



Via Email Only

January 27, 2022

Kevin Mullin, Chair
C/O Michael Barber, General Counsel
Green Mountain Care Board
144 State Street
Montpelier, Vermont 05602

**Re: GMCB-008-21CON – CSC Response to Questions about Real Estate
Ownership/Landlord-Tenant Status**

Dear Chair Mullin:

This letter is to address questions raised at the hearing regarding the status of the Letter of Intent to Lease between the Colchester Real Estate Company, LLC (“CREC”) and The Collaborative Surgery Center (“CSC”). The CSC appreciated the Board noting that the CREC was a dissolved entity. As the Board may have noted, this was a surprise to the CSC. Following the hearing, the CSC reached out to the owners of the property to confirm that the current owner(s) agree to be bound by the terms and conditions of the original Letter of Intent to Lease. The CSC also asked for an explanation as to the course of property ownership for the property at 525 Hercules Drive.

Attached is a letter from Mr. Harmeling as owner of 525 Hercules Drive explaining the course of transactions and documenting that he remains in control of the real estate as expected under the original option and Letter of Intent to Lease. As documented in Mr. Harmeling’s letter, in the course of executing CREC’s option, the nature of the sale changed and the parties (then owner and buyer) determined it best to own the property as “Tenants in Common.” The transaction was complicated due the conversion to a Tenancy in Common and due to the timing of the transaction. With the rapidity that the Board scheduled this hearing, the owners of 525 Hercules Drive did not have the opportunity to notify the CSC of the change in structure before the hearing.

Given that the ownership structure changed to a Tenants-in-Common structure, the CSC asked that the owner execute a new Letter of Intent to Lease reflecting the terms and conditions of the Letter of Intent to Lease previously agreed to with the CREC. An updated fully executed Letter of Intent and Legal Authorization is attached hereto. Also included is a signed authorization by the required Tenants-in-Common. As you can see the underlying conditions remain the same.

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The Board also asked about the contingencies built into the fit-up budget. I discussed at the hearing that there was a contingency built into the budget to address potential overruns. As noted in Mr. Harmeling's letter, and as I discussed at the hearing, the fit-up budget includes a 12% contingency. There is also a market inflation rate of 7.8% included in the fit-up budget to address expected inflation over time. An additional 6% General Conditions line item was also noted to address unexpected site conditions during construction. These figures are provided in Table 2 – Cost Summary that is on page 28 of the Applicant's CON application.

Further, in response to the Board's questions as to cost overruns and how those would be managed, the CSC asked the owners to confirm how cost over-runs are to be handled. Originally, the intent of the parties was to finalize those details after the issuance of a CON when they drafted a final and complete lease. The parties did expect and understand that there would be some sharing of overrun costs between Tenant and Landlord so as to align the parties' interest and share any necessary burden. This is noted in Mr. Harmeling's letter.

I trust this addresses the Board's reasonable questions about the ownership of the real property and status of lease agreement. The CSC appreciates the Board's diligence. The CSC was not aware that the transaction had closed. Had it been aware, it would have provided the Board with details earlier this month. It thanks the Board for the opportunity to clarify this issue.

Thank you,

A.J. LaRosa

A.J. LaRosa

ajlarosa@mskvt.com

Cc: Kali Kuper (kkuiper@vtlegalaid.org)

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MSK
ATTORNEYS

The Collaborative Surgery Center

Letter of Intent to Lease

Date: Jan 27, 2022

Landlord: DPR Investments, LLC, DS Capital LLC and L5 Inc. by and Through Taylor Harmeling as Property Manager of 525 Hercules Drive, Colchester VT (hereinafter "Landlord")

Tenant: The Collaborative Surgery Center, LLC (hereinafter "Tenant")

Regarding: Intent to Lease Premises within 525 Hercules Drive, Colchester Vermont

Building/Property: 525 Hercules Drive, Colchester Vermont

Premises: The premises shall be deemed to contain approximately 9,000+/- gross rentable square feet of space in the subject property, which constitutes the majority of the total square footage of the 525 Hercules Drive building.

Rent Commencement: The Lease shall commence not later than the first of the month following the receipt of an un-restricted multi-specialty Certificate of Need from the Green Mountain Care Board that that allows the Tenant to perform all those orthopedic, dental, ENT and urology procedures allowed by Medicare to be performed at an ASC.

Landlord's Fit Up: Landlord owns 525 Hercules Drive building. Landlord shall commence the fit up of the Premises upon the issuance of an un-restricted multi-specialty Certificate of Need from the Green Mountain Care Board that that allows the Tenant to perform all those orthopedic, dental, ENT and urology procedures allowed by Medicare to be performed at an ASC or upon such and other further assurances as Landlord deems acceptable.

Use: Ambulatory Surgery Center

Initial Lease Term(s): Minimum ten (10) years from the date of Rent Commencement with not less than a 10 year renewal term.

Security Deposit: N/A

Rent: \$64 per/square foot with 3% annual increases during initial lease term. Renewal term base rent to be determined upon renewal term.

Early Termination: Tenant may terminate lease with 90 days' notice.

Tenant's Gas, Electric, Water, and Other Utilities: By Tenant, separately metered.

Rubbish, Compost, Recycling: By Tenant.

Tenant's Janitorial: Provided by Tenant.

Landlord Contribution: Landlord to deliver the fit up Premises as per the plans prepared by Wiemann Lamphere Architects. Initial fit-up costs are estimated to be \$2.4 million. Landlord will incur initial fit-up costs and said costs will be reimbursed by Tenant through the payment of the base rent of \$64 per square foot

Tenant Fit-Up: Immediately following the receipt of a Certificate of Need, Tenant will have ten (10) business days to determine additional work Tenant requires above and beyond the Landlord Contribution. All additional work will be considered "Tenant Fit-Up," and as such the Tenant will be responsible for the cost.

Signage: Tenant to design, permit and supply exterior signage, with prior Landlord approval.

Condition of Premises: Landlord warrants that the provided premises will meet all current codes, ordinances, etc., including but not limited to, building electrical, plumbing, general fire/life safety, and ADA (excludes installation of tenant provided light fixtures or additional HVAC/electrical distribution completed as part of a separate tenant fit-up scope). Landlord will be responsible for maintenance of the exterior of the building including but not limited to the roof, structure, and facade. Tenant shall be responsible for ensuring the use as an Ambulatory Surgery Center meets all regulatory requirements for the operation of such a facility. Landlord shall not be responsible in any way for the operation of an Ambulatory Surgery Center.

Parking: Parking shall be onsite and communal with no designated parking.

Personal Guaranties: N/A.

Lease Agreement: Prior to the commencement of Rent and after the issuance of a Certificate of Need, Landlord will deliver to Tenant a copy of a Lease reflecting the terms and conditions contained herein for Tenant's review. Tenant shall have ten (10) business days to review the lease document and provide comments to the Landlord, if any.

Conditions: The terms reflected in this Letter of Intent are contingent upon execution of a formal Lease Agreement mutually agreeable to both Landlord and Tenant.

This letter does not address all material and essential terms of a lease for the Premises and such terms, including those set forth above, will be subject to further negotiation. Neither Landlord nor Tenant shall have any obligation, duty nor liability on account of negotiations neither pursuant to this letter nor otherwise, nor any course of dealing, any action or statement, or correspondence made or delivered by anyone pursuant to this letter. We do not intend that this letter be binding upon Landlord or Tenant and no binding agreements shall exist between Landlord or Tenant for any purpose until final, definitive, fully negotiated lease documents have been fully executed and delivered. Tenant shall not enter into and execute a binding fully negotiated lease until the appropriate officers of Tenant's company have approved the same.

TENANT:

By: 

Its: Member-Manager

Date: 1/27/22

LANDLORD:

By: 

Its: Taylor Harmeling, Manager of Tenants In Common owners of 525 Hercules Drive, Colchester VT

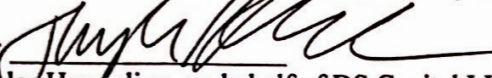
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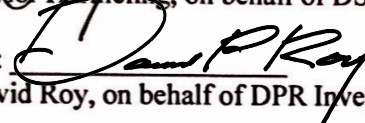
AUTHORIZATION TO ENTER INTO LETTER OF INTENT TO LEASE

WHEREAS Pursuant to a Tenants-In-Common Agreement (the "TICA") dated January 1, 2022 DS Capital, LLC, DPR Investments, LLC and L5, Inc. are owners of certain real property known as 525 Hercules Drive, Colchester, Vermont.

WHEREAS the TICA designates Taylor Harmeling as Property Manager and authorizes Mr. Harmeling to enter into any Lease Agreement upon the vote of 60% of the ownership shares of the Property.

NOW WHEREAS the following owners constituting more than 60% of the shares of ownership of the Property authorized Mr. Harmeling to execute and enter into the Letter of Intent to Lease with the Collaborative Surgery Center dated January 27, 2022.

By: 
Taylor Harmeling, on behalf of DS Capital LLC

By: 
David Roy, on behalf of DPR Investments, LLC

January 27, 2022

Dear Ms. Ridzon and Ms. Hunt:

Per the confusion at your Green Mountain Care Board hearing yesterday, I wanted to provide you this letter and updated Letter of Intent to Lease. I would like to apologize for not having kept you informed of all the comings and goings of my transactions in the past few months – these have been very complicated and I hope you can understand that since my partners' and my intent was always to honor the prior Letter of Intent to Lease, it was not our highest priority to keep you informed of the minutiae of how the transactional negotiations and details were unfolding. Our priority has been dealing with our own affairs, closing our transaction and dealing with post-closing logistics which are ongoing and remain time consuming. I understand that this has caused some uncertainty in your process, and I hope with this letter and the attached Letter of Intent to Lease, this uncertainty will be cleared up.

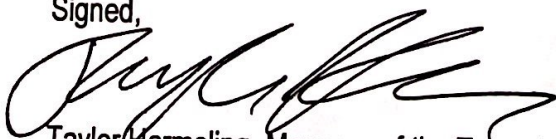
By way of background, in July 2021, I formed Colchester Real Estate Company LLC for the purpose of acquiring 525 Hercules Drive from its existing owner, L, R & W LLC. In negotiating the terms of the sale and based on the wishes of the owners of L, R & W, the structure of the transaction changed from the purchase of the real estate to the purchase of membership interests in L, R & W, since one of the members of L, R & W wanted to continue to own an interest in the property. So rather than having the Colchester Real Estate Company purchase the property from L, R & W instead I ended up purchasing a controlling interest in L, R & W from two of the three members of the company in December 2021. Rather than continuing the existence of L, R & W following the closing, we dissolved that entity and distributed the property to its members as tenants-in-common.

These changes in the transaction had nothing to do with Collaborative Surgery Center – it was what it took to make the transaction happen.

I currently own (through my single member limited liability company DS Capital LLC) a controlling interest in 525 Hercules Drive, as the majority economic owner of the property. I am also the duly authorized manager and agent of the tenants-in-common ownership of the property. As evidence of my prior statement that my partners' and I intended on honoring your prior letter of intent, please find in the attached document a signed Letter of Intent to Lease on behalf of the ownership of 525 Hercules Drive, on the same terms as the prior July 29th 2021 agreement that I executed on behalf of my previous limited liability company, the Colchester Real Estate Company (which, given that it no longer serves any purpose, I have dissolved).

Finally, as to the issue of potential cost overruns that was asked about at yesterday's hearing, please see page 28 of the application for the Contingency and Market Inflation figures that were included in the fit up budget. To the extent that there are costs and inflation above these amounts, I would anticipate entering into some arrangement whereby these overruns are shared between tenant and landlord, so as to align interests and share the burden. That said, such a level of detail has not been contemplated in this Letter of Intent to Lease.

Signed,



Taylor Harmeling, Manager of the Tenants In Common owners of 525 Hercules Drive, Colchester VT