# AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

**Agenda Item:** Petition for Abatement or Refund of Taxes; Propert

**Action Requested:** Other Hearing on petition for abatement of taxes

**Parties to the Agreement:**

**Term Begins:** **Term Ends:** **Grant Contract #:**

**Summary:**

Petitioner owns property that is leased to Gunnison Valley Hospital, which qualifies it for exemption from property taxes. The intent of the statute creating this exemption is that the rent paid by the exempt entity should be reduced accordingly.

**Fiscal Impact:**

**Submitted by:** William Spicer **Submitter's Email Address:** wspicer@gunnisoncounty.org

**Finance Review:** (●) Required ( ) Not Required

Comments:

The fiscal impact to Gunnison County (and other taxing entities impacted) can be mitigated with a designated mill in the upcoming levy, if used, to recoup abatedments per assessed value supplied by Assessor. This is a one-year only process. Ongoing loss of assessed value can not be recovered for taxing entities and only positively impacts the leasee if assured in the lease agreement. I didn't see that assurance in the attachments. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 5/10/2018

**County Attorney Review:** (●) Required ( ) Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 5/10/2018 Certificate of Insurance Required Yes ( ) No (●)

**County Manager Review:**

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 5/10/2018

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5

Agenda Date: 7/3/2018

*Revised April 2015*

SCANNED

RECEIVED
MAY 04 2018
BY: PM: 5/1/18

# PETITION FOR ABATEMENT OR REFUND OF TAXES

County: GUNNISON

Date Received _____
(Use Assessor's or Commissioners' Date Stamp)

**Section I: Petitioner, please complete Section I only.**

Date: APRIL, 26 2018
Petitioner's Name: PPI GUNNISON LLC
Petitioner's Mailing Address: 3675 GREENHILL RD
PASADENA, CA 91107-2107

| SCHEDULE NUMBER(S) | PROPERTY ADDRESS OR LEGAL DESCRIPTION OF PROPERTY |
|---|---|
| R001699 | LOTS 13-20 BLK 52 FIRST ADDITION #641478 |

Petitioner requests an abatement or refund of the appropriate taxes and states that the taxes assessed against the above property for the property tax years 2016 and 2017 are incorrect for the following reasons: (Briefly describe why the taxes have been levied erroneously or illegally, whether due to erroneous valuation, irregularity in levying, clerical error, or overvaluation. Attach additional sheets if necessary.)

PROPERTY LEASED TO A POLITICAL SUBDIVISION OF THE STATE

**Petitioner's estimate of value:** $0 (2016) and $0 (2017)
Value Year Value Year

I declare, under penalty of perjury in the second degree, that this petition, together with any accompanying exhibits or statements, has been prepared or examined by me, and to the best of my knowledge, information and belief, is true, correct, and complete.

B Weiss
**Petitioner's Signature**

Daytime Phone Number (626) 510-9180

By _____
**Agent's Signature***

Daytime Phone Number ( )

***Letter of agency must be attached when petition is submitted by agent**

If the Board of County Commissioners, pursuant to § 39-10-114(1), C.R.S., or the Property Tax Administrator, pursuant to § 39-2-116, C.R.S., denies the petition for refund or abatement of taxes in whole or in part, the Petitioner may appeal to the Board of Assessment Appeals pursuant to the provisions of §39-2-125, C.R.S. within thirty days of the entry of any such decision, § 39-10-114.5(1), C.R.S.

**Section II:**

## Assessor's Recommendation
**(For Assessor's Use Only)**

| | Tax Year 2016 | | | Tax Year 2017 | | |
|---|---|---|---|---|---|---|
| | Actual | Assessed | Tax | Actual | Assessed | Tax |
| Original | 587,240 | 170,300 | 9,472.76 | 618,060 | 179,240 | 10,009.12 |
| Corrected | 0 | 0 | 0.00 | 0 | 0 | 0.00 |
| Abate/Refund | 587,240 | 170,300 | 9,472.76 | 618,060 | 179,240 | 10,009.12 |

[X] **Assessor recommends approval as outlined above.**

If the request for abatement is based upon the grounds of overvaluation, no abatement or refund of taxes shall be made if an objection or protest to such valuation has been filed and a Notice of Determination has been mailed to the taxpayer, § 39-10-114(1)(a)(I)(D), C.R.S.

**Tax year 2016 Protest?:** No [X] Yes [ ] **(If a protest was filed, please attach a copy of the NOD.)**

**Tax year 2017 Protest?:** No [X] Yes [ ] **(If a protest was filed, please attach a copy of the NOD.)**

[ ] **Assessor recommends denial for the following reason(s):**

Kristy McJarland
**Assessor's or Deputy Assessor's Signature**

15-DPT-AR No. 920-66/11

WSPICER

## FOR ASSESSORS AND COUNTY COMMISSIONERS USE ONLY

**(Section III or Section IV must be completed)**

Every petition for abatement or refund filed pursuant to § 39-10-114, C.R.S. shall be acted upon pursuant to the provisions of this section by the Board of County Commissioners or the Assessor, as appropriate, within six months of the date of filing such petition, § 39-1-113(1.7), C.R.S.

**Section III:** **Written Mutual Agreement of Assessor and Petitioner**

**(Only for abatements up to $10,000)**

The Commissioners of GUNNISON County authorize the assessor by Resolution No. 2011-42 to review petitions for abatement or refund and to settle by written mutual agreement any such petition for abatement or refund in an amount of $10,000 or less per tract, parcel, or lot of land or per schedule of personal property, in accordance with § 39-1-113(1.5), C.R.S.

**The Assessor and Petitioner mutually agree to the values and tax abatement/refund of:**

| | Tax Year 2016 | | | Tax Year 2017 | | |
|---|---|---|---|---|---|---|
| | Actual | Assessed | Tax | Actual | Assessed | Tax |
| **Original** | 587,240 | 170,300 | 9,472.76 | 618,060 | 179,240 | 10,009.12 |
| **Corrected** | 0 | 0 | 0.00 | 0 | 0 | 0.00 |
| **Abate/Refund** | 587,240 | 170,300 | 9,472.76 | 618,060 | 179,240 | 10,009.12 |

Note: The total tax amount does not include accrued interest, penalties, and fees associated with late and/or delinquent tax payments, if applicable. Please contact the County Treasurer for full payment information.

**Petitioner's Signature** _____ **Date** 4/30/18

**Assessor's or Deputy Assessor's Signature** _____ **Date** _____

**Section IV:** **Decision of the County Commissioners**

**(Must be completed if Section III does not apply)**

WHEREAS, The County Commissioners of GUNNISON County, State of Colorado, at a duly and lawfully called regular meeting held on _____/_____/_____, at which meeting there were present the following members:
Month Day Year

_____

_____

with notice of such meeting and an opportunity to be present having been given to the Petitioner and the Assessor of said County and Assessor KRISTY MCFARLAND ***(being present--not present)*** and Petitioner _____ ***(being present--not present)***, and WHEREAS, The said County
Name
Commissioners have carefully considered the within petition, and are fully advised in relation thereto,
NOW BE IT RESOLVED, That the Board ***(agrees--does not agree)*** with the recommendation of the Assessor and the petition be ***(approved--approved in part--denied)*** with an abatement/refund as follows:

| Year | Assessed Value | Taxes Abate/Refund | Year | Assessed Value | Taxes Abate/Refund |
|---|---|---|---|---|---|
| | | | | | |

**Chairperson of the Board of County Commissioners' Signature**

I, _____ County Clerk and Ex-officio Clerk of the Board of County Commissioners in and for the aforementioned county, do hereby certify that the above and foregoing order is truly copied form the record of the proceedings of the Board of County Commissioners.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of the said County this _____ day of _____, _____.
Month Year

**County Clerk's or Deputy County Clerk's Signature**

Note: Abatements greater than $10,000 per schedule, per year, must be submitted in duplicate to the Property Tax Administrator for review.

**Section V:** **Action of the Property Tax Administrator**

**(For all abatements greater than $10,000)**

The action of the Board of County Commissioners, relative to the within petition, is hereby

☐ Approved ☐ Approved in part $_____

☐ Denied for the following reason(s):

**Secretary's Signature** _____ **Property Tax Administrator's Signature** _____ **Date** _____

COMMERCIAL
STUCY
PROPERTIES
413 Wilcox Street
Castle Rock, Colorado 80104
Office: 303.660.0801
www.stucycommercial.com

December 15, 2017

**VIA EMAIL**

Mr. Rob Santilli
CEO
Gunnison Valley Health
711 N. Taylor St.
Gunnison, CO 81230

**Subject: Lease Renewal – 707 N. Iowa St, Gunnison, Colorado 81230**

Dear Rob:

You have indicated an interest in exercising your right to a *first renewal term* under Section 4-12(A) of the existing lease between Gunnison Valley Hospital and PPI Gunnison LLC. The landlord offers the following terms for the first renewal period, which would begin August 1, 2018 and terminate July 31, 2023:

| | |
|---|---|
| **Tenant:** | Gunnison Valley Hospital |
| **Landlord:** | PPI Gunnison, LLC |
| **Property:** | 707 N. Iowa St, Gunnison, Colorado 81230. |
| **Premises:** | Premises is approximately 4,775 square feet. |
| **Lease Term:** | Five (5) years, beginning August 1, 2018. |
| **Rent:** | Year 1 - $12.00/SF ($4,775.00/month)<br>Year 2 - $12.00/SF ($4,775.00/month)<br>Year 3 - $12.30/SF ($4,894.38/month)<br>Year 4 - $12.66/SF ($5,037.63/month)<br>Year 5 - $13.03/SF ($5,184.85/month) |

**Tenant Improvements:**

Tenant will, at its cost, construct/provide any desired tenant improvements, consistent with lease terms including but not limited to section 2.4 ("Remodeling"). The Landlord will reimburse any such expense up to a maximum of $7,500 in any one-year period from lthe effective date of this lease renewal, and to a cumulative maximum of $30,000 during the five-year period. Reimbursement will be made upon conclusion of work and presentation of receipts or other validation of the expenditure. All additional improvement costs beyond this allowance are the Tenant's sole responsibility. Use of any internal labor or materials will be reimbursed only with prior approval of cost by the landlord.

**Parking Lot Maintenance:**

Landlord will be responsible for normal and reasonable maintenance of the parking lot surface, including sealcoating, repairs, re-striping and signage. Snow removal and trash clearance remain the responsibility of Tenant.

If these terms are acceptable, please sign in the space designated below and return one copy of this letter to me as soon as possible. A fully executed copy will be returned to you for your records, and will become Addendum 1 to the lease originally dated July 26, 2013.

Sincerely,

Britt Nelson

**Stucy Commercial Properties**

**AGREED AND ACCEPTED this** 18TH **day of** DECEMBER **2017.**

**Landlord**

By: _____

It's: MANAGER

**AGREED AND ACCEPTED this** _____ **day of** _____, **2017.**

**Tenant**

By: _____

It's: CEO

# LEASE

**THIS LEASE** is made and entered into as of the 26 day of July, 2013 in the City of Gunnison, Gunnison County, Colorado, between:

Gunnison Medical Arts Center, LLC ("Lessor")

and

Gunnison Valley Hospital ("Tenant"),

WITNESSETH:

## ARTICLE 1

**1-1. FOR AND IN CONSIDERATION** of the payment of rent and the keeping and performance of the covenants and agreements by the said Tenant, the Lessor has leased and by these presents does lease unto the Tenant the following described real property, which is commonly known as 707 N. Iowa, together with the improvements situate thereon, in the City of Gunnison, County of Gunnison and State of Colorado, to-wit:

> Lots 13-20, Block 52, City of Gunnison, according to the Official Plat of First Addition to Gunnison, on file and of record in the Office of the Clerk and Recorder of Gunnison County, Colorado, City of Gunnison, County of Gunnison, State of Colorado, consisting of approximately 4,775 square feet, which is the square footage stated in the Gunnison County Assessor's records (the "Premises").

**1-2. TO HAVE AND TO HOLD** the same with all appurtenances unto the said Tenant for use consistent with the mission and purpose of Gunnison Valley Health, in accordance with the terms and conditions of this Lease from 8:00

a.m. the 1st day of August, 2013, until 11:59 p.m. the 31st day of July, 2018 (the "Initial Term"), at and for a Rent of $10.00 per square foot per year for the full term aforesaid for a total of $238,800.00, payable in advance, without prior notice, in equal installments of $3,980.00 due on or before the 5th day of each calendar month, unless the 5th day of a month falls on a weekend and/or a recognized holiday for which normal businesses and banks are closed, in which case the rent will be due on the prior business day. Lessor and Tenant, having performed studies of the rental market, agree that the aforementioned Rent is equal to fair market value.

## ARTICLE 2

**THE TENANT HEREBY COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:**

**2-1. Rental Payments**. Tenant agrees to pay the Rent on or before the 5th day of each month as hereinabove set forth and further, interest at the rate of ten percent (10%) per annum simple interest on any rent or other payments which are not paid within five business days of the due date.

**2-2. Deposits**. Tenant agrees to pay upon the execution of this Lease, the following deposits:

A. The first month's Rent under this Lease; and

B. $11,940.00 as a security deposit for the Premises (the "Security Deposit), to be held by Lessor in a non-interest bearing account, as a guarantee and indemnity that Tenant will keep the Premises in as good a condition as when received (reasonable wear and tear excepted), will not vacate the Premises prior to the termination hereof, will pay all Rental Payments and other sums payable by Tenant to Lessor as the same become due, and will otherwise perform all terms, covenants and conditions of this Lease. It is understood and agreed that the Security Deposit is neither an advance rental nor a bonus to Lessor. If at any time during the term of this Lease any Rental Payment is overdue and unpaid, or any other sum payable by Tenant to Lessor hereunder is overdue and unpaid, then Lessor may, at the option of Lessor (but

Lessor shall not be required to), appropriate and apply any portion of the Security Deposit to the payment of any such overdue sum. If Lessor appropriates and applies the Security Deposit or any portion thereof for the payment of overdue Rental Payments or other sums due and payable to Lessor by Tenant hereunder, the Tenant shall, within five (5) days after the written demand of Lessor, forthwith remit to Lessor a sufficient amount to restore the Security Deposit to the original sum deposited. If Tenant complies with all of the terms, covenants and conditions of this Lease and promptly pays all of the Rental Payments and all other sums payable by Tenant to Lessor hereunder, Lessor shall return the Security Deposit in full to Tenant within sixty (60) days of the end of the Initial Term or any properly exercised Renewal Term, or of the earlier termination of this Lease. If damage to Lessor exceeds the amount of the Security Deposit, the Tenant shall pay such excess amount within thirty days of being billed therefor by Lessor.

Lessor shall be permitted to commingle the funds deposited pursuant to subparagraphs A and B of this Article 2, Section 2-2.

**2-3. Utilities.** Tenant shall pay all heat, electricity, gas, water service, sewer service, refuse collection, and other utility charges for the Premises. If Tenant fails to pay such charges in a timely fashion, Lessor may pay such charges from the Security Deposit. Tenant shall contact all applicable utility companies and authorized metering agencies to transfer payment responsibility into Tenant's name and otherwise arrange to be billed directly by such companies and agencies. Tenant shall be responsible for removing and disposing of any and all medical waste generated on the Premises after the mutual execution hereof or otherwise placed on the Premises by Tenant after the mutual execution hereof. Lessor shall be responsible for removing or otherwise disposing of any medical waste located on the Premises at the time of the mutual execution hereof.

**2-4. Remodeling.** Tenant shall make no structural alterations to the Premises in any respect without the prior written consent of the Lessor, which consent shall not be unreasonably withheld ("Tenant Improvements"). Lessor acknowledges that Tenant intends to make certain Tenant Improvements necessary for its business operation to be conducted on the Premises at or

shortly after the commencement of the Lease (the "Initial Tenant Improvements"). Lessor hereby consents to these Initial Tenant Improvements provided that: (i) Tenant delivers detailed plans and specifications for the Initial Tenant Improvements to Lessor at least ten (10) days prior to the commencement of construction of the Initial Tenant Improvements in accordance with the Notice provisions set forth herein, and (ii) such Initial Tenant Improvements do not adversely affect the value of the Premises. With respect to all Tenant Improvements other than the Initial Tenant Improvements, Tenant shall deliver detailed plans and specifications for the Tenant Improvements to Lessor, in accordance with the Notice provisions set forth herein, for Lessor to review and approve. Lessor shall, within ten (10) days after receipt of said plans and specifications, respond to Tenant by either (i) approving such plans and specifications, or (ii) requesting that Tenant make specific changes thereto. Tenant's acceptance of Lessor's requested changes also shall constitute Lessor's approval of the proposed Tenant Improvements. Lessor's failure to respond within ten (10) days after receipt of the plans and specifications submitted by Tenant shall be deemed approval of Tenant's submission. All work by Tenant shall be performed in a workmanlike manner in compliance with applicable building and other codes. The Tenant Improvements shall be performed by Tenant, at Tenant's sole cost and expense and in accordance with the detailed plans and specifications provided to Lessor. Tenant shall be responsible for repairing any damage to the Premises caused by the construction of the Tenant Improvements. Subject to the provisions of Article 4 below, all permanent additions and fixtures shall become the property of Lessor. Tenant agrees that in the event Tenant's use and occupancy of the Premises, the Initial Tenant Improvements, or subsequent Tenant Improvements cause the City of Gunnison to require certain alterations, modifications, or improvements to the Premises in order to comply with the Americans With Disabilities Act, then Tenant shall be responsible for the cost of any such alterations, modifications, or improvements. Tenant shall not be responsible for the cost of any other alterations, modifications, or improvements required by the City of Gunnison or otherwise necessary to bring the Premises into compliance with the Americans With Disabilities Act, and any such costs shall be the sole responsibility of Lessor.

**2-5. Repairs and Maintenance**. Except for the repairs and maintenance which Lessor is obligated to perform under Section 3-2 of Article 3 below, Tenant shall maintain and make all ordinary and routine repairs to the Premises and systems serving the Premises as may be necessary to keep the same in as good a condition as when received, normal wear and tear excepted.

**2-6. Refuse, Janitorial and Cleanliness.** Tenant shall keep and maintain the Premises in a neat, orderly, clean, and sanitary condition at all times.

**2-7. Use of Premises.** Tenant shall use the Premises for purposes consistent with the mission of the Gunnison Valley Health System, including but not limited to, the use of the Premises as physicians' offices. Tenant shall not use the Premises for any other purposes without Lessor's prior written consent. Tenant shall not use nor permit the use of the Premises in any manner that: (i) violates any requirement of any law, including any local ordinance; (ii) might subject Lessor to any liability or responsibility for injury to any person or persons or to property by reason of any business or operation carried on upon the Premises or for any other reason; or (iii) may tend to create waste or a nuisance. Tenant shall, at Tenant's expense, procure every permit, license, certificate or other authorization required in connection with the lawful and proper use of the Premises, but Lessor does not covenant, warranty or guarantee that Tenant shall be able to obtain any of the aforementioned permits, licenses, certificates or other authorizations.

**2-8. Furniture, Fixtures and Equipment.** Tenant shall be solely responsible, at its cost, to obtain, place and install within the Premises all furnishings, fixtures, equipment and personal property necessary or desirable for its occupancy of the Premises and the use thereof. Tenant shall carry fire and extended coverage property insurance on all furniture, fixtures, equipment and personal property located upon the Premises and shall be solely responsible for any loss, damage or destruction of such items.

**2-9. Signs and Exterior Lighting**. Tenant shall erect only signs and exterior lighting which comply with all applicable local ordinances.

**2-10. Liens.** Tenant agrees to keep the Premises free and clear of all liens of any kind.

**2-11. Inspection of Premises.** Tenant shall allow the Lessor or its authorized representatives to enter upon the Premises at any reasonable hour to inspect said Premises or to make repairs thereon.

**2-12. Liability Insurance.** Tenant, at its sole cost and expense, shall obtain and maintain a policy of comprehensive public liability insurance, including property damage, covering the Premises and all use and occupancy thereof by Tenant in an amount of not less than $2,000,000.00 aggregate comprehensive liability limits and not less than $100,000.00 property damage limits with a reputable insurance company or companies licensed to do business in the State of Colorado. Such insurance policy or policies shall be endorsed to name Lessor as an additional insured and to state that the insuring company or companies will give not less than 10 days prior written notice to the Lessor and Tenant of any cancellation or reduction of insurance under such policy or policies of insurance, together with all endorsements pertaining thereto. A copy of such policy of insurance, together with all endorsements pertaining thereto, shall be furnished to Lessor prior to commencement of the Initial Term of this Lease.

**2-13. Indemnification of Lessor.** Tenant shall indemnify, defend and hold Lessor harmless from any and all cost, loss, damage or injury to person or property of any kind, including but not limited to reasonable attorneys' fees and court costs as such costs or fees are incurred, caused by (i) the negligence or intentional acts of Tenant, its employees, customers, or visitors; (ii) any breach or default in the performance of any obligation of this Lease by Tenant (but specifically excluding any breach or default which arises because of Lessor's failure to carry out Lessor's obligations under this Lease); (iii) Tenant's use of the Premises; and (iv) the conduct of Tenant's business or any other activity, work or things done, permitted or suffered by Tenant in or about the Premises. Tenant shall be solely responsible and liable for the payment of any expense incurred or for the value of any labor done or materials furnished to the Premises by Tenant unless (i) Lessor specifically agrees to the contrary in writing prior to the commencement of the work or furnishing of materials, (ii)

such expense, labor, or materials are performed or furnished in connection with remodeling, repairs or maintenance which Lessor is obligated to perform under Article 4, or (iii) such expense, labor or materials are performed or furnished at the direction or request of Lessor.

2.14. **Assignment**. Tenant shall not assign, sublease, sell or encumber the Premises, in whole or in part, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld; provided, however, that Lessor agrees that a sublease or assignment of the Premises, or a portion thereof, to a medical professional for use of the Premises for medical purposes, such as physicians' offices, shall be presumptively acceptable. Lessor's consent to such sublease or assignment shall not release Tenant from its liability under this Lease. The use of the Premises pursuant to any sublease shall be consistent with the uses permitted under this Lease and any tenant under any sublease shall not take any action that would cause the Tenant to be in default or breach under this Lease. Neither this Lease nor any interest herein shall be assignable or transferable by operation of law, and in the event of any proceeding under the Bankruptcy Act involving Tenant, or in the event Tenant should be adjudged insolvent, or make an assignment for the benefit of creditors, or if a Writ of Attachment or execution be levied on the leasehold estate created hereby, or if a receiver be appointed in any proceeding or action to which Tenant is a party, with authority to take possession or control of the Premises or the business conducted therein by Tenant, this Lease, at the option of the Lessor, shall terminate immediately and shall not be treated as an asset of the Tenant after the exercise of said option by the Lessor. To the fullest extent permitted by law, Lessor shall have the right, after the exercise of said option, forthwith to re-enter and to repossess the Premises.

2-15. **Surrender of Premises**. Upon the expiration of the term of this Lease, including any renewal hereof, or any extension hereof agreed to by the parties, Tenant shall have the Premises professionally cleaned and shall quit and surrender the Premises in as good a state and condition as received, reasonable wear and tear excepted.

2-16. **Hazardous Material - Compliance with Environmental Laws.** Tenant shall not, without the prior written consent of Lessor, knowingly

cause or permit any Hazardous Material (hereinafter defined) to be brought or remain upon, kept, used, discharged, leaked, produced or emitted in or about, or treated at the Premises; provided that nothing in this Section 2-16 shall prohibit or limit Tenant from conducting Tenant's intended use of the Premises as set forth in Section 2-7 hereof, including without limitations use of the Premises as physicians' offices, so long as Tenant's use is in conformity with all state, federal and local laws, ordinances, orders, rules, regulations, codes or any other governmental restrictions or requirements. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic or radioactive substance material, matter or waste which is or becomes regulated by any federal, state or local law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include (i) any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto and replacements therefor; (ii) the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. §9601 et seq., and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U. S.C. §6901 et seq.; and (iii) any medical waste. Tenant shall indemnify, protect, hold harmless, and defend Lessor and its contractors, agents, employees, members, managers, officers, and directors, if any, from any and all claims, demands, damages, expenses, fees (including without limitation reasonable attorneys' fees), costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature which may arise during or after the Term of this Lease or any Extended Terms thereof as a result of any Hazardous Material(s) contamination caused by the actions of Tenant. This includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. Without limiting the foregoing, if the presence of any Hazardous

Material(s) on or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall, at its sole expense, promptly take all actions and expense as are necessary to return the Premises to a condition in compliance with applicable laws, ordinances, orders, rules, regulations, codes or any other governmental restrictions or requirements, provided, however, that Lessor's approval of such actions shall first be obtained in writing; which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Lessor shall be responsible to correct, remove, or otherwise render harmless, Hazardous Materials that existed in or on the Premises at the time the same was delivered to Tenant ("Pre-existing Conditions") whether such conditions were discoverable upon a reasonable inspection or latent in nature and discovered only after possession was delivered to Tenant. Lessor shall be responsible for compliance with the governmental laws, orders, rules and directives governing such Pre-existing Conditions. Lessor shall indemnify, protect, hold harmless, and defend Tenant and its contractors, agents, employees, members, managers, officers, and directors, if any, from any and all claims, demands, damages, expenses, fees (including without limitation reasonable attorneys' fees), costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature which arise out of or relate to the presence of any Pre-Existing Conditions in or on the Premises, including but not limited to, Hazardous Materials which were placed in the Premises by Lessor, its agents, employees and/or contractors, or prior tenants.

2-17. <u>Snow Removal, Parking Lot, and Grounds</u>. Tenant shall remove or arrange to have removed all snow from the building in which the Premises are located, including all entrances and exits, in keeping with the frequency of snow removal by Gunnison Valley Hospital for its hospital premises. Tenant also shall maintain the parking lot in the same condition it was in at the commencement of this Lease, reasonable wear and tear excepted, by performing or causing the performance of the same annual maintenance that has historically been performed by Lessor, provided that in no event shall Tenant be responsible for repaving or replacing the parking lot. Tenant also shall maintain the exterior grounds of the Premises in keeping with Tenant's maintenance of its grounds at the Gunnison Valley Hospital; provided,

however, that this shall not be construed as alleviating Lessor of its obligations under Section 3-2 of Article 3.

**2-18. Condition of Premises.** Tenant hereby warrants and represents that Tenant has fully and completely inspected the Premises and all related areas and grounds, including but not limited to the heating, ventilating, air conditioning, plumbing and electrical systems, and is wholly satisfied with the physical condition thereof. Tenant agrees that Lessor has made no representations, warranties (expressed or implied), or covenants with respect to the condition of the Premises except those contained in this Lease.

## ARTICLE 3

**THE LESSOR HEREBY COVENANTS AND AGREES WITH THE TENANT AS FOLLOWS:**

**3-1. Ownership of Premises.** Lessor is the sole owner, in fee simple, of the Premises and has full right and power to lease the same for the term aforesaid.

**3-2. Repairs and Maintenance.**

A. Lessor shall be responsible for repairs and maintenance to the structural and exterior portions of the building located on the Premises. Provided, however, that any damage or destruction to the Premises caused by any acts or omissions of the Tenant, its agents, employees, guests and invitees shall be the sole responsibility of the Tenant. Lessor also shall maintain and make necessary repairs to wiring, mains, pipes, conduits, furnaces, and other means of producing and distributing services, including utility services such as electricity, gas, water, sewer, air conditioning, ventilation, and heat, in and through the Premises, provided that such maintenance or repair (i) was not necessitated by the acts of Tenant, Tenant's employees, agents, guests, invitees or customers, but specifically including within Lessor's obligation such maintenance or repairs as are necessitated by reasonable wear, tear and use, and (ii) shall not include making any upgrades to the existing utility services, including but not limited to the electrical service to the old x ray room.

B. Prior to August 1, 2013, Lessor shall perform the following repairs and verifications:

1. Repair airlock glass door so that it no longer drags.
2. Verify that all smoke alarms and fire systems are operable and to code and, if not bring such alarms and systems up to code.
3. Confirm functionality of occupancy/vacancy exam room lighting, and if not functional, repair.

C. Prior to August 1, 2013, Lessor shall have the Premises professionally cleaned.

3-3. **Quiet Enjoyment**. Lessor covenants that Tenant shall peaceably have, hold and enjoy the Premises for the term of this Lease. In the event that Lessor fails to pay encumbrances or real property taxes on the Premises resulting in foreclosure or tax sale, Tenant shall have the right to cure such defaults, and recover from Lessor any amounts paid to effect such a cure.

3.4. **Fire and Extended Coverage Insurance.** During the Initial Term of this Lease and any renewal hereof, the Lessor shall keep the Premises fully insured for fire and extended coverage and shall bear the risk of loss therefore. The amount of coverage in such policy of insurance shall be at least equal to the fair market value of the Premises and shall be with a reputable insurance company or companies licensed to do business in the State of Colorado. Such insurance policy or policies shall be endorsed to name Tenant as an additional insured and to state that the insuring company or companies will give not less than 10 days prior written notice to the Tenant of any cancellation or reduction of insurance under such policy or policies of insurance, together with all endorsements pertaining thereto. A copy of such policy of insurance, together with all endorsements pertaining thereto, shall be furnished to Tenant prior to commencement of the Initial Term of this Lease.

3-5. **Indemnification of Tenant.** Lessor shall indemnify, defend and hold Tenant harmless from any and all cost, loss, damage or injury to person or property of any kind, including but not limited to reasonable attorneys' fees and court costs as such costs or fees are incurred, caused by (i) the negligence or

intentional acts of Lessor, its employees, or agents; (ii) any breach or default in the performance of any obligation of this Lease by Lessor, including without limitation any injury suffered because Lessor's failure to perform its maintenance or repair obligations under Section 3-2 of this Article 3 (but specifically excluding any breach or default which arises because of Tenant's failure to carry out Tenant's obligations under this Lease); and (iii) any unpaid local, state or federal taxes due from the Lessor or any business previously operated on the Premises.

## ARTICLE 4

**THE TENANT AND THE LESSOR HEREBY MUTUALLY COVENANT AND AGREE AS FOLLOWS:**

4- 1. **Taxes and Assessments.** Lessor shall pay all Real Estate Taxes levied on the Premises, and Tenant shall promptly pay as the same become due and payable, and will not allow the same to become delinquent, all other taxes or assessments levied by any taxing entity in connection with Tenant's use of the Premises, including but not limited to (i) all personal property taxes levied on the personal property located upon the Premises during the term of the Lease, and (ii) all sales taxes, employment taxes, and unemployment taxes.

4- 2. **Default.**

A. The following shall constitute default by Tenant under this Lease:

(1) Tenant's failure to pay any installment of Rent, or other charge or money obligation hereunder when due.

(2) Tenant's insolvency or transfer in fraud of creditors, or Tenant's assignment for the benefit of creditors.

(3) Tenant's filing of a petition under the Bankruptcy Acts.

(4) The appointment of a receiver or trustee for Tenant's interest in the Premises or for all or substantially all of the assets of the Tenant.

(5) Tenant's abandonment or vacation of the Premises.

(6) The filing or creation of a lien on the Premises as a result of Tenant's action or inaction.

(7) Tenant's failure to pay any and all federal, state taxes, and local taxes related to Tenant's business when such taxes became due.

(8) Tenant's failure to comply with any term, provision or covenant of this Lease other than those failures specifically addressed above in this Article 4, Section 4-2 which continues for a period of ten (10) days after written notice thereof to Tenant.

B. In the event of any default by Tenant under this Lease, the Lessor shall give to the Tenant written notice of such default by certified mail. The Tenant shall have fifteen (15) days from the date of mailing of such notice to correct said default and if said default remains uncured fifteen (15) days after the date of said Notice, the Lessor shall have the right, but not the obligation, to terminate this Lease by giving written notice to Tenant of such termination by certified mail, provided, however, that in the event of a non-monetary default incapable of being cured within fifteen (15) days, the Tenant shall not be deemed in default if Tenant shall have, within such fifteen (15) day period, in good faith begun action necessary to remedy such default and continues thereafter diligently to prosecute such action to completion. In the event of such termination by the Lessor, the Lessor, in addition to the right to terminate as set forth above and other rights and remedies Lessor may have, shall, to the fullest extent permitted by applicable law, have the right to re-enter upon the Premises and may remove all persons and property from said Premises.

C. In the event of any default by Lessor under this Lease, the Tenant shall have the right to terminate this Lease in the following manner:

(1) The Tenant shall give to the Lessor written notice of such default by certified mail.

(2) The Lessor shall have thirty (30) days from the date of mailing of such notice to correct said default and if said default remains uncured thirty (30) days after the date of said notice, the Tenant shall have the right to terminate this Lease; provided, however, that in the event of a default incapable of being cured within 30 days, the Lessor shall not be deemed in default if Lessor shall have, within such thirty (30) day period, in good faith begun action necessary to remedy such default and continues thereafter diligently to prosecute such action to completion.

4-3. **Right to Retake Possession**. If under Section 4-2 B. the Lessor has the right to terminate this Lease because of uncured default, the Lessor may, without terminating this Lease, retake possession of the Premises and rent, or attempt to rent, the same for such rental payments and upon such conditions as the Lessor may deem best, making such repairs and alterations to the Premises as may be required. If Lessor elects to retake possession of the Premises without terminating this Lease, Tenant shall be liable for and shall pay to the Lessor all rent and other amounts due to the date of such repossession, together with all rent required to be paid by the Tenant to the Lessor during the remainder of the Lease term as such rent becomes due under the terms of the Lease, less any rents actually received by Lessor from any new tenant or tenants, plus Lessor's expenses and costs of repossessing the Premises, expenses sustained in securing any new tenant or tenants, and any other amounts payable by Tenant to Lessor under the provisions of this Lease.

4-4. **Tenant's Property**. All trade or business fixtures, equipment and property which may be placed in or upon the Premises by the Tenant are to remain its sole and separate property, and Tenant shall have the right to remove the same upon the termination of this Lease, or any extension thereof. Said right of removal shall be subject to the following express conditions:

A. Tenant shall not then be in default in the performance of any of the terms and conditions of this Lease.

B. No personal property or trade or business fixtures, equipment and property shall be removed which shall have become permanently affixed to the real property and cannot be removed without causing irreparable damage or injury to the Building, and all such property shall become the property of Lessor and shall remain upon and be surrendered with the Premises as a part thereof at the termination of this Lease, Tenant hereby waiving all rights to any payment or compensation therefor. Tenant may remove personal property or trade or business fixtures, equipment and other property, which has not become permanently affixed to the real property, and provided such removal can be accomplished without causing irreparable damage or injury to the Building. Tenant shall promptly repair all damage caused by such removal and restore the Premises to substantially the same condition as it was prior to the removal thereof.

C. Notwithstanding the foregoing, Lessor shall have the option, but not the obligation, to pay Tenant fair market value for any fixtures or personal property installed or otherwise placed on the Premises by Tenant that Tenant does not want to remove upon the termination of this Lease, including any renewal periods.

4-5. **Destruction of Premises**. In the event the Premises shall be destroyed or so damaged by or injured by fire or other casualty during the life of this Lease, whereby the same shall be rendered untenantable, then, the Lessor shall have the right to render said Premises tenantable by repairs within ninety (90) days therefrom. Rent shall abate during the said periods of untenantability of the Premises. If said Premises are not rendered tenantable within said time, it shall be optional with each Lessor and Tenant to cancel this Lease, and in the event of such cancellation, the rent shall be paid only to the date of such fire or casualty. The cancellation herein mentioned shall be evidenced in writing.

4-6. **Lessor's Transfer of Interest**. Lessor shall have the right to transfer, sell, convey or in any other manner dispose of its interest in the Premises. Upon any such transfer, the Lessor shall be relieved of any and all obligations hereunder to the Tenant, any successor or transferee of Lessor shall take title

to the property subject to this Lease and shall assume all of the obligations of the Lessor hereunder, and Tenant shall attorn to such successor or transferee.

4-7. **Subordination.** This Lease may, at the option of the Lessor, be made subordinate to any mortgage or deed of trust now or hereafter placed upon or affecting the Premises and to all renewals, modifications, replacements or extensions hereof, subject to the provision that notwithstanding any default under or foreclosure of such mortgage or deed of trust or the enforcement of any other rights and remedies including the right of sale thereunder, this Lease shall be recognized and shall remain in full force and effect during the term of this Lease so long as the Tenant is not in default of this Lease's provisions. Tenant shall, upon request by Lessor, execute and deliver such instruments as may be reasonably necessary or convenient to evidence such subordination.

4-8. **Continuance of Lease.** If, after the expiration of this Lease the Tenant shall remain in possession of the Premises without the written agreement of Lessor as to such tenancy, then the Tenant shall be deemed to be a month to month Tenant and shall pay monthly Rent in an amount equal to 125% of the Rent in effect on the last month of this Lease. Such month to month tenancy shall not be deemed to extend the Term or renew this Lease, and the month to month tenancy may be terminated by either party giving written notice to the other of the termination at least 30 days prior to the commencement of the next month of the month to month tenancy.

4-9. **Rights are Cumulative.** All rights and remedies hereby created for the benefit of the Lessor and Tenant are cumulative and the exercise of any one remedy shall not be taken to exclude or waive the right of the Lessor or Tenant, as the case may be, to make use of any other remedy.

4-10. **Knowledge of Contents.** The parties to this Lease, by the execution hereof, acknowledge that they have read the same and every paragraph hereof and have expressed an explicit knowledge and understanding of all matters, things, conditions, stipulations, promises, covenants, and agreements herein set forth. The parties have consulted with appropriate professionals with respect to this lease as they deem necessary or advisable, and this Lease will be

deemed to have been prepared with the equal participation of both Lessor and Tenant.

4-11. Notices. All notices and communications required herein shall be in writing and shall be sent by (i) hand delivery to the following physical address or sent by registered or certified mail (or equivalent) return receipt requested to the following mailing address and (ii) shall also be sent via electronic mail to the following email address, if one is stated herein:

Lessor: Gunnison Medical Arts Center, LLC
c/o Dr. Jay Wolkov, D.O.
971 Camino del Rio
Gunnison, CO 81230
drjaygunnison@gmail.com
greelea@aol.com

With a copy to:

Seth Wolkov
162 Ash Street
Denver, CO 80220
swolkov@madisoncap.com

Tenant: Gunnison Valley Hospital
c/o Robert Santilli, CEO
711 North Taylor Street
Gunnison, CO 81230
rsantilli@gvh-colorado.org

Notice shall be deemed properly given when (i) hand delivered to the above addressee's physical address or received by mail sent to the above addressee's mailing address and (ii) sent via electronic mail to the addressee's email address, if one is stated herein. Any party may change his address of record by giving written notice of the change to the other party.

4-12. Renewal and Notice of Sale. The Tenant shall have the right to renew the Term of this Lease for two successive five-year terms (respectively, the "First Renewal Term" and "Second Renewal Term"), subject to the following terms and conditions:

A. Tenant shall not be in default as to any of the terms and conditions of this Lease either at the time of exercise of the renewal option or at the commencement of the First Renewal Term or Second Renewal Term.

B. Tenant shall give written notice to Lessor no less than 180 days prior to the end of the Initial Term of its intent to exercise its option to extend the Term of this Lease for the First Renewal Term and no less than 180 days prior to the end of the First Renewal Term of its intent to exercise its option to extend the Term of this Lease for the Second Renewal Term. If Tenant fails to timely deliver such notice to Lessor, then this Lease shall expire at the end of the current term without renewal for another term.

C. The extension of the Initial Term of this Lease for the First Renewal Term shall be under the same terms and conditions set forth herein, except that Tenant shall lease the Premises from Lessor at and for a Rent equal to the appraised value as calculated pursuant to subparagraph E. below, with rent payable in advance in equal, monthly installments due by the fifth day of each calendar month.

D. The extension of the First Renewal Term of this Lease for the Second Renewal Term shall be under the same terms and conditions set forth herein for the First Renewal Term, except that Tenant shall lease the Premises from Lessor at a Rent for Second Renewal Term equal to the appraised value as calculated pursuant to subparagraph E. below, with rent payable in advance in equal, monthly installments due by the fifth day of each calendar month.

E. The appraised value shall be determined as follows:

If the parties can agree to the value, the value shall be as the parties agree and no appraisal shall be necessary.

If the parties are unable to agree upon the fair market value for the renewal period, the Lessor and Tenant shall mutually select an appraiser to assist in determining said value, who shall be a qualified commercial real estate appraiser with experience in Gunnison County. If the Lessor and Tenant cannot agree upon an appraiser, then they shall each select their own appraiser. If the two appraisers agree upon the value, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the value, they shall appoint a third appraiser, who shall determine the value, and render a written report stating that value. The rental rate contained in the joint written report or written report of the third appraiser, as the case may be, shall be the Rent for the renewal term; provided, however, that if the rental rate contained in the report of the third appraiser is more than the higher of the first two rental rates, the higher of the first two rates shall govern; and provided, further, that if the rental rate contained in the report of the third appraiser is less than the lower of the first two rates, the lower of the first two rates shall govern. Each party shall pay the fees and other costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared by the parties.

F. Lessor shall provide notice to Tenant of its good faith intention to sell the Premises, and the price at which it intends to sell the Premises, at least 30 days prior to listing or otherwise marketing the Premises for sale.

4-13. **Entire Agreement.** This Lease contains the entire agreement of the parties and all discussions, negotiations and representations are merged herein. This Lease shall not be amended except by written instrument signed by Lessor and Tenant.

4-14. **Applicable Law**. This Lease is entered into in the City of Gunnison, Gunnison County, Colorado, and it is agreed that the exclusive proper

jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Lease shall be in the District Court of Gunnison County, Colorado.

4-15. **Severability.** If this Lease, any provision of this Lease, or any other instruments by way of reference incorporated herein contains any term or provision which is or becomes under present or future laws, illegal, invalid or unenforceable, the remainder of the Lease shall not be affected thereby, and each and every term and provision otherwise valid shall remain valid and be enforced to the fullest extent permitted by law. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

4-16. **Construction.** This Lease is the result of substantial negotiations between the parties and their counsel and the provisions hereof shall not be more strictly construed against or in favor of either party.

4-17. **Attorneys' Fees.** If any action is brought in a court of law to enforce, interpret or construe this Lease or any document provided for herein or related hereto, the prevailing party shall be awarded all reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action, including expert witness fees and expenses.

4-18. **Binding Agreement.** This Lease shall be binding upon the successors or assigns of the parties hereto.

4-19. **Miscellaneous.**

A. This Lease may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. The parties will accept facsimile signatures or electronic signatures as original signatures.

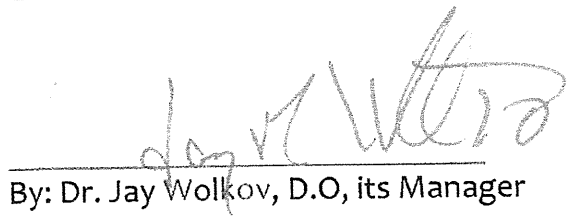
B. The paragraph headings used in this Agreement are for purposes of identification only and shall not be considered in construing this Agreement.

C. Lessor and Tenant represent and warrant that they have not retained any third parties, such as brokers, that would be owed any commissions or other monies because of this Lease.

D. No sums payable or due by Tenant to Lessor under this Lease, including but not limited to payments of Rent, shall be payable or collectable from property tax revenues that might otherwise be available to Gunnison County for general purposes, unless approved each year as an annual appropriation by Gunnison County.

IN WITNESS WHEREOF, the parties have signed this Lease as of the day and year first above set forth.

**LESSOR**
Gunnison Medical Arts Center, LLC



By: Dr. Jay Wolkov, D.O, its Manager

**TENANT**
Gunnison Valley Hospital

By: Robert Santilli, its Chief Executive Officer

# 39-3-124. Property used by state entity - installment sales or lease agreement - lease-purchase or leveraged lease agreement - exemption

- **(1)** (a) Property, real and personal, that is used by the state or any of its political subdivisions pursuant to the provisions of any installment sales agreement, lease-purchase agreement, or any other agreement whereby the state or such political subdivision shall be entitled to acquire title to such property at the end of the agreement term without cost or for only nominal consideration shall be exempt from the levy and collection of property tax.
  - **(b)** (I) (A) Subject to the provisions of sub-subparagraph (B) of this subparagraph (I), on and after January 1, 2009, the part of real property that is used by the state, a political subdivision, or a state-supported institution of higher education pursuant to the provisions of any lease or rental agreement for at least a one-year term, with or without an option to purchase, and pursuant to which the subject real property is used for purposes of the state, political subdivision, or institution of higher education, as applicable, shall be exempt from the levy and collection of property tax. If the state or any political subdivision or state-supported institution of higher education enters into a lease or rental agreement or is already in a lease or rental agreement on or after January 1, 2009, and is exempt from the levy and collection of property tax pursuant to this section, the state, political subdivision, or state-supported institution of higher education, as applicable, shall file a copy of the lease or rental agreement with the county assessor's office. The state or a political subdivision or institution of higher education shall notify the county assessor's office in the event that the lease or rental agreement is terminated prior to the term stated in such lease or rental agreement. Nothing in this paragraph (b) shall affect property tax exemptions allowed pursuant to section 8-82-104, 22-32-127, 29-4-227, 30-11-104.2, 31-15-802, or 43-1-214, C.R.S.
    - **(B)** The state, a political subdivision, or a state-supported institution of higher education shall reduce, deduct, or offset property taxes from rent due under any lease or rental agreement pursuant to sub-subparagraph (A) of this subparagraph (I). Upon receipt of a lease or rental agreement for the state, a political subdivision, or a state-supported institution of higher education, the county assessor shall send a notice to the landlord acknowledging receipt of the lease or rental agreement. The notice shall identify the property, the property address, and the parties to the lease or rental agreement.
    - **(C)** To the extent that real property taxes are shared and payable by one or more tenants under the lease of property that are not the state, a political subdivision, or a state-supported institution of higher education, real property taxes otherwise due but for the application of this paragraph (b) shall be deemed taxes paid by the property owner or the landlord of a property leased in part to the state, a political subdivision, or a state-supported institution of higher education.
    - **(D)** Only a tenant that is the state, a political subdivision, or a state-supported institution of higher education shall receive any benefit related to the tenant's property tax-exempt status pursuant to this paragraph (b).
    - **(E)** It is the general assembly's intent that the application of this paragraph (b) be cost-neutral in that the tax reduction and the rent reduction pursuant to this paragraph (b) are equal.