



BOARD OF SUPERVISORS AGENDA ITEM REPORT  
AWARDS / CONTRACTS / GRANTS

Award  Contract  Grant

Requested Board Meeting Date: May 7, 2024

\* = Mandatory, information must be provided

or Procurement Director Award:

**\*Contractor/Vendor Name/Grantor (DBA):**

Banner - University Medical Center – South Campus, LLC

**\*Project Title/Description:**

Replacement of the Banner - University Medical Center–South Campus Lease

**\*Purpose:**

The County-owned hospital, formerly known as the Kino Campus, has been leased to area-hospital operators since 2004, and most recently, with Banner Health. In concert with a new Operating Intergovernmental Agreement, the Lease has been amended and restated to align with the tenets and stewardship of the hospital and provision of critical health services in the community.

**\*Procurement Method:**

Exempt Per Section 11.04.20.

**\*Program Goals/Predicted Outcomes:**

Tenant will continue to provide critical medical, surgical, out-patient clinic services and behavioral health services to Pima County residents.

**\*Public Benefit:**

The hospital, now called the Banner - University Medical Center–South Campus, will continue to provide essential medical and behavioral health services in a designated Medically Underserved Area. Through this partnership detailed within the Lease, the hospital will continue to retain its accreditation from the Joint Commission, and grow its comprehensive hospital-based, clinical and outpatient services available to the community and County residents.

**\*Metrics Available to Measure Performance:**

Pima County will continue to partner with Banner - University Medical Center–South Campus to assure comprehensive medical and behavioral health services are provided by a Joint Accredited Hospital in a medically underserved area.

**\*Retroactive:**

No.

TO: COB 4-24-24  
VERS: 1  
PGS: 44

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

Contract / Award Information

Document Type: CT Department Code: FM Contract Number (i.e., 15-123): 24-442
Commencement Date: July 1, 2024 Termination Date: 6/30/2029 Prior Contract Number (Synergen/CMS): CT-FM-12-2152
Expense Amount \$ Revenue Amount: \$ 10,050.00

\*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? Yes No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

Expense Revenue Increase Decrease

Amount This Amendment: \$

Is there revenue included? Yes No If Yes \$

\*Funding Source(s) required:

Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Commencement Date: Termination Date: Amendment Number:

Match Amount: \$ Revenue Amount: \$

\*All Funding Source(s) required:

\*Match funding from General Fund? Yes No If Yes \$ %

\*Match funding from other sources? Yes No If Yes \$ %

\*Funding Source:

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Tony Cisneros

Department: Facilities Management

Telephone: 520-724-3703

Department Director Signature:

Date: 4.22.2024

Deputy County Administrator Signature:

Date: 4.22.2024

County Administrator Signature:

Date: 4/23/2024

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**SECOND AMENDED AND RESTATED LEASE AGREEMENT**

Dated as of July 1, 2024

Between

**PIMA COUNTY**

and

**BANNER-UNIVERSITY MEDICAL CENTER SOUTH CAMPUS, LLC**

Execution Version

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**EXHIBIT B – CRC SERVICES ..... B-1**

**EXHIBIT C – SUPERIOR COURT SERVICES ..... C-1**

## SECOND AMENDED AND RESTATED LEASE AGREEMENT

This **SECOND AMENDED AND RESTATED LEASE AGREEMENT** (this “*Lease*”) is made and entered into as of the later of the signature dates below, to be effective as of July 1, 2024 (the “*Effective Date*”) between Pima County, a political subdivision of the State of Arizona (“*County*” or “*Landlord*”), and Banner-University Medical Center South Campus, LLC, an Arizona limited liability company (“*Tenant*”), with reference to the below recitals. Landlord and Tenant are sometimes referred individually as a “*Party*” and collectively as the “*Parties*”.

### RECITALS

**A.** County and University Physicians Healthcare, an Arizona nonprofit corporation, fka University Physicians, Inc. (“*UPH*”), that acted on behalf of the clinical practice group of the University of Arizona College of Medicine (“*UACOM*”), previously entered into a lease agreement dated April 27, 2004 (as amended, the “*UPH Lease*”), pursuant to which County leased to UPH a hospital facility and some associated real property formerly operated by County as Kino Community Hospital, located within the Health Campus.

**B.** The UPH Lease was subsequently amended and restated by the parties thereto by the Amended and Restated Lease Agreement dated as of June 21, 2011, amended by the First Amendment to Amended and Restated Lease Agreement dated as of August 20, 2012, the Second Amendment to Amended and Restated Lease Agreement dated as of May 13, 2014, the Third Amendment to Amended and Restated Lease Agreement dated as of August 16, 2016, the Fourth Amendment to Amended and Restated Lease Agreement dated as of March 7, 2017, and the Fifth Amendment to Amended and Restated Lease Agreement dated as of October 3, 2017 (the “*First Amended and Restated Lease*”).

**C.** The above-described lease agreements and amendments (which, including all previous amendments, will be referred to in this document as the “*Original Lease*”), reflects Banner-University Medical Center South Campus, LLC (Tenant) as the current tenant, and all previous tenants of the facility.

**D.** University of Arizona Health Network, Inc. (“*UAHN*”) assigned the First Amended and Restated Lease to Tenant effective February 27, 2015, with County consent.

**E.** In connection with the Original Lease, County committed to operational service payments to establish the Health Campus into a financially self-sufficient full service general hospital. This operational support had been outlined in the provisions of a previous agreement among County, Tenant, and the Arizona Board of Regents and is now provided for in the Operating Agreement (as defined in **Recital I**).

**F.** The “*Leased Premises*” is defined as: the Hospital Parcel; the Heliport Parcel (for medical transports to and from the Hospital); the behavioral health in-patient facility known as the Behavioral Health Pavilion (the “*BHP*”); the buildings denominated as A (aka Bldg. 500), B (aka Bldg 100), F (aka Bldg. 200), G (aka Bldg. 300), and P (aka the Central Plant); and parking areas P2, P3, P4, P5, P6, P7, and P8, all as depicted on **Exhibit A**, all improvements thereon, and the



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Landlord Equipment. (Notwithstanding the foregoing, the Parties acknowledge that Tenant owns the improvements, but not the land, located on the sites of buildings F and G.) The BHP includes an emergency room, specially designed space referred to as the psychiatric emergency area, an outpatient clinic on the first floor, two 24-bed inpatient units on the second floor, and administrative offices, an outpatient clinic, ECT suite and shelled space on the third floor. A building (the “**CRC**”), physically connected to the BHP by a covered walkway, has been constructed to house a psychiatric urgent care crisis center on the first floor and a sub-acute behavioral health in-patient facility on the second floor, to be operated by the Regional Behavioral Health Authority and/or its designated contractor. This Lease does not lease the CRC to Tenant. Rather, the CRC operations are controlled by a completely separate agreement unrelated to this Lease and or the Operating Agreement to which Tenant is not a party. Various systems in the CRC operate from the BHP central plant. The CRC is further discussed in **Section 11.4**.

**G.** The area in which the Health Campus is located is within a federally designated “Medically Underserved Area” and a “Health Professional Shortage Area” of Pima County with respect to primary care, dental care, and behavioral health.

**H.** Arizona and Pima County are faced with a healthcare workforce shortage limiting community access to healthcare. Revitalization, and continued growth of the Health Campus will continue to provide a site for training of a much-needed professional healthcare workforce, including physicians, nurses, and other medical professionals. This continued workforce investment will also support the community’s access to critical healthcare in a Medically Underserved Area.

**I.** It is therefore in the best interests of County and its residents for Tenant and its subsidiaries to succeed in maintaining, expanding, and further integrating the research, teaching, and clinical operations at all Tucson sites, creating a unified educational and clinical system that maximizes economic and healthcare opportunities for County residents. To assist with this endeavor, County, Tenant, and Arizona Board of Regents entered into an Agreement for the Funding and Operating of Banner–University Medical Center South Campus of even date herewith (the “**Operating Agreement**”).

**J.** To the extent practicable, County expects Tenant to maximize County’s investment in the Health Campus programs and services, including the healthcare workforce development initiatives, and anticipates that Tenant will reasonably cooperate with other area agencies, the Court, the Pima County Attorney’s Office (“**PCAO**”) and various County departments as a provider for an array of services for which County is the payer or is mandated to provide, such as health services to individuals housed in County detention centers, and A.R.S. Title 36 (“**Title 36**”) involuntary psychiatric evaluations and treatment.

**K.** Landlord has dedicated public funding toward various capital improvements for the Leased Premises. The Parties acknowledge that the Leased Premises need certain additional capital improvements to maintain its accreditation from the Joint Commission and to provide for advanced medical services in keeping with industry best practices.

**L.** Tenant (and previous tenants) have been in continuous occupancy of the Leased Premises since the commencement date of the Original Lease. However, many provisions of the

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First Amended and Restated Lease have been modified or are no longer applicable given the passage of time and the way in which operations at the Hospital have evolved.

**M.** The County Board of Supervisors (the “**Board**”) has authority to provide for the care and maintenance of the sick of Pima County and erect and maintain hospitals for that purpose (A.R.S. § 11-251(5)); to provide medical care for persons under the supervision of a county corrections agency (A.R.S. § 11-291); to pay for the costs of involuntary evaluations (A.R.S. § 36-545.04); to provide monies in order to qualify for additional federal matching monies (A.R.S. § 36-2903.01(G)(9)(f)); to provide funding to qualify for additional federal matching monies for disproportionate share hospital payments (A.R.S. § 36-2903.01(P)); to appropriate and spend monies for and in connection with economic development activities (A.R.S. § 11-254.04); and to enter into intergovernmental agreements (A.R.S. § 11-951 et seq).

**N.** The Parties desire to amend, restate, and replace the First Amended and Restated Lease in its entirety with this Lease.

NOW, THEREFORE, in consideration of the above and the sum of Ten Dollars (\$10.00), receipt of which is hereby acknowledged, and other good and valuable consideration, and in further consideration of the mutual covenants and agreements to be herein kept and performed by the Parties, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS AND SUBJECT OF THE LEASE**

**Section 1.1 Definitions.** In addition to the terms within the general sections of this Lease, the terms set forth below shall have the following meanings unless otherwise required by the context in which they may be used:

“**AAA**” is defined in **Section 9.3.2.**

“**Acceptance Period**” is defined in **Section 13.1.1.**

“**ADA**” is defined in **Section 5.1.3.**

“**Banner**” means Banner-University Medical Center South Campus, LLC, an Arizona limited liability company.

“**BHP**” is defined in **Recital F.**

“**Board**” is defined in **Recital M.**

“**Book Value**” means the value of the Improvements or Tenant Equipment, as applicable, as reflected on Tenant’s audited financial statements.

“**Capital Improvements**” is defined in **Section 6.2.1.**

“**Claims**” is defined in **Section 7.1.1.**

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“**Code**” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder and applicable to the Bonds or the use of proceeds thereof, unless the context clearly requires otherwise.

“**County**” means Pima County, a political subdivision of the State of Arizona.

“**Court**” is defined in **Section 11.1**.

“**CRC**” is defined in **Recital F**.

“**CRC Operator**” is defined in **Section 11.4**.

“**CRC Parcel**” is defined in **Section 11.4**.

“**CRC Parking Lot**” is defined in **Section 11.3**.

“**CRC Services**” is defined in **Section 11.4**.

“**Dispute**” is defined in **Section 9.3**.

“**Effective Date**” is defined in the introduction paragraph of this Lease.

“**Event of Default**” is defined in **Section 9.1**.

“**Excluded Tenants**” is defined in **Section 5.1.4**.

“**Extension Notice**” is defined in **Section 2.2**.

“**First Amended and Restated Lease**” is defined in **Recital B**.

“**Health Campus**” means the larger public health campus, which is depicted on **Exhibit A**. The Health Campus includes the buildings labeled as A – G and P, the parking labeled as P1 – P9W/P9E, the Heliport Parcel, the Superior Court Space, and the sally port labeled as J, all as depicted on **Exhibit A**.

“**Heliport Parcel**” means that certain parcel as depicted on **Exhibit A**.

“**Hospital**” means the “Banner-University Medical Center South Campus” located at 2800 E. Ajo Way, Tucson, Arizona 85713, which operates within the Leased Premises.

“**Hospital Parcel**” means that certain parcel as depicted on **Exhibit A**.

“**Improvements**” is defined in **Section 6.2**.

“**Insured Casualty**” is defined in **Section 7.6.1**.

“**Landlord**” means County.

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“*Landlord Equipment*” is defined in Section 1.2.3.

“*Law*” and “*Laws*” are defined in Section 5.1.3.

“*Lease*” means this Second Amended and Restated Lease Agreement, as from time to time amended, between Landlord and Tenant.

“*Lease Term*” means the term of this Lease, as described in Section 2.1, as may be extended pursuant to Section 2.2.

“*Lease Year*” means a full 12 calendar month period during the Lease Term. The first Lease Year commences on the Effective Date and shall expire on the last day of the full calendar month in which the anniversary of the Effective Date occurs unless the Effective Date is the first day of a calendar month, in which case the first Lease Year shall end on the day immediately preceding the first anniversary of the Effective Date. Subsequent Lease Years shall each be consecutive 12 calendar month periods thereafter.

“*Leased Premises*” is defined in Recital F.

“*North Parking Lot*” is defined in Section 11.2.3.

“*Offer*” is defined in Section 13.1.

“*Offer Notice*” is defined in Section 13.1.

“*Operating Agreement*” is defined in Recital I.

“*Original Lease*” is defined in Recital C.

“*Party*” means either County or Tenant.

“*Parties*” means, collectively, County and Tenant.

“*PCAO*” is defined in Recital J.

“*Permitted Use*” is defined in Section 5.1.1.

“*Rent*” is defined in Section 4.5.

“*Review Limit*” is defined in Section 6.2.

“*ROFR Payment*” is defined in Section 13.1.5.

“*State*” means the State of Arizona.

“*Subject Property*” is defined in Section 13.1.

“*Superior Court Space*” is defined in Section 11.1.

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“*Superior Court Services*” is defined in Section 11.1.4.

“*Tenant*” means Banner.

“*Tenant Affiliate*” is defined in Section 8.1.

“*Tenant Equipment*” is defined in Section 1.2.3.

“*Title 36*” is defined in Recital J.

“*UACOM*” is defined in Recital A.

“*UAHN*” is defined in Recital D.

“*UPH*” is defined in Recital A.

“*UPH Lease*” is defined in Recital A.

## **Section 1.2 Subject of Lease.**

1.2.1 Second Amended and Restated Lease. This Lease is intended to amend, restate, and replace, in its entirety, the First Amended and Restated Lease, as of the Effective Date.

1.2.2 Leased Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Leased Premises, for the rental and on the terms, conditions and provisions herein contained. The Leased Premises shall not include the CRC Parcel, the North Parking Lot, the CRC Parking Lot, or the Superior Court Space.

1.2.3 Title to Personal Property and Equipment. Landlord and Tenant will retain their respective ownership of existing personal property and equipment, as set forth in the Hospital’s annual inventories. All new and replacement personal property and equipment acquired by Landlord shall remain Landlord owned (together with Landlord’s existing personal property and equipment, “*Landlord Equipment*”). All new and replacement personal property and equipment acquired by Tenant shall remain Tenant owned (together with Tenant’s existing personal property and equipment, “*Tenant Equipment*”).

Tenant shall have the right to remove any Tenant Equipment during the Term or upon the expiration or early termination of the Lease. Tenant shall be responsible for and pay for the repair of any damage to the Leased Premised caused by the removal of Tenant Equipment. Notwithstanding the foregoing, upon the expiration (without renewal or extension) or early termination of this Lease (except in the event Tenant purchases the Leased Premises), Tenant may, in its discretion, offer Landlord the right to purchase any non-proprietary Tenant Equipment then located in the Leased Premises and used in the operations of the Leased Premised at its then current Book Value.

All capital improvements and equipment, if any, provided by Landlord after the Effective Date, whether acquired by additional debt obligations, grants, contribution, or other Landlord

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funds shall be owned by Landlord and shall become part of the Leased Premises and subject to the provisions of this Lease.

1.2.4 Property of Landlord. Landlord Equipment will remain the property of Landlord, and Tenant does not have the right to dispose of it. If Tenant no longer wishes to use any items of Landlord Equipment, Tenant must notify Landlord (Pima County Facilities Management) to arrange for its removal. Tenant must provide Landlord (Pima County Facilities Management) an annual inventory of the Landlord Equipment. In addition, Landlord may conduct periodic and, subject to the terms of **Section 5.5**, unscheduled inspections of the Landlord Equipment.

**Section 1.3** Condition of Premises. Subject to Landlord's representations and obligations contained herein, the Leased Premises have been accepted by Tenant in "as is" condition.

1.3.1 Environmental Condition. Landlord represents, to the best of Landlord's knowledge, that there are no pending actions or notices from regulatory agencies relating to violations of environmental laws on the Leased Premises.

1.3.2 Asbestos. Tenant acknowledges that Landlord has disclosed the presence of asbestos containing materials within the Leased Premises as set forth in that certain Asbestos Survey at Kino Community Hospital, Survey Findings and Management Plan, dated June 22, 1989, prepared by Environmental Sciences Inc., a copy of which was provided to Tenant in connection with the Lease.

1.3.3 Abatement and ADA Compliance. Landlord has completed the mold abatement work and the ADA compliance work, as detailed in the Original Lease.

## ARTICLE II LEASEHOLD TERM

**Section 2.1** Term. The term of the First Amended and Restated Lease shall be extended by this Lease, which shall commence as of the Effective Date and expire on June 30, 2029 (the "**Lease Term**"). The Lease Term shall coincide with the term of the Operating Agreement.

**Section 2.2** Extension Option. Tenant shall have one option to extend the initial Lease Term by five (5) years by providing written notice ("**Extension Notice**") to Landlord no sooner than two (2) years and no later than one (1) year prior to the expiration of the initial Lease Term.

**Section 2.3** Early Termination. If the Operating Agreement is terminated or if funding under the Operating Agreement is discontinued, then this Lease will also terminate as of earlier of the termination effective date in the Operating Agreement or upon the effective date when funding is discontinued.

**Section 2.4** Termination. Except for any of the early termination rights set forth in the Operating Agreement and the early termination rights in connection with a casualty or condemnation in **Sections 7.6** and **16.3**, respectively, the terms and conditions for an early termination of this Lease are set forth in **Article IX**.

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**Section 2.5 Surrender of Leased Premises.** Upon expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises in substantially as good condition as on the Effective Date, usual wear and tear from the reasonable use thereof excepted. Tenant shall be permitted for a period of sixty (60) days beyond the expiration or earlier termination of this Lease to enter the Leased Premises to remove all of Tenant Equipment, inventory, and other items owned by Tenant and placed or installed by Tenant on the Leased Premises so long as the day-to-day operation of the Leased Premises is not adversely affected.

**Section 2.6 Holding Over.** In the event Tenant remains in possession of the Leased Premises after the expiration or earlier termination of this Lease, such holding over on the part of Tenant shall not renew or extend this Lease, and Tenant shall be deemed to be occupying and using the Leased Premises as a month-to-month tenant at will, subject to all of the terms, conditions, provisions and obligations of this Lease (insofar as same are applicable to such form of tenancy).

### ARTICLE III PURPOSE OF LEASE

**Section 3.1 Purpose.** The Leased Premises shall be used in the public interest for any lawful purpose including, without limitation, the establishment and maintenance of a hospital for diagnosis and treatment of inpatients and/or outpatients and the provision of hospital services. Tenant shall, at all times during the Lease Term and any extension or renewal thereof, operate and maintain the Leased Premises and the personal property located on the Leased Premises, and operate the Hospital as a Medicare-certified, licensed, accredited general hospital also licensed to provide level-one acute psychiatric care. If Tenant provides an alternative configuration that Landlord reasonably agrees meets community needs, Tenant may increase or decrease the number of beds, or alter the number of beds licensed for psychiatric or medical services, as appropriate for licensure requirements.

**Section 3.2 Title 36 Services.** Tenant shall, to the extent of its available capacity at the Leased Premises, provide all medical clearance, psychiatric evaluations, treatment, and testimony for Landlord's adult civil commitment proceedings under Title 36.

**Section 3.3 Coordination with the CRC Operator.** Tenant also agrees to work cooperatively, in a commercially reasonable manner, with the CRC Operator with respect to the CRC's specific operations, which are aligned with the comprehensive service approach intended for the Health Campus, specifically, contributing to a 'no wrong door' approach at the Health Campus, ensuring that individuals presenting for assistance at any of the facilities are guided to the appropriate setting.

### ARTICLE IV CONSIDERATION FOR LEASE

**Section 4.1 Net Lease.** This is a "net" Lease, and Landlord shall not be required to provide any services or do any act in connection with the Leased Premises, except as otherwise expressly set forth in **Section 11.1**, **Section 11.3**, or elsewhere in this Lease. All costs, expenses and obligations of every kind and nature relating to the use and occupancy of the Leased Premises by Tenant shall be paid by Tenant.

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**Section 4.2 Taxes.** Tenant shall be responsible for payment of all personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Leased Premises or any use of the Leased Premises by Tenant, including, if applicable, the government property lease excise tax levied pursuant to A.R.S. § 42-6202.

**Section 4.3 Contested Taxes.** Tenant shall have the right to contest the amount or validity of any imposition with respect to the Leased Premises imposed by any governmental authority by appropriate legal proceedings, after written notice to Landlord.

**Section 4.4 Utilities.** Tenant shall pay when due, all charges for water, gas, electricity, HVAC, recycling services, sewer service, refuse disposal, telephone service, and similar services incurred in connection with the operation of the Leased Premises during the Lease Term and shall save and hold Landlord harmless from any charge, expense, or liability for the same.

4.4.1 **Interruption.** Landlord shall not be liable to Tenant if any utilities or services, whether or not furnished by Landlord hereunder, are interrupted or terminated because of necessary repairs, installation, or improvements, or any other cause beyond Landlord's reasonable control, nor shall any such interruption or termination relieve Tenant of any of its obligations under this Lease. Landlord shall have no liability to Tenant if any utility service is interrupted by the utility provider or otherwise.

4.4.2 **Water.** Potable water delivered to the Leased Premises is currently provided by the City of Tucson. Reclaimed water is used to irrigate vegetation and landscaping in and around the Leased Premises and Landlord will continue to provide reclaimed water to Tenant, without charge, for this purpose.

**Section 4.5 Rent.** Tenant shall pay to Landlord, as annual rent for the Leased Premises, the sum of Ten Dollars (\$10.00) ("***Rent***"), payable in annual installments, in advance, to be received by Landlord on or before the Effective Date, and on the anniversary thereof of each year thereafter throughout the Lease Term and any extension hereof.

## ARTICLE V USE AND MAINTENANCE

### **Section 5.1 Use of Leased Premises.**

5.1.1 **Permitted Use.** During the Lease Term, the Leased Premises shall be used by Tenant as a licensed general hospital, also licensed to provide level-one acute psychiatric care, and such other related purposes as may be incidental and appropriate thereto including, without limitation, healthcare professional offices and outpatient clinics; the provision of healthcare services, including behavioral health; the conducting of medical and health-related education and research, and for no other purpose without the prior written consent of Landlord (collectively, the "***Permitted Use***"). Tenant shall maintain the Leased Premises in a clean and orderly condition. Tenant shall not permit the use or occupancy of the Leased Premises or any portion thereof for any unlawful purpose or maintain or permit the maintenance of any public or private nuisance thereon, and neither Tenant nor Landlord shall do any act or suffer any omission which will invalidate or conflict with any fire and extended coverage insurance policy covering the Leased Premises.



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5.1.2 Prohibited Activities. Tenant shall not do or permit anything to be done in or about the Leased Premises, nor bring or keep anything therein, that is not within the Permitted Use. Tenant shall not do or permit anything to be done in or about the Leased Premises which materially obstructs or interferes with the rights of the occupant of the CRC or the Superior Court Space. Tenant shall not store within the Leased Premises equipment other than that to be used in the Leased Premises or used in connection with the Permitted Use.

5.1.3 Compliance with Laws. Tenant shall not use the Leased Premises, nor permit anything to be done in or about the Leased Premises that will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated (herein referred to as a “*Law*” or collectively as “*Laws*”). Except as otherwise set forth herein or in the Operating Agreement, Tenant shall, at its sole cost and expense promptly comply with all Laws in connection with its use of the Leased Premises, including without limitation all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) (the “*ADA*”) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. and all applicable provisions of the Clean Air Act, 42 U.S.C. 7401 et seq. and Arizona Revised Statutes, Title 49, Chapter 3. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any Law shall be conclusive of that fact as between Landlord and Tenant.

5.1.4 Exclusive Use. Except only for the Excluded Tenants (as defined below), Landlord hereby covenants that it shall not lease, rent, occupy or permit to be occupied or used any other space within the Health Campus to a healthcare provider without the prior written consent of Tenant. For the purpose of the foregoing, “*Excluded Tenants*” mean those tenants occupying space within the Health Campus pursuant to leases executed before the Effective Date. Notwithstanding the fact that the Abrams building is not part of the Health Campus, such building is subject to the above covenant by Landlord to the extent that the Abrams building is proposed to be used for clinical healthcare purposes. Landlord shall not amend or modify any of the existing leases with Excluded Tenants to permit any tenant under such an existing lease to engage in the operation as a healthcare provider.

**Section 5.2 Operating Cost and Maintenance.** Subject to the next sentence, to the other provisions of this Lease relating to casualty, which is addressed in **Section 7.6**, and condemnation, which is addressed in **Section 16.3**, and to the limitations on the cost of Capital Improvements contained in **Section 6.2.1**, Tenant shall be responsible for all costs and expenses of every kind and nature that may become due because of or in connection with the operation of the Leased Premises. For the avoidance of doubt, the Parties acknowledge and agree that by entering into this Lease, notwithstanding any language to the contrary contained herein, the Parties hereto intend that Tenant will be responsible for the maintenance and operation of the Leased Premises and for one hundred percent (100%) of the costs and expenses associated therewith, except for those costs and expenses specifically allocated to Landlord elsewhere in this Lease or in the Operating Agreement.

**Section 5.3 Equipment.** Except for the Landlord Equipment that is included in the Leased Premises, Tenant, at its sole expense, will be responsible for the acquisition and maintenance of all equipment, technology, and information systems necessary for the operation of

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the Hospital consistent with Joint Commission regulatory standards as well as those practiced by Tenant in its owned and leased hospitals. Further, Tenant agrees throughout the Lease Term to continue to maintain, replace and upgrade equipment to aid in the provision of quality patient care equivalent to similarly situated critical access hospitals.

**Section 5.4 Contributions and Gifts.** After the Effective Date, there may be an individual or group of individuals or an organization or a group of organizations who desire to contribute to Tenant any sum of money for the purchase of equipment or other articles to be used in and specifically designated as a contribution for the Leased Premises, either as memorial or other contribution. Tenant may accept such gifts, it being understood, however, that Tenant will comply with the wishes of the donor and that all items purchased with such gifts by Tenant shall be and remain a part of the Leased Premises and the property of Landlord. However, if the terms or conditions of the gift, bequest, contribution or grant contain specific stipulations, restrictions or directions and wishes pertaining to the gift or the use thereof, then there shall be strict compliance with the terms, instructions, and wishes of the donor. Should the terms or conditions of the contribution indicate that it is intended for Tenant and not for Landlord, Tenant shall accept the contribution on its own behalf and utilize the funds in its sole discretion. For purposes of this **Section 5.4**, the term “contribution” shall include a gift, bequest, grant or donation of money or property. It is expressly understood that the term “contribution” does not include any money derived by, or from, taxes or other governmental funds or entities.

**Section 5.5 Entry by Landlord.** Landlord, at any and all times, has the right to enter the Leased Premises to inspect the same, with at least four (4) business days advance written notice to Tenant, except in the event of an emergency. Landlord shall use its reasonable best efforts to not interrupt Tenant’s business at the Leased Premises. Landlord at any and all times shall have the right to use any and all means which Landlord may deem proper to open doors in an emergency in order to obtain entry to the Leased Premises without liability to Tenant, except for any failure to exercise due care for Tenant’s property, and any entry to the Leased Premises obtained by Landlord by any such means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction of Tenant from the Leased Premises or any portion thereof. Landlord shall always have access to the Superior Court Space, even without the necessity of any type of notice.

## ARTICLE VI WARRANTIES AND IMPROVEMENTS

**Section 6.1 Warranties.** Tenant shall have the benefit of all warranties accruing to Landlord by reason of construction, purchases and installations relating to the Leased Premises. Landlord hereby consents to any lawful action of Tenant in seeking enforcement of said warranties; provided, however, efforts of Tenant to secure enforcement of such warranties shall be at the sole cost and expense of Tenant.

**Section 6.2 Improvements.** Except for its obligation to maintain and operate the Leased Premises as set forth elsewhere in this Lease, Tenant may not make or permit any improvements, alterations, additions, or changes to the Leased Premises (the “**Improvements**”) without first obtaining the written consent, not to be unreasonably withheld, conditioned, or delayed, of Landlord’s Director of Facilities Management and Project Design and Construction

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Departments, unless the cost of the Improvements is less than \$500,000 (the “**Review Limit**”). The Review Limit will increase by \$25,000 every five years during the Lease Term. The next five year incremental increase will occur in 2029, if the Lease Term is extended pursuant to **Section 2.2**.

6.2.1 **Capital Improvements**. Tenant shall be obligated to pay not to exceed \$3,000,000 during each Lease Year, for a total of not to exceed \$15,000,000 during the initial Lease Term, for Improvements that are capital in nature (“**Capital Improvements**”). Should Tenant pay in excess of \$3,000,000 during any Lease Year, such excess amount shall be credited to Tenant’s \$3,000,000 requirement for the next Lease Year and to Tenant’s \$15,000,000 initial Lease Term requirement.

6.2.2 **Approval of Improvements**. All Improvements with a cost in excess of the Review Limit must be approved by Landlord’s Director of Facilities Management and Project Design and Construction Departments, which approval must not be unreasonably withheld, conditioned, or delayed. Capital Improvements must be made to maintain Tenant’s accreditation from the Joint Commission or to provide for advanced medical services in keeping with industry best practices. Tenant shall provide Landlord with notice of any Improvements with a cost in excess of the Review Limit and Landlord’s Director of Facilities Management and Project Design and Construction Departments shall provide written consent within twenty (20) days after receipt of the notice. Within twenty (20) days after completion of such Improvements, Tenant shall deliver to Landlord’s Director of Facilities Management and Project Design and Construction Departments a reproducible copy of the drawings of such Improvements, as built. All Improvements must adhere to the requirements set forth in Title 34 of the Arizona Revised Statutes, relating to Public Buildings and Improvements. For Improvements with a cost less than the Review Limit, Tenant will provide Landlord with a list and status update as to such completed or in process Improvements monthly.

## ARTICLE VII INDEMNIFICATION AND INSURANCE

### **Section 7.1 Indemnification; Landlord’s Responsibilities.**

7.1.1 **Tenant Indemnification**. Except as expressly set forth in **Section 7.1.2**, Tenant shall defend, indemnify and hold harmless Landlord and the officers, employees and agents thereof, from and against any and all claims, demands, suits, damages, losses, liability, and costs or expenses, including reasonable attorney’s fees and costs (collectively, “**Claims**”) arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Tenant or any of Tenant’s directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the workers' compensation laws or arising out of the failure of Tenant to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. Landlord will, in all instances, be indemnified by Tenant from and against any and all Claims, except to the extent the Claim arises by reason of the negligent or intentional acts or omissions of Landlord or any Landlord officer, employee, contractor and agent thereof. Tenant is responsible for primary loss investigation, defense, and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Lease, and the indemnification provided by Tenant herein shall

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only apply to acts or omissions occurring during the term of the First Amended and Restated Lease and this Lease Term. Indemnity obligations regarding the Heliport Parcel are covered in **Section 12.4**.

7.1.2 **Landlord's Responsibilities.** Landlord shall be responsible for all Claims to the extent the Claim arises by reason of the negligent or intentional acts or omissions of Landlord or any Landlord officer, employee, contractor and agent thereof and any Claim to the extent arising from any accident, personal or bodily injury, or damage whatsoever occurring in or at the CRC Parcel, the Superior Court Space, and the North Parking Lot and CRC Parking Lot, except to the extent the Claim arises by reason of the negligent or intentional acts or omissions of Tenant or any of Tenant's directors, officers, agents, employees, volunteers, or subcontractors.

7.1.3 **Cooperation of Parties.** Landlord and Tenant each agree that each Party will reasonably assist and cooperate with the other Party in the defense of claims and the collection of necessary documents and evidence involved in such claims.

**Section 7.2 Required Insurance.** Tenant shall, at Tenant's sole cost and expense, obtain and maintain during the Lease Term and any renewals thereof, and for a period not less than two (2) years beyond the Lease Term if the policy is written on a claims-made basis, as may be extended pursuant to **Section 2.2**, the following insurance policies:

(a) Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than \$5,000,000, covering portions of the Leased Premises furnished to the Tenant for the Permitted Use, and including Landlord as an additional insured.

(b) Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than \$1,000,000 for vehicles actually used in the performance of services under this Lease (as compared to use for simple commuting, for which there is no obligation hereunder to provide insurance).

(c) Medical Malpractice insurance in an amount not less than \$5,000,000 per claim or occurrence. If reasonably available, the policy(ies) shall include Pima County as an additional insured.

(d) Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than \$1,000,000 per injury, illness, or disease.

(e) Commercial Property, Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering the full replacement cost of real property, including improvements and betterments, and personal property located at the Leased Premises, to include County as a loss payee as its interest may appear; provided, however, that Tenant is not required to insure the Landlord Equipment. Tenant shall include not less than \$10,000,000.00 of coverage for earthquake and flood damage.

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(f) Business Interruption insurance sufficient to permit Tenant to continue services required under this Lease in the event of serious loss or damage to the Leased Premises.

(g) Environmental insurance as necessary to cover exposures related to any hazardous materials or substances, including radioactive isotopes or materials stored or used at the Leased Premises, and any fuel stored at the Heliport Parcel.

(h) Non-owned aircraft and premises Liability Insurance must be in place prior to commencement of operations on the Heliport Parcel, and maintained continuously thereafter, covering exposures related to aircraft operation, in an amount not less than \$5,000,000.

(i) Builders' Risk insurance or an Installation Floater, as necessary, to reasonably insure losses during construction projects, endorsed to include Pima County as a loss payee.

**Section 7.3 Insurance Policies.** Tenant shall provide that the insurer shall not cancel or change such insurance without first giving the named insureds not less than ninety (90) days prior written notice. All insurance policies herein required shall be written by an insurance company or companies authorized to do business in the State of Arizona, or may be a plan or plans of self-insurance or pooling of insurance. Certificates of insurance or self-insurance letters shall be delivered at or prior to the effective date or dates thereof by Tenant.

**Section 7.4 Waiver of Subrogation.** Landlord and Tenant shall have no liability to one another, or to any insurer, by way of subrogation or otherwise, on account of any loss or damage to their respective property, the Leased Premises or its contents, regardless of whether such loss or damage is caused by the negligence of Landlord or Tenant, arising out of any of the perils or casualties insured against by insurance policies actually carried by Landlord or Tenant, or required to be carried by Tenant pursuant to this Lease. The insurance policies obtained by Landlord and Tenant shall permit waivers of subrogation which the insurer may otherwise have against the non-insuring party.

**Section 7.5 Insurance Claims.** In the event of any damage to or destruction of the buildings or other improvements upon the Leased Premises during the Lease Term as a result of which a claim or claims become payable under any of the policies of insurance hereinabove provided, Landlord and Tenant jointly shall use every reasonable effort to adjust and settle as quickly as possible with the insurance company or companies, any such claim or claims, and each agrees not to withhold approval of any reasonable adjustment or settlement arbitrarily, unreasonably or capriciously.

**Section 7.6 Destruction of Leased Premises.**

7.6.1 Damage Due to Insured Casualty. In the event the Leased Premises or any portion thereof are damaged by fire or other perils covered by the insurance that Tenant is required to maintain pursuant to **Section 7.2** (an "*Insured Casualty*"), Tenant shall forthwith repair the same, restoring the Leased Premises to the condition which existed prior to the Insured Casualty

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or to a comparable facility, subject to compliance with applicable building codes, and this Lease shall remain in full force and effect without abatement of rent or Tenant's non-monetary obligations except as set forth in **Section 7.6.4**.

Notwithstanding the foregoing, in the event that the Leased Premises are destroyed or damaged by an Insured Casualty to such an extent that the cost of restoring the Leased Premises exceeds fifty percent (50%) of the then insured value thereof, Tenant may, at its option, elect to terminate this Lease in its entirety or as to the damaged parcel(s) only, at any time within one hundred twenty (120) days after the occurrence of the casualty, which termination shall be effective as of the date specified in such notice, with such date to be no more than thirty (30) days after the giving of such notice. In the event of such termination (in whole or in part), Tenant shall deliver to Landlord all insurance proceeds received by Tenant for the damage to the Leased Premises and the improvements thereon, except any portion of such proceeds that must be paid to a lender that has extended financing with respect to the damaged improvements. Landlord shall have no claim or right to receive any portion of other proceeds paid for losses sustained by Tenant, such as proceeds from personal property insurance (with respect to property in which Landlord has no insurable interest) or business interruption insurance.

**7.6.2 Damage Due to Uninsured and Underinsured Casualty.** In the event the Leased Premises or any portion thereof are damaged (a) to an extent that the cost of repair will exceed by more than \$2,000,000, the insurance proceeds that Tenant is entitled to receive under the insurance policies that Tenant is required to carry pursuant to **Section 7.2**, or (b) by a casualty with a cost to repair of more than \$2,000,000 that is not covered by the insurance required set forth herein, Tenant shall have the option to: (1) repair, reconstruct or restore the Leased Premises, in which event this Lease shall continue in full force and effect without abatement of rent or Tenant's non-monetary obligations; or (2) give notice to Landlord at any time within sixty (60) days after such damage, terminating this Lease in its entirety or as to the damaged parcel(s) only, as of the date specified in such notice, which date shall be: no more than thirty (30) days after the giving of such notice. If Tenant elects to terminate the Lease in whole or in part, Tenant shall pay to Landlord all insurance proceeds paid to Tenant for the damage to the parcels with respect to which Tenant is terminating the Lease except any portion of such proceeds that must go to a lender that has extended financing with respect to the damaged improvements.

If Tenant elects to terminate this Lease (in its entirety or only with respect to the damaged parcel(s)) in accordance with this **Section 7.6.2**, Landlord shall have the right to repair, reconstruct and/or restore the Leased Premises at its sole cost (but including the insurance proceeds paid to it by Tenant pursuant to the preceding paragraph) by providing written notice of the same to Tenant within thirty (30) days of receipt of Tenant's notice of termination in which case this Lease shall remain in full force and effect and Landlord shall diligently pursue the repair, reconstruction and/or restoration of the Leased Premises to the condition which existed prior to the casualty or to a comparable facility subject to compliance with applicable building codes. Rent due hereunder and Tenant's non-monetary obligations shall not abate.

**7.6.3 Casualty Near End of Lease Term.** Notwithstanding anything to the contrary contained in **Section 7.6**, Tenant shall not have any obligation whatsoever to repair, reconstruct or restore the Leased Premises when the damage resulting from any casualty covered under **Section 7.6** occurs during the last twelve (12) months of the Lease Term. In the event of any

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casualty during such periods, Tenant shall have the right to terminate the Lease, in its entirety or with respect to the damaged portion only, or elect to repair the Leased Premises, as set forth in **Section 7.6.2**. In the event this Lease is terminated in accordance herewith (either partially or in its entirety), Tenant shall deliver to Landlord all insurance proceeds received by Tenant as a result of such casualty insurance maintained by Tenant in accordance with **Section 7.2** hereof, except any portion of such proceeds that must go to a lender that has extended financing with respect to the damaged improvements.

7.6.4 Restoration/Construction/Abatement. Tenant's obligation as set forth in **Sections 7.6.1** and **7.6.2** shall be only to restore the Leased Premises to the condition which existed prior to the casualty or to a comparable facility, both subject to compliance with all applicable building codes. In the event of any such casualty which damages Tenant's furniture, fixtures and/or equipment at the Leased Premises and does not result in the termination of this Lease, Tenant shall proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair or replace all of Tenant's leasehold improvements, fixtures, and other personal property of Tenant to the same condition which existed prior to the casualty, Tenant shall continue the operation of its business within the Leased Premises to the extent practicable during any period of reconstruction or restoration, it being agreed that Tenant's failure to provide any service as the result of a casualty to the Leased Premises shall not result in a default hereunder by Tenant or in any liability on the part of Tenant.

7.6.5 Effect of Full or Partial Termination. In the event Tenant terminates the Lease in its entirety, this Lease shall expire and all interest of Tenant in the Leased Premises shall terminate on the date so specified in Tenant's notice of termination and the monetary rent and all other amounts due hereunder shall be deemed abated as of the date of the casualty. In the event the Lease is only partially terminated, the Parties' obligations with respect to the released parcel(s) shall be deemed abated as of the date of the casualty, but the Lease shall continue in full force and effect with respect to the remaining parcels.

## ARTICLE VIII ASSIGNMENTS AND SUBLEASES

**Section 8.1** Assigning and Subleasing. Except as expressly provided below, Tenant may not assign this Lease or sublease its interest in the entire Leased Premises without the prior written consent of Landlord. In addition, Tenant may not assign this Lease as to a portion of the Leased Premises or sublease its interest in a portion of the Leased Premises without the prior written consent of Landlord, but only if such partial assignment or sublease would materially affect the services Tenant is then providing to its patients or materially affect the mechanical, electrical, plumbing or other building systems. Any such assignment or subletting without such consent, which shall not be unreasonably withheld, conditioned or delayed, shall be void, and shall, at the option of Landlord, constitute a default under the terms of this Lease. If consent to an assignment is obtained, this Lease is binding on the successors and assigns of the Parties to this Lease. Notwithstanding any provision of this Lease to the contrary, Tenant may, without Landlord's prior written consent, assign, sublease, or otherwise transfer its interest under this Lease to (a) any entity controlling, controlled by or having 50% or more common control with Tenant, or resulting from a merger or consolidation with Tenant or acquiring all of the assets and/or stock of Tenant, or (b) a Tenant Affiliate; provided that any such entity assumes all obligations under this Lease. A

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“*Tenant Affiliate*” means a related entity including a parent or subsidiary of Tenant, any entity that acquires all or substantially all of Tenant’s assets or operations relating to this Lease. Any assignment to a Tenant Affiliate shall not require the consent or approval of Landlord to be effective, but Tenant will provide Landlord with thirty (30) days’ notice informing Landlord of the assignment, sublease, or transfer. No assignment or sublease, however, shall relieve Tenant from the responsibility for the payments required by **Article IV**.

**Section 8.2 Successor and Assigns**. Subject to the provisions of **Section 8.1**, all the terms, covenants, and conditions of this Lease shall be binding upon and inure to the benefit, and shall apply to the respective successors and assigns, of the Parties.

**Section 8.3 Encumbrance of Leased Premises**. Tenant shall not encumber or grant a security interest in any and all improvements, fixtures, equipment, inventory or other items on or in the Leased Premises that are owned by Landlord. Additionally, Tenant shall not encumber or grant a security interest in Tenant’s leasehold interest in the Leased Premises.

## ARTICLE IX

### DEFAULT; DISPUTE RESOLUTION; AND EARLY TERMINATION

**Section 9.1 Events of Default by Tenant**. Any of the following on the part of Tenant shall constitute an “*Event of Default*” under this Lease:

- (a) **Abandonment**. The abandonment of the Leased Premises or any substantial portion thereof by Tenant.
- (b) **Monetary Payments**. The failure by Tenant to make any monetary payment of Rent or any other monetary payment required to be made by Tenant hereunder, as and when due where such failure shall continue for a period of fifteen (15) business days after Tenant’s receipt of written notice of late payment.
- (c) **Maintenance & Repair**. If Tenant fails to perform its repair and maintenance obligations under **Section 5.2**, Tenant shall be in default hereunder after prior written notice of such failure from Landlord and such obligations remain uncured twenty (20) days from such notice. If the nature of such repairs or maintenance is such that more than twenty (20) days are reasonably required for completion, Tenant shall not be in default hereunder if such repairs and/or maintenance are commenced within said twenty (20) day period and diligently pursued to completion.
- (d) **Bankruptcy**. An entry of a decree or order by a court adjudging Tenant as bankrupt or insolvent or approving a petition seeking reorganization, arrangement, adjustment or composition of Tenant or the appointment of a receiver, liquidator, assignee or trustee of Tenant or any substantial part of its property or ordering the winding up or liquidation of its affairs which continues for at least thirty (30) consecutive days.
- (e) **Other Obligations**. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than as otherwise specifically set forth herein, where such failure shall continue for a



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period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(f) Dissolution or Liquidation. Dissolution or the commencement of any action or proceeding for the dissolution or liquidation of Tenant, whether instituted by or against Tenant, or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the Tenant.

(g) Licensure. Loss of Medicare certification for the Hospital, loss of the general hospital license, loss of the license to provide level-one acute psychiatric care or loss of authority to provide court-ordered evaluation or treatment services.

(h) Default of Operating Agreement. Any default by Tenant under the Operating Agreement beyond any applicable cure period contained in the Operating Agreement.

9.1.1 Effect of Default. Upon the occurrence of an Event of Default by Tenant, Landlord, unless otherwise limited herein and subject to **Section 2.3**, may at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy generally available at law or in equity which Landlord may have by reason of such default or breach:

(a) Termination. Give notice to Tenant that this Lease shall terminate upon the date specified in the notice, which date shall not be earlier than thirty (30) days from the date of such notice.

(b) Collection. Require Tenant to pay Landlord, without demand or notice, all monetary rent and other payments accrued to the date of such default and a proportionate part of such rent or other sums otherwise payable for the remainder of the year in which such default occurs. All monetary rental and other payments due hereunder shall continue to accrue and be due to Landlord by Tenant in the event the Lease is not terminated after a default by Tenant.

(c) Enforcement. Enforce, by suit or otherwise, any other non-monetary term or provision hereof on the part of Tenant required to be kept or performed.

9.1.2 Landlord's Lien. Landlord hereby agrees that it shall not have a Landlord's lien pursuant to A.R.S. § 33-361 and § 33-362 or under common law.

**Section 9.2 Default By Landlord**. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord hereunder within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation. If the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord

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commences performance within such period and thereafter diligently prosecutes the same to completion. Landlord shall also be in default under this Lease if it is in default under the Operating Agreement beyond any applicable cure period contained in the Operating Agreement. In the event of Landlord's default, Tenant shall have all remedies available at law or in equity. Additionally, Tenant shall have the right, but not the obligation, to pay any sum or perform any act that requires payment of any sum in the event of a default hereunder by Landlord. Such sum paid by Tenant shall be due immediately from Landlord to Tenant at the time the sum is paid, and if paid by Landlord at a later date, the outstanding principal amount thereof shall bear interest at the statutory rate for interest on judgments (A.R.S. § 44-1201) from the date the sum is paid by Tenant until Tenant is reimbursed in full by Landlord.

**Section 9.3 Dispute Resolution.** In an Event of Default or a Dispute (as hereinafter defined), neither Party may exercise the remedies available to it, or file a lawsuit, until the dispute has been negotiated and mediated as set forth below, unless a Party needs to file a lawsuit to preserve a Party's legal rights in which event any such lawsuit will be stayed during the dispute resolution process. The term "***Dispute***" means any and all questions, claims, controversies, or disputes arising out of or relating to this Lease, including the validity, construction, meaning, performance, effect, or breach of this Lease.

9.3.1 Dispute Negotiations. In the event of any Dispute between the Parties, the Parties will promptly and in good faith attempt to resolve such through informal negotiations. Either Party may, if they conclude that informal negotiations are ineffective, commence a formal dispute resolution process by giving written notice of the Dispute to the other Party that contains a statement of the nature of the Dispute and indicates that this **Section 9.3.1** is being invoked. If the Parties are unable to resolve the Dispute through negotiation within fifteen (15) days of receipt by the adverse party of the written notice, any party may submit the Dispute to mediation as set forth below.

9.3.2 Mediation.

(a) A Party wishing to commence mediation must send written notice of intent to mediate to the other Party, specifying in detail the nature of the Dispute and proposing a resolution thereof. Within fifteen (15) days of receipt, if the Parties are unable to agree on a proposed mediator, one will be appointed by the executive director or equivalent of the American Arbitration Association ("**AAA**"). Each Party will designate no more than three representatives (not including legal counsel) who will meet with the mediator to resolve the Dispute. Mediation shall be commenced as soon as reasonably possible.

(b) The mediation will be conducted in Tucson, Arizona in accordance with the Commercial Mediation Rules and Procedures of the AAA and shall be non-binding. Any non-binding mediation conducted under the terms of this **Section 9.3.2** shall be confidential within the meaning of Arizona law. The cost of the mediation shall be borne equally by the Parties. The mediation will be conducted and completed within thirty (30) days of the appointment of the mediator.

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9.3.3 No Consequential Damages. Notwithstanding anything to the contrary in this Lease, neither Landlord nor Tenant will be liable to the other for any consequential, special, or indirect damages (in each case, regardless of whether such damages are foreseeable).

9.3.4 Cure by Landlord. If Tenant fails to perform in a timely manner any of its obligations under this Lease following any applicable notice and cure periods, Landlord may (but is not obligated to) perform those obligations and charge Tenant for the costs, together with interest at the statutory rate for interest on judgments, from the date the expense was incurred until it is paid by Tenant.

9.3.5 Cure by Tenant. If Landlord fails to perform in a timely manner any of its obligations under this Lease following any applicable notice and cure period, Tenant may (but is not obligated to) perform those obligations and offset any amounts due under this Lease by the reasonable out-of-pocket amount incurred by Tenant in undertaking such performance.

## ARTICLE X COVENANTS OF THE TENANT

**Section 10.1 Tenant to Operate Licensed Hospital.** Throughout the Lease Term, Tenant will obtain and maintain all necessary licenses, permits, and authorizations required to provide the services being offered at the Hospital, and will maintain the Hospital's license to provide appropriate medical services at the Hospital. Tenant has the right to refuse to allow any use that Tenant reasonably determines is incompatible with the nature of the Hospital and its existing uses, violates licenses, violates regulations, or is unsafe. Landlord shall reasonably cooperate with Tenant, at no material cost to Landlord, with respect to maintenance of the Hospital's licensure.

**Section 10.2 Rates, Fees, and Charges.** The rates, fees and charges to the public shall be established by Tenant in an amount which is appropriate to provide viable financial support for the Leased Premises and shall be comparable to fees and charges of other licensed hospitals in the State of Arizona of comparable size, type, and scope of service. Rates, fees, and charges will comply with applicable Arizona statutes.

**Section 10.3 Tenant to Supply Expendables.** Tenant agrees that it shall furnish, supply, and maintain all expendable hospital supplies as may be required for the continual and proper operation of a duly licensed hospital. It is agreed by the Parties that all materials and supplies purchased by Tenant for use in the operation of the Hospital will be the property of the Tenant. Upon termination of this Lease, Landlord shall have the right to purchase the remaining supplies and materials at Tenant's cost.

**Section 10.4 Employees.** Tenant will recruit, hire, train, promote, assign, set the compensation level, and discharge all personnel as necessary for the proper operation and maintenance of the Leased Premises. All personnel of the Leased Premises shall be employees or independent contractors of Tenant, and the employees shall be subject to Tenant's personnel policies. Tenant will make the determination of the numbers and qualifications of employees and independent contractors needed in the various departments and services of the Leased Premises.

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**ARTICLE XI**  
**SUPERIOR COURT SPACE, ROOF, NORTH AND**  
**CRC PARKING LOTS, AND CRC PARCEL**

**Section 11.1 Landlord's Use of Premises and Superior Court Space.** Landlord shall have the right to continue to use that certain approximately 5,120 square feet of space physically located within, but not a part of the Leased Premises leased by this Lease to Tenant, which is depicted on **Exhibit A** (the "**Superior Court Space**"). The Superior Court Space shall be used by the Pima County Superior Court (the "**Court**") for attorneys, judges, courtrooms, meeting rooms and other space relating to the adult civil commitment process under Title 36 of the Arizona Revised Statutes. The Superior Court Space will not be used for any other civil or criminal proceedings.

11.1.1 Access. Landlord and Landlord's employees, contractors, and invitees, and all court personnel and users of court services, shall always have access to the Superior Court Space. Tenant will issue Landlord and the Superior Court the number of key cards requested and will replace them as and when needed. Landlord will pay Tenant a standard charge for each keycard, currently \$11.00, with the anticipation that minimal increases may occur during the Lease Term.

11.1.2 Shared Walls. Landlord and Tenant will each have the right to open shared walls, as necessary, to do work required for use, maintenance, repair, and improvements of its space. The Party doing any such work will do so in a manner, and at times, so as to minimize disruption of the other's use of its adjacent space to the extent reasonably practicable and will repair any damage caused by such work.

11.1.3 Utilities. Tenant shall provide all utilities for the Superior Court Space, including electrical and HVAC, 24 hours per day, seven days per week. Landlord shall reimburse Tenant for the electricity and HVAC usage at the conclusion of each calendar year. The allocation of these utility costs will be based on the Court's actual operating hours (currently 9:00 a.m. to 5:00 p.m.) and the size of the Superior Court Space (which is 3.8% of the total BHP parcel of 134,800 square feet). The annual reimbursement is, at the time of the Effective Date of this Lease, estimated at \$8,000. At the conclusion of each Lease Year, Tenant shall send Landlord (Pima County Facilities Management) an invoice, with supporting documentation, showing the actual costs and Tenant's calculation of the amount owed.

11.1.4 Security and Janitorial Services. Tenant will provide certain services for the Court, as set forth on **Exhibit C** ("**Superior Court Services**"). Tenant will also provide janitorial services for the Superior Court Space on each business day. The services shall include: trash removal, vacuuming, general cleaning, and restocking the restrooms, as needed. Landlord shall pay for these services, in advance, on or before the first day of each month. The monthly payment will initially be \$9,200.00, subject to adjustments periodically based on actual costs incurred by Tenant.

11.1.5 Pest Control. Tenant shall provide pest control services within the Superior Court Space, at no cost to Landlord or the Court.

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11.1.6 Reconciliation. At the conclusion of each Lease Year, Tenant shall provide Landlord with a reconciliation statement showing the actual costs for the services to the Court and the Superior Court Space for the past calendar year, along with supporting documentation, and a comparison to amounts paid. If an additional amount is due to Tenant, Landlord shall pay that amount within thirty (30) days of receipt of the reconciliation statement. If Landlord has overpaid the amount, then the amount of the overpayment will be credited against subsequent payments from Landlord and the monthly payment amount will be adjusted based on the actual costs shown in the reconciliation statement.

11.1.7 Parking. Tenant will issue parking permits to all Court personnel, at no charge. The Court will be allocated one parking space in the sally port as depicted on Exhibit A (which connects the CRC to the BHP and is not within the Leased Premises under this Lease) for the exclusive use of the assigned judge. Tenant may direct all other Court staff to park in the unassigned parking spaces located in the east Hospital parking lot.

11.1.8 Furnishings within the Superior Court Space. All personal property and all fixtures located within the Superior Court Space is the property of Landlord or the Court and may be removed or replaced by Landlord or the Court at any time.

11.1.9 Cooperation with PCAO and the Court. Tenant agrees to cooperate with and agrees to respond to inquiries and requests for meetings and trainings with PCAO and the Court. Tenant hereby understands that PCAO must review and process all evaluation paperwork to ensure complete and accurate filing of petitions for court-ordered treatment in the timelines specified by PCAO.

**Section 11.2 Landlord's Use of Roof**. Landlord and Landlord's agents, contractors, and licensees may use the roof of the Leased Premises for the location of telecommunications equipment and antennae on a nonexclusive basis. Landlord's use may not materially interfere with Tenant's operation of the Hospital. Landlord shall, at Landlord's sole cost and expense, in a timely manner, be responsible for repairing any and all damage to the roof that results from the addition, repair or maintenance of any equipment thereon.

11.2.1 Abandonment of Space. If at any time Landlord determines that it will no longer occupy all or a portion of the roof, then Landlord shall give notice to Tenant and Tenant may, upon Landlord's removal of the equipment, occupy the abandoned space pursuant the provisions of this Lease.

**Section 11.3 North Parking Lot and CRC Parking Lot**. The Leased Premises does not include the large parking lot located north of the Hospital Parcel and depicted as P1 on Exhibit A (the "North Parking Lot") or the CRC parking lot depicted as P9W/P9E on Exhibit A (collectively, "CRC Parking Lot"). During the Lease Term, as may be extended pursuant to Section 2.2, Tenant, its employees, contractors, agents, patients, and invitees shall have a non-exclusive right to use the North Parking Lot and the CRC Parking Lot for parking, ingress and egress to the Leased Premises, and installation and maintenance of utilities, data and communication cables, lines, and facilities to the Leased Premises. The North Parking Lot and the CRC Parking Lot may also be used by persons associated with the Superior Court Space or the CRC Parcel. Tenant shall coordinate with Landlord regarding the location and installation of any

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utility, data, or communications cables, lines, and facilities, to avoid unnecessary disruption of the North Parking Lot and the CRC Parking Lot, and to avoid unduly hampering future development on or off the Leased Premises.

11.3.1 Maintenance. Tenant shall, at Tenant's sole cost and expense, provide routine day-to-day maintenance of the North Parking Lot and that portion of the CRC Parking Lot depicted on Exhibit A as "P9E," including trimming vegetation, as appropriate, and picking up trash. Landlord shall provide capital repairs, including but not limited to, the repair or replacement of curbs, as well as paving and striping of the North Parking Lot and to P9E. Notwithstanding the foregoing, Tenant shall be responsible for the repair and replacement of any damage caused by the installation of utilities by Tenant as permitted in Section 11.3. Landlord shall have the right to close portions of the North Parking Lot or CRC Parking Lot from time to time with twenty-four (24) hour advance written notice to Tenant in order to perform these repairs, provided such closures do not materially interfere with the operation of Tenant's business at the Leased Premises.

11.3.2 Vehicle Towing. Landlord hereby authorizes security personnel of Tenant, pursuant to A.R.S. § 9-499.05(C), to call a designated towing company, as approved by Landlord, for towing of any private vehicle parked in the North Parking Lot and the CRC Parking Lot that (1) creates a hazard; (2) interferes with the day-to-day operations of the Hospital or associated clinics; or (3) is in violation of County or State ordinances. Before calling the towing company, Tenant security personnel must first establish that the private vehicle is either abandoned or the occupant of the vehicle is not doing business or employed at any of the Health Campus. Tenant's security personnel must sign a State of Arizona Motor Vehicle Department form before the vehicle is towed from the North Parking Lot and the CRC Parking Lot. Tenant must ensure that signage is posted, clearly visible and readable from any point within the North Parking Lot and the CRC Parking Lot and at each entrance, stating (i) the restrictions on parking; (ii) the disposition of vehicles found in violation of the parking restrictions; (iii) the maximum towing and storage charges; and (iv) a telephone number and address where the violator can locate the violator's vehicle.

**Section 11.4 Provision of Services to the CRC**. Landlord leases that certain building containing approximately 63,452 square feet south of the Leased Premises, as depicted on Exhibit A (labeled as and referred to as the "**CRC Parcel**") to another tenant (the "**CRC Operator**"). Tenant acknowledges that the CRC Operator may depend on Tenant for certain services, as more specifically set forth on Exhibit B (the "**CRC Services**") because the Leased Premises and the CRC Parcel share certain infrastructure and utilities. Tenant agrees to provide the CRC Services to the CRC Operator. Landlord agrees that its lease with the CRC Operator will require the CRC Operator to reimburse Tenant for the cost of the CRC Services in the manner outlined on Exhibit B and that Tenant shall be a third party beneficiary as to such requirements. Landlord and Tenant agree that if the CRC Parcel shall become vacant and unoccupied, then Landlord shall pay Tenant for the actual use of the CRC Services.

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## ARTICLE XII HELIPORT

**Section 12.1 Laws and Regulations.** The Heliport Parcel must be utilized in compliance with industry standards and all Laws, including without limitation, all environmental regulations, Arizona State Fire Code, and the City of Tucson's Zoning Code.

**Section 12.2 Improvements on Heliport Parcel.** Notwithstanding the consent requirement set forth in **Section 6.2.1**, Tenant may perform the following Improvements on the Heliport Parcel:

- (a) Install a portable office structure in a location acceptable to Landlord;
- (b) Connect all utilities to the portable structure and pay monthly bills;
- (c) Install no greater than 4,000-gallon double wall above ground fuel tank and fueling system that includes a fuel spill recovery kit; and
- (d) Install and connect fuel lines from the above ground fuel tank to the heliport pad.

**12.2.1 Fuel Tank Requirements.** If a fuel tank is installed, as permitted in **Section 12.2(c)**, then the following will apply:

(a) **Maintenance Program.** Tenant will develop and institute a program to properly maintain the fuel tank that will be located on the Heliport Parcel and all safety features installed with the tank including, but not limited to, overfill protection. Tenant will provide a copy of the above referenced maintenance policy and procedures to Landlord within thirty (30) days of the installation of the fuel tank.

(b) **Spill Recovery Kit.** Tenant will maintain a spill recovery kit in the immediate vicinity of the refueling pad and will ensure that the kit is always readily available to refueling personnel. Tenant will also provide and use a fuel sample disposal receptacle that is protected from precipitation events. In no event are fuel samples to be poured onto the refueling pad or soil.

(c) **Baseline.** Landlord acknowledges that Tenant has supplied Landlord with a baseline Phase 1 Assessment showing the condition of the Heliport Parcel prior to construction. Tenant agrees that it will conduct another Phase 1 Assessment at the end of the Lease Term to determine whether any contamination arises during the Lease Term. Tenant will then address the Phase 1 Assessment to both Landlord and Tenant, and deliver a copy to Landlord (Pima County Facilities Management).

**Section 12.3 Delegation to Subtenant.** If Tenant subleases the Heliport Parcel pursuant to **Section 8.1**, Tenant will be permitted to delegate the responsibilities under this **Article XII** to such subtenant, and thereupon, Tenant will not be liable to Landlord for any breach of this **Article XII** by such subtenant. Any sublease of the Heliport Parcel must provide specifically that the subtenant is assuming Tenant's obligations under this **Article XII** and that a breach of any of

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**Article XII** will be cause for termination of the sublease. Tenant agrees that Tenant will terminate the sublease for breach if Landlord informs Tenant that a breach has occurred.

**Section 12.4 Indemnity.** Without limiting the scope of any general indemnities in **Section 7.1.1**, Tenant agrees to indemnify and defend Landlord and the officers, employees and agents thereof, from and against any Claims suffered or incurred related to operations on the Heliport Parcel, including any liability or expenses related to environmental contamination or helicopter use and flight. This indemnity shall not extend to Claims that Landlord suffers or incurs as a result of any negligent or intentionally wrongful conduct on the part of Landlord, or any Landlord officer, employee, contractor and agent thereof, or that arise as a result of the original design and construction of the Heliport Parcel, including but not limited to the original design and construction of the Heliport Parcel.

### **ARTICLE XIII**

#### **RIGHT OF FIRST REFUSAL TO PURCHASE THE HEALTH CAMPUS**

**Section 13.1 Right of First Refusal.** Upon receipt by Landlord of any bona fide offer from any third party to purchase all or any portion of the Health Campus (which for purposes of this **Article XIII** only, shall be deemed to include any of the Landlord Equipment used in connection therewith) from Landlord that Landlord intends to accept, or upon making a bona fide offer to sell all or any portion of the Health Campus to any third party, and in any event prior to Landlord entering into any binding agreement to sell all or any portion of the Health Campus to any third party that is not by its terms subject to Tenant's rejection thereof, Landlord shall deliver to Tenant a written notice (an "**Offer Notice**") of its intention to sell all or any portion of the Health Campus to such third party, which sale shall be subject and subordinate to the terms of this Lease. The Offer Notice shall be deemed to be an offer (an "**Offer**") to sell the Health Campus (or portion thereof, and to be referred to herein as the "**Subject Property**") to Tenant on the terms and conditions set forth in the Offer Notice.

13.1.1 **Acceptance Period.** Tenant shall have ninety (90) days from delivery of the Offer Notice ("**Acceptance Period**") to accept the Offer by delivering to Landlord a written acceptance. If Tenant fails to accept the Offer in writing before the end of the Acceptance Period, the Offer shall be deemed rejected. All references in this **Article XIII** to "reject," "rejected" or "rejection" shall refer to an actual or deemed rejection of an Offer. If Tenant accepts an Offer, upon such acceptance, Landlord shall be obligated to sell to Tenant, and Tenant shall be obligated to purchase from Landlord, the Subject Property on the terms set forth in the Offer Notice.

13.1.2 **Rejecting an Offer.** If Tenant rejects an Offer, Landlord, without further obligation to Tenant, shall be free to consummate a sale of the Subject Property to the third party which initiated Landlord's sending an Offer Notice (or such party's assignee) upon the terms and conditions stated in the applicable Offer Notice, provided such sale is consummated on or before fifteen (15) days after the latest closing date specified in the Offer Notice. If within such period Landlord fails to sell the Subject Property upon the terms and conditions set forth in the applicable Offer Notice to the applicable third party (or such party's assignee), Landlord shall again be subject to the obligations specified in this **Article XIII** with respect to the Health Campus.



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13.1.3 Offer Notices. All Offer Notices shall include a complete copy of the applicable bona fide offer to purchase, the bona fide offer to sell, or the binding agreement that is subject to Tenant's rejection thereof. The terms and conditions of the Offer Notice shall be identical to the terms and conditions contained in the applicable bona fide offer or binding agreement.

13.1.4 Consideration and Expiration of Right of First Refusal. Tenant's rights under this **Article XIII** are given in consideration of: (i) the ROFR Payment, and (ii) Tenant's agreement to enter into this Lease and all of its other obligations hereunder, including, without limitation, its obligation to make the Capital Improvements pursuant to **Section 6.2.1**, and shall continue in effect until the earliest of:

- (a) The expiration or earlier termination of the Term.
- (b) Purchase of the Health Campus by Tenant.
- (c) Consummation of a sale of the Subject Property in accordance with an Offer Notice to a third party after Tenant's rejection of such Offer Notice. (If the sale is as to less than all of the Health Campus, Tenant's rights under this **Article XIII** shall continue as to the remainder of the Health Campus.)
- (d) Tenant's failure to consummate the purchase of the Subject Property following its acceptance of an Offer Notice.

13.1.5 ROFR Payment. In partial consideration of Landlord's grant to Tenant of the rights set forth in this **Article XIII**, Tenant shall pay Landlord the sum of \$10,000.00 on or before the date that is sixty (60) days after the mutual execution and delivery of this Lease (the "**ROFR Payment**").

### **Section 13.2 Sale of the Health Campus.**

13.2.1 Sale of the Health Campus to Tenant. If Tenant accepts the Offer in accordance with **Section 13.1.1**, then Landlord shall provide Tenant with a credit towards the purchase price based on the Book Value of all of the Improvements that Tenant made to the Health Campus from the Effective Date to the closing date of the sale.

13.2.2 Sale of the Health Campus to Third Party. If Landlord sells the Health Campus to a third party during the Lease Term, then Landlord shall reimburse Tenant, at the closing of such sale, for the Book Value of all of the Improvements that Tenant made to the Health Campus from the Effective Date to the closing date of the sale. Tenant shall provide Landlord with reasonable documentation supporting the Book Value of such Improvements.

## **ARTICLE XIV CONSIDERATION OF POTENTIAL SALE OF HEALTH CAMPUS**

**Section 14.1 Consideration of Potential Sale of the Health Campus.** Landlord and Tenant agree to meet in good faith during the duration of the Lease Term to discuss the possibility of Landlord granting Tenant an option to purchase the Health Campus and the Landlord Equipment. Landlord and Tenant acknowledge that any agreement relating to a purchase option

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entered into by Landlord and Tenant, if negotiated in the future, must comply with the Gift Clause of the Arizona Constitution.

## ARTICLE XV SIGNS

**Section 15.1 Signs.** Tenant may affix and maintain in and around the Leased Premises only such signs, names, insignia, trademarks and descriptive material as have first received the written approval of the Director of Pima County Facilities Management (or such other County official as Landlord may, from time to time, designate in writing) as to type, size, color, location, copy nature and display qualities. Landlord confirms that all such signs, names, insignia, trademarks and descriptive material existing upon the Leased Premises as of the Effective Date are approved. Any failure by the Director to respond within thirty (30) days to a request made by Tenant for approval of proposed signage shall be deemed to be an approval. All signs installed by Tenant on or about the Leased Premises shall always comply with the City of Tucson Sign Code and shall be installed and maintained at Tenant's sole cost. All signs placed by Tenant on the Leased Premises or at other locations approved by Landlord shall be immediately removed by Tenant upon termination of this Lease for any reason, and any damage resulting from such removal shall be repaired immediately by Tenant at its sole cost.

15.1.1 County-Installed Signage. Landlord reserves the right to place directional signs to locate and identify the Superior Court Space inside the Leased Premises. Any signs that are installed by Landlord and within the Leased Premises must be reasonably acceptable to Tenant and must, after the initial installation, be maintained by Tenant.

15.1.2 Other Signage in the Health Campus. With respect to other third-party operations in the Health Campus, Landlord will either install and maintain those signs, at Landlord's sole expense, or require a third-party to install and maintain, appropriate signage identifying the operation as belonging to the third-party, and not to Tenant. All such signs shall be reasonably acceptable to Tenant.

15.1.3 Name Change. Tenant may change the name of its operations in the Leased Premises during the Lease Term with Landlord's prior approval, which shall not be unreasonably withheld.

## ARTICLE XVI MISCELLANEOUS

**Section 16.1 Cooperation of Parties.** Landlord agrees that it will assist Tenant in determining and deciding all matters of policy pertaining to public relations and the relationship of the Leased Premises to the community which it serves. However, Tenant, in charge of the operation and maintenance of the Leased Premises, shall have full responsibility for the operation of the Leased Premises in accordance with the terms of this Lease.

**Section 16.2 Laws.** Landlord and Tenant agree to abide by all federal, state, and local laws pertaining to hospital ownership and to Tenant's operation of the Leased Premises.

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**Section 16.3 Eminent Domain.** If all or any part of the Leased Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either Party hereto shall have the right, at its option, to terminate this Lease, and Landlord shall be entitled to any and all income, rent, award, or any interest therein whatsoever which may be paid or made in connection with such public or quasi-public use of property, provided, however, that any portion of the condemnation award specifically identified as awarded for loss or damage to Tenant's interest or the Tenant Equipment shall be that of Tenant. If a part of the Leased Premises shall be so taken or appropriated and neither Party hereto shall elect to terminate this Lease, only the Tenant's Rent payments thereafter to be paid shall be equitably reduced. Before Landlord or Tenant may terminate this Lease by reason of taking or appropriation as above provided, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede, or impair Tenant's use of the Leased Premises.

**Section 16.4 Access to Records for Government Inspection.** Landlord agrees, until the expiration of four (4) years after the furnishing of any services described in this Lease, to make available, upon request, to the Secretary of HHS, the Comptroller General of the United States of America, or any of their duly authorized representatives, the contracts, books, documents and records that are necessary to certify the nature and extent of reimbursable costs under the Medicare laws. This provision relating to the retention and production of documents is included because of possible application of Section 1861(v)(1)(I) of the Social Security Act, as amended by Section 952 of Public Law 95-499, to this Lease. If Landlord carries out any of the agreements under this Lease through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period with a related organization, such subcontract shall contain a requirement identical to that set forth in this **Section 13.4.**

**Section 16.5 Covenant of Quiet Enjoyment.** Landlord covenants and warrants that Tenant, subject to the terms and provisions of this Lease, upon keeping and performing all of the terms and provisions of this Lease on Tenant's part, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Leased Premises during the term hereof without hindrance or ejection by any person or party whomsoever subject only to the matters provided for, in or to which this Lease is made subject under the terms hereof and to all applicable Laws, rules and regulations of all governmental authorities, agencies and departments from time to time exercising jurisdiction over the Leased Premises.

**Section 16.6 Non-Discrimination.** Tenant will comply with applicable local, state, and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; with the employment-related provisions of the ADA, to the extent applicable to Tenant's operation at the Leased Premises; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which are incorporated into this Lease by this reference.

**Section 16.7 Non-Appropriation.** Landlord's performance of its obligations under this Lease may be dependent upon the appropriation of funds by the Board or the availability of funding from other sources. Should the Board fail to appropriate the necessary funds, or if funding becomes otherwise not available to Landlord for the purpose of fulfilling Landlord's obligations under this Lease, Landlord will be relieved of that obligation and Landlord or Tenant may terminate this Lease, in which case neither Landlord nor Tenant shall have any further rights or obligations

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hereunder, except those obligations that specifically survive the termination of this Lease. Landlord agrees to notify Tenant as soon as reasonably possible after the unavailability of said funds comes to the Board's attention.

**Section 16.8 No Partnership.** Nothing contained in this Lease shall be deemed or construed by the Parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of Rent nor any other provision contained in this Lease nor any acts of the Parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

**Section 16.9 Severability.** If any term, condition, or provision of this Lease is hereafter determined or declared to be invalid or unenforceable, this shall not operate to defeat or invalidate the remainder of this Lease unless the unenforceability or invalidity has the effect of substantially changing the terms and conditions of this Lease or operates in such manner as to invalidate or defeat the primary purposes or objectives of this Lease.

**Section 16.10 Waiver.** None of the terms, conditions, covenants, or provisions of this Lease can be waived by either Party except by appropriate written instrument. The waiver by either Party of any breach of any term, condition, covenant, or provision herein contained shall not be deemed a waiver of the same or any other term, condition, covenant, or provision herein contained or of any subsequent breach of the same or any other term, condition, covenant, or provision herein contained.

**Section 16.11 Notice.** All notices, demands, and other writings permitted or required to be given by either Party to the other shall be deemed given upon actual receipt by personal delivery or by depositing the same in a United States mail receptacle, certified or registered mail, postage prepaid, or by overnight courier, and addressed to the appropriate Party at the following addresses:

Landlord:

Pima County  
Attn: County Administrator  
115 N. Church Ave, 2<sup>nd</sup> Floor, Suite 231  
Tucson, Arizona 85701  
Telephone Number: (520)-724-8661

Tenant:

Banner-University Medical Center South Campus  
2800 E. Ajo Way  
Tucson, Arizona 85713  
Attn: Chief Executive Officer  
Banner-University Medical Center South Campus

with a copy to:

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Banner Health  
2901 N. Central Avenue, Suite 160  
Phoenix, Arizona 85012  
Attn: General Counsel

**Section 16.12 Time is of Essence.** Time is declared to be of the essence in each and every term, condition, and provision contained in this Lease.

**Section 16.13 Topical Headings.** The topical headings of the paragraphs herein contained are for convenience only and do not define, limit, or construe the contents of such paragraph.

**Section 16.14 Counterparts/Electronic Signatures.** This Lease may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signatures transmitted by e-mail, through scanned or electronically transmitted .pdf, .jpg or .tif files, shall have the same effect as the delivery of original signatures and shall be binding upon and enforceable against the Parties as if such scanned documents were an original executed counterpart.

**Section 16.15 Governing Law.** This Lease shall be governed by the internal substantive law of the State of Arizona, without regard for conflicts of laws.

**Section 16.16 Nondiscrimination in Admission to the Hospital.** As required under Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and other state and federal law, it is understood and agreed by the Parties hereto that any person in need of hospital care that is appropriately provided at the Leased Premises shall be admitted to the Hospital, as the case may be, regardless of color, race, creed, national origin, religion, sex, age, physical or mental handicap, sexual orientation or financial circumstances.

**Section 16.17 Mutual Contribution.** The Parties to this Lease and their counsel have mutually contributed to its drafting. Consequently, no provision of this Lease shall be construed against any Party on the ground that such Party drafted the provision or caused it to be drafted or the provision contains a covenant of a Party.

**Section 16.18 Legal Fees and Costs.** In the event either Party elects to incur legal expenses to enforce any provision of this Lease, the prevailing party will be entitled to recover such legal expenses, including without limitation, attorney's fees and costs, and necessary disbursements, in addition to any other relief to which such Party is entitled.

**Section 16.19 Binding Obligation.** Each Party warrants that this Lease has been duly authorized, executed and delivered; that this Lease is the valid and binding obligation of each Party enforceable against said Party in accordance with its terms. The terms, covenants and conditions of this Lease shall inure to and be binding upon the administrators, successors and assigns of the Parties hereto.

**Section 16.20 Entire Lease/Amendment.** The recitals to this Lease are affirmed by the Parties as true and correct and are incorporated into this Lease. This Lease supersedes all previous leases and contracts and, together with the Operating Agreement, constitutes the entire agreement

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of whatsoever kind or nature existing between and among the Parties respecting the within subject matter and no Party shall be entitled to other benefits than those specified herein. No oral statements or prior written material not specifically incorporated herein shall be of any force and effect. All prior representations or agreements, whether oral or written, not expressly incorporated herein, are superseded and no changes in or additions to this Lease shall be recognized unless and until made in writing and signed by the Parties hereto.

**Section 16.21 Conflict of Interest.** This Lease is subject to cancellation pursuant to A.R.S. § 38-511 which is incorporated herein by reference.

**Section 16.22 Liens.** Tenant will keep the Leased Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Tenant.

**Section 16.23 Conflicts between the Lease and Operating Agreement.** If any of the terms of this Lease conflict with any of the terms of the Operating Agreement, the terms of the Operating Agreement shall control.

[Signature Pages Follow]

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IN WITNESS WHEREOF, the Parties hereto have executed this Lease, individually or by signature of their duly authorized representative, as of the signature dates set forth below, to be effective as of the Effective Date.

**LANDLORD:**

**PIMA COUNTY**, a political subdivision of the State of Arizona

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

ATTEST:

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

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**TENANT:**

**BANNER-UNIVERSITY MEDICAL CENTER SOUTH CAMPUS, LLC**, an Arizona limited liability company

By: Banner Health

Its: Sole Member

By: Amy Perry \_\_\_\_\_

Name: Amy Perry

Title: President

Date: April 23, 2024 | 12:46 PM MST \_\_\_\_\_

APPROVED AS TO CONTENT:

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

Name: Tony Cisneros

Title: Director Facilities Mgmt.

Date: April 23, 2024

APPROVED AS TO FORM:

By: Bobby Yu \_\_\_\_\_

Name: Bobby Yu

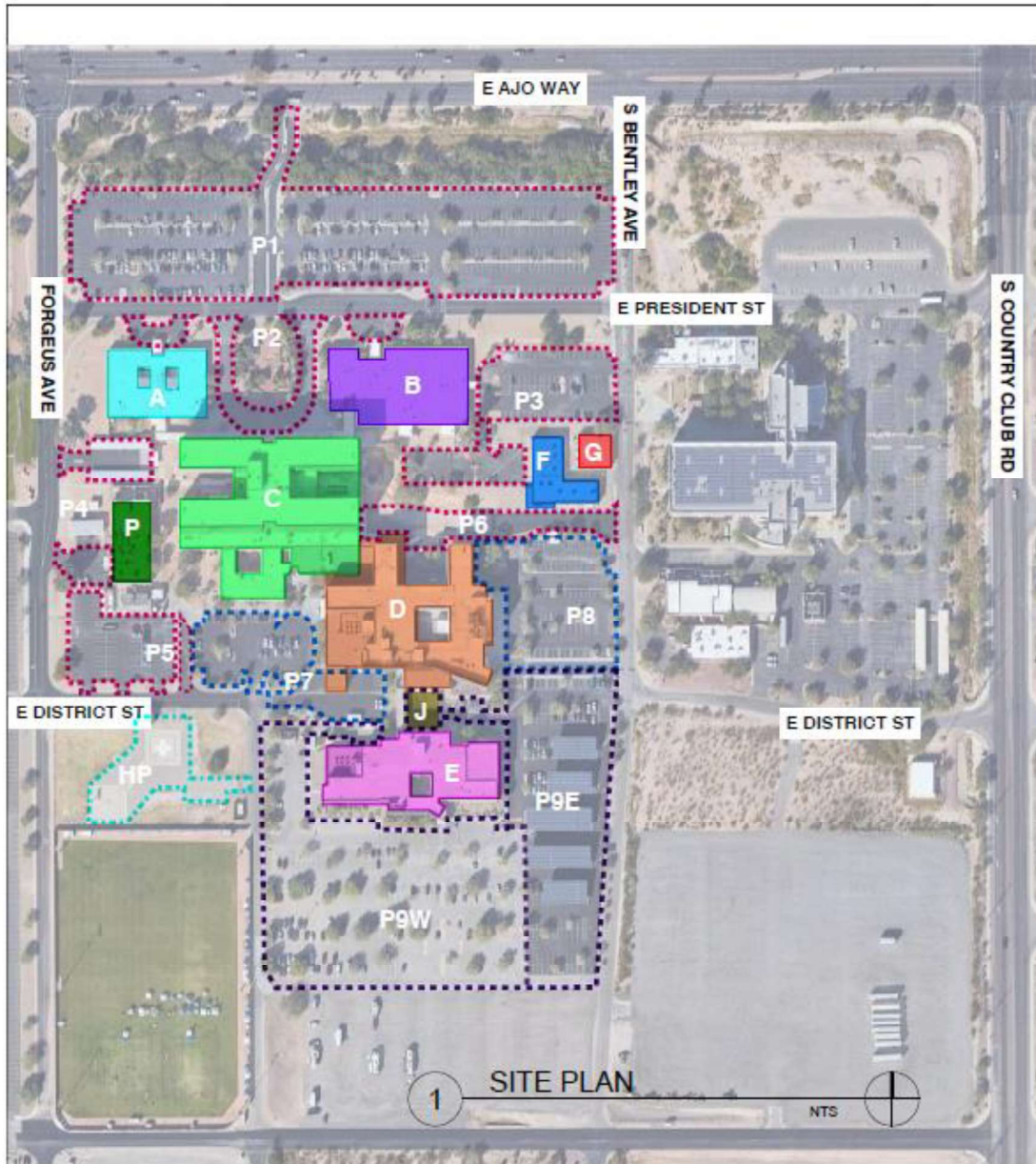
Title: Deputy County Attorney

Date: 4/23/2024 \_\_\_\_\_

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**EXHIBIT A**

DEPICTION OF HEALTH CAMPUS (THE LEASED PREMISES, SALLY PORT, NORTH PARKING LOT, CRC PARKING LOT, SUPERIOR COURT SPACE, AND CRC PARCEL)



	PROJECT NAME: <b>KINO CAMPUS                  BANNER-UMC, BHP &amp; CRC</b> 2800 E AJO WAY & 2802 E DISTRICT ST	SEAL:	<table border="1"> <thead> <tr> <th>REV.</th> <th>DATE</th> <th>DESCRIP.</th> <th>SHEET NO.</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td rowspan="2"><b>SK-1</b></td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	REV.	DATE	DESCRIP.	SHEET NO.				<b>SK-1</b>			
	REV.	DATE	DESCRIP.	SHEET NO.										
			<b>SK-1</b>											
SHEET TITLE: <b>SITE PLAN - BUILDING/PARKING AREAS</b>	DRAWN BY: S.JT CHECKED BY: DATE: 04/22/2024 PROJ. #:	STATUS: ISSUED FOR INFORMATION												

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<b>A</b>	BLDG 500: BANNER TRAINING & SIMULATION CENTER	13,000 sf
<b>B</b>	BLDG 100: BANNER UNIVERSITY MEDICINE CLINIC	32,800 sf
<b>C</b>	BANNER - UMC SOUTH	226,995 sf
<b>D</b>	BEHAVIORAL HEALTH PAVILLION	134,800 sf
<b>E</b>	CRISIS RESPONSE CENTER	63,452 sf
<b>F</b>	BLDG 200: BANNER PHYSICAL THERAPY / BANNER UNIVERSITY MEDICINE - ORTHOPEDICS & SPORTS MEDICINE	21,100 sf
<b>G</b>	BLDG 300: AMR	1,950 sf
<b>J</b>	SALLY PORT	
<b>P</b>	CENTRAL PLANT	
<b>..... BANNER-UMC PARKING</b>		
<b>P1</b>	NORTH PARKING LOTS	192,805 sf
<b>P2</b>	NORTH DRIVEWAYS	23,140 sf
<b>P3</b>	EAST PARKING LOTS	44,060 sf
<b>P4</b>	WEST PARKING LOTS	15,750 sf
<b>P5</b>	SOUTH PARKING LOTS	29,355 sf
<b>P6</b>	EAST LOADING AREA	18,375 sf
TOTAL		323,485 sf
<b>..... BHP / CRC PARKING</b>		
<b>P7&amp;8</b>	BEHAVIORAL HEALTH PAVILLION	89,260 sf
<b>P9W/P9E</b>	CRISIS RESPONSE CENTER	267,800 sf
TOTAL		357,060 sf
<b>HP</b>	HELIPORT	26,515 sf

**LEASED PREMISES**

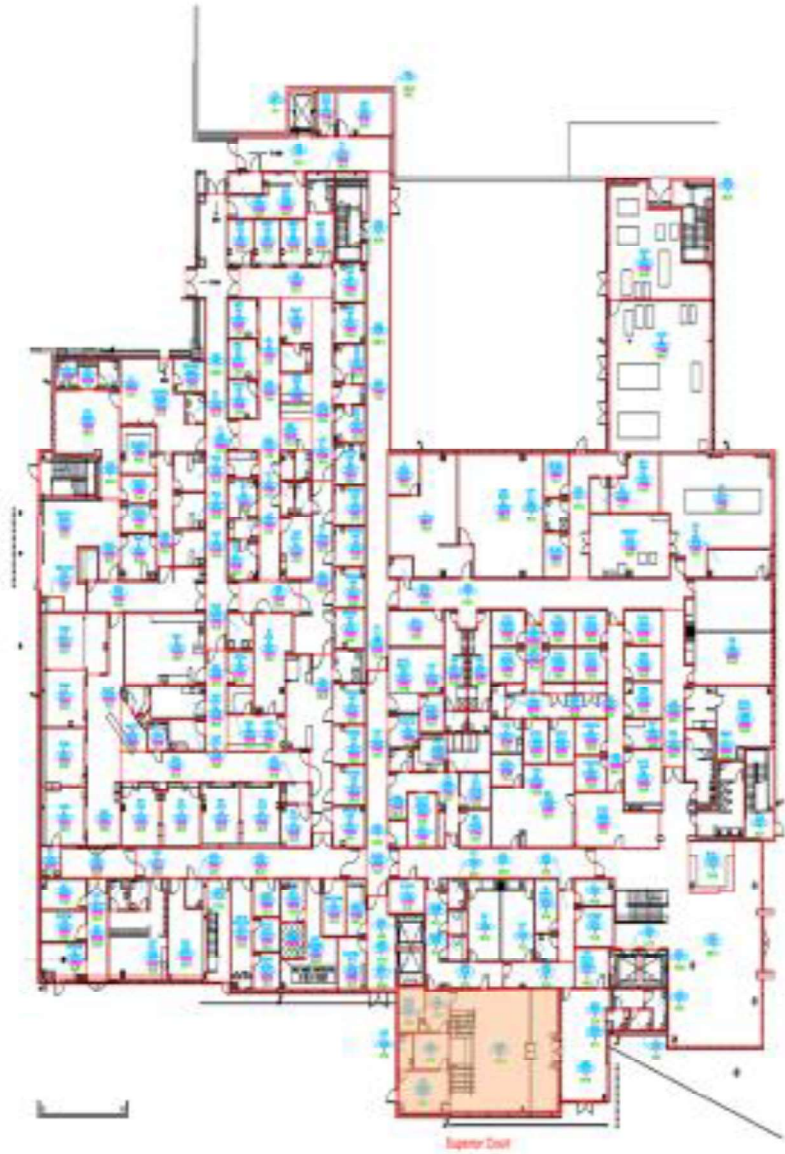
**A B C D F G P HP P2 THRU P8**

 <p>180 W CONGRESS ST, 3rd FLOOR TUCSON, AZ 85701 (520)724-3088</p>	PROJECT NAME: <b>KINO CAMPUS                  BANNER-UMC, BHP &amp; CRC</b> 2800 E AJO WAY & 2802 E DISTRICT ST	SEAL:	REV. DATE:	DESCRIP.:	SHEET NO. <b>SK-2</b>
	SHEET TITLE: <b>SITE PLAN - BUILDING/PARKING AREAS</b>		DRAWN BY:	SJT	STATUS: ISSUED FOR INFORMATION
			CHECKED BY:		
			DATE:	04/22/2024	
			PROJ. #:		

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### SUPERIOR COURT SPACE



↑

WEST - NORTH - EAST - SOUTH  
EAST - SOUTH - WEST - NORTH  
WEST - NORTH - EAST - SOUTH  
EAST - SOUTH - WEST - NORTH

NO SCALE - NOT TO BE USED FOR CONSTRUCTION

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**EXHIBIT B**  
**CRC SERVICES**

System or Service	Description of Service	Method of Cost Distribution
Electricity	Tenant will provide the feed to the CRC for all normal electrical service. This charge will show up on Tenant's electric bill from Tucson Electric Power, and will need to be charged to Arizona Complete Health/ the CRC. There are no sub meters to capture the usage of the CRC.	Based on electrical submeters.
Emergency Electricity	Tenant will provide the feed to the CRC for all emergency electrical power. A portion of the diesel generator maintenance inspections, fuel and ultimate capital replacement will need to be charged to Arizona Complete Health/ the CRC. There are no sub meters to capture the usage of the CRC.	Based on electrical submeters.
Heating and Cooling Water	Chilled water and heating water is provided from Leased Premises to the CRC for the HVAC system. There are no sub meters to capture the usage of the CRC.	Based on square footage of CRC, currently 63,452 sq. ft./ square footage of all areas serviced by applicable utility/service.
Emergency Management System	The environmental controls for the CRC are controlled by the BHP and the Hospital. Tenant will provide chilled and heated water from the BHP central plan as set forth above with sufficient energy capacity for the CRC air handling unit(s) to maintain the space temperatures within the CRC facility per American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 55-2010 thermal environmental conditions for human occupancy.	Based on square footage of CRC, currently 63,452 sq. ft./ square footage of all areas serviced by applicable utility/service.

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Maintenance and Repairs	Tenant will perform regular maintenance on equipment, generators, and utility systems. This includes FTEs, fuel, chemicals, and other items purchased for operating the plant. Locksmithing and energy management system troubleshooting included.	Based on square footage of CRC, currently 63,452 sq. ft./ square footage of all areas serviced by applicable utility/service.  Unexpected repairs to connecting systems and facilities will be based on square footage. Repairs solicited for systems and facilities that are not connected will be based on time and material.
Cable TV	Provide feed from Leased Premises to CRC for the approximately 5 TVs in the CRC. This is subject to all restrictions placed into the feed by Tenant.	No charge to Arizona complete health.
Connecting covered walkway, sally port, parking area and associated gates	Maintenance and repairs to the covered walkway, sally port, parking areas and gates will be provided by County.	County will cover repairs to these areas.
Elevators		CRC will be responsible for their own maintenance.
Termite and pest control		CRC will be responsible for their own maintenance .
Fire Alarm Control Panel and Fire Sprinkler Testing	CRC will be responsible for their own maintenance.	Based on square footage of CRC, currently 63,452 sq. ft./ square footage of all areas serviced by applicable utility/service.

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**EXHIBIT C**  
**SUPERIOR COURT SERVICES**

**Court Room Security Services**

Tenant will, with respect to the Superior Court Space, and subject to the cooperation of the Court where noted, supply the following security services:

- Screen visitors, patients, and other attendees who are not members of the Court for dangerous devices.
- Provide a presence inside of the Court during Title 36 hearings.
- Provide camera surveillance: 24 hours / 7 days a week
- Grant and manage Court employee and ancillary legal support staff card access
- Maintain access and surveillance
- Respond to all duress alarms

Tenant's patients will be escorted from the BHP to the Court. Non-Tenant patients will be escorted to the Court as directed and arranged by the sending facility. Tenant will utilize the two rooms immediately adjacent to the elevator to avoid delays and maximize the efficiency of the Court's hearing schedule.

Facilitated by Landlord, points of contact will be exchanged between the Court and Tenant's security staff, information will be shared back and forth regarding security concerns, and the parties, together with Landlord when appropriate, will meet as needed to discuss and resolve issues promptly.

Tenant will provide orientation to the Hospital, Health Campus, and pertinent procedures for all Court staff.

Landlord will facilitate coordination between the Court and appropriate Tenant's staff. The Court will provide Tenant's staff, in a timely manner, with copies of all post orders, policies, and procedures, and any changes to those orders, policies, and procedures as and when they are amended by the Court.

The Court will train designated security personnel on all post orders, policies, and procedures, and any changes to such orders, policies and procedures as and when they are amended by the Court from time to time.

The Court will promptly inform Tenant's staff if the Court's hours of operations (currently 9:00 a.m. to 5:00 p.m.) are altered and will supply Tenant's security staff, daily, with the next day's

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hearing calendar. Tenant's security staff shall exert a reasonable effort to accommodate any change in the Court's hours of operation.

Landlord or the Court will provide training to Tenant's security staff regarding the operation of the scanner.

Tenant's security staff will hand out keys as appropriate in order for armed visitors (other than law enforcement personnel) to self-check weapons before entering the courtroom.

Tenant's security staff will be unarmed.

### **CCTV Security System**

Recording – 14 video cameras throughout the Court and adjacent areas will be recorded on Tenant's security equipment.

Reviewing – Tenant's security staff will make the surveillance videos available for review, upon request to designated Court personnel. Only the Court, under its policies, will permit release to any other party, unless Tenant is legally required to release the video.

Monitoring – Tenant's security staff will monitor live video from the cameras located throughout the Court. All suspicious or threatening activities will be reported to appropriate Court authorities.

Badging & Access – Tenant's staff will provide identification / access badges and vehicle parking stickers, and will grant badge access to all Court employees and ancillary legal support staff – with Court approval. Access badges will be granted within 24-hours of receiving a written request. Designated hours for Court employee badging are Monday through Friday 7:00 a.m. through 6:00 p.m.