - c. The transferee shall have adopted and approved in writing this Agreement.
- 8.3. Status of Transferee. A transferee of a Membership Interest who is not admitted as a substitute Member (as permitted by the Members) shall be entitled only to receive that share of Net Profits, Net Losses and distributions, and the return of Capital Contribution, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have the rights of a Member of the Company under the Act or this Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals of, any matter. The Company shall, however, furnish the transferee with pertinent tax information at the end of each fiscal year.

- 8.4. Option to Purchase Membership Interest. If any Member (i) is adjudicated bankrupt, voluntary or involuntary; (ii) makes an assignment for the benefit of creditors; (iii) applies for a judicial dissolution of the Company under the Act; (iv) is no longer eligible to own an interest in an Article 28 ambulatory surgery center; (v) fails to timely fund its Capital Contribution obligation or deliver a Member Guaranty pursuant to Sections 5.2 and 5.5; (vi) is excluded from participation in Medicare, Medicaid or any other Federal health care program; or (vii) is in material breach of any of its obligations, representations or warranties under this Agreement (each, a “Triggering Event”), such Member (the “Selling Member”) shall be deemed to have offered to sell its entire Membership Interest to the Company on the following terms:
- a. The option to purchase may be exercised by the Company not later than 180 days following notice of any such Triggering Event. The Company shall be authorized to exercise the option by unanimous vote of the Members other than the Selling Member.
 - b. The purchase price shall be calculated pursuant to Section 8.5 and paid in the manner provided in Section 8.6.
- 8.5. Calculation of Purchase Price. The purchase price for a Member’s Membership Interest purchased by the Company pursuant to Section 8.4 hereof (the “Purchase Price”) shall be determined by multiplying the Company’s Book Value by the selling Member’s Sharing Ratio; provided, however, that if the Triggering Event for the purchase is being made under Section 8.4(iii) (the Offering Member’s application for a judicial dissolution of the Company), the Purchase Price shall be reduced by 50%. As used herein, “Book Value” is the net worth of the Company as of the last day of the month coincident with or immediately preceding the date the option was exercised. Book Value shall be determined by the Company’s regular accountant in accordance with generally accepted accounting principles applied on a consistent basis with prior periods (but in all events on an accrual basis, even if the Company usually reports its operations on a cash basis), including the following adjustments:
- a. Depreciation on all equipment, furnishings and fixtures (including uncapitalized, fully depreciated and/or items expensed for tax purposes under Code §179) will be restated by using straight-line depreciation over their original useful life;
 - b. The value of pre-paid expenses, security and other deposits, and any liability for capital costs under financing leases shall be added to the balance sheet;
 - c. The Company shall include as a liability the amount of any pension or profit sharing plan contributions that the Company shall make or intends to make that are attributable to the portion of the fiscal year ending on the closing date and the Member distributions payable or to be paid as of the Closing Date;
 - d. The Company shall include as an asset 95% of the value of its accounts receivable valued by the Company’s regular accountant using the Company’s historic collection percentage determined over the prior 24 month period; and
 - e. There is no goodwill in the Company, and no value shall be claimed for or attributed to it in determining the Purchase Price.

- 8.6. Payment of Purchase Price. The Purchase Price for a purchase pursuant to Section 8.4 hereof shall be paid as follows: (a) 20% by business check at closing and (b) the balance by execution and delivery of a promissory note (a "Withdrawal Note") which (i) shall bear interest at a fixed rate equal to the then current mid-term applicable federal rate ("AFR") under Section 1274(d) of the Code for the month in which the first payment is made (or a rate per annum equal to what the AFR would be for such month under Section 1274(d) of the Code if the AFR is no longer published) and (y) shall be payable in 60 equal consecutive monthly installments of principal and interest commencing 90 days following the date the 20% payment was made. The promissory note shall be unsecured, may be prepaid in full or in part without premium or penalty and shall provide that in case of default all principal and accrued interest shall become immediately due and payable at the holder's election. The Company shall have the right to set-off any amounts owing by the Member to the Company against the Purchase Price.
- 8.7. Closing. The closing of the purchase of a Membership Interest hereunder shall take place at the principal office of the Company. A Member shall not be deemed to have withdrawn as a Member until such time as the Company has complied with section 2801-a(4)(b) of the Public Health Law. The Company agrees to use its best efforts to make the required filing with the Health Department under Section 2801-a(4)(b) of the Public Health Law at the earliest possible date. At closing the purchaser shall deliver the Purchase Price and the selling Member shall execute and deliver assignments legally sufficient to transfer the Membership Interest free and clear of all taxes, debts, claims, liens or encumbrances. The closing shall occur on the date designated by the Company.
- 8.8. Power of Attorney. Each Member appoints the Company as its agent and attorney-in-fact to execute and deliver all documents needed to convey its Membership Interest, if such selling Member is not present at the closing. This power of attorney is coupled with an interest.
- 8.9. Other Restrictions.
- a. There shall be no changes in the Constituent Members of either Member prior to the issuance of an operating certificate for the Center.
 - b. Each Member agrees that the admission or withdrawal of Constituent Members shall (i) require 90 days prior written notice to the Company and (ii) be effectuated in accordance with section 2801-a(4) (b) of the Public Health Law.
 - c. All filings and submissions required under Section 8.9(b) shall be made solely by the Company, the costs of which, including Health Department filing fees and the Company's attorneys' fees shall be paid by the applicant Member.
 - d. All new Constituent Members shall certify to the Company that (i) they have never been excluded, suspended or debarred from the Medicare or Medicaid programs and (ii) under applicable law, such Constituent Member's ownership in the Member would not disqualify the Company or the Center from engaging in operations as a Medicare certified ambulatory surgery center.
 - e. Each Member agrees to indemnify and hold the Company and the other Member harmless

from and against any and all claims, liabilities, costs and expenses including, without limitation, reasonable attorneys' fees, suffered as a result of such Member's breach of this Section.

9. DISSOLUTION AND TERMINATION

- 9.1. Dissolution of the Company. The Company may be dissolved by the unanimous vote of the Members.
- 9.2. Procedure on Liquidation. Upon the dissolution of the Company, the Managers shall liquidate the assets of the Company and apply the proceeds of liquidation in the order of priority provided in Section 9.3 below. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of its liabilities to minimize losses that might otherwise occur in connection with the liquidation. Upon completion of the liquidation of the Company and distribution of the proceeds, Articles of Dissolution shall be filed with the Secretary of State.
- 9.3. Liquidation Proceeds. The proceeds from the liquidation of the assets of the Company shall be distributed in the following order of priority:
 - a. First, to creditors including Members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves, other than liabilities for distributions to Member under Section 507 or 509 of the Act;
 - b. Second, to Members and former Members in satisfaction of liabilities for distributions under Section 507 or 509 of the Act;
 - c. Third, to Members in accordance with their positive Capital Account balances.

10. INDEMNIFICATION

- 10.1. Right to Indemnification. Each person (including the heirs, executors, administrators, and estate of each person) (an "Indemnitee") (a) who is or was a Manager or (b) who is or was serving at the request of the Company in the position of a manager, director, officer, trustee, member, agent or employee of another limited liability company, corporation, membership, joint venture, trust or other enterprise and as to whom the Company has agreed to grant an indemnity hereunder, shall be indemnified by the Company as of right to fullest extent permitted or authorized by the Act or future legislation or by current or future judicial or administrative decision (but, in the case of future legislation or decision, only to the extent that it permits the Company to provide broader indemnification rights than permitted prior to the legislation or decision), against all fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or incurred by him in his capacity as a Members, director, officer, trustee, member, agent or employee, or arising out of his status as a Member, director, officer, trustee, member, agent or employee. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Company shall maintain insurance, at its expense, to protect itself and the indemnified persons against all fines, liabilities, costs and expenses, including attorneys' fees,

whether or not the Company would have the legal power to indemnify him directly against such liability. Notwithstanding the foregoing, an Indemnitee shall not be entitled to indemnification hereunder for conduct which (i) was a breach of the Indemnitee's duty of loyalty to the Company or the Members; (ii) involved acts or omissions not in good faith or that involve gross negligence, intentional misconduct, active and deliberate dishonesty or a knowing violation of law; or (iii) involved a transaction from which the Indemnitee personally gained in fact a financial profit or other advantage to which the Member was not legally entitled.

10.2. Advances. Costs, charges and expenses (including attorneys' fees) incurred by an Indemnitee in defending a civil or criminal suit, action or proceeding shall be paid by the Company in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Company as authorized by Section 10.1.

11. DISPUTE RESOLUTION

11.1. Mediation. All claims or disputes arising among the parties bound by this Agreement which relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

12. OPERATIONAL MATTERS

12.1. Transactions with Interested Parties. The Company may enter into contracts or transactions with its Managers, Members or their Affiliates (an "Interested Party") under the following conditions:

- a. The Company shall pay fair market value for items provided or services rendered by an Interested Party.
- b. Any such agreements, contracts or arrangements shall be fully and promptly disclosed to all Managers prior to execution with an opportunity to be heard on the agreement, contract or arrangement.
- c. Any such agreement, contract or arrangement shall be approved by a Super-Majority Vote, which shall include at least two Managers appointed by the Member that is not the Interested Party.

12.2. Medical Staff Membership Limitation. No physician who practices on a substantially full-time basis in Associated Medical Professionals of NY, PLLC's Auburn or Oswego offices, who is on the active medical staff of Auburn Community Hospital or Oswego Hospital and who has historically performed and currently performs a majority of his or her inpatient and outpatient procedures at such hospitals shall have full medical staff privileges at the Center permitting such physician to perform the same procedures at the Center. Notwithstanding the foregoing, such physician may have limited medical staff privileges and be permitted to perform procedures that he or she has historically performed in an office setting or procedures that he or she did not historically perform at such hospitals.

13. DISPUTE RESOLUTION

13.1. Mediation. All claims or disputes arising among the parties bound by this Agreement that relate to this Agreement or the breach thereof shall be handled in accordance with the following procedure: The parties shall first attempt to resolve the dispute through negotiation. If the parties are unable to resolve the dispute through negotiation within 30 calendar days after the complaining party first gave the other party written notice of the dispute, the parties shall attempt in good faith to resolve the dispute by non-binding mediation. Each party shall bear its own costs, but costs of the mediator(s) shall be borne equally by the parties. In the event the dispute cannot be resolved through non-binding mediation, the parties may pursue any other remedy available at law.

14. GENERAL PROVISIONS

14.1. Covenant Not to Dissolve. Except as otherwise permitted by this Agreement, each Member hereby covenants and agrees not to exercise any power under the Act to dissolve the Company.

14.2. Notices. All notices or other communications hereunder by any party to any other party shall be in writing and shall be delivered by first class certified mail, postage prepaid, return receipt requested or by nationally recognized commercial overnight courier. Such notices or communications shall be deemed to be received by the addressee on the third business day following the day such notice is deposited with the United States postal service first class certified mail, postage prepaid, return receipt requested, or on the first business day after deposit with such overnight courier. Unless otherwise specified by written notice (a) the Company's address shall be the address of the Center and (b) each Member's address as set forth on Exhibit A attached hereto or to which the Company and other Members have been given notice of pursuant to this Section.

14.3. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

14.4. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the parties with respect to formation and operation of the Company and supersedes any and all prior negotiations, understandings or agreements in regard thereto.

14.5. Nature of Interest of Member. The interest of a Member in the Company is personal property.

14.6. Counterparts. This Agreement may be executed in counterparts or with detachable signature

pages and shall constitute one agreement, binding upon all parties hereto as if all parties signed the same document.

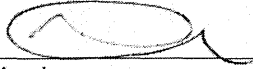
- 14.7. Governing Law. This Agreement shall be governed by and construed in accordance, with the laws of the State of New York.
- 14.8. Severability. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable by any court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby, and the provision found invalid or unenforceable shall be revised or interpreted to the extent permitted by law so as to uphold the validity and enforceability of this Agreement and the intent of the parties as expressed herein.
- 14.9. Waiver of Action for Partition. In addition to being subject to Section 607 of the Act, each Member further irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.
- 14.10. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or be enforceable by any creditors of the Company.
- 14.11. Contract Modifications for Prospective Legal Events. In the event any state or Federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the Members shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements among the Members.
- 14.12. Book Entry. Membership Interests or Units will not be represented by a certificate or other instrument, but will be registered upon books maintained for that purpose by the Company.
- 14.13. Classification as a Partnership. The Company intends to be classified as a partnership for Federal income tax purposes only. The Members shall take such actions, make such elections and, if required, amend this Operating Agreement to assure that such classification is maintained.
- 14.14. Confidential Information. Each Member acknowledges that the Confidential Information is valuable property of the Company and undertakes that for so long as it is a Member, and thereafter until such information otherwise becomes publicly available other than through breach of this Section, shall:
- a. Treat the Confidential Information as secret and confidential;
 - b. Not disclose (directly or indirectly, in whole or in part) the Confidential Information to any third party except with the prior written consent of Company;
 - c. Not use (or in any way appropriate) the Confidential Information for any purpose other than the performance of the business of the Company and otherwise in accordance with the provisions of this Agreement;

- d. Recognize and acknowledge that the Company's trade secrets and other confidential or proprietary information, as they may exist from time to time, are valuable, special and unique assets of the Company's business. Accordingly, during the term of the Company, each Member shall hold in strict confidence and shall not, directly or indirectly, disclose or reveal to any person, or use for his or her own personal benefit or for the benefit of anyone else, any trade secrets, confidential dealings or other confidential or proprietary information of any kind, nature or description (whether or not acquired, learned, obtained or developed by a Member alone or in conjunction with others) belonging to or concerning the Company, or any of its customers or clients or others with whom they now or hereafter have a business relationship, except: (i) with the prior written consent of all the other Members; (ii) in the course of the proper performance of the Member's duties hereunder; or (iii) as required by applicable law or legal process. Each Member confirms that all such information constitutes the exclusive property of the Company.
- e. Given the secretive and competitive environment in which the Company does business and the fiduciary relationship that the Members have with the Company, each Member agrees to promptly deliver to the Company, at any time when the Company so requests, all memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) in any way relating to the business or affairs of the Company or any of its customers and clients, whether made or compiled by such Member or furnished to it by the Company or any of its employees, customers, clients, consultants or agents, which such Member may then possess or have under his or her control. Each Member confirms that all such memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) constitute the exclusive property of the Company. Notwithstanding the foregoing paragraph or any other provision of this Agreement, each Member shall be entitled to retain any written materials received by such Member in his or her capacity as a Member; and
- f. Limit the dissemination of and access to the Confidential Information to such of the Company's and the Member's officers, directors, managers, employees, agents, attorneys, consultants, professional advisors or representatives as may reasonably require such information for the performance of Company business and ensure that any and all such persons observe all the obligations of confidentiality contained in this Section.

"Confidential Information" means any and all policies, procedures, quality assurance techniques, plans, projections, pro formas, financial, statistical and other information of the Company, including (but not limited to) information embodied on magnetic tape, computer software or any other medium for the storage of information, together with all notes, analyses, compilations, studies or other documents prepared by the Company or others on behalf of the Company containing or reflecting such information. Confidential Information does not include information which: (i) was lawfully made available to or known by third person on a non-confidential basis prior to disclosure by a Member; (ii) is or becomes publicly known through no wrongful act of a Member.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

AMP ASC HOLDINGS, LLC

By: 
Member

CRA ASC HOLDINGS, LLC

By: _____
Member

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

AMP ASC HOLDINGS, LLC

By: _____
Member

CRA ASC HOLDINGS, LLC

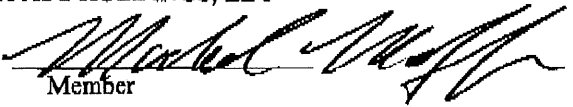
By:  _____
Member

EXHIBIT A

<u>Member/Addresses</u>	<u>Units of Membership Interest</u>	<u>Sharing Ratio</u>
AMP ASC HOLDINGS, LLC 1226 East Water Street Syracuse, New York 13210	72	72%
CRA ASC HOLDINGS, LLC 5100 W Taft Rd # 4A Liverpool, New York 13088	<u>28</u> 100	<u>28%</u> 100%

EXHIBIT B

Initial Board of Managers

AMP ASC Holdings, LLC Appointees:

Benjamin McHone, M.D.

Christopher Pieczonka, M.D.

Brent Carlyle, M.D.

CRA ASC Holdings, LLC Appointees:

Michael Moffa, M.D.

David Nesbitt, M.D.

EXHIBIT C

Maximum Initial Capital Contributions

<u>Member</u>	Maximum Initial Capital Contribution ¹
AMP ASC Holdings, LLC	\$1,209,600
CRA ASC Holdings, LLC	<u>\$ 470,000</u>
	\$1,680,000

¹ Represents approximately 120% of estimated Department of Health equity requirements.

EXHIBIT "C"
GOOD STANDING CERTIFICATE

STATE OF NEW YORK

DEPARTMENT OF STATE

Certificate of Status

I, ROSSANA ROSADO, Secretary of State of the State of New York and custodian of the records required by law to be filed in my office, do hereby certify that upon a diligent examination of the records of the Department of State, as of the date and time of this certificate, the following entity information is reflected:

Entity Name: INTREPID LANE ASC, LLC
DOS ID Number: 5772421
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY
Entity Status: EXISTING
Date of Initial Filing with DOS: 06/23/2020
Statement Status: CURRENT
Statement Due Date: 06/30/2022

I certify that the following is a list of documents on file in the Department of State for said entity:

Document Type: ARTICLES OF ORGANIZATION
Date of Filing: 06/23/2020
Entity Name: INTREPID LANE ASC, LLC

Document Type: RESTATED CERTIFICATE
Date of Filing: 09/24/2021

Above space is left blank intentionally.

No information is available from this office regarding the financial condition, business activity or practices of this entity.

WITNESS my hand and official seal of the Department
of State, at the City of Albany, on October 06, 2021 at
11:40 A.M.



ROSSANA ROSADO, Secretary of State

A handwritten signature in black ink that reads "Brendan C. Hughes".

By Brendan C. Hughes
Executive Deputy Secretary of State

Authentication Number: 100000456361 To Verify the authenticity of this document you may access the
Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

EXHIBIT "D"
GROUND LEASE

LEASE

THIS LEASE is made as of the 15th day of August, 2020, by and between SOS REAL ESTATE HOLDING COMPANY, LLC, a New York limited liability company, with a mailing address at 5824 Widewaters Parkway, East Syracuse, New York 13057 ("Landlord") and INTREPID LANE ASC, LLC, a New York limited liability company, with an office at 100 Metropolitan Park Drive, Liverpool, New York 13088 ("Tenant").

RECITALS:

A. Tenant proposes to enter into a lease with Landlord under which the Tenant will occupy and lease the Premises as hereinafter defined.

B. Landlord is the owner of the Premises.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, Landlord and Tenant agree as follows:

1. Premises. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the premises located at 190 Intrepid Lane, Syracuse New York (the "Premises") containing an approximately 15,597 square foot building (the "Building") and surrounding land (the "Land") being tax map parcel # 062,-02-18.0.

2. Representations by Landlord. Neither Landlord nor any agent or employee of Landlord has made any representations or promises with respect to the Premises except as expressly set forth in this Lease, and no rights, privileges, easements or licenses shall be acquired by Tenant except as expressly set forth in this Lease. Tenant has inspected the Premises and accepts the same "AS IS" and "WHERE IS." Landlord represents and warrants that there are no existing violations of applicable codes, laws, rules or regulations with respect to the Premises, the Building or the Land.

3. Term. The term of this Lease shall commence on the Term Commencement Date, as hereinafter defined, and shall continue for a period of fifteen (15) years following the Rent Commencement Date. The Term Commencement Date shall be the date Landlord delivers possession of the Premises to Tenant following final Public Health and Health Planning Council approval of Tenant's Certificate of Need application for the establishment and construction of a multi-specialty ambulatory surgery center at the Premises ("CON Approval"). In the event Tenant does not receive its CON Approval by September 1, 2021, either Landlord or Tenant shall have the right to terminate this Lease. The Rent Commencement Date shall be the earlier of (a) the date on which Tenant receives an operating certificate from the New York State Department of Health to operate the Surgery Center, as hereinafter defined, as an Article 28 licensed freestanding ambulatory surgery center at the Premises or (b) twelve (12) months following the Term Commencement Date. Promptly following the Rent Commencement Date, Landlord and Tenant shall execute a stipulation as to the Term Commencement Date and Rent Commencement Date. Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease at any time during the Pre-Approval Period (as defined herein) by providing written notice to Landlord (the

"Termination Notice"). For purposes hereof, the "Pre-Approval Period" shall mean the period commencing on the date hereof and ending on the date that is thirty (30) days after the receipt by Tenant of the initial Public Health and Health Planning Council approval of Tenant's Certificate of Need application for the establishment and construction of a multi-specialty ambulatory surgery center at the Premises ("Initial CON Approval"). Upon delivery of the Termination Notice during the Pre-Approval Period, this Lease shall be terminated and neither party shall have any further liability hereunder.

4. Renewal Term. Provided Tenant is not in default under this Lease beyond any applicable period of notice and grace at the time of exercise and at the commencement of the applicable Renewal Term (as hereinafter defined), Tenant may, at its option, renew the term of this Lease for two (2) terms of five (5) years (each a "Renewal Term", or collectively, the "Renewal Terms") at a Fixed Rent equal to the Fixed Rent determined in accordance with this section, and otherwise upon the same terms and conditions of this Lease, by giving notice to Landlord of its intention to renew at least six (6) months prior to the expiration of the initial Term (or first Renewal Term, as the case may be), and thereupon the Term of this Lease shall be extended without any further action by either party.

5. Use. Tenant shall use the Premises only for the operation of a multi-specialty ambulatory surgery center, related administrative uses and for no other purpose.

6. Rent. Commencing on the Rent Commencement Date, Tenant shall pay to Landlord without prior demand, setoff or counterclaim monthly rent in the amount of \$26,008.00 ("Fixed Rent") in advance, on the first day of each calendar month during the term of this Lease.

7. Option to Purchase. Provided Tenant is not in default hereunder at the time of the exercise of the option, Tenant shall have the option to purchase the Premises, during the first seven (7) years of the term of this Lease, at a purchase price equal to the outstanding principal balance calculated under Section 6 - Rent above and as set forth on Schedule A attached hereto. If Tenant desires to exercise said option, Tenant shall give written notice thereof to Landlord during the option period. Tenant shall pay to Landlord the purchase price by certified or cashiers' check and Landlord shall deliver to Tenant a bargain and sale deed conveying the Premises to Tenant free of all monetary liens and subject to all easements, restrictions and covenants of record (provided the current Building and use of the Premises do not violate any such easements, restrictions or covenants); and any state of facts an updated survey would show. The closing of the purchase of the Premises shall be within ninety (90) days of the exercise of the option. Tenant shall have the right to assign its rights under this Section 7 to any entity owned in whole or in part by one or more of the owners of Tenant.

8. Late Payments. If any installment of Fixed Rent or additional rent is not paid within ten (10) days of its due date, Tenant shall pay to Landlord a late charge of five percent (5%) of the unpaid installment.

9. Additional Rent. All amounts whatsoever which Tenant shall be obligated to pay pursuant to this Lease shall be deemed additional rent, and in the event of the non-payment by Tenant of any sum of money which Tenant from time to time shall be obligated to pay under any

provisions of this Lease, Landlord shall have the same rights and remedies by reason of such non-payment as if Tenant had failed to pay any installment of Fixed Rent.

10. Real Estate Taxes. Commencing on the Term Commencement Date, Tenant covenants and agrees to pay to Landlord as additional rent, within twenty (20) days after receipt of a copy of a tax bill from Landlord, all real estate taxes, assessments, and other government levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind, which are assessed or imposed upon the tax parcel of which the Premises are a part (Tax Map No. 062-02-18.0) ("Real Estate Taxes"). Within thirty (30) days of the Term Commencement Date, Tenant shall reimburse Landlord for the Real Estate Taxes for the tax fiscal year prepaid by Landlord during the first year of the lease term.

11. Utilities. Commencing on the Term Commencement Date, Tenant shall pay for all utility services rendered or furnished to the Premises, including gas, water, electricity, and the like, as metered or submetered to the Premises.

12. Tenant to Construct Surgery Center. Tenant shall, at its sole cost and expense, construct all tenant improvements within the Premises constituting a multi-specialty ambulatory surgery center (the "Surgery Center") designed and constructed in compliance with 10 NYCRR Parts 711 and 715 and pursuant to plans and specifications provided by Tenant and approved by Landlord. All construction shall be performed in a first class and workmanlike manner in compliance with all applicable Federal, state and local laws, rules, regulations, orders and codes. Landlord shall engage a contractor reasonably acceptable to Tenant for to replace the roof in connection with the construction of the Surgery Center (at Landlord's sole cost and expense). Landlord shall coordinate the timing of the roof replacement with the Tenant's improvements and provide a full and final lien waiver from each contractor or material supplier used in connection with the roof replacement. Landlord shall assign all warranties associated with the roof to Tenant.

13. Repairs. Landlord shall have no responsibility for any repairs or replacements to the Premises. All repairs and replacements to the Premises shall be made by Tenant. Tenant shall maintain the Premises in good order and condition including, without limitation, all snow plowing, mowing, landscaping and maintenance of the parking areas.

14. Compliance with Orders of Public Authorities. Tenant shall comply with all laws, ordinances, rules, regulations or requirements of all federal, state or municipal governments, and every department or bureau thereof applicable to the Premises, and shall not do or permit to be done any act upon the Premises whereby the hazard of fire or the rate of fire insurance upon the Premises or the Building may be increased or which shall be in violation of the rules of the Board of Fire Underwriters or the provisions of the New York State standard form of fire insurance policies.

15. Alterations. Tenant shall not make or permit to be made any alterations, additions or improvements, structural or otherwise, in or to the Premises, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall not make or permit any defacement, injury or waste in, to or about the Premises. Tenant agrees that any alterations, additions or improvements made by Tenant shall, upon being made, become part of

the Premises and remain in the Premises at the expiration of the Lease or, at the option of Landlord, Tenant at the expiration of the Lease, may be required to restore the Premises to their original condition and remove the alterations, additions or improvements, which option Landlord shall exercise at the time it consents to such alterations, additions or improvements. Tenant shall have the right to remove, and shall remove, its trade fixtures at the expiration, or earlier termination, of the Lease and repair any damage caused thereby.

16. Signs. Tenant shall not erect, place or display any sign, advertisement or notice on any part of the Premises, except in accordance with the written consent of Landlord, which consent shall not be unreasonably withheld, and subject to compliance with local ordinances. Notwithstanding the foregoing, Tenant shall be permitted to replace the existing signage with its own signage of similar size.

17. Mechanics' Liens. If any mechanics' or other liens, or orders for payment of money shall be filed against the Premises by reason of or arising out of any labor or materials furnished or alleged to have been furnished, or to be furnished, to or for Tenant at the Premises, Tenant shall within thirty (30) days after notice of filing thereof cause the same to be canceled and discharged of record, by bond or otherwise at Tenant's expense.

18. Assignment and Subletting. Tenant shall not assign this Lease, or sublet the Premises, by operation of law or otherwise, in whole or in part, and shall not allow the Premises to be occupied by any person or entity other than Tenant, without the written consent of Landlord, such consent not to be unreasonably withheld. An assignment made by Tenant with the written consent of Landlord shall not release, discharge or otherwise effect the liability of Tenant under this Lease, nor shall any such assignment relieve Tenant from the requirement of obtaining the prior written consent of Landlord to any further assignment. If an event of default occurs, Tenant hereby assigns to Landlord the rent due from any assignee or subtenant of Tenant and hereby authorizes each assignee or subtenant to pay such rent directly to Landlord.

The transfer of all or a majority of its voting stock, if Tenant is a corporation, or a majority-in-interest of the membership interests in a in the partnership or limited liability company, if Tenant is a partnership or limited liability company, resulting in a change in the present effective voting control of Tenant by the person or persons owning a majority of said voting stock or a majority interest in the partnership or limited liability company, as the case may be, on the date of this Lease, shall constitute an assignment for the purposes of this Lease.

19. Subordination. This Lease shall be subject to and subordinate to any mortgage or mortgages now in force or which shall at any time affect the Premises or any part thereof and to all renewals, modifications, consolidations, replacements and extensions thereof, and advances thereunder, provided such mortgagee enters into a subordination, non-disturbance and attornments agreement with Tenant. Tenant agrees that it will, upon demand, execute and deliver such instruments as necessary to effect more fully such subordination of this Lease to the lien of any such mortgage or mortgages as shall be desired by any mortgagee or proposed mortgagee.

20. Estoppel Certificates. Tenant agrees, at any time and from time to time, upon not less than twenty (20) days prior notice by Landlord to execute, acknowledge and deliver to

Landlord or Landlord's mortgagee or proposed mortgagee an estoppel certificate in such form as may from time to time be provided. In the event of the failure of Tenant to execute and deliver such instrument to Landlord or Landlord's designee within such ten day period, Tenant hereby nominates and appoints Landlord attorney-in-fact for the purpose of executing any such estoppel certificate.

21. Notice to Mortgagees. If any mortgagee shall notify Tenant that it is the holder of a mortgage affecting the Premises, no notice, request or demand thereafter sent by Tenant to Landlord shall be effective unless and until a copy of the same shall also be sent to such mortgagee in the manner prescribed herein and to such address as such mortgagee shall designate.

22. Performance of Landlord's Obligations by Mortgagee. Tenant shall accept performance of any of Landlord's obligations hereunder by any mortgagee, provided such mortgagee elects to assume Landlord's obligations hereunder. This Section shall not be construed to mean that mortgagee is required to assume Landlord's obligations.

23. Attornment. If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, and if so requested or required by such successor in interest, Tenant shall attorn to such successor in interest and shall execute such agreement in confirmation of such attornment as such successor in interest shall reasonably request.

24. Damages. Tenant, in case of fire or other casualty, shall promptly give notice thereof to Landlord who shall thereupon cause the damages to the Premises to be repaired, but if the Premises are so damaged that Landlord decides not to rebuild, the term shall cease and the accrued rent shall be paid up to the time of the fire or other casualty. In case, however, the destruction of the Premises by fire or other casualty shall be only partial and a portion thereof shall during the period of repairs be fit for occupancy by Tenant, then the rent shall be equitably apportioned and paid for the part so fit for occupancy.

25. Liability Insurance. Tenant shall, during the entire term of this Lease and any renewal thereof, keep in full force and effect workers compensation insurance and public liability insurance, from an insurance company qualified to do business in New York State in amounts not less than \$1,000,000 in case of bodily injury or death and \$500,000 in case of property damage, naming Landlord as an additional insured and containing an endorsement that the policy will not be canceled or reduced in scope of coverage or amount of coverage until thirty days after written notice to Landlord. Tenant shall provide Landlord with a certificate of such insurance upon the execution of this Lease and upon each renewal of such insurance policy.

26. Landlord's Insurance. Landlord shall maintain property insurance on the Premises in an amount not less than the full replacement value of the Premises and as otherwise may be required by any mortgagee of the Premises. Tenant shall pay as Additional Rent Landlord's insurance premiums hereunder within fifteen (15) days after receipt of a bill in reasonable detail for same by Tenant.

27. Waiver of Subrogation. Landlord and Tenant hereby waive all rights of subrogation against each other with respect to loss by fire or other casualty, and any insurance policies kept and maintained by the parties, shall be so written as to recognize such waiver.

28. Limitation of Landlord's Liability. Landlord shall not be liable to Tenant for any loss, damage or expense of any kind resulting from, and no claim shall be made against Landlord by Tenant for (a) any injury or damage to personal property occurring in, on or about the Premises unless due to Landlord's negligence or misconduct; (b) theft, loss or destruction of any personal property contained in or on the Premises unless due to Landlord's negligence or misconduct; (c) necessity of repairing the Premises or any part thereof unless required to be made by Landlord hereunder; (d) fire or other casualty, however caused; (e) any overflow or leakage upon or into the Premises of water, rain, snow, steam, gas, electricity or any breakage or bursting of pipes, conduits or other plumbing fixtures or appliances unless due to Landlord's negligence or misconduct; or (f) any loss or damage to property of Tenant entrusted with Landlord or Landlord's employees. All references to Tenant in the preceding sentence shall be deemed to include Tenant's employees, agents and other persons claiming the right to be in the Premises or the Building under or through Tenant. All references to Landlord shall be deemed to include Landlord's employees, agents or invitees.

29. Indemnification. Tenant shall indemnify and save harmless Landlord from and against any and all liability, damages, expenses, fees, penalties, actions, causes of action, suits, costs, claims or judgments in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon or at the Premises, from or out of the occupancy or use by Tenant of the Premises or any part thereof, occasioned wholly or in part by any act or omission of Tenant, its agents, employees, customers and invitees or resulting from any breach of this Lease by Tenant. Tenant shall and will, at its own cost and expense, defend any and all suits, actions or proceedings that may be brought against Landlord or in which Landlord may be implicated with others upon any such above-mentioned claim or claims. In the event of the failure of Tenant to do so, Landlord may, at the cost and expense of Tenant and upon prior written notice to Tenant, defend any and all such suits, actions or proceedings.

Tenant shall and will satisfy, pay and discharge any and all judgments that may be recovered against Landlord in any such suit, action or proceeding in which Landlord may be a party or in which Landlord shall become liable as aforesaid, or in which Landlord may pay the same with any interests, costs or other charges which may have accrued thereon. The amount so paid by Landlord, with interest thereon at the rate of ten percent (10%) per annum from the date of payment shall become and be due and payable by Tenant as additional rent with the next installment of rent which shall become due after such payment by Landlord.

30. Condemnation. If any part of the Premises shall be taken, appropriated or condemned for any public purpose, at the option of Landlord or automatically if the whole of the Premises is so taken, the term of this Lease shall cease and terminate as of the date when possession of the property so taken shall be required to be delivered or when title shall vest in the taking authority, whichever first occurs and Tenant shall remain liable for rent up to such time. Tenant shall have no claim or interest in or to any award or recovery as damages or otherwise for such

taking and the Tenant hereby expressly assigns any such claim to Landlord. Tenant may make a separate claim to the condemning authority for its trade fixtures and moving expenses.

31. Default and Landlord's Rights. In the event of any default in the payment of rent ten (10) days after written notice of default, or in the event of any default in the observance or performance by Tenant of any other term, covenant or condition of this Lease or any rules or regulations governing the Premises for thirty (30) days after written notice, or if the Premises are abandoned or vacated, or if the Tenant shall make a general assignment for the benefit of creditors, or if a trustee or receiver of any of Tenant's property be appointed, or if Tenant shall file a voluntary petition for bankruptcy or arrangement or reorganization, or if an involuntary petition be filed against Tenant, Landlord may terminate this Lease at its option, by giving written notice thereof to Tenant and Tenant will then quit and surrender the Premises to Landlord, but Tenant shall remain liable as hereinafter provided. Notwithstanding anything contained herein to the contrary, Tenant shall not be in default hereunder in the event that a default, other than the payment of money, is capable of being cured but not within thirty (30) days and Tenant promptly commences to cure said default and diligently prosecutes same to completion.

Upon the termination of this Lease pursuant to the provisions of this section or otherwise as a result of Tenant's breach of this Lease, Landlord may reenter and repossess the Premises by summary proceeding or otherwise, to dispossess and remove therefrom any and all occupants and their effects without being liable to prosecution or damages therefor, to hold the Premises as if this Lease had ceased by expiration through maturity of the term above specified, and to relet the same, should the Landlord so elect, for the Tenant's account or otherwise, for such rent and upon such terms as shall be satisfactory to Landlord and whether or not the Premises are relet, Tenant shall remain liable for the equivalent of all rent and other charges provided for in this Lease to be paid by Tenant had this Lease not been terminated prior to the expiration of its term, which said amount shall be due and payable to Landlord as damages or rent, as the case may be, on the monthly rent days herein provided, plus any unamortized brokerage fees amortized over the term of this Lease, the reasonable cost of any reletting including, without limitation, the cost and expenses of any repairs, the cost and expense incurred in recovering possession of the Premises, including reasonable attorneys' fees, and the expenses of reletting including reasonable brokerage fees and attorneys' fees, if any, which said amount shall be due and payable to Landlord as damages upon demand. At the election of Landlord, Tenant shall pay to Landlord, such sum as at the time of such election represents the amount of the excess, if any, of the then present value of the total Fixed Rent and additional rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the term if the Lease had been fully complied with by Tenant over and above the then present rental value of the Leased Premises for the balance of said term. Landlord shall use commercially reasonable efforts to mitigate its damages hereunder.

If Landlord incurs any expense including reasonable attorneys' fees in any action or proceeding instituted by reason of any default of Tenant hereunder, such expense shall be due from Tenant to Landlord on the first date of the month following the incurring of such respective expenses.

32. Right of Landlord to Cure Tenant's Default. If Tenant defaults in the making of any payment or in doing any act required under this Lease, Landlord may make such payment or do

such act, any expense thereof shall be paid by Tenant with interest at the rate of ten percent (10%) per annum from the date paid and shall constitute additional rent and be payable with the next monthly installment of rent. Landlord shall not be estopped from the pursuit of any remedy to which it would otherwise be entitled.

33. Compliance with Environmental Laws. Tenant, its contractors, and invitees shall not store, spill, dump or maintain in, on or under the Premises any hazardous substances, wastes or materials; toxic substances, chemicals, mixtures or materials; or other regulated substances, chemicals or materials as defined in or pursuant to the New York Environmental Conservation Law, as amended, the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et. seq.), as amended ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et. seq.), as amended ("CERCLA"), the Toxic Substances Control Act (15 U.S.C. § 2601 et. seq.), as amended ("TSCA"), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et. seq.), as amended ("FIRFA") and other federal, state, and local laws, ordinances, rules or regulations, other than substances, chemicals, mixtures, wastes or materials transported, handled, stored or used in accordance with applicable law. Tenant shall indemnify and defend Landlord its agents, employees, officers and directors from and against any and all liabilities, obligations, losses and expenses (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach of this section. In case of violation of this paragraph and upon failure to discontinue and/or remedy such violation within ten days after notice to Tenant, it shall be a default hereunder and Landlord shall be entitled to any and all remedies available to Landlord for Tenant's violation of any covenant, agreement or condition of this Lease. The provisions of this paragraph shall survive the termination or expiration of this Lease. Landlord represents that it has no knowledge of any existing or prior violation at the Premises of the New York Environmental Conservation Law, as amended, the RCRA, CERCLA, TSCA, FIRFA and any other federal, state, and local laws, ordinances, rules or regulations.

34. Quiet Enjoyment. Tenant, upon paying the rent and additional rent and observing and performing all the terms, covenants and conditions contained in this Lease on Tenant's part to be observed and performed, shall peaceably and quietly enjoy the Premises without hindrance or molestation by Landlord or any party claiming through Landlord.

35. Notices. All notices required or permitted to be given under this Lease shall be in writing and sent by certified or registered mail, personal delivery or overnight delivery addressed to the party intended to be notified at the addresses set forth in the preamble to this Lease or at such other address as the parties may specify in written notice to the other. Notices shall be deemed given when delivery is received or refused.

36. Access to Premises. Landlord and its representatives shall, at all reasonable times and upon reasonable prior notice, have access to the Premises for the purposes of performing Landlord's obligations hereunder, inspection or curing Tenant's default, or for the purpose of showing the Premises to prospective purchasers; and for a period of at least six months prior to the expiration of this Lease, shall have the right to post notices on said Premises offering the same "To Let" or "For Sale" which said notices Tenant shall permit to remain without molestation.

37. Surrender of Premises. Tenant covenants, at the expiration or other termination of this Lease, to remove its trade fixtures, furnishings, equipment and other personal property from the Premises and return the Premises and all keys thereto to Landlord, in good repair, order and condition, ordinary wear and tear and damage by fire or other casualty excepted. Any trade fixtures, furnishings, equipment or other personal property remaining in the Premises after the expiration or earlier termination of this Lease shall be deemed abandoned and Landlord may dispose of same or remove and store such property for the benefit of Tenant. Tenant shall pay to Landlord upon demand the cost of disposal and/or removal and storage of such property plus ten percent (10%) for administration.

38. Limitation on Personal Liability. Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to its interest in the Premises and any judgments rendered against Landlord shall be satisfied solely out of the proceeds of sale of its interest. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Premises and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's right to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law under this Lease.

39. When Lease Becomes Binding. The submission of this document for examination and negotiation does not constitute an offer to lease or an option to lease the Premises, and this document shall become effective and binding only upon the execution hereof by Landlord and Tenant.

40. No Waiver. No failure by Landlord to insist upon strict performance of any agreement, term, covenant, or condition hereof, or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or any continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. No waiver by Landlord of any breach by Tenant under this Lease shall constitute a waiver of any subsequent breach under this Lease.

41. Waiver of Right of Redemption. Tenant hereby expressly waives (to the extent legally permissible) for itself and all persons claiming by, through or under it, any right of redemption or for the restoration of the operation of this Lease under any present or future law in case Tenant shall be dispossessed by summary proceeding.

42. Holdover. Should Tenant continue to occupy the Premises after the expiration of the term or after a forfeiture has occurred, no holdover or other tenancy shall be created unless Landlord accepts rent from Tenant and in such case such tenancy shall be a month-to-month tenancy under all the terms, conditions and covenants of this Lease excluding any option to renew the Lease or purchase the Premises and at double the Fixed Rent reserved herein.

43. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of New York. If any provisions of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of this Lease shall not be effected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law.

44. Entire Agreement. This Lease contains the entire agreement of the parties with regard to the Premises. There are no oral agreements existing between them.

45. Waiver of Jury Trial. Landlord and Tenant covenant and agree that in any action, proceeding or counterclaim brought by either Landlord or Tenant against the other on any matter whatsoever arising out of, under or by virtue of the terms of this Lease or Tenant's occupancy, Landlord and Tenant shall and do hereby waive trial by jury.

46. No Oral Changes. This Lease may not be changed or terminated orally

47. Successors and Assigns. Except as otherwise provided, this Lease shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs and assigns.

48. Remedies Cumulative. No reference to any specific right or remedy shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.

49. Captions and Headings. The captions and headings are for the convenience of reference only and in no way shall be used to construe or modify the provisions set forth in this Lease.

50. Triple Net Lease. This Lease is a triple net lease and Landlord shall not be required to provide any services or do any act or thing with respect to the Premises, except as may be specifically provided herein, and the rent and other charges required to be paid hereunder shall be paid to Landlord without any claim on the part of Tenant for diminution, set off, or abatement.

51. Right of Reentry. Notwithstanding the provisions of Section 31 hereof [Default and Landlord's Rights Section], Landlord acknowledges that its rights of reentry into the Premises do not confer on it the authority to operate a hospital as defined in Article 28 of the Public Health Law on the Premises and agrees that it will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237 notification by certified mail of its intent to reenter the Premises or to initiate dispossession proceedings or that this Lease is due to expire, at least 30 days prior to the date on which Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of this Lease. Upon receipt of notice from Landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of this Lease, Tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, New York 12237, of the receipt of such notice or service of such process or that this Lease is about to expire.

52. Signatures. This Lease may be executed in counterparts, which collectively shall have the same legal effect as if all signatures had appeared on the same physical document. This Lease may be executed and exchanged by e-mail, facsimile or other electronic transmission, with the same legal effect as if the signatures were originals.

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

LANDLORD:

SOS REAL ESTATE HOLDING COMPANY,
LLC

By: 

Dr. Michael Fitzgerald
Member

TENANT:

INTREPID LANE ASC, LLC

By: 

Dr. Ben McKone
Member

Schedule A

See attached.

Compound Period: Monthly

Nominal Annual Rate: 4.500%

CASH FLOW DATA

Event	Amount	Number	Period
1 Loan	4,046,850.73	1	
2 Payment	26,008.00	234	Monthly

AMORTIZATION SCHEDULE - Normal Amortization

	Payment	Interest	Principal	Balance
Loan				4,046,850.73
9/1/2020	26,008.00	15,175.69	10,832.31	4,036,018.42
10/1/2020	26,008.00	15,135.07	10,872.93	4,025,145.49
11/1/2020	26,008.00	15,094.30	10,913.70	4,014,231.79
12/1/2020	26,008.00	15,053.37	10,954.63	4,003,277.16
1/1/2021	26,008.00	15,012.29	10,995.71	3,992,281.45
2/1/2021	26,008.00	14,971.06	11,036.94	3,981,244.51
3/1/2021	26,008.00	14,929.67	11,078.33	3,970,166.18
4/1/2021	26,008.00	14,888.12	11,119.88	3,959,046.30
5/1/2021	26,008.00	14,846.42	11,161.58	3,947,884.72
6/1/2021	26,008.00	14,804.57	11,203.43	3,936,681.29
7/1/2021	26,008.00	14,762.55	11,245.45	3,925,435.84
8/1/2021	26,008.00	14,720.38	11,287.62	3,914,148.22
9/1/2021	26,008.00	14,678.06	11,329.94	3,902,818.28
10/1/2021	26,008.00	14,635.57	11,372.43	3,891,445.85
11/1/2021	26,008.00	14,592.92	11,415.08	3,880,030.77
12/1/2021	26,008.00	14,550.12	11,457.88	3,868,572.89
1/1/2022	26,008.00	14,507.15	11,500.85	3,857,072.04
2/1/2022	26,008.00	14,464.02	11,543.98	3,845,528.06
3/1/2022	26,008.00	14,420.73	11,587.27	3,833,940.79
4/1/2022	26,008.00	14,377.28	11,630.72	3,822,310.07
5/1/2022	26,008.00	14,333.66	11,674.34	3,810,635.73
6/1/2022	26,008.00	14,289.88	11,718.12	3,798,917.61
7/1/2022	26,008.00	14,245.94	11,762.06	3,787,155.55
8/1/2022	26,008.00	14,201.83	11,806.17	3,775,349.38
9/1/2022	26,008.00	14,157.56	11,850.44	3,763,498.94
10/1/2022	26,008.00	14,113.12	11,894.88	3,751,604.06
11/1/2022	26,008.00	14,068.52	11,939.48	3,739,664.58
12/1/2022	26,008.00	14,023.74	11,984.26	3,727,680.32
1/1/2023	26,008.00	13,978.80	12,029.20	3,715,651.12
2/1/2023	26,008.00	13,933.69	12,074.31	3,703,576.81

3/1/2023	26,008.00	13,888.41	12,119.59	3,691,457.92
4/1/2023	26,008.00	13,842.96	12,165.04	3,679,292.18
5/1/2023	26,008.00	13,797.35	12,210.65	3,667,081.53
6/1/2023	26,008.00	13,751.56	12,256.44	3,654,825.09
7/1/2023	26,008.00	13,705.59	12,302.41	3,642,522.68
8/1/2023	26,008.00	13,659.46	12,348.54	3,630,174.14
9/1/2023	26,008.00	13,613.15	12,394.85	3,617,779.29
10/1/2023	26,008.00	13,566.67	12,441.33	3,605,337.96
11/1/2023	26,008.00	13,520.02	12,487.98	3,592,849.98
12/1/2023	26,008.00	13,473.19	12,534.81	3,580,315.17
1/1/2024	26,008.00	13,426.18	12,581.82	3,567,733.35
2/1/2024	26,008.00	13,379.00	12,629.00	3,555,104.35
3/1/2024	26,008.00	13,331.64	12,676.36	3,542,427.99
4/1/2024	26,008.00	13,284.10	12,723.90	3,529,704.09
5/1/2024	26,008.00	13,236.39	12,771.61	3,516,932.48
6/1/2024	26,008.00	13,188.50	12,819.50	3,504,112.98
7/1/2024	26,008.00	13,140.42	12,867.58	3,491,245.40
8/1/2024	26,008.00	13,092.17	12,915.83	3,478,329.57
9/1/2024	26,008.00	13,043.74	12,964.26	3,465,365.31
10/1/2024	26,008.00	12,995.12	13,012.88	3,452,352.43
11/1/2024	26,008.00	12,946.32	13,061.68	3,439,290.75
12/1/2024	26,008.00	12,897.34	13,110.66	3,426,180.09
1/1/2025	26,008.00	12,848.18	13,159.82	3,413,020.27
2/1/2025	26,008.00	12,798.83	13,209.17	3,399,811.10
3/1/2025	26,008.00	12,749.29	13,258.71	3,386,552.39
4/1/2025	26,008.00	12,699.57	13,308.43	3,373,243.96
5/1/2025	26,008.00	12,649.66	13,358.34	3,359,885.62
6/1/2025	26,008.00	12,599.57	13,408.43	3,346,477.19
7/1/2025	26,008.00	12,549.29	13,458.71	3,333,018.48
8/1/2025	26,008.00	12,498.82	13,509.18	3,319,509.30
9/1/2025	26,008.00	12,448.16	13,559.84	3,305,949.46
10/1/2025	26,008.00	12,397.31	13,610.69	3,292,338.77
11/1/2025	26,008.00	12,346.27	13,661.73	3,278,677.04
12/1/2025	26,008.00	12,295.04	13,712.96	3,264,964.08
1/1/2026	26,008.00	12,243.62	13,764.38	3,251,199.70
2/1/2026	26,008.00	12,192.00	13,816.00	3,237,383.70
3/1/2026	26,008.00	12,140.19	13,867.81	3,223,515.89
4/1/2026	26,008.00	12,088.18	13,919.82	3,209,596.07
5/1/2026	26,008.00	12,035.99	13,972.01	3,195,624.06
6/1/2026	26,008.00	11,983.59	14,024.41	3,181,599.65
7/1/2026	26,008.00	11,931.00	14,077.00	3,167,522.65
8/1/2026	26,008.00	11,878.21	14,129.79	3,153,392.86
9/1/2026	26,008.00	11,825.22	14,182.78	3,139,210.08
10/1/2026	26,008.00	11,772.04	14,235.96	3,124,974.12
11/1/2026	26,008.00	11,718.65	14,289.35	3,110,684.77
12/1/2026	26,008.00	11,665.07	14,342.93	3,096,341.84
1/1/2027	26,008.00	11,611.28	14,396.72	3,081,945.12
2/1/2027	26,008.00	11,557.29	14,450.71	3,067,494.41
3/1/2027	26,008.00	11,503.10	14,504.90	3,052,989.51

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4/1/2027	26,008.00	11,448.71	14,559.29	3,038,430.82
5/1/2027	26,008.00	11,394.11	14,613.89	3,023,816.33
6/1/2027	26,008.00	11,339.31	14,668.69	3,009,147.64
7/1/2027	26,008.00	11,284.30	14,723.70	2,994,423.94
8/1/2027	26,008.00	11,229.09	14,778.91	2,979,645.03
9/1/2027	26,008.00	11,173.67	14,834.33	2,964,810.70
10/1/2027	26,008.00	11,118.04	14,889.96	2,949,920.74
11/1/2027	26,008.00	11,062.20	14,945.80	2,934,974.94
12/1/2027	26,008.00	11,006.16	15,001.84	2,919,973.10
1/1/2028	26,008.00	10,949.90	15,058.10	2,904,915.00
2/1/2028	26,008.00	10,893.43	15,114.57	2,889,800.43
3/1/2028	26,008.00	10,836.75	15,171.25	2,874,629.18
4/1/2028	26,008.00	10,779.86	15,228.14	2,859,401.04
5/1/2028	26,008.00	10,722.75	15,285.25	2,844,115.79
6/1/2028	26,008.00	10,665.43	15,342.57	2,828,773.22
7/1/2028	26,008.00	10,607.90	15,400.10	2,813,373.12
8/1/2028	26,008.00	10,550.15	15,457.85	2,797,915.27
9/1/2028	26,008.00	10,492.18	15,515.82	2,782,399.45
10/1/2028	26,008.00	10,434.00	15,574.00	2,766,825.45
11/1/2028	26,008.00	10,375.60	15,632.40	2,751,193.05
12/1/2028	26,008.00	10,316.97	15,691.03	2,735,502.02
1/1/2029	26,008.00	10,258.13	15,749.87	2,719,752.15
2/1/2029	26,008.00	10,199.07	15,808.93	2,703,943.22
3/1/2029	26,008.00	10,139.79	15,868.21	2,688,075.01
4/1/2029	26,008.00	10,080.28	15,927.72	2,672,147.29
5/1/2029	26,008.00	10,020.55	15,987.45	2,656,159.84
6/1/2029	26,008.00	9,960.60	16,047.40	2,640,112.44
7/1/2029	26,008.00	9,900.42	16,107.58	2,624,004.86
8/1/2029	26,008.00	9,840.02	16,167.98	2,607,836.88
9/1/2029	26,008.00	9,779.39	16,228.61	2,591,608.27
10/1/2029	26,008.00	9,718.53	16,289.47	2,575,318.80
11/1/2029	26,008.00	9,657.45	16,350.55	2,558,968.25
12/1/2029	26,008.00	9,596.13	16,411.87	2,542,556.38
1/1/2030	26,008.00	9,534.59	16,473.41	2,526,082.97
2/1/2030	26,008.00	9,472.81	16,535.19	2,509,547.78
3/1/2030	26,008.00	9,410.80	16,597.20	2,492,950.58
4/1/2030	26,008.00	9,348.56	16,659.44	2,476,291.14
5/1/2030	26,008.00	9,286.09	16,721.91	2,459,569.23
6/1/2030	26,008.00	9,223.38	16,784.62	2,442,784.61
7/1/2030	26,008.00	9,160.44	16,847.56	2,425,937.05
8/1/2030	26,008.00	9,097.26	16,910.74	2,409,026.31
9/1/2030	26,008.00	9,033.85	16,974.15	2,392,052.16
10/1/2030	26,008.00	8,970.20	17,037.80	2,375,014.36
11/1/2030	26,008.00	8,906.30	17,101.70	2,357,912.66
12/1/2030	26,008.00	8,842.17	17,165.83	2,340,746.83
1/1/2031	26,008.00	8,777.80	17,230.20	2,323,516.63
2/1/2031	26,008.00	8,713.19	17,294.81	2,306,221.82
3/1/2031	26,008.00	8,648.33	17,359.67	2,288,862.15
4/1/2031	26,008.00	8,583.23	17,424.77	2,271,437.38

5/1/2031 26,008.00 8,517.89 17,490.11 2,253,947.875/2020 5:00 PM Page 4
6/1/2031 26,008.00 8,452.30 17,555.70 2,236,391.57
7/1/2031 26,008.00 8,386.47 17,621.53 2,218,770.04
8/1/2031 26,008.00 8,320.39 17,687.61 2,201,082.43
9/1/2031 26,008.00 8,254.06 17,753.94 2,183,328.49
10/1/2031 26,008.00 8,187.48 17,820.52 2,165,507.97
11/1/2031 26,008.00 8,120.65 17,887.35 2,147,620.62
12/1/2031 26,008.00 8,053.58 17,954.42 2,129,666.20
1/1/2032 26,008.00 7,986.25 18,021.75 2,111,644.45
2/1/2032 26,008.00 7,918.67 18,089.33 2,093,555.12
3/1/2032 26,008.00 7,850.83 18,157.17 2,075,397.95
4/1/2032 26,008.00 7,782.74 18,225.26 2,057,172.69
5/1/2032 26,008.00 7,714.40 18,293.60 2,038,879.09
6/1/2032 26,008.00 7,645.80 18,362.20 2,020,516.89
7/1/2032 26,008.00 7,576.94 18,431.06 2,002,085.83
8/1/2032 26,008.00 7,507.82 18,500.18 1,983,585.65
9/1/2032 26,008.00 7,438.45 18,569.55 1,965,016.10
10/1/2032 26,008.00 7,368.81 18,639.19 1,946,376.91
11/1/2032 26,008.00 7,298.91 18,709.09 1,927,667.82
12/1/2032 26,008.00 7,228.75 18,779.25 1,908,888.57
1/1/2033 26,008.00 7,158.33 18,849.67 1,890,038.90
2/1/2033 26,008.00 7,087.65 18,920.35 1,871,118.55
3/1/2033 26,008.00 7,016.69 18,991.31 1,852,127.24
4/1/2033 26,008.00 6,945.48 19,062.52 1,833,064.72
5/1/2033 26,008.00 6,873.99 19,134.01 1,813,930.71
6/1/2033 26,008.00 6,802.24 19,205.76 1,794,724.95
7/1/2033 26,008.00 6,730.22 19,277.78 1,775,447.17
8/1/2033 26,008.00 6,657.93 19,350.07 1,756,097.10
9/1/2033 26,008.00 6,585.36 19,422.64 1,736,674.46
10/1/2033 26,008.00 6,512.53 19,495.47 1,717,178.99
11/1/2033 26,008.00 6,439.42 19,568.58 1,697,610.41
12/1/2033 26,008.00 6,366.04 19,641.96 1,677,968.45
1/1/2034 26,008.00 6,292.38 19,715.62 1,658,252.83
2/1/2034 26,008.00 6,218.45 19,789.55 1,638,463.28
3/1/2034 26,008.00 6,144.24 19,863.76 1,618,599.52
4/1/2034 26,008.00 6,069.75 19,938.25 1,598,661.27
5/1/2034 26,008.00 5,994.98 20,013.02 1,578,648.25
6/1/2034 26,008.00 5,919.93 20,088.07 1,558,560.18
7/1/2034 26,008.00 5,844.60 20,163.40 1,538,396.78
8/1/2034 26,008.00 5,768.99 20,239.01 1,518,157.77
9/1/2034 26,008.00 5,693.09 20,314.91 1,497,842.86
10/1/2034 26,008.00 5,616.91 20,391.09 1,477,451.77
11/1/2034 26,008.00 5,540.44 20,467.56 1,456,984.21
12/1/2034 26,008.00 5,463.69 20,544.31 1,436,439.90
1/1/2035 26,008.00 5,386.65 20,621.35 1,415,818.55
2/1/2035 26,008.00 5,309.32 20,698.68 1,395,119.87
3/1/2035 26,008.00 5,231.70 20,776.30 1,374,343.57
4/1/2035 26,008.00 5,153.79 20,854.21 1,353,489.36
5/1/2035 26,008.00 5,075.59 20,932.41 1,332,556.95

6/1/2035	26,008.00	4,997.09	21,010.91	1,311,546.84	5/2020 5:00 PM Page 5
7/1/2035	26,008.00	4,918.30	21,089.70	1,290,456.34	
8/1/2035	26,008.00	4,839.21	21,168.79	1,269,287.55	
9/1/2035	26,008.00	4,759.83	21,248.17	1,248,039.38	
10/1/2035	26,008.00	4,680.15	21,327.85	1,226,711.53	
11/1/2035	26,008.00	4,600.17	21,407.83	1,205,303.70	
12/1/2035	26,008.00	4,519.89	21,488.11	1,183,815.59	
1/1/2036	26,008.00	4,439.31	21,568.69	1,162,246.90	
2/1/2036	26,008.00	4,358.43	21,649.57	1,140,597.33	
3/1/2036	26,008.00	4,277.24	21,730.76	1,118,866.57	
4/1/2036	26,008.00	4,195.75	21,812.25	1,097,054.32	
5/1/2036	26,008.00	4,113.95	21,894.05	1,075,160.27	
6/1/2036	26,008.00	4,031.85	21,976.15	1,053,184.12	
7/1/2036	26,008.00	3,949.44	22,058.56	1,031,125.56	
8/1/2036	26,008.00	3,866.72	22,141.28	1,008,984.28	
9/1/2036	26,008.00	3,783.69	22,224.31	986,759.97	
10/1/2036	26,008.00	3,700.35	22,307.65	964,452.32	
11/1/2036	26,008.00	3,616.70	22,391.30	942,061.02	
12/1/2036	26,008.00	3,532.73	22,475.27	919,585.75	
1/1/2037	26,008.00	3,448.45	22,559.55	897,026.20	
2/1/2037	26,008.00	3,363.85	22,644.15	874,382.05	
3/1/2037	26,008.00	3,278.93	22,729.07	851,652.98	
4/1/2037	26,008.00	3,193.70	22,814.30	828,838.68	
5/1/2037	26,008.00	3,108.15	22,899.85	805,938.83	
6/1/2037	26,008.00	3,022.27	22,985.73	782,953.10	
7/1/2037	26,008.00	2,936.07	23,071.93	759,881.17	
8/1/2037	26,008.00	2,849.55	23,158.45	736,722.72	
9/1/2037	26,008.00	2,762.71	23,245.29	713,477.43	
10/1/2037	26,008.00	2,675.54	23,332.46	690,144.97	
11/1/2037	26,008.00	2,588.04	23,419.96	666,725.01	
12/1/2037	26,008.00	2,500.22	23,507.78	643,217.23	
1/1/2038	26,008.00	2,412.06	23,595.94	619,621.29	
2/1/2038	26,008.00	2,323.58	23,684.42	595,936.87	
3/1/2038	26,008.00	2,234.76	23,773.24	572,163.63	
4/1/2038	26,008.00	2,145.61	23,862.39	548,301.24	
5/1/2038	26,008.00	2,056.13	23,951.87	524,349.37	
6/1/2038	26,008.00	1,966.31	24,041.69	500,307.68	
7/1/2038	26,008.00	1,876.15	24,131.85	476,175.83	
8/1/2038	26,008.00	1,785.66	24,222.34	451,953.49	
9/1/2038	26,008.00	1,694.83	24,313.17	427,640.32	
10/1/2038	26,008.00	1,603.65	24,404.35	403,235.97	
11/1/2038	26,008.00	1,512.13	24,495.87	378,740.10	
12/1/2038	26,008.00	1,420.28	24,587.72	354,152.38	
1/1/2039	26,008.00	1,328.07	24,679.93	329,472.45	
2/1/2039	26,008.00	1,235.52	24,772.48	304,699.97	
3/1/2039	26,008.00	1,142.62	24,865.38	279,834.59	
4/1/2039	26,008.00	1,049.38	24,958.62	254,875.97	
5/1/2039	26,008.00	955.78	25,052.22	229,823.75	
6/1/2039	26,008.00	861.84	25,146.16	204,677.59	

7/1/2039	26,008.00	767.54	25,240.46	179,437.12	6/25/2020 5:00 PM Page 6
8/1/2039	26,008.00	672.89	25,335.11	154,102.02	
9/1/2039	26,008.00	577.88	25,430.12	128,671.90	
10/1/2039	26,008.00	482.52	25,525.48	103,146.42	
11/1/2039	26,008.00	386.80	25,621.20	77,525.22	
12/1/2039	26,008.00	290.72	25,717.28	51,807.94	
1/1/2040	26,008.00	194.28	25,813.72	25,994.22	
2/1/2040	26,008.00	13.78	25,994.22	0.00	

Grand Totals 6,085,872.00 2,039,021.27 4,046,850.73

Last interest amount decreased by 83.70 due to rounding.

EXHIBIT "E"
RESOLUTION

**JOINT UNANIMOUS WRITTEN CONSENT
OF THE
BOARD OF MANAGERS
AND THE
MEMBERS
OF
INTREPID LANE ASC, LLC
D/B/A INTREPID LANE ENDOSCOPY AND SURGERY CENTER
(SIDA)**

The undersigned, being all of the members of the Board of Managers and the Members of INTREPID LANE ASC, LLC D/B/A INTREPID LANE ENDOSCOPY AND SURGERY CENTER, a New York limited liability company (the "Company"), DO HEREBY, ratify, confirm and adopt the following as and for the resolutions of the Company:

WHEREAS, the Company wishes to undertake a project (the "Project") through the City of Syracuse Industrial Development Agency (the "Agency") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "*Land*"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "*Facility*"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "*Equipment*" and together with the Land and the Facility, the "*Project Facility*"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

WHEREAS, the Company will sublease the Land and Facility to the Agency pursuant to a Company Lease Agreement (the "*Company Lease*") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale (the "*Bill of Sale*") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement (the "*Agency Lease*").

NOW, THEREFORE, be it resolved by the Managers and Members of the Company as follows:

1. Approval of Transactions. The Company is hereby authorized to sublease the Land and Facility to the Facility to the Agency pursuant to the Company Lease, to transfer its interest in the Equipment to the Agency pursuant to the Bill of Sale, to sub-sublease the Project Facility pursuant to the Agency Lease and to take such further action as contemplated by the Agency's Documents.

2. Approval of Company Documents. The form and substance of the Company Lease, the Agency Lease, the Bill of Sale, the Environmental Compliance and Indemnification Agreement, the Local Access Agreement, and the Project Agreement are hereby approved in the form presented herewith, and the

Authorized Representative is hereby authorized to execute and deliver the foregoing documents as well as any and all other documents required to be executed in conjunction with the Project and the Financial Assistance (collectively, the "Company Documents"), together with such changes thereto as the Authorized Representative may approve, such approval to be conclusively evidenced by their execution thereof. All prior action taken on behalf of or by the Company or any Authorized Representative with respect to the Agency and/or the Project, including its application to the Agency and all presentations to same, are hereby ratified.

3. Authorized Representative. Benjamin McHone, M.D, a Manager of the Company or any other Manager of the Company (each, an "Authorized Representative") is hereby designated and appointed to act by and on behalf of the Company in all matters relating to the Company Documents.

4. Other Action by Authorized Representative. The Authorized Representative is hereby authorized to execute, acknowledge (if appropriate) and deliver such other documents as may be necessary or appropriate in order to effectuate the execution and delivery of the Company Documents and the transactions contemplated thereby. The execution by an Authorized Representative on any or all of the Company Documents shall be binding upon the Company and the Agency may rely on such execution and delivery.

5. Immediate Effect. This resolution shall take effect immediately.

IN WITNESS WHEREOF, the undersigned have executed this Joint Unanimous Written Consent the 15th day of ~~November~~, 2021.
October

AMP ASC HOLDINGS, LLC, Member

By: Ben McHone
Ben McHone (Oct 15, 2021 15:45 EDT)
Benjamin R. McHone, M.D., Member


CRA ASC HOLDINGS, LLC, Member

By: DA
David Nesbitt (Oct 15, 2021 15:42 EDT)
David A. Nesbitt, M.D., Member


Ben McHone
Ben McHone (Oct 15, 2021 15:46 EDT)
Benjamin R. McHone, M.D., Manager

HADLEY NARINS
HADLEY NARINS (Oct 15, 2021 17:36 EDT)
Hadley Narins, M.D., Manager

Brent Carlyle
Brent Carlyle (Oct 15, 2021 16:11 EDT)
Brent E. Carlyle, M.D., Manager


Michael Moffa (Oct 15, 2021 17:40 EDT)

Michael A. Moffa, M.D., Manager


David Nesbitt (Oct 16, 2021 15:42 EDT)

David A. Nesbitt, M.D., Manager










Joint Unanimous Written Consent of the Board of Managers and Members of Intrepid Lane ASC, LLC (SIDA)


Final Audit Report


2021-10-16


Created:	2021-10-15
By:	Lisa Cavallaro (lcavallaro@ampofny.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAawX5W5t_AGhk6u8MVhFNy0Znwi2LnZcQ


"Joint Unanimous Written Consent of the Board of Managers and Members of Intrepid Lane ASC, LLC (SIDA)" History


-  Document created by Lisa Cavallaro (lcavallaro@ampofny.com)
2021-10-15 - 7:16:40 PM GMT
-  Document emailed to Ben McHone (bmchone@ampofny.com) for signature
2021-10-15 - 7:20:55 PM GMT
-  Document emailed to David Nesbitt (nesbitt_david@msn.com) for signature
2021-10-15 - 7:20:55 PM GMT
-  Document emailed to Michael Moffa (drmmoffa@gmail.com) for signature
2021-10-15 - 7:20:55 PM GMT
-  Document emailed to HADLEY NARINS (hnarins@ampofny.com) for signature
2021-10-15 - 7:20:55 PM GMT
-  Document emailed to Brent Carlyle (bcarlyle@ampofny.com) for signature
2021-10-15 - 7:20:55 PM GMT
-  Email viewed by Brent Carlyle (bcarlyle@ampofny.com)
2021-10-15 - 7:42:03 PM GMT
-  Email viewed by Ben McHone (bmchone@ampofny.com)
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-  Document e-signed by Ben McHone (bmchone@ampofny.com)
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2021-10-15 - 7:51:55 PM GMT


 Document e-signed by Brent Carlyle (bcarlyle@ampofny.com)
Signature Date: 2021-10-15 - 8:11:14 PM GMT - Time Source: server


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2021-10-15 - 9:35:57 PM GMT

 Document e-signed by HADLEY NARINS (hnarins@ampofny.com)
Signature Date: 2021-10-15 - 9:36:43 PM GMT - Time Source: server

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2021-10-15 - 9:39:36 PM GMT

 Document e-signed by Michael Moffa (drmmoffa@gmail.com)
Signature Date: 2021-10-15 - 9:40:19 PM GMT - Time Source: server

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2021-10-16 - 7:39:51 PM GMT

 Document e-signed by David Nesbitt (nesbitt_david@msn.com)
Signature Date: 2021-10-16 - 7:42:36 PM GMT - Time Source: server


 Agreement completed.
2021-10-16 - 7:42:36 PM GMT

EXHIBIT "F"
LOCAL ACCESS AGREEMENT

City of Syracuse
Industrial Development Agency

Local Access Agreement

INTREPID LANE ASC, LLC (the Company) understands and agrees that local labor, contractors and suppliers will be used for the construction, renovation, reconstruction and equipping of the Project unless a written waiver is first received from the Agency, and agrees to provide the information requested below as a way to provide access for local participation.

Company		Intrepid Lane ASC, LLC				General Contractor		CBD Construction, LLC			
Representative for Contract Bids and Awards		Christopher R. Williamson				Contact		Courtney D. Wilson			
Address		100 Metropolitan Park Dr				Address		100 Madison St. (Suite 1200)			
City	Liverpool	ST	NY	Zip	13088	City	Syracuse	ST	NY	Zip	13202
Phone	(315)558-6605		Fax	(315)558-6611		Phone	(315)295-1900		Fax	(315)295-1901	
Email		Cwilliamson@ampofny.com				Email		cwilson@cbdcos.com			
Project Address		190 Intrepid Lane				Construction Start Date		10/18/21			
City	Syracuse	ST	NY	Zip	13205	Occupancy Date		5/1/22			

Project Components – Indicate those for which bids will be sought:

Item	Estimated Value	Bid Date	Contact
Site work/Demolition	\$73,520.00	9/28/2021	CBD Construction
Foundation and footings	N/A		
Building	\$208,000.00	9/28/2021	Fox Building
Masonry	\$5,500.00	9/28/2021	CBD Construction
Metals	\$43,060.00	9/28/2021	Northern Welding
Wood/casework	\$222,094.00	9/28/2021	Wood etc./Al Mitchell
Thermal/moisture proof	\$5,000.00	9/28/2021	CBD Construction
Doors, windows, glazing	\$87,200.00	9/28/2021	Kelley Brothers/Black Glass
Finishes	\$220,195.00	9/28/2021	Sposato Flooring/Commercial
Electrical	\$697,000.00	9/28/2021	Caryl Electric
HVAC	\$1,370,000.00	9/28/2021	Quality Mechanical (QMS)
Plumbing	\$407,963.00	9/28/2021	Burns Brother/Associated
Specialties	\$88,495.00	9/28/2021	CBD Construction/Al Mitchell
Machinery & Equipment			
Furniture and Fixtures			
Utilities	N/A		
Paving	N/A		
Landscaping	N/A		
Other – General Conditions/Etc.	\$286,686.00	9/28/2021	CBD Construction

Date: 10/19/2021

Company: INTREPID LANE ASC, LLC

Signature: 

Name: Benjamin McHone, M.D., Manager



BOUSQUET HOLSTEIN PLLC

110 WEST FAYETTE STREET ▪ ONE LINCOLN CENTER ▪ SUITE 1000 ▪ SYRACUSE, NEW YORK 13202 ▪ PH: 315.422.1500 ▪ FX: 315.422.3549

November 1, 2021

City of Syracuse Industrial Development Agency
201 East Washington Street, 6th Floor
Syracuse, New York 13202

Intrepid Lane ASC, LLC
100 Metropolitan Park Drive
Liverpool, New York 13088

Re: City of Syracuse Industrial Development Agency
Lease/Leaseback Transaction
Intrepid Lane Endoscopy and Surgery Center Project

Ladies and Gentlemen:

We have acted as counsel to the City of Syracuse Industrial Development Agency (the “*Agency*”) in connection with a project (the “*Project*”) undertaken by the Agency at the request of Intrepid Lane ASC, LLC (the “*Company*”) consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the “*Land*”); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the “*Facility*”); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the “*Equipment*” and together with the Land and the Facility, the “*Project Facility*”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the “*Financial Assistance*”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.



SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "**Owner**") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long term lease agreement, which has a purchase option, dated August 25, 2020 (the "**Ground Lease**").

The Company has also requested that the Agency grant the Financial Assistance to the Project. Capitalized terms used herein which are not otherwise defined shall have the meanings ascribed to them in the Agency Lease Agreement, dated October 1, 2021, between the Agency and the Company.

As counsel to the Agency, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, and documents as we have deemed necessary or appropriate for the purposes of the opinion expressed below. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies, and have assumed the accuracy and truthfulness of the factual information, expectations, conclusions, representations, warranties, covenants and opinions of the Company and its counsel and representatives as set forth in the various documents executed and delivered by them or any of them and identified in the Closing Memorandum in connection with the Project.

We are of the opinion that:

1. The Agency is a duly organized and existing corporate governmental agency constituting a public benefit corporation of the State of New York.
2. The Agency is duly authorized and empowered by law to acquire, construct, reconstruct, renovate and equip the Project, to lease the Land and the Facility from the Company pursuant to the Company Lease; to accept an interest in the Equipment pursuant to the Bill of Sale; to sublease the Project Facility back to the Company pursuant to the Agency Lease, to provide the Financial Assistance and to appoint the Company as its agent for completion of the Project.
3. The Agency Documents have been authorized by and lawfully executed and delivered by the Agency and (assuming the authorization, execution, and delivery by the other respective parties thereto) are valid and legally binding obligations enforceable against the Agency in accordance with their respective terms.



November 1, 2021
Page 3

In rendering this opinion, we advise you of the following:

The enforceability of the Agency Documents may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law or enactment now or hereafter enacted by the State of New York or the Federal government affecting the enforcement of creditors' rights generally and the general principles of equity, including limitations on the availability of the remedy of specific performance which is subject to discretion of the court.

This opinion is rendered to the addressees named above and their successors and/or assigns, and may not be relied upon by any other person without our prior, express written consent.

Very truly yours,

BOUSQUET HOLSTEIN PLLC

/s/ Bousquet Holstein PLLC



Bruce A. Smith
Direct: 315.477.6291
Direct Fax: 315.425.3691
Email: bsmith@ccblaw.com

October 25, 2021

Intrepid Lane ASC, LLC
190 Intrepid Lane
Syracuse, New York 13205

City of Syracuse Industrial Development Agency
City Hall Commons, 6th Floor
201 East Washington Street
Syracuse, New York 13202

Re: City of Syracuse Industrial Development Agency
Lease/Leaseback Transaction
Intrepid Lane Endoscopy and Surgery Center Project

Ladies and Gentlemen:

We have acted as counsel to Intrepid Lane ASC, LLC (the "**Company**") in connection with a certain project (the "**Project**") undertaken by the City of Syracuse Industrial Development Agency (the "**Agency**") at the Company's request. The Project consists of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft. one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in



Intrepid Lane ASC, LLC
City of Syracuse Industrial Development Agency
October 25, 2021
Page 2

the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "**Owner**") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long-term lease agreement, which has a purchase option, dated August 25, 2020 (the "**Ground Lease**"). The Ground Lease is in full force and effect.

The Agency has acquired an interest in the Project Facility pursuant to that certain Company Lease Agreement dated as of September 1, 2021 (the "**Company Lease**") and transfer its interest in the Equipment to the Agency pursuant to a bill of sale dated as of October 1, 2021 (the "**Bill of Sale**") and the Agency will (sub)sublease the Project Facility back to the Company pursuant to an Agency Lease Agreement dated as of October 1, 2021 (the "**Agency Lease**"). Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Agency Lease.

In that regard, we have examined the Ground Lease, the Project Agreement, the Company Lease, the Agency Lease, the Bill of Sale, the Environmental Compliance and Indemnification Agreement and the other documents identified in the Closing Memorandum and as defined in the Agency Lease to which the Company is a party (collectively, the "**Company Documents**").

We have also examined corporate documents and records of the Company and made such investigation of law and/or fact that we deem necessary or advisable in order to render this opinion. For purposes of such examination, we have assumed the genuineness of all certificates and the authenticity of all documents submitted to us as original counterparts or as certified or photostatic copies; the genuineness of all signatures of all parties to the Company Documents other than on behalf of the Company; and the due authorization, execution and delivery of the Company Documents by and the enforceability thereof against all parties thereto other than the Company.

As to questions of fact material to our opinion, we have relied upon the representations and warranties made by the Company in the Company Documents and upon one or more certificates



Intrepid Lane ASC, LLC
City of Syracuse Industrial Development Agency
October 25, 2021
Page 3

of officers of the Company. Whenever the phrase "to the best of our knowledge" is used in this opinion, it refers to actual knowledge of members of this firm obtained from our representation of the Company and inquiries of responsible officers of the Company made in connection with this opinion, but no further investigation or review has been conducted.

Based upon the foregoing, it is our opinion that:

1. The Company is a duly formed and validly existing New York limited liability company and possesses full corporate power and authority to own its property, to conduct its business, to execute and deliver the Company Documents, and to carry out and perform its obligations thereunder.

2. The execution, delivery and performance of the Company Documents have been duly authorized by the Company and the Company Documents have been duly executed and delivered by an Authorized Representative of the Company.

3. The Company Documents constitute the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with their terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws affecting creditors' rights generally and to the extent that the availability of the remedy of specific performance or injunctive relief or other equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

4. To the best of our knowledge, in reliance on the certificates and opinions specified herein, the execution and delivery by the Company of the Company Documents, the execution and compliance with the provisions of each and the consummation of the transactions contemplated therein do not and will not constitute a breach of, or default under the Company's Articles of Organization, Operating Agreement or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Company or any of its Property may be bound, for which a valid consent has not been secured; nor is any approval or any action by any governmental authority required in connection with the execution, delivery and performance thereof by the Company.



Intrepid Lane ASC, LLC
City of Syracuse Industrial Development Agency
October 25, 2021
Page 4

5. To the best of our knowledge, in reliance on the certificates and opinions specified herein, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened against, or affecting the Company wherein an unfavorable decision, ruling or finding would in any way adversely affect in a material fashion the validity or enforceability of the Company Documents.

Our examination of law relevant to matters herein is limited to the laws of the State of New York and also the Federal law, where appropriate, and we express no opinion as to matters governed by the laws of any other state or jurisdiction.

This opinion is only for the benefit of and may be relied upon only by the Agency, its successors and assigns. The opinions set forth in this letter are limited to those expressly stated and no other opinion may be inferred nor is any implied. No other use of this opinion may be made without prior written consent. This opinion is given as of the date hereof and we undertake no obligation, and hereby disclaim any obligation, to update or supplement this opinion in response to a subsequent change in the law or future events affecting the documents identified in this letter.

Very truly yours,

COHEN COMPAGNI BECKMAN APPLER & KNOLL, PLLC

Bruce A. Smith

BAS/jlr:682460.1

CLOSING MEMORANDUM

CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY

INTREPID LANE ENDOSCOPY & SURGERY CENTER PROJECT

DATE AND TIME OF CLOSING: November 1, 2021

PLACE OF CLOSING: Escrow

I. Action Taken Prior to Closing

At the request of Intrepid Lane ASC, LLC (the "**Company**"), the City of Syracuse Industrial Development Agency (the "**Agency**"), a public benefit corporation organized under the laws of the State of New York, has undertaken a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 1.4 acres of land improved by an approximately 16,624 sq. ft one-story building located at 190 Intrepid Lane in the City of Syracuse, New York (Tax Map No. 062.-02-18.0) (the "**Land**"); (ii) the renovation and reconstruction of the building for use as an ambulatory surgery center (the first such center to specialize in urology in Onondaga County), including four (4) fully-fit-out operating rooms and two (2) shelled operating rooms, patient preparation, hold and recovery spaces plus support areas sized to accommodate six (6) operating rooms; and masonry and related painting to the exterior of the building (collectively, the "**Facility**"); (iii) the acquisition and installation in and on the Land and Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, reconstruction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary.

The Company requested that the Agency appoint the Company as its agent for purposes of completing the Project and the granting of certain Financial Assistance.

WHEREAS, SOS Real Estate Holding Company, LLC, successor by merger to Intrepid Lane Realty, LLC (the "**Owner**") is the current fee owner of the Land. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to a long-term lease agreement, which has a purchase option, dated August 25, 2020 (the "**Ground Lease**"); and

The Agency will acquire a (sub)leasehold interest in the Land and Facility pursuant to a Company Lease Agreement dated as of October 1, 2021 (the “**Company Lease**”), between the Company, as landlord and the Agency, as tenant; and an interest in the Equipment pursuant to a bill of sale from the Company dated as of October 1, 2021 (the “**Bill of Sale**”). The Agency will (sub)sublease the Project Facility back to the Company, pursuant to an Agency Lease Agreement dated as of October 1, 2021 (the “**Agency Lease**”) between the Agency, as sublessor and the Company, as sublessee. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in Exhibit “C” to the Agency Lease.

Among the actions taken by the Agency with respect to the Project prior to Closing were the following:

- | | |
|--------------------|--|
| August 4, 2021 | The Company submitted an application for financial assistance for the project. |
| August 17, 2021 | A resolution determining that the acquisition, construction and equipping of a mixed-use project constitutes a project; describing the financial assistance in connection therewith; and authorizing a public hearing (the “ Public Hearing Resolution ”). |
| September 8, 2021 | Notice of the Public Hearing was sent to the chief executive officers of the affected tax jurisdictions pursuant to Section 859-a of the Act. |
| September 9, 2021 | Notice of the Public Hearing was published in the <u>Post-Standard</u> pursuant to Section 859-a of the Act. |
| September 21, 2021 | The Agency conducted the Public Hearing pursuant to Section 859-a of the Act. |
| September 21, 2021 | A resolution classifying a certain project as an Unlisted Action pursuant to the State Environmental Quality Review Act, declaring the Agency lead agency for purposes of an uncoordinated review thereunder and determining that the Project will not have a significant effect on the environment (the “ SEQRA Resolution ”). |
| September 21, 2021 | A resolution authorizing the undertaking of the acquisition, reconstruction, renovation, equipping and completion of a project; appointing the Company agent of the Agency for the purpose of the acquisition, reconstruction, renovation, equipping and completion of the project and authorizing the execution and delivery of an agreement between the Agency and the Company (the “ Inducement Resolution ”). |
| September 21, 2021 | A resolution authorizing the execution and delivery of certain documents by the agency at the request of the Company (the “ Final Approving Resolution ”). |

II. Action To Be Taken At Closing

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency (A), Agency's Counsel (AC), the Company (C), Company's Counsel (CC) as follows:

A.	Basic Documents	Responsible Party	Signatories
1.	Application for Financial Assistance and Supplemental Application and Verification		
2.	Ground Lease	CC	
3.	Project Agreement	AC	C, A
4.	Company Lease Agreement	AC	C, A
5.	Memorandum of Company Lease Agreement with TP-584	AC	C, A
6.	Bill of Sale		
7.	Agency Lease Agreement	AC	C, A
8.	Memorandum of Agency Lease Agreement with Form TP-584	AC	C, A
9.	Company Certification re: Local Labor Policy	AC	C
10.	Certificates of casualty, liability, workers' compensation and other required insurance	AC	
11.	Environmental Compliance and Indemnification Agreement	AC	C
12.	Closing Receipt	AC	C, A
13.	Sales Tax Exemption Letter	AC	A
14.	Form ST-60 indicating appointment of the Company to act as the agent of the Agency	AC	A
15.	General Security Agreement		
16.	Confirmation of the project by the chief executive officer of the City of Syracuse, New York pursuant to Section 862(2)(c) of the Act (Retail Letter)		

B. Items To Be Delivered By The Agency

1. General Certificate of the Agency relating to incumbency and signatures of officers, execution and delivery of Agency Documents to which it is a party, no litigation and continued existence, with the following items included as exhibits:	AC	A
Exhibit "A" - Chapter 641 of the Laws of 1979 of the State of New York, as amended	A	
Exhibit "B" - Certificate of Establishment of the Agency and Certificates of appointment of current members	A	
Exhibit "C" - By-laws	A	
Exhibit "D" - Public Hearing Resolution	AC	
Exhibit "E" - Notice of Public Hearing with evidence of publication and copies of letters to affected tax jurisdictions	AC	
Exhibit "F" - SEQRA Resolution	AC	
Exhibit "G" - Inducement Resolution	AC	
Exhibit "H" - Final Approving Resolution	AC	

C. Items To Be Delivered By The Company

1. General Certificate of the Company relating to capacity and signatures of officers, execution and delivery of the Documents to which it is a party, no litigation and approval, with the following items included as exhibits:	AC	C
Exhibit "A" - Articles of Organization	C	
Exhibit "A" - Articles of Organization	C	C
Exhibit "C" - Certificate of Good Standing	C	
Exhibit "D" - Company Resolution	C	
Exhibit "E" - Local Access Agreement	C	

D. Opinions of Counsel

C

1. Opinion of Bousquet Holstein PLLC, counsel to the Agency, addressed to the Company and the Agency

AC

AC

2. Opinion of Cohen Compagni Beckman Appler & Knoll, PLLC, counsel to the Company, addressed to the Agency and the Company

AC

CC

III. Action To Be Required Concurrently With Or After Closing

Memorandum of Company Lease Agreement, Memorandum of Agency Lease Agreement are to be filed with the Onondaga County Clerk.

IV. Post-Closing

Scan copy of Local Access Agreement to SIDA.

SCHEDULE "A"

PERSONS APPEARING

For the Agency:	City of Syracuse Industrial Development Agency Kathleen Murphy, Chair Judith DeLaney, Executive Director
For the Company:	Intrepid Lane ASC, LLC Benjamin McHone, M.D.
Company Counsel:	Cohen Compagni Beckman Appler & Knoll, PLLC Bruce Smith, Esq.
Agency's Counsel:	Bousquet Holstein PLLC Susan R. Katzoff, Esq.