

**ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**TO**

**UPSTATE PATHOLOGY LAB OWNERSHIP, LLC**

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**LEASEBACK AGREEMENT**

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**Street Address:**

6624 Fly Road  
Town of Dewitt  
Onondaga County

**Tax Map Number:**

029.-02-27.3

**Dated:**

As of August 1, 2025

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## LEASEBACK AGREEMENT

THIS LEASEBACK AGREEMENT, dated as of August 1, 2025 (the "Leaseback Agreement"), is by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 335 Montgomery Street, Floor 2M, Syracuse, New York 13088 (the "Agency") and **UPSTATE PATHOLOGY LAB OWNERSHIP, LLC**, a Florida limited liability company authorized to conduct business in New York having an office for the transaction of business located 5112 West Taft Road, Suite M, Liverpool, New York 13088 (the "Company").

### WITNESSETH:

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

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

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 435 of the Laws of 1970 of the State (hereinafter collectively with the Enabling Act, the "Act") created the Agency which is empowered under the Act to undertake the leasing of the Project Facility described below; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (i) the Agency taking title to or a leasehold (or other) interest in an approximately 23.263  $\pm$  acre parcel of land located at 6624 Fly Road, Town of Dewitt, Onondaga County, New York (being more particularly identified as tax map number 029.-02-27.23) (the "Land"); (ii) the construction on the Land of (a) an approximately 109,000 square foot, three story pathology lab building; (b) state of the art lab testing equipment, drone technology; and (c) other site improvement consisting of surface parking, signage, landscaping, and sidewalks (collectively, the "Improvements"); and (iii) the acquisition and installation by the Company in and around the Land and the Improvements of items of equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Project Facility"); and

WHEREAS, in order to induce the Company to undertake the acquisition, construction and equipping of the Project Facility, the Agency is willing to take title to or a leasehold interest

in the Project Facility and to lease its interest in said Project Facility back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency has determined that providing the Project Facility will accomplish, in part, its public purposes; and

WHEREAS, by resolution adopted on the Agency on April 10, 2025, the Agency authorized certain financial assistance (the "Financial Assistance") for the benefit of the Company in the form of (i) exemptions from sales and use taxes otherwise payable upon the purchase or lease of materials, furnishings, fixtures and equipment, and other taxable personal property, (ii) a partial real property tax abatement structured through a payment-in lieu-of-tax agreement (the "PILOT"), and (iii) exemptions from mortgage recording taxes in connection with the acquisition financing, construction financing and/or permanent financing or any subsequent refinancing of the costs of the acquisition, construction, renovation, reconstruction, refurbishing and equipping of the Facility as permitted by New York State law; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, renovate and equip the Project Facility in accordance with the application filed with the Agency, as amended from time to time (the "Application"); and

WHEREAS, the Agency proposes to lease the Project Facility to the Company, and the Company desires to rent the Project Facility from the Agency, upon the terms and conditions hereinafter set forth in this Leaseback Agreement.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## **ARTICLE I**

### **REPRESENTATIONS AND COVENANTS**

**Section 1.1. Representations and Covenants of the Agency.** The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Leaseback Agreement.

(c) The Agency will take title to or a leasehold interest in the Project Facility, lease the Project Facility to the Company pursuant to this Leaseback Agreement and designate the Company as its agent for purposes of the acquisition, construction and equipping of the Project Facility, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and Onondaga County, New York, and improving their standard of living.

(d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to acquire, construct, renovate, equip, repair and maintain the Project Facility and related jobs for the residents of Onondaga County, New York.

**Section 1.2. Representations and Covenants of the Company.** The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company formed, validly existing and in good standing under the laws of the State of Florida, duly authorized to do business and in, and in good standing under, the Laws of the State of New York, and authorized and has the authority to enter into this Leaseback Agreement and has duly authorized the execution and delivery of this Leaseback Agreement.

(b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Project Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's Application, to the extent occupants are relocating from one plant or facility of the Company to another, the Agency's involvement with the Project Facility is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry.

(d) The Project Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project Facility and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d). The Company shall operate the Project Facility in accordance with this Leaseback Agreement and as a qualified "project" under the Act.

(e) The Company has caused to be transferred to the Agency a fee interest or leasehold interest in all those properties and assets contemplated by this Leaseback Agreement and all documents related hereto.

(f) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact the Company's ability to fulfill its obligations under this Leaseback Agreement.

(g) The Company covenants that the Project Facility will comply in all respects with all environmental laws and regulations and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Project Facility, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Project Facility or from the Project Facility onto any other property, (iii) that the Company will not incorporate or dispose of or allow the incorporation or disposal of asbestos in or at the Project Facility, (iv) that the Company will not locate or allow the location of underground storage tanks on the Project Facility, and, (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this subsection (g), shall promptly notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify and hold harmless the Agency, its members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this subsection (g). In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Project Facility, the Company agrees to pay the expenses of same to the Agency upon demand and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent hereunder.

(h) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee,

loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer of such cancellation, lapse, expiration, reduction or change.

(i) Any personal property acquired by the Company in the name of the Agency shall be located in Onondaga County, New York, except for temporary periods during ordinary use.

(j) The Company represents, warrants and covenants that, unless otherwise approved by the Agency in compliance with the Act, facilities or properties that are primarily used for making retail sales to customers who personally visit such facilities constitute less than one-third (1/3) of the total costs of the Project. For purposes of this section, "retail sales" means: (a) sales by registered vendors under Article 28 of the Tax Law of the State of New York primarily engaged in the retail sale of tangible personal property, as defined in Section 1101(b)(4)(i) of the Tax Law of the State of New York; or (b) sales of a service to said customers.

(k) The Company hereby acknowledges and agrees that the Financial Assistance constitutes "public funds" unless otherwise excluded under Section 224-a(3) of the New York State Labor Law (the "Labor Law"), and by executing this Leaseback Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the New York Labor Law. Other than the Financial Assistance estimates provided in that certain Project Agreement, dated as of May [ ], 2025, by and between the Agency and the Company and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of "public funds" received by the Company in connection with the Project.

**Section 1.3. Public Authorities Law Representations.** The parties hereto hereby acknowledge that the Project Facility and the interest therein conveyed to the Agency under the Lease Agreement, dated as of August 1, 2025, by and between the Company and the Agency (the "Lease Agreement") and conveyed by the Agency back to the Company pursuant to the terms of this Leaseback Agreement is not "property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Project Facility and the leasehold interests therein are securing the Company's obligations to the Agency under this Leaseback Agreement, including (i) the Company's obligation to acquire, construct renovate, equip and maintain the Project Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.



**ARTICLE II**  
**FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS**

**Section 2.1. Agreement to Convey to Agency.** The Company has conveyed to the Agency a fee interest or a leasehold interest in real property, including any buildings, structures or improvements thereon, described in **Exhibit A** attached hereto and the Company has or will convey all of its interest to the Agency in the Equipment described in **Exhibit B** attached hereto. The Company agrees that the Agency's interest in the Project Facility resulting from said conveyances will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability arising out of a defect in title or a lien adversely affecting the Project Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Project Facility.

**Section 2.2. Construction, Renovation and Equipping of the Project Facility.** (a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project Facility. Such appointment was made by the Agency pursuant to resolutions duly adopted by the Agency on April 10, 2025 (the "Authorizing Resolution").

(b) The Company, as agent for the Agency, will undertake the acquisition, construction, reconstruction, renovation and equipping of the Project Facility. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the acquisition, construction, reconstruction, renovation and equipping of the Project Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (i) the completion of the Project Facility, or (ii) **December 31, 2026**; *provided, however*, that the Agency may extend the Company's agent appointment with the written approval of the Chair of the Agency upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment.

(c) The Company hereby agrees to pay the Agency administrative fee, the fees of transaction counsel, and any and all fees, costs and expenses incurred in connection with the acquisition, construction, renovation and equipping of the Project Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(d) The Company hereby covenants and agrees to annually file with the State Department of Taxation and Finance the statement required by General Municipal Law Section 874(8) concerning the value of sales tax exemptions claimed.

**Section 2.3. Demise of Facility.** The Agency hereby demises and leases the Project Facility to the Company and the Company hereby rents and leases the Project Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

**Section 2.4. Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.** In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company, at its expense, either separately or in conjunction with others, may

pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or supplier or other person so in default and against such surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which the Company deems reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including, but not limited to, reasonable attorneys' fees) in any such action or proceeding.

**Section 2.5. Duration of Lease Term; Quiet Enjoyment.** (a) The Agency shall deliver to the Company sole and exclusive possession of the Project Facility (subject to the provisions of Sections 5.3 and 7.2 hereof) and the leasehold estate created hereby shall commence on the date hereof.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on March 31, 2036, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(d) The Agency shall, subject to the provisions of Sections 5.3 and 7.2 hereof neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Leaseback Agreement, to prevent the Company, during the Lease Term, from having quiet and peaceable possession and enjoyment of the Project Facility and will, at the request of the Company and at the Company's sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility as hereinabove provided.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Leaseback Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project Facility upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Leaseback Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof shall continue until the expiration of the applicable statute of limitations, notwithstanding any such termination or expiration.

**Section 2.6. Rents and Other Consideration.** The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Project Facility as follows:

(a) Upon execution of this Leaseback Agreement, One Dollar (\$1.00) for the period commencing on the date hereof and ending on December 31, 2025, and on January 1 of each calendar year thereafter an amount equal to One Dollar (\$1.00) annually the receipt and sufficiency of which are hereby acknowledged.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the term of this Leaseback Agreement, the Company shall pay to the Agency as additional rent, within ten (10) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership or leasing of the Project Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement or any other document or agreement related to the transactions contemplated hereby.

(c) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6, the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

**Section 2.7. Obligations of Company Hereunder Unconditional.** The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Project Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or in the suitability of the Project Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Project Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement, or otherwise. Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2 hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Project Facility or which will otherwise adversely affect the rights or estates of the Company hereunder, except upon the written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

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

**Section 3.1. Maintenance and Modifications of Facility By Company.** (a) The Company agrees that during the term of this Leaseback Agreement it will (i) keep the Project Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Project Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Project Facility in a sound and prudent manner; (iv) operate the Project Facility such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

(b) The Company, at its own expense, from time to time may make any structural addition, modifications or improvements to the Project Facility or any addition, modifications or improvements to the Project Facility or any part thereof which it may deem desirable for its business purposes and uses. All such structural additions, modifications or improvements so made by the Company shall become a part of the Project Facility; *provided, however*, that, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under an Agent Agreement between the Agency and the Company which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law.

**Section 3.2. Installation of Additional Equipment.** The Company, from time to time, may install additional machinery, equipment or other personal property in the Project Facility (which may be attached or affixed to the Project Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Project Facility. The Company, from time to time, may remove or permit the removal of such machinery, equipment or other personal property.

**Section 3.3. Taxes, Assessments and Utility Charges.** (a) The Company agrees to pay, or cause to be paid, as the same respectively become due, (i) all taxes, payments-in-lieu-of-taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed and levied against or with respect to the Project Facility and any machinery, equipment or other property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or revenues of the Agency from the Project Facility, (ii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; *provided*, that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the Lease Term. Notwithstanding the above, it is the intent of the Agency and the Company that the Company shall at all times during the Lease Term be obligated to pay all special district charges and assessments and either real estate taxes or payments in lieu thereof, and that the real estate taxes

(excluding special district charges and assessments) or payments in lieu thereof shall not be duplicative of each other or otherwise be additive.

(b) The Company, at its own expense and in its own name and on behalf or in the name and on behalf of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Agency reasonably requests payment prior to settlement.

**Section 3.4. Insurance Required.** At all times throughout the Lease Term, including, without limitation, during any period of construction of the Project Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company; or as an alternative to the foregoing the Company may insure the Project Facility under a blanket insurance policy or policies covering not only the Project Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

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

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage; provided, however, the Company's obligations to deliver such blanket excess liability policy shall commence upon the construction and equipping of the Project Facility.

**Section 3.5. Additional Provisions Respecting Insurance.** (a) All insurance required by Sections 3.4(a) and 3.4(c) hereof shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to

those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) subject to the rights of any approved mortgagee, payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Leaseback Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project Facility complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

**Section 3.6. Application of Net Proceeds of Insurance.** The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(i) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof, and

(ii) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.** If the Company fails to (i) pay any tax, payments-in-lieu-of-tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, payments-in-lieu-of-tax, assessment or other governmental charge or the premium for such insurance. The Company shall reimburse the Agency for any amount so paid together with interest thereon from the date of payment at a rate of twelve percent (12%) per annum.

#### **ARTICLE IV** **DAMAGE, DESTRUCTION AND CONDEMNATION**

**Section 4.1. Damage or Destruction.** (a) If the Project Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Leaseback Agreement:

(i) the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Project Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to replace, repair, rebuild or restore the Project Facility if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

**Section 4.2. Condemnation.** (a) If at any time during the term of this Leaseback Agreement the whole or any part of title to, or the use of, the Project Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Project Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

(i) restore the Project Facility (excluding any land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation, or

(ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as an operating entity as the Project Facility subject to Agency consent.

The Project Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Project Facility or acquire a substitute facility if the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Project Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Project Facility without the written consent of the Company.

**Section 4.3. Condemnation of Company-Owned Property.** The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Project Facility.

## **ARTICLE V**

### **SPECIAL COVENANTS**

**Section 5.1. No Warranty of Condition or Suitability by the Agency.** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

**Section 5.2. Hold Harmless Provisions.** The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its officers, members, agents (except the Company), employees, representative, successors or assigns, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project Facility or (ii) liability arising from or expense incurred by the Agency's financing, constructing, renovating, equipping, owning and leasing of the Project Facility, including, without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its members, officers, agents (except the Company), employees, representatives, successors or assigns and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; *except, however*, that, such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified hereunder.

**Section 5.3. Right to Inspect the Project Facility.** The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Project Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Project Facility.

**Section 5.4. Agreement to Provide Information.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Company's employment history and statistics related thereto, the Project Facility and other topics necessary to enable the Agency to



make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

**Section 5.5. Books of Record and Account; Financial Statements.** The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with cash basis accounting principles, of all business and affairs of the Company relating to the Project Facility.

**Section 5.6. Compliance With Orders, Ordinances.** (a) The Company agrees that it will, throughout the Lease Term, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Project Facility or any part thereof, or to any use, manner of use or condition of the Project Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of this Leaseback Agreement.

**Section 5.7. Discharge of Liens and Encumbrances.** (a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Project Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Project Facility or any part thereof except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens (as they are defined in Section 6.1(a) hereof).

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with prior written notice to the Agency, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency, thereby causing said lien to be removed.

**Section 5.8. Depreciation Deductions and Investment Tax Credit.** The parties agree that the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Project Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Project Facility which constitutes "Section 38 Property."

**ARTICLE VI**  
**RELEASE OF CERTAIN LAND; ASSIGNMENTS**  
**AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS**

**Section 6.1. Restriction on Sale of Facility; Release of Certain Land.** (a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, the Lender and the Company, for purposes of financing the acquisition, construction and equipping of the Project Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens"), the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Project Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company. Under no circumstances shall the Agency be required to mortgage or grant a security interest in or assign its rights to receive, as the case may be, (i) the rental payments described in Section 2.6 hereof or its rights to be indemnified under Sections 1.2(d), 1.2(g), 1.2(j), 1.2(k), 2.1, 3.1(a) and 5.2 hereof or (ii) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (iii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iv) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project Facility and to confirm the qualification of the Project Facility as a "project" under the Act; (v) the right of the Agency to amend with the Company this Leaseback Agreement, and the right of the Agency to exercise its rights and remedies hereunder; (vi) the right of the Agency on its own behalf to declare an Event of Default under Section 7.1 hereof; and (vii) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, clauses (i) – (vi) being referred to as the "Unassigned Rights").

(b) With the exception of the Unassigned Rights, the Agency agrees that this Leaseback Agreement shall be subordinate to mortgage liens granted by the Company and the Agency in favor of any Lender (the "Mortgagee") executed and delivered herewith and all further mortgages hereafter placed on the Project Facility with the consent of the Agency and the Mortgagee, but that under no circumstances shall the Agency be required to mortgage, grant a security interest in its Unassigned Rights.

**Section 6.2. Removal of Equipment.** (a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Project Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of

Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section 6.2.

(c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

**Section 6.3. Assignment of the Leaseback Agreement.** The Company may not assign its right, title, interest and obligations in, to and under this Leaseback Agreement without the prior written consent of the Agency, and any such assignment without such prior written consent shall be deemed null and void.

**Section 6.4 Sale or Lease of the Project Facility.** The Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof or allow the Project Facility to be used by any person or entity other than the Company or sub-tenants of the Company who have entered into written subleases for portions of the Project Facility without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

Any and all subleases of one or more portions of the Project Facility by the Company shall be delivered to the Agency within ten (10) days after execution and delivery along with evidence of subtenant insurance naming the Agency as an additional insured. Any such subleases shall also incorporate the provisions set forth in **Exhibit C** hereto.

Any assignment, if and once approved by the Agency, shall be on the following conditions, as of the time of such assignment:

- (i) no assignment shall relieve the Company from primary liability for any of its obligations hereunder;
- (ii) the assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment and the instrument of assumption; and
- (iv) the Project Facility shall continue to constitute a "project" as such quoted term is defined in the Act.

If the Agency shall so request, as of the purported effective date of any assignment pursuant to subsection (a) above, the Company at its cost shall furnish the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

(b) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company,

including attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel.

## **ARTICLE VII**

### **DEFAULT**

**Section 7.1. Events of Default Defined.** (a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:

(1) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Leaseback Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(2) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Leaseback Agreement (except as set forth in subsection (1) immediately above and subsection (3) immediately below); or

(3) If the Company fails to comply with the provisions of Sections 3.4 and 6.3 of the Leaseback; or

(4) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed (except as set forth in subsections (1), (2) and (3) immediately above) and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence; or

(5) If any representation or warranty of the Company contained in this Leaseback Agreement was incorrect in any material respect when made.

(b) Notwithstanding the provisions of 7.1(a) above, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 2.6 and 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections

5.2, 5.3, 5.6, 5.7, 6.3 and 7.1(a)(1) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

**Section 7.2. Remedies on Default.** Whenever any Event of Default shall have occurred and is continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps;

- (1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Leaseback Agreement.
- (2) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.
- (3) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.
- (4) Terminate this Leaseback Agreement and either re-convey the Project Facility to the Company if the Agency has a fee interest or terminate the Agency's leasehold interest.
- (5) In the event the Company sells, transfers, conveys or assigns the Project Facility, or any majority shareholder of the Company sells, transfers, conveys or assigns its interests in whole or in part without first obtaining the consent of the Agency, and fails to comply with Section 6.3 herein, or the Agency fails or refuses to give its approval to any sale, conveyance, assignment or transfer as hereinbefore provided, then (i) the Lease Agreement and Leaseback Agreement shall automatically be terminated and of no force or effect as of the date of such sale, conveyance, assignment or transfer, (ii) the Project Facility shall, as of the date of such sale, conveyance, assignment or transfer, automatically be placed on the tax rolls as taxable

property for its full assessed value, and (iii) all real property taxes, levies and assessments on the Project Facility based upon the full assessed value thereof shall thereafter be due and payable.

**Section 7.3. Remedies Cumulative.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.** In the event the Company should default under any of the provisions of this Leaseback Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.5. No Additional Waiver Implied by One Waiver.** In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## **ARTICLE VIII**

### **EARLY TERMINATION OF AGREEMENT; OBLIGATIONS OF COMPANY**

#### **Section 8.1. Early Termination of Agreement.**

(a) The Company shall have the option at any time to terminate this Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.

(b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence and the continuance beyond any applicable notice and/or cure period of an Event of Default hereunder.

**Section 8.2. Obligation to Purchase Facility.** Upon termination of the Lease Term in accordance with Sections 2.5, 7.2 or Section 8.1 hereof, the Company shall purchase the Project Facility from the Agency (or if the Agency's interest is a leasehold, the Agency shall surrender its leasehold estate) for One Dollar (\$1.00) plus all rental payments reserved and unpaid as described in Section 2.6 hereof (the "Purchase Payment"). The Company shall exercise its obligation to purchase or option to have the Agency's leasehold interest terminated by giving written notice to the Agency and paying said amount to the Agency.

**Section 8.3. Conveyance on Purchase.** At the termination of the Company's leasehold interest in the Project Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Purchase Payment, deliver to the Company, at the Company's sole cost and expense, all necessary documents to reflect either (i) a transfer by quitclaim deed of a fee interest (if the Agency holds a fee interest) or (ii) termination of the Agency's leasehold interest.

## **ARTICLE IX** **MISCELLANEOUS**

**Section 9.1. Notices.** All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency:            Onondaga County Industrial Development Agency  
                                 335 Montgomery Street, 2nd Floor  
                                 Syracuse, New York 13202  
                                 Attn: Executive Director  
                                 e-mail: [economicdevelopment@ongov.net](mailto:economicdevelopment@ongov.net)

With a copy to:           Harris Beach Murtha Cullina PLLC  
                                 99 Garnsey Road  
                                 Pittsford, New York  
                                 Attn: Christopher A. Andreucci, Esq.  
                                 e-mail: [candreucci@harrisbeachmurtha.com](mailto:candreucci@harrisbeachmurtha.com)

To the Company:           Upstate Pathology Lab Ownership, LLC  
                                 5112 West Taft Road, Suite M  
                                 Liverpool, New York 13088  
                                 Attn: John D. Murphy, Jr., Manager  
                                 e-mail: [jmurphy@hallmarkre.com](mailto:jmurphy@hallmarkre.com)

With a copy to:           Barclay Damon LLP  
                                 125 E. Jefferson Street  
                                 Syracuse, New York 13202  
                                 Attn: Kevin McAuliffe, Esq.  
                                 e-mail: [kmcauliffe@barclaydamon.com](mailto:kmcauliffe@barclaydamon.com)

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

**Section 9.2. Binding Effect.** This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

**Section 9.3. Severability.** In the event any provision of this Leaseback Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 9.4. Amendments, Changes and Modifications.** This Leaseback Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

**Section 9.5. Execution of Counterparts.** This Leaseback Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**Section 9.6. Applicable Law.** This Leaseback Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein.

**Section 9.7. Recording and Filing.** This Leaseback Agreement (or a memorandum thereof) shall be recorded or filed, as the case may be, in the Office of the Onondaga County Clerk, Division of Land Records, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

**Section 9.8. Survival of Obligations.** This Leaseback Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 and all indemnities shall survive any termination or expiration of this Leaseback Agreement.

**Section 9.9. Section Headings Not Controlling.** The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.

**Section 9.10. No Broker.** The Agency and Company represent and warrant to the other that neither the Agency nor the Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Leaseback Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including reasonable attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

**Section 9.11. No Recourse; Special Obligation.** (a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency, and not of its members, officers, employees, agents (other than the Company), representatives, successors, and assigns in his/her individual capacity, and its members, officers, employees, agents (other than the Company), representatives, successors, and assigns shall not be liable personally hereon or thereon or be



subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York, or Onondaga County, New York, and neither the State of New York nor Onondaga County, New York, shall be liable hereon or thereon and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) the Agency refuses to comply with such request and the Agency's refusal to comply is based on its expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient, determined in the sole discretion of the Agency, to cover such fees and expenses, and (iii) the Agency refuses to comply with such request and the Agency's refusal to comply is based on its expectation that it or its any of its members, officers, employees, agents (other than the Company), representatives, successors, and assigns shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, employees, agents (other than the Company), representatives, successors, and assigns against all liability expected to be incurred as a result of compliance with such request.

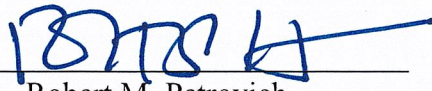
**Section 9.12. No Joint Venture Created.** The Agency and the Company mutually agree that by entering into this Leaseback Agreement the parties hereto are not entering into a joint venture.

**Section 9.13 Mortgage Financing with Five Star Bank.** The Company hereby covenants and agrees to obtain financing in connection with the Project (the "Financing") no later than six (6) months from August 6, 2025 (the "Effective Date"); and the Company hereby covenants and agrees to pay (i) to the Agency its administrative fee, and (ii) to Harris Beach Murtha Cullina PLLC its legal counsel fees in connection with the Financing.

*(Remainder of page intentionally left blank)*

IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed as of the date first above written.

**ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Robert M. Petrovich  
Title: Executive Director

**UPSTATE PATHOLOGY LAB OWNERSHIP,  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

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**UPSTATE PATHOLOGY LAB OWNERSHIP,  
LLC**

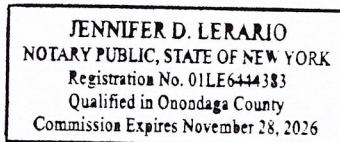
By: \_\_\_\_\_  
Name: John D. Murphy Jr.  
Title: Manager

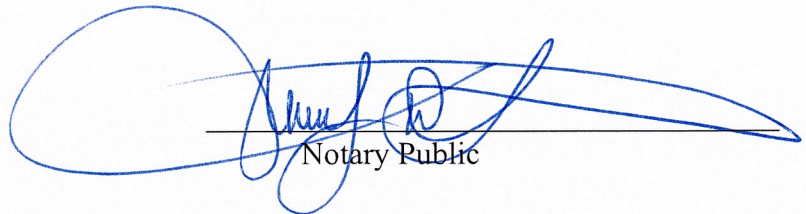


STATE OF NEW YORK  
COUNTY OF ONONDAGA

)  
) ss.:  
)

On the 31 day of July in the year 2025, before me, the undersigned, personally appeared **ROBERT M. PETROVICH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

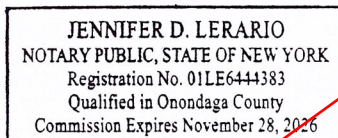


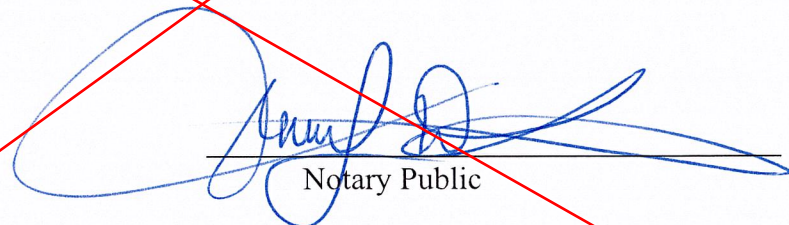
  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK  
COUNTY OF ONONDAGA

)  
) ss.:  
)

On the 31 day of July in the year 2025, before me, the undersigned, personally appeared Robert M. Petrovich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK  
COUNTY OF ONONDAGA

)  
) ss.:  
)

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2025, before me, the undersigned, personally appeared **ROBERT M. PETROVICH**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK  
COUNTY OF ONONDAGA

)  
) ss.:  
)

On the 5<sup>th</sup> day of August in the year 2025, before me, the undersigned, personally appeared John D. Murphy, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity(ies), and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

JAMES H. MESSENGER, JR.  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02ME4738201  
Qualified in Onondaga County  
My Commission Expires November 30, 2025

## **EXHIBIT A**

### Legal Description of Leased Premises

6624 Fly Road Dewitt, New  
York

Tax Map No. 029.-02-27.3

All that tract or parcel of land situate in the Town of Dewitt, County of Onondaga, State of New York, being more particularly bounded and described as follows:

Beginning at a pin and cap found on the easterly right of way line of Fly Road (variable width) on the division line between the lands now or formerly of Loren Oatman III (TA# 29-2-29) on the south and the lands now or formerly of Military Trail Medical Properties LLC (TA# 29-2-27.1, Instrument No. 2022-00044337) on the north; said point being the southwesterly corner of Instrument No. 2022-00044337, thence, on the said easterly right of way line of Fly Road the following six courses:

- 1) North 03° 15' 38" East, a distance of 131.15 feet to a pin and cap found; thence,
- 2) North 03° 56' 43" West, a distance of 224.69 feet to a pin and cap found; thence,
- 3) North 09° 40' 56" West, a distance of 135.83 feet to a point; thence,
- 4) North 06° 26' 33" West, a distance of 240.35 feet to a pin and cap found; thence,
- 5) North 02° 22' 07" East, a distance of 150.75 feet to a pin and cap found; thence,
- 6) North 03° 21' 30" West, a distance of 334.54 feet to a pin and cap found on the division line between the lands now or formerly of Hunter-Syracuse, Hunter Kessinger (TA# 29-2-2.2) on the north and the said lands of Military Trail Medical Properties LLC on the south; thence,

North 86° 06' 12" East, on the said division line and continuing on the division line between the said lands of Military Trail Medical Properties LLC on the south and the following properties on the north: (lands now or formerly of L&L Realty Syracuse LLC, TA# 29-2-2.3), (lands now or formerly of Manlius Center Road Corp, TA# 29-2-21.), (lands now or formerly of Ralph R. & Mary G. Debaise, TA# 29-2-6) and (lands now or formerly of Ralph R. & Mary G. Debaise, TA# 29-2- 7.1), a distance of 1310.89 feet to a rebar found on the westerly right of way line of Interstate Route 481; thence,

South 01° 57' 02" East, on the said westerly right of way line, a distance of 329.26 feet to a point on the division line between proposed Lot 1 on the north and proposed Lot 2 on the south as shown on a map entitled "Military Trail Medical Properties LLC Final Plan", prepared by Bergmann Associates, dated January 13, 2023, to be filed in the Onondaga

County Clerk's Office; thence, through the said lands of Military Trail Medical Properties LLC and on the said division line between Lot 1 and Lot 2 the following seven courses:

- 1) South 86° 06' 12" West, a distance of 470.07 feet to a point; thence,
- 2) South 66° 37' 39" West, a distance of 202.13 feet to a point; thence,
- 3) South 32° 36' 12" West, a distance of 82.06 feet to a point; thence,
- 4) South 57° 23' 48" East, a distance of 262.91 feet to a point; thence,
- 5) on a curve to the right, having a radius of 116.05 feet, an arc length of 82.48 feet, a delta angle of 40° 43' 29", a chord bearing of South 38° 06' 43" East, and a chord length of 80.76 feet to a point; thence,
- 6) South 40° 33' 47" West, a distance of 510.68 feet to a point; thence,
- 7) South 03° 45' 31" East, a distance of 165.57 feet to a point on the division line between the said lands of Loren Oatman III on the south and the said lands of Military Trail Medical Properties on the north; thence,

South 86°14'29" West, on the said division line, a distance of 500.31 feet to the Point of Beginning.

Said parcel containing 23.263 acres, more or less.

## **EXHIBIT B**

### Equipment

All furniture, furnishings, machinery, equipment and other items of tangible and intangible personal property, including computer hardware and software to be installed at the Project Facility for use in the operation thereof; now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Project Facility together with any replacements therefore to the extent acquired in the name of the Onondaga County Industrial Development Agency (the "Agency") by Upstate Pathology Lab Ownership, LLC (the "Company"), pursuant to the agency appointment described in Section 2.2 hereof, or to the extent the Company conveys title to the Agency.



## Exhibit C

### **Form of Sublease Rider**

Upstate Pathology Lab Ownership, LLC (the "Landlord") and \_\_\_\_\_ (the "Tenant") hereby acknowledge that the within lease agreement pertains to a certain facility (the "Project") which is also leased to and from the Onondaga County Industrial Development Agency (the "Agency") pursuant to a certain Lease Agreement and Leaseback Agreement, each dated as of August 1, 2025 (with related documents, collectively, the "Agency Documents").

Landlord and Tenant acknowledge and agree that the obligations and agreements of the Agency contained within the Agency Documents and any other instrument or document executed in connection therewith, and any other instrument or document supplemental thereto, are and shall be deemed the obligations and agreements of the Agency, and not of any of its members, officers, agents (other than the Landlord), employees, representatives, successors, and assigns of the Agency in his/her individual capacity, and the members, officers, agents (other than the Landlord), employees, representatives, successors and assigns of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. Landlord and Tenant hereby further acknowledge and agree that the obligations and liabilities of the Agency, if any, with respect to the Project are specifically limited and controlled by the terms and conditions set forth within the Leaseback Agreement. No recourse may be sought by the Tenant or any permitted guests, agents or invitees from the Agency for any of the operation, condition, or maintenance of the Project – whether in tort or equity, with any such liability being the express responsibility of Landlord and/or Tenant, as their respective interests shall appear.

The obligations and agreements of the Agency contained within the Agency Documents do and shall not constitute or give rise to an obligation of the State of New York or Onondaga County, New York, and neither the State of New York nor Onondaga County, New York shall be liable hereon or thereon and, further, such obligations and agreements are and shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined within the Leaseback Agreement).

No order or decree of specific performance with respect to any of the obligations of the Agency under the Agency Documents shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with the Agency, an amount or undertaking sufficient, determined in the sole discretion of the Agency, to

cover such fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its expectation that it, or any of its members, officers, agents (other than the Landlord), employees, representatives, successors, or assigns shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Landlord), employees, representatives, successor, and assigns against all liability expected to be incurred as a result of compliance with such request.

Tenant further represents and acknowledges that by entering into the within Lease Agreement will not result in the removal of a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Tenant located within the State. To the extent that Tenant is relocating from one plant or facility to another, Tenant's shift of operations to the Project is and was necessary to discourage the Tenant from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Tenant in its respective industry.

The within acknowledgments and representations are made for the benefit of the Agency and the Landlord and may be relied upon by same.

Upstate Pathology Lab Ownership, LLC,  
**AS LANDLORD**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
**AS TENANT**

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