



Hospital of Saint Raphael

A member of the Saint Raphael Healthcare System

1450 Chapel Street • New Haven, Connecticut 06511 • 203.789.3000 • www.srhs.org

March 22, 2007

Cristine Vogel
Commissioner
Office of Health Care Access
State of Connecticut
410 Capital Avenue
3rd Floor
Hartford, Connecticut 06134-0308

Re: Hospital of Saint Raphael
Letter of Determination
Acquisition of CyberKnife

Dear Commissioner Vogel:

Attached is a completed Letter of Determination (OHCA Form 2020) describing the Hospital of Saint Raphael's proposal to acquire a state-of-the-art CyberKnife radiosurgery system which will significantly enhance the stereotactic radiosurgery services (SRS) offered at the McGivney Cancer Center.

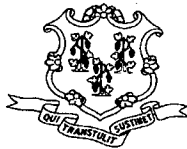
The benefits of a CyberKnife SRS program are many. Most importantly, patients within the Hospital's service area will have access to the most technology advanced SRS treatment, improving their chances for optimal outcomes without having to travel great distances.

We look forward to working with you and the Staff of the Office of Health Care Access on this necessary project. If you have any questions regarding this proposal, please contact me at (203) 789-4378.

Sincerely yours,

Barbara Durdy
Planning & Business Development

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OFFICE OF HEALTH CARE ACCESS



**State of Connecticut
Office of Health Care Access
CON Determination Form
Form 2020**

All persons who are requesting a determination from OHCA as to whether a CON is required for their proposed project must complete this Form 2020. The completed form should be submitted to the Commissioner of the Office of Health Care Access, 410 Capitol Avenue, MS#13HCA, P.O. Box 340308, Hartford, Connecticut 06134-0308.

SECTION I. PETITIONER INFORMATION

If this proposal has more than two Petitioners, please attach a separate sheet, supplying the same information for each Petitioner in the format presented in the following table.

	Petitioner	Petitioner
Full Legal Name	Hospital of Saint Raphael	
Doing Business As	Hospital of Saint Raphael	
Name of Parent Corporation	Saint Raphael Healthcare System, Inc.	
Petitioner's Mailing Address, if Post Office (PO) Box, include a street mailing address for Certified Mail	1450 Chapel Street New Haven, CT 06511	
What is the Petitioner's Status: P for profit and NP for Nonprofit	NP - Non-profit	
Contact Person, including Title/Position: This Individual will be the Petitioner's Designee to receive all correspondence in this matter.	Barbara Durdy Planning & Business Development	

Contact Person's Mailing Address, if PO Box, include a street mailing address for Certified Mail	1450 Chapel Street New Haven, CT 06511	
Contact Person's Telephone Number	203-789-4378	
Contact Person's Fax Number	203-789-3653	
Contact Person's e-mail Address	bdurdy@srhs.org	

SECTION II. GENERAL PROPOSAL INFORMATION

a. Proposal/Project Title: **Acquisition of Cyberknife for McGivney Cancer Center**

b. Location of proposal, identifying Street Address, Town and Zip Code:

1450 Chapel Street, New Haven , CT 06511

c. List each town this project is intended to serve:

This project will serve the residents of the Hospital's 22 town service area. Please see Attachment # 3 for a complete listing of cities and towns which comprise the Hospital's Service Area.

d. Estimated starting date for the project: **August 1, 2007**

e. Type of Entity: (Please check *E* for Existing and *P* for Proposed in the boxes that apply)

E P	E P	E P
X <input type="checkbox"/> Acute Care Hospital	<input type="checkbox"/> <input type="checkbox"/> Imaging Center	X <input type="checkbox"/> Cancer Center
<input type="checkbox"/> <input type="checkbox"/> Behavioral Health Provider	<input type="checkbox"/> <input type="checkbox"/> Ambulatory Surgery Center	<input type="checkbox"/> <input type="checkbox"/> Primary Care Clinic
<input type="checkbox"/> <input type="checkbox"/> Hospital Affiliate	<input type="checkbox"/> <input type="checkbox"/> Other (specify): _____	

SECTION III. EXPENDITURE INFORMATION

- a. Estimated Total Project Cost: \$ 550,000
- b. Please provide the following breakdown as appropriate: (may not represent the aggregate shown above)

Medical Equipment Purchases	
Major Medical Equipment Purchases	
Non-Medical Equipment Purchases*	
Land/Building/Asset Purchases	
Construction/Renovation	
Other (Non-Construction) Specify: Interest in Connecticut CK Leasing, LLC	\$550,000
Total Capital Expenditure	\$ 550,000
Medical Equipment - Fair Market Value of Leases	
Major Medical Equipment - Fair Market Value of Leases	
Non-Medical Equipment - Fair Market Value of Leases*	
Fair Market Value of Space –Capital Leases Only	
Total Capital Cost	\$550,000
Total Project Cost	\$550,000
Capitalized Financing Costs (Informational Purpose Only)	

* Provide an itemized list of all non-medical equipment to be purchase and leased.

Not applicable – This proposal does not involve the purchase of non-medical equipment.

The Hospital intends to lease the Cyberknife equipment from Connecticut CK Leasing, a single purpose limited liability company that acquires and leases new technology to end providers. Please see Attachment 4 for a description of the leasing model.

Major Medical and/or Imaging Equipment Acquisition:

Equipment Type	Name	Model	Number of Units	Cost per unit
Cyberknife	Accuray		1	4,000,000

Note: Provide copy of the vendor contract or quotation for the medical equipment.

Please see Attachment 5 for a copy of the purchase agreement with Accuray. The Hospital intends to assign the purchase agreement to CK Leasing, LLC once the corporate entity is established.

c. Check each applicable financing method or funding source to be used for the proposal:

- | | | |
|---|---|---|
| <input type="checkbox"/> Petitioner's Equity | <input type="checkbox"/> Capital Lease | <input type="checkbox"/> Conventional Loan |
| <input type="checkbox"/> Charitable Contributions | <input checked="" type="checkbox"/> Operating Lease | <input type="checkbox"/> CHEFA Financing |
| <input type="checkbox"/> Funded Depreciation | <input type="checkbox"/> Grant Funding | <input type="checkbox"/> Other (specify): _____ |

The Hospital intends to lease the Cyberknife equipment from Connecticut CK Leasing, a single purpose limited liability company that acquires and leases new technology to end providers. Please see Attachment 4 for a description of the leasing model.

SECTION IV. PROPOSAL DESCRIPTION

Please provide a description of the proposed project, highlighting each of its important aspects, on at least one, but not more than two separate 8.5" X 11" sheets of paper. At a minimum each of the following elements need to be addressed, if applicable.

Please see Attachment # 1 for a description of the project.

1. Identify the types of services currently provided. If applicable, provide a copy of each Department of Public Health license held by the Petitioner.

The Hospital of Saint Raphael is a 511 bed general acute care teaching hospital located in New Haven, Connecticut. Please see Attachment # 2 for a copy of the current license for the Hospital of Saint Raphael issued by the Department of Public Health.

2. Identify the types of services that are being proposed and what DPH licensure categories will be sought, if applicable?

The Hospital is proposing to acquire Cyberknife technology which would be an enhancement to the Hospitals' existing stereotactic radiosurgery service. The proposed service will be operated under the Hospital of Saint Raphael's license.

3. Identify the current population served and the target population to be served.

The Hospital of Saint Raphael generally serves the residents of South Central Connecticut, consisting of the 22 municipalities (approximately 700,000 persons) which include and surround New Haven.

4. Identify the entity that will be providing the service(s).

The proposed services will be provided by the Hospital of Saint Raphael.

5. Identify the entity that will be responsible for the billing of the service(s) relating to this proposal.

The Hospital will bill the technical fee and the physicians will bill the professional fee associated with this service.

6. Identify the entity that owns/leases or will own/lease the physical space of the proposed equipment/service?

The equipment will be housed on the main campus of the Hospital of Saint Raphael.

7. If there is more than one entity involved in this proposal, please provide copies of any and all existing or proposed contracts or written agreements entered between the two entities that relate to the proposal.

At the present time, the lease agreement between the Hospital of Saint Raphael and Connecticut CK leasing, LLC is under development. The Hospital will forward a copy of the lease agreement to OHCA once it is drafted and finalized.

8. Provide a list that identifies the name of each petitioning or affiliate entity involved with this proposal.

This proposal is being submitted by the Hospital of Saint Raphael.

9. Provide a copy of the chart of organization for each individual petitioning entity or affiliate and a corporate chart of organization, if applicable.

Please see Attachment 6 for a copy of the Chart of Organization for the Hospital of Saint Raphael.

10. Provide a narrative that addresses the relationship of each petitioning or affiliate entity with the other entities involved with this proposal.

N/A. The Hospital of Saint Raphael is the sole petitioner for this proposal.

11. Who are the current payers of this service and identify any anticipated payer changes when the proposed project becomes operational?

The Hospital anticipates that the payor mix for this service will be consistent with the overall payor mix of the Hospital.

SECTION V. AFFIDAVIT

To be completed by each Petitioner

Petitioner: The Hospital of Saint Raphael

Project Title: Acquisition of CyberKnife for McGivney Cancer Center

I, David Benfer, CEO

of the **Hospital of Saint Raphael**, being duly sworn, depose and state that the information provided in this CON Determination form is true and accurate to the best of my knowledge, and that the **Hospital of Saint Raphael** complies with the appropriate and applicable criteria as set forth in the Sections 19a-630, 19a-637, 19a-638, 19a-639, 19a-486 and/or 4-181 of the Connecticut General Statutes.

David W. Benfer
Signature

March 6, 2007
Date

Subscribed and sworn to before me on March 6, 2007

Gloria Astarita
Notary Public/Commissioner of Superior Court

My commission expires: _____

Gloria Astarita
Notary Public, State of Connecticut
My Commission Expires Oct. 31, 2011

Attachment # 1

Project Description

Attachment #1

Project Description

Acquisition of CyberKnife for the McGivney Cancer Center

Since the Hospital of Saint Raphael opened the first radiation treatment center in the State of Connecticut in 1957, the Hospital has been committed to the provision of cancer care. With more than 50 years of experience in cancer care and treatment, the Hospital of Saint Raphael has developed its cancer services to become a recognized regional leader as a multidisciplinary cancer center serving the residents of South Central Connecticut.

The Father Michael J. McGivney Cancer Center was opened in February, 1994 to provide a new dimension in care to people facing cancer. The McGivney Center is a 29,000 square foot facility that offers technologically advanced equipment for the treatment of cancer including high-energy linear accelerators, intensity modulated radiation therapy (IMRT), high dose and low dose brachytherapy, stereotactic radiosurgery (SRS), and three-dimensional treatment planning and conformal radiation therapy. In addition to sophisticated chemotherapy capabilities, the McGivney Center provides support services such as counseling for patients and their families, and nutritional guidance.

The Hospital is proposing to locate a state-of-the-art CyberKnife radiosurgery system which will significantly enhance the stereotactic radiosurgery services offered at the McGivney Cancer Center. The CyberKnife is a frameless SRS technology used to treat malignant and benign tumors anywhere in the body. Unlike the Gamma Knife, the CyberKnife does not require the use of invasive immobilization devices such as head frames and is considered the most patient-friendly of all SRS technologies. The CyberKnife, using image-guided robotics, can target multiple locations during a single treatment session. The increased flexibility allows treatment of tumors previously deemed inoperable due to the limitations of frame-based systems. In addition, the Cyberknife continuously tracks and corrects for tumor and patient movement during treatment.

The Hospital intends to lease the equipment from Connecticut CK Leasing, LLC, a single purpose limited liability company that acquires and leases new technology to end providers. The lease model under consideration calls for an operating lease with the Hospital being charged a fixed "per-patient" fee over a 10 year period. A copy of the leasing model is provided as Attachment 4.

The financing for this proposal is based on a leasing model developed by Accelitech, a company which specializes in providing the resources necessary to acquire, deploy and operate successful programs built around new and emerging technologies. Connecticut CK Leasing, LLC will be established as a joint venture between the Hospital of Saint Raphael, Accelitech and a group of more than 30 physicians from various specialties including neurosurgery, urology, radiology, and oncology. Under

this model, the Hospital of Saint Raphael will invest up to \$550,000 in the joint venture, depending on the level of interest from physicians.

The acquisition of CyberKnife technology will enhance the stereotactic radiosurgery (SRS) program at the Hospital. The benefits of a CyberKnife SRS program are many. Most importantly, patients within the Hospital's service area will have access to the most technology advanced SRS treatment, improving their chances for optimal outcomes without having to travel great distances. This technology will expand the scope of conditions that can be successfully treated with significantly fewer trips to the Hospital.

Attachment # 2

Hospital of Saint Raphael License

STATE OF CONNECTICUT

Department of Public Health

LICENSE

License No. 0056

General Hospital

In accordance with the provisions of the General Statutes of Connecticut Section 19a-493:

Hospital of Saint Raphael of New Haven, CT, d/b/a Hospital of Saint Raphael is hereby licensed to maintain and operate a General Hospital.

Hospital of Saint Raphael is located at 1450 Chapel Street, New Haven, CT 06511

The maximum number of beds shall not exceed at any time:

22 Bassinets

511 General Hospital beds

This license expires **September 30, 2007** and may be revoked for cause at any time.

Dated at Hartford, Connecticut, October 1, 2005. RENEWAL.

License revised to reflect:

*Change of address on (1) satellite effective 9/10/05

Satellites

*Adolescent Day Hospital, 646 George Street, New Haven, CT
Psychiatric Day Hospital, 1294 Chapel Street, New Haven, CT
Children's Psychiatric Day Hospital, 1348 Chapel Street, New Haven, CT
Elder Care Clinic, Atwater Clinic, 26 Atwater Street, New Haven, CT
Project Mother Care (Mobile), 9 River Street, New Haven, CT
Dwight School Based Health Center, 130 Edgewood Avenue, New Haven, CT
Dental Mobile Van "Miles 4 Smiles", 9 River Street, New Haven, CT
Elder Care Clinic/Tower One, Tower Lane, New Haven, CT
Elder Care Clinic/Casa Otonal, 140 Sylvan Avenue, New Haven, CT
Elder Care Clinic/Edith Johnson Tower, 114 Bristol Street, New Haven, CT
Elder Care Clinic/Crawford Manor, 90 Park Street, New Haven, CT
Elder Care Clinic/Ribicoff Cottages, 200 Brookside Avenue, New Haven, CT
Evening Chemical Dependency Program, 1294 Chapel Street, New Haven, CT
Mcqueeny Towers/Hospital of Saint Raphael Eldercare Clinic, 318/358 Orange Street, Apt.#416, New Haven, CT
Elder Care Clinic/Surfside, 200 Oak Street, West Haven, CT
Troup School Base Health Center, 130 B Leeder Hill, Hamden, CT



J Robert Galvin M.D., M.P.H.

J. Robert Galvin, M.D., M.P.H.,
Commissioner

Attachment # 3

**Listing of Towns and Cities that Comprise the Service Area
of the Hospital of Saint Raphael**

**Hospital Of Saint Raphael
22 Town Service Area**

**Ansonia
Bethany
Branford
Cheshire
Clinton
Derby
East Haven
Guilford
Hamden
Madison
Meriden
Milford
New Haven
North Branford
North Haven
Orange
Oxford
Seymour
Shelton
Wallingford
West Haven
Woodbridge**

Attachment 4

Description of the Leasing Model



March 9, 2007

Mr. Gary Davidson
Vice President, Chief Information Officer
Hospital of Saint Raphael
1450 Chapel Street
New Haven, CT 06511

RE: Accelitech Engagement Continuation Agreement

Dear Gary:

This Accelitech Engagement Continuation Agreement ("*Continuation Agreement*") is to confirm the decision of the Hospital of Saint Raphael ("*HSR*") to complete the "Project", as such term was defined in that certain "*Engagement Agreement*" dated January 24, 2007, pursuant to the terms set forth herein.

In particular, Accelitech and HSR agree to the following:

- That the Engagement Agreement and that certain Mutual Non-Disclosure and Exclusive Dealing Agreement executed by Accelitech and HSR dated January 24, 2007 ("*NDA Agreement*") are hereby ratified.
- That the Exclusive Period set forth in the NDA Agreement shall be extended from 90 days to 120 days from the date of this Continuation Agreement in order to achieve Syndication Closing (as such term is defined in Exhibit A).
- The documentation prepared by Accelitech during Phase 2: Partnership Creation shall be a work for hire, however, in the event that the Project is terminated due to a failure to achieve Syndication Closing or the inability to obtain the CON Approval (as such term is defined in Exhibit A), then the Hospital will not develop a similar project within six (6) months of such termination.
- That Accelitech has or will soon complete Phase 1: Business Planning for the Project, and upon such completion Accelitech shall begin Phase 2: Partnership Creation of the Project pursuant to the terms set forth in Exhibit A.
- That Accelitech will have the opportunity, should it so choose, to purchase a minimum of 10% of the Accelitech Model Equipment Leasing, LLC ("*Leasing Company*") on terms and pricing equal to the other investing parties.
- That HSR will have the opportunity, should it so choose, to purchase either directly or through a subsidiary a minimum of 25% of the Leasing Company on terms and pricing equal to the other investing parties.
- In the event that investment in the Leasing Company from parties other than Accelitech and HSR falls below the minimum required, then Accelitech and HSR will have the opportunity, should each so choose, to fund such shortfall by increasing their respective investments in the Company on a pro-rata basis up to a maximum of 15% and 50% respectively for Accelitech and HSR.
- That upon the completion of Phase 2: Partnership Creation, Accelitech shall be retained by the Leasing Company to complete Phase 3: Deployment of the Project pursuant to the terms set forth in Exhibit B.

- Accelitech's fees for completion of Phase 2: Partnership Creation and Phase 3: Deployment, and the terms associated with payment are set forth in Exhibit C.
- The third party expenses Phase 2: Partnership Creation shall not exceed \$37,500 without the prior approval of HSR (*see* Formation Expenses below). In addition, these expenses shall not exceed the following sub-limits without the prior approval of SMH: Out-of-pocket travel etc - \$10,000, legal representation by Davis Wright Tremaine - \$10,000, and valuation assessment by Value Management Group - \$10,000, MarCap financing commitment fee - \$5,000 (applied to Master Lease financing if closed) and MarCap documentation fee - \$2,500.

We are enthusiastic about the opportunity to work with HSR's to realize and complete this Project.

Very truly yours,

Scott D. Milligan
Chief Development Officer

I, the undersigned, hereby represent that I have the authority to represent and bind the Hospital of HSR to enter into this Continuation Agreement.

Agreed:

Date

Name

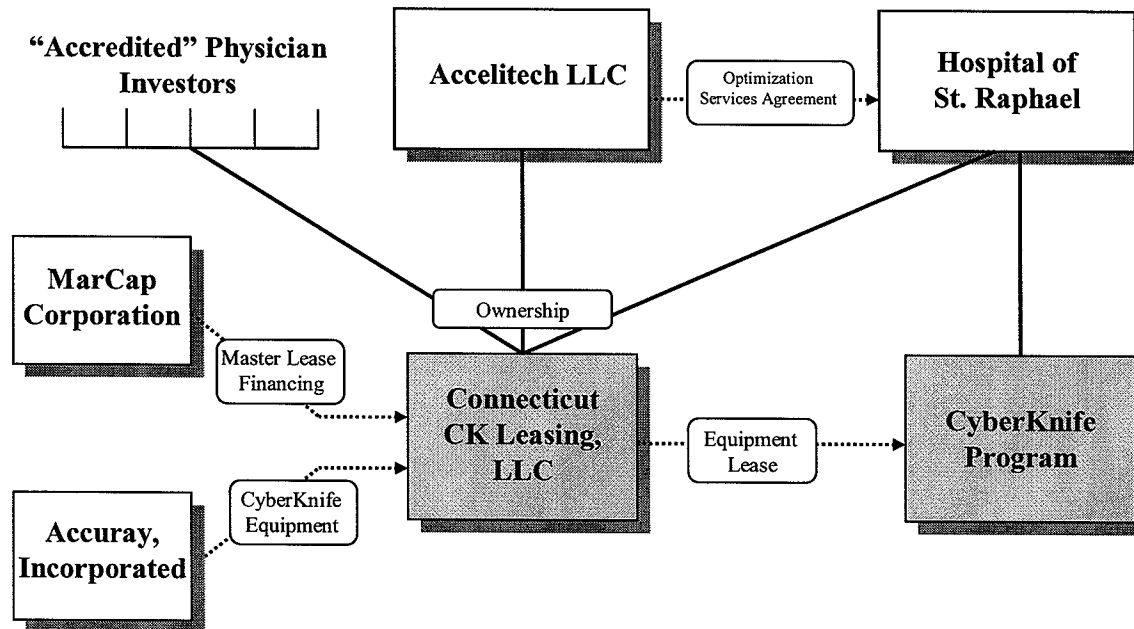
Title

EXHIBIT A

PHASE 2: PARTNERSHIP DEVELOPMENT

Structural Terms and Timelines

1. **Legal Structure of Project:** The Project legal structure shall be as follows:



2. **Phase 2: Partnership Development Process:** Accelitech shall undertake the primary role in driving to completion Phase 2: Partnership Development, including the following:

- **Leasing Company** Formation of Connecticut CK Leasing, LLC, a Connecticut limited liability company.
- **Operating Agreement** Preparation of the form Operating Agreement for the Leasing Company. The structure and terms of the Operating Agreement will contemplate issues related to having a tax exempt organization holding a member interest in the Leasing Company, and reasonable accommodations that do not substantively compromise the interests of other investors will be made to permit HSR to avoid unrelated business income treatment relating to profit distributions from the Leasing Company.
- **CyberKnife Purchase Agreement** Negotiation of the final terms of the Accuray CyberKnife Purchase Agreement, including securing from Accuray the standard Accelitech "Administrative Fee" that Accelitech will then extend as a partial offset to the Phase 3: Deployment fee.
- **Equipment Lease** Preparation and negotiation on behalf of the Leasing Company the terms of the Equipment Lease agreement, including having the Leasing Company finance and reimburse up to \$1,500,000 of the direct costs associated with creating the CyberKnife vault and adjacent outpatient space ("Vault Cost").
- **Master Lease** Secure non-recourse financing for the Leasing Company sufficient to acquire the CyberKnife and reimburse the Vault Cost. It is anticipated that there will be up to \$5,000 in non-refundable fees incurred to conduct financing due-diligence and secure the financing commitment. This fee will be applied to the Master Lease obligations when the financing is

closed. In addition, MarCap will charge a \$2,500 documentation fee to complete the Master Lease documentation payable upon execution at "Syndication Closing" (as defined below).

- **Private Placement Memorandum** Prepare a "Regulation D" compliant securities offering document for the Leasing Company that contemplates investment by "accredited" investors.
- **Optimization Services** Preparation and negotiation of the Optimization Services Agreement between HSR and Accelitech concerning ongoing support of the CyberKnife Program during the ten year Equipment Lease term. The fees payable to Accelitech for the Optimization Services shall be \$25,000 for the first year, \$24,000 for the second year, and with a continued reduction of \$1,000 for each of the subsequent years (all as reflected in the Project pro-forma).
- **Legal Representation** On behalf of the Leasing Company, retain Davis Wright Tremaine to serve as special regulatory counsel addressing security and health care issues. The expense of this legal representation shall not exceed \$10,000 without the prior consent of HSR.
- **Valuation Counsel** On behalf of the Leasing Company, retain Value Management Group to review and render a fair market value opinion concerning the terms of the Equipment Lease. The expense of this retention shall not exceed \$10,000 without the prior consent of HSR.
- **Certificate of Need** HSR shall be responsible for obtaining from the State of Connecticut Office of Health Care Access ("OCHA") a certificate of need ("CON") approval for the Project. Upon CON Approval (as defined below), the Leasing Company will reimburse up to \$30,000 of HSR's direct third party expenses related to obtaining the CON approval.

In conducting the above activities, Accelitech shall consult with and provide HSR with an opportunity to actively participate in the development of the above referenced documents and conduct of the underlying activities.

3. **Process and Completion:** At the initiation of Phase 2: Partnership Creation, Accelitech will prepare a detailed Work Plan which sets forth the deliverables, tasks and target timelines to complete the Project. Significant milestones will include:
 - HSR notifying OCHA of the Project, either through a "Form 2030 Letter of Intent" or by amending an existing application.
 - Physician Presentations beginning the week of March 12, 2007 (including the distribution of the Non-Binding Expression of Interest letter and accompanying Summary.
 - Completion of the Equipment Lease Agreement including reaching agreement concerning all financial terms between HSR and the Leasing Company. **Target Date: March 16, 2007**
 - Securing a contingent financing commitment for the Leasing Company's Master Lease Financing. **Target Date: March 30, 2007**
 - Collection of Non-Binding Expression of Interest letters and the \$5,000 Good Faith Payment. **Target Date: March 30, 2007**
 - Completion of the Private Placement Memorandum which attaches as exhibits the final forms of the Leasing Company Operating Agreement, the Equipment Lease Agreement, the CyberKnife Purchase Agreement, and the Master Lease financing commitment. HSR shall review and approve the Private Placement Memorandum, including the final forms of the agreements attached thereto, prior to distribution to potential investors. **Target Date: April 15, 2007**
 - Completion of the Leasing Company investment syndication, including, in part, raising the minimal amount of capital required to secure the Master Lease financing ("Syndication Closing"). **Target Date: April 30, 2007**
 - HSR securing the CON approval from OCHA for the Project ("CON Approval"). **Target Date: November, 2007**
 - Immediately following CON Approval, contemporaneously secure and enter into the following: the Equipment Lease, the Master Lease financing, and the CyberKnife Purchase Agreement ("Phase 2 Closing"). **Date: November, 2007**

- Following the Phase 2 Closing, the Leasing Company will pay Accelitech for the residual portion of the Phase 2: Partnership Creation fee (see discussion below), reimburse HSR for the Phase 1: Business Planning fee and the Phase 2: Partnership Creation fee already earned and paid to Accelitech, and reimburse or directly pay all Formation Expenses (as defined below) incurred on behalf of the Leasing Company during Phase 1: Business Planning and Phase 2: Partnership Creation. In addition, the Leasing Company will reimburse HSR for up to \$30,000 for its direct third party expenses incurred in obtaining the CON and also up to \$750,000 of the Vault Cost incurred and paid at the time of the Phase 2 Closing.
 - Completion of the CyberKnife vault and delivery of the CyberKnife. **Target Date: January, 2008.**
 - Completion of Phase 3: Deployment and CyberKnife Program “go-live”. **Target Date: February 2008.**
4. ***Formation Expenses*** As provided in the Engagement Letter, HSR shall reimburse Accelitech for all direct expenses reasonably incurred in completing Phase 1: Business Planning. In addition, HSR shall reimburse or pay all direct expenses reasonably incurred by Accelitech in completing Phase 2: Partnership Creation, including in particular the retention on behalf of the Leasing Company of legal representation and valuation counsel. These third party expenses incurred in completing Phase 1: Business Planning and Phase 2: Partnership Creation, coupled with Accelitech’s fees shall constitute the Leasing Companies “*Formation Expenses*”. Subject further to the approval sub-limits set forth above, the aggregate direct expenses incurred in completing Phase 2: Partnership Creation will not exceed \$37,500 without the prior approval of HSR. The Formation Expenses will not include HSR’s costs associated with obtaining the CON Approval, construction of the CyberKnife vault or the direct or indirect costs for HSR or any investor incurred in association with negotiating or reviewing the Projects structure and documentation, including the Private Placement Memorandum, the Operating Agreement, and the Equipment Lease. Where practical or upon request, Accelitech shall reasonably manage the incurrence of Formation Expenses and shall provide HSR with an estimate of Formation Expenses prior to incurring such direct expenses.

EXHIBIT B

PHASE 3: DEPLOYMENT

Objective: Complete steps necessary to begin treating patients as quickly and efficiently as possible.

Approach: On behalf of the Leasing Company, Accelitech will manage the installation of the CyberKnife technology and implementation of the CyberKnife Program through proven project management techniques. Accelitech's extensive experience with CyberKnife deployments will allow for reduced likelihood of delays in patient treatments and project revenue. Accelitech utilizes a detailed project plan to manage all aspects of the implementation. The Accelitech team will work directly with HSR administration to ensure that the timelines are met and to trouble-shoot deployment issues that arise. In addition, Accelitech will work with HSR to develop administrative procedures, educational programs and initial aspects of the marketing plan for the CyberKnife Program. All incentives are aligned to drive an accelerated and comprehensive implementation of the CyberKnife Program.

Outputs: The deliverable for this phase will be the CyberKnife Program and the treatment of HSR's first CyberKnife patients.

EXHIBIT C

ACCELITECH FEES

1. ***Phase 2: Partnership Creation Fee*** The fee for Accelitech undertaking Phase 2: Partnership Creation shall be **\$180,000**, payable as follows:
 - **Retention** HSR shall pay Accelitech a non-refundable retention fee of **\$70,000** upon execution of this Continuation Agreement.
 - **Syndication Closing** HSR shall pay Accelitech a non-refundable fee of **\$70,000** contingent upon Syndication Closing.
 - **Phase 2 Closing** The Leasing Company will pay the remaining **\$40,000** contingent upon Phase 2 Closing.
2. ***Phase 3: Deployment Fee*** The fee for Accelitech undertaking Phase 3: Deployment shall be **\$24,000**, payable as follows:
 - **Retention** The Leasing Company will pay a non-refundable retention fee of **\$24,000** contingent upon Phase 2 Closing (i.e. when Phase 2: Partnership Creation is concluded and Phase 3: Deployment).
 - **Equipment Acceptance** In addition to the Deployment fee, Accelitech will earn its standard Administrative Fee payable by Accuray to Accelitech for facilitating deployment activities relating to CyberKnife placements. The Administrative Fee is equal to 2% of the CyberKnife Purchase Price and will be paid by Accuray to Accelitech within 60 days of HSR's acceptance of the CyberKnife.

Attachment 5

Vendor Contract



1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: (408) 716-4600
Fax: (408) 716-4620

CyberKnife® G4 Purchase Agreement

Initials: Customer _____
Accuray _____
Page 1 of 13

DRAFT

Customer:	HOSPITAL OF SAINT RAPHAEL	Account Number:	
	("Customer")		
Contact Name:	Gary Davidson, Sr. VP	Quote ID:	031307RS006HSR
Address:	1450 Chapel Street New Haven, CT 06511	Revision Number:	006
		Revision Date:	March 16, 2007
RSD Contact:	Roger Szafranski: 845.416.8993	Expiration Date:	March 23, 2007

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Only valid for primary customer named above. This CyberKnife Purchase Agreement ("Agreement") is non-transferable and not for export outside the U.S.

CyberKnife® Robotic Radiosurgery System

A. Quote

Part Description	Quantity	Unit Price	Line Total
1. CyberKnife Robotic Radiosurgery System (See B Below)	1	\$4,150,000.00	\$4,150,000.00
2. Additional Options Total (See C Below)			\$775,000.00
3. <u>Bundled Discount:</u> Discount off the CyberKnife System Subtotal Price of \$4,925,000.00 (Base List Price plus Additional Options Total).			(\$200,000.00)
4. <u>Special Promotion:</u> Customer shall receive an additional discount if this Agreement is signed and received by Accuray by the Expiration Date.			(\$725,000.00)
Total Due			\$4,000,000.00

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B. The Base CyberKnife System - G4 Configuration

\$4,150,000.00

1. Robotic Treatment Delivery System

- 1.1. Image-Guidance System
 - 1.1.1. Diagnostic X-ray sources
 - 1.1.2. In-Floor Amorphous Silicon X-Ray Detectors
- 1.2. 600 MU/minute Linear Accelerator (Linac) with secondary collimators
- 1.3. Robotic Manipulator
- 1.4. Axum® Treatment Couch & Automatic Patient Positioning System
 - 1.4.1. Two (2) CT Overlay Kits included
- 1.5. Treatment Delivery Control Console

2. Treatment Planning System

- 2.1. Two (2) MultiPlan™ 2.0 Treatment Planning Workstations

- 2.2. CK Remote™ Open Architecture

3. Clinical Application Modules

- 3.1. Synchrony® Respiratory Tracking System
- 3.2. Xsight™ Spine Tracking System

4. Data Management Systems

- 4.1. Patient Archive and Restore System

Deleted: 15

CYBERKNIFE G4 PURCHASE AGREEMENT STD 11.14.2006
CT, New Haven, Hospital of Saint Raphael - 3.16.07 (Redline)

ACCURAY CONFIDENTIAL



1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: (408) 716-4600
Fax: (408) 716-4620

CyberKnife® G4 Purchase Agreement

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C. Additional Options

1. RoboCouch™ Patient Positioning System

Select RoboCouch Patient Positioning System by marking the box below.

☒ RoboCouch Patient Positioning System \$800,000.00

When selecting RoboCouch Patient Positioning System, the Patient Treatment Couch (Section B.1.4) is removed from the Base CyberKnife System and replaced with the RoboCouch Patient Positioning System.

Patient Treatment Couch Credit (\$350,000.00)

2. Additional MultiPlan™ 2.0 Treatment Planning Workstation

Two (2) MultiPlan 2.0 Workstations are included with the Base CyberKnife System; however, additional MultiPlan 2.0 Workstations may be purchased. Select additional MultiPlan 2.0 Workstations by marking the box below.

☐ MultiPlan 2.0 Workstation \$150,000.00 each

Number of Additional MultiPlan 2.0 Workstations: MultiPlan Subtotal \$ 0.00

3. InView™ Workstation

Select InView Workstations by marking the box below.

☐ InView Workstation \$45,000.00 each

Number of Additional InView Workstations: InView Subtotal \$ 0.00

4. Xchange™ Robotic Collimator Changer

Select Xchange Robotic Collimator Changer by marking the box below.

☐ Xchange Robotic Collimator Changer \$175,000.00

5. Xsight™ Lung Tracking System

Select Xsight Lung Tracking System by marking the box below.

☒ Xsight Lung Tracking System \$175,000.00

6. 4D Treatment Optimization and Planning System

Customer must have a 4D CT Scanner installed prior to installation of the 4D Treatment Optimization and Planning System and prior to the installation date of the Accuray System. Accuray may delay installation of the 4D Treatment Optimization and Planning System until Customer establishes the prerequisite 4D CT Scanner at Customer's site. Customer acknowledges and agrees that Accuray will be reimbursed if expenses occur from performing a separate installation of the 4D CT Scanner. Select 4D Treatment Optimization and Planning System by marking the box below.

☒ 4D Treatment Optimization and Planning System \$150,000.00

Additional Options Total \$775,000.00

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D. Pricing and Inclusions

1. Payment Terms:

- 1.1. \$50,000 with the signed Term Sheet (received).
- 1.2. \$200,000 due upon JV formation and capitalization (on or before May 15, 2007).
- 1.3. \$950,000 due upon CON approval (on or before December 31, 2007).
- 1.4. \$2,400,000 due upon delivery of the CyberKnife System (February 15, 2008).
- 1.5. \$400,000 due upon Acceptance (as defined in Section 7 of the Accuray Terms and Conditions set forth below in Section G).

2. Shipping Terms:

- 2.1. F.O.B. Destination.
- 2.2. Anticipated delivery scheduled for February 15, 2008.

3. Site Preparation and Installation:

- 3.1. Site preparation at Customer's expense.
- 3.2. Installation included at Accuray's expense.

4. Warranty:

- 4.1. 1-year warranty includes all parts and labor.

5. Training:

- 5.1. Training provided for up to 10 personnel (e.g. surgeon, radiation oncologist, physicist, radiation therapist). Hotel accommodations and travel costs are not included.
- 5.2. Additional attendees will be charged according to the then current training price list.

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E. Contingencies

1. **LLC Contingency.** This Agreement is contingent upon formation and the capitalization of a Limited Liability Company ("LLC") or a Joint Venture, as applicable, by Customer and upon payment terms (1.1 and 1.2) above being met. Customer shall send written confirmation to Accuray, in accordance with the "Notice" provisions herein that this contingency has or has not been satisfied, as the case may be, such written confirmation to be sent to Accuray on or before May 15, 2007. This Agreement shall remain contingent through May 15, 2007, after which time, if Accuray does not timely receive such written confirmation, this contingency shall be deemed waived and this Agreement and all of its terms and conditions shall become binding on all parties. Should this Agreement terminate under this paragraph, upon timely notice from Customer of failure to satisfy this contingency, Accuray shall refund any money paid by Customer within 30 days.
2. **CON Approval Contingency.** This Agreement is contingent upon receipt of an approved Certificate of Need ("CON") by Customer and upon all the payment terms above being met. Customer shall send written confirmation to Accuray, in accordance with the "Notice" provisions herein that this contingency has or has not been satisfied, as the case may be, such written confirmation to be sent to Accuray on or before December 31, 2007. This Agreement shall remain contingent through December 31, 2007, after which time, if confirmation of CON approval is not timely received by Accuray, this Agreement and all of its terms and conditions will become null and void and thereby automatically terminate. Should this Agreement terminate under this paragraph, Accuray shall refund any money paid by Customer to Accuray within 30 days of receipt of notice from Customer of failure to satisfy this contingency.

F. Preventive Maintenance and Service Contracts

Accuray offers the below Preventive Maintenance and Service contracts ("Service Contracts"). The Service Contracts cover the Base CyberKnife System as described in Section B, up to 2 MultiPlan 2.0 Workstations (including the 2 MultiPlan 2.0 Workstations in the Base CyberKnife System), and up to 3 InView Workstations. If Customer has more than 2 MultiPlan 2.0 Workstations installed (including the MultiPlan 2.0 Workstations in the Base CyberKnife System) or more than 3 InView Workstations installed, then Customer shall pay an additional charge of \$18,750.00 per year per MultiPlan 2.0 Workstation and \$6,750.00 per year per InView

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CYBERKNIFE G4 PURCHASE AGREEMENT STD 11.14.2006

ACCURAY CONFIDENTIAL

CT, New Haven, Hospital of Saint Raphael - 3.16.07 (Redline)



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Workstation, as applicable. Select one of the Service Contract options below by marking the box next to the service option desired. The terms of Accuray's Preventive Maintenance and Service contracts, to be signed separately and invoiced separately by Accuray, apply to Accuray's provision of maintenance and support. If Customer does not execute a Preventive Maintenance and Service contract as of the date of this Agreement, it will not be entitled to any Upgrades released under Accuray's Diamond Elite Preventive Maintenance and Service contract between the date of this Agreement and the date Customer executes a Diamond Elite Service contract.

☐ Customer does not wish to select a Service Contract at this time. If Customer does not execute a Service contract as of the date of this Agreement, it will not be entitled to any Upgrades released under Accuray's Diamond Elite Preventive Maintenance and Service contract between the date of this Agreement and the date Customer executes a Diamond Elite Service contract.

☐ **EMERALD ELITE SERVICE:** 4-year contract, no payments until after warranty year:

First Year (Warranty Year)	No Payment
Second Year	\$275,000.00 per year
Third Year	\$275,000.00 per year
Fourth Year	\$275,000.00 per year
Fifth Year (optional)	\$275,000.00 per year

☒ **DIAMOND ELITE SERVICE:** 4-year contract, no payments until after warranty year:

First Year (Warranty Year)	No Payment
Second Year	\$460,000.00 per year
Third Year	\$460,000.00 per year
Fourth Year	\$460,000.00 per year
Fifth Year (optional)	\$460,000.00 per year

Payment Terms: See Service Contracts, provided separately.

G. Accuray Terms and Conditions of Sale

1. **Definitions; Terms.** "Accuray Products" means all products manufactured by Accuray Incorporated ("Accuray") including, but not limited to, Accuray-produced hardware, software, and firmware. "Accuray Services" means services of Accuray related to the warranty provided herein, but shall not include any services relating to a Preventive Maintenance and Service Contract between Customer and Accuray, which shall be governed by the terms of such separate Preventive Maintenance and Service Contract. "Accuray System" means the CyberKnife System provided by Accuray to Customer hereunder, which includes component parts produced by other manufacturers. "Accuray Update" means any update offered by Accuray to any Accuray Product or Accuray System. "Accuray Upgrade" means any upgrade offered by Accuray to any Accuray Product or Accuray System. "Specifications" means the user manuals, reference guides, and configuration documentation provided by Accuray to Customer in writing, as updated from time to time by Accuray. All Accuray Products, Accuray Services, Accuray System, Accuray Upgrades and Accuray Updates (collectively, "Accuray Deliverables") are furnished only on the terms and conditions stated herein. Any different or additional terms contained in Customer's purchase order, Purchase Term Agreement or similar documents shall not bind Accuray.

2. **Terms of Payment.**

2.1. **Purchase Price; Payment Schedule.** The Purchase Prices for the Accuray Deliverables are as set forth in Section A above. Purchase Prices are valid only for the item on which such prices are specified. The Purchase Prices are exclusive of all applicable taxes, if any (including, but not limited to, any sales tax, use tax, or value-added tax or other similar tax), license fees, customs fees, duties, and similar charges. Customer shall pay for the Accuray Deliverables in accordance with the payment schedule set forth in Section D above and the terms of this Section 2, provided that if installation or

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Acceptance (as defined in Section 7) is delayed by Customer for reasons not attributable to Accuray, the payment amount due upon Acceptance of the applicable Accuray Deliverable shall be due and payable the earlier of (i) 90 calendar days after delivery or (ii) Acceptance. If the delivery of an Accuray Deliverable is delayed by Customer for reasons not attributable to Accuray, Customer shall pay Accuray's reasonable cost to store such deliverable (including, but not limited to, insurance and demurrage charges) and amounts due on the estimated delivery date specified in Section D above for such deliverable shall become due and payable on such date. Accuray's performance hereunder is subject to Accuray's approval of Customer's credit.

- 2.2. **Invoices: Late Payments.** If Customer's internal payment processing procedure requires Customer to receive an invoice before paying amounts due hereunder, Customer shall request such invoice sufficiently in advance to make the payment in accordance with the payment schedule set forth in Section D above. Past due balances shall bear interest at the rate of 1% per month or, if lower, the maximum amount permitted by applicable law. Accuray may suspend its performance under this Agreement if payments are not made in accordance with the payment schedule set forth in Section D above. Customer shall pay Accuray's reasonable costs of collecting amounts due hereunder that are more than 60 days past due.
- 2.3. **Security Interest.** Until the Purchase Price is paid in full to Accuray, Accuray shall have a security interest in all Accuray Deliverables and proceeds generated therefrom, for the purpose of securing payment for such deliverables. Customer authorizes Accuray to file, and shall execute upon Accuray's request, documents and related filings and recordings thereof as necessary for Accuray to perfect the foregoing security interest under the Uniform Commercial Code or any similar domestic or foreign laws. Customer shall maintain the Accuray Deliverables in good condition and keep such deliverables free of any liens until payment is made in full. All security interests shall be released once Accuray has received all payments owed hereunder for all Accuray Deliverables.
3. **Shipment.** Shipments are F.O.B. Destination. Customer shall inspect arriving shipments and report any visible damage or shortages to Accuray within 48 hours after delivery and any concealed damage within 10 days after installation. If Customer does not report damage in accordance with the previous sentence, Customer shall bear the risk of loss with respect to such damage. For shipments outside the United States, Customer shall procure all necessary permits and licenses for such shipments and for compliance with any government regulations applicable at the destination. Delivery and installation dates set forth in Section D above, or otherwise agreed upon in writing by the parties are approximate. Accuray shall use reasonable efforts to meet all such delivery and installation dates but shall not be liable for delays provided that (subject to the Force Majeure clause) such delivery and installation is not extended beyond 60 days without customer request.
4. **Installation.**
- 4.1. **Installation by Accuray.** Accuray will notify Customer at least 90 calendar days prior to the scheduled delivery of the Accuray System to coordinate installation details. Installation will be performed by Accuray. Accuray will assemble and test the Accuray System. Operation of the Accuray System by Accuray, as necessary for completion of installation or acceptance tests, is subject to Customer providing adequate radiation shielding protection and other site preparations required for the safety and protection of personnel and the Accuray Deliverables. Upon completion of the installation, Accuray's representatives will demonstrate proper machine operation by performing Accuray's acceptance test procedure. For clarity, Accuray is not responsible for any commissioning of the Accuray System, including, but not limited to, any calibration or radiation surveys. Such commissioning shall be the sole responsibility of Customer.
- 4.2. **Site Preparation.** Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, and access to the room completed on the estimated delivery date

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and ready for installation of the Accuray System. Accuray will have no responsibility for any matter affecting or related to the adequacy of architectural design, utility service design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers and other safety devices must be approved by an expert in the radiation field and shall be Customer's responsibility.

- 4.3. **Rigging and Unloading.** Accuray will locate and contract with a rigger or local licensed contractor to provide labor and rigging services necessary to unload the sub-base frame and the rest of the Accuray System from the transport vehicle and move the entire Accuray System to its final position under Accuray's supervision. Accuray shall be responsible for all standard rigging costs and expenses. An Accuray representative will monitor the movement, final positioning and connection of the Accuray System.
- 4.4. **Customer Representative.** Customer shall provide a representative who shall be present at all times during the installation and be capable of assisting where necessary. When no representative is present and assistance from Customer is not available when required, Accuray may suspend the installation until an appropriate Customer representative is made available consistently.
- 4.5. **Site Location.** Customer agrees that the Accuray System will remain at the site at which Accuray installs the System and will not be re-located without the prior written consent of Accuray, such consent to not be unreasonably withheld.

5. Training.

- 5.1. **Training.** Accuray will provide training for up to 5 Customer personnel (such personnel, collectively, the "Initial Group"). The Accuray training includes: (i) Technical Training, (ii) 1 Clinical Site Visit, and (iii) 1 on-site training session on the technical use of the Accuray System during first patient treatment, as each is described below. Additional Technical Training will be provided for 5 additional Customer personnel. Customer shall be responsible for the travel and living expenses of all personnel sent for training. At the request of Customer, Accuray shall train additional Customer personnel beyond the Initial Group in accordance with Accuray's then current training price list and availability.

- 5.2. **Training Framework and Restrictions.** Due to logistical considerations, Accuray can only offer 1 Clinical Site Visit and 1 on-site training session during first patient treatment per Customer. As set forth below, Customer shall at a minimum send a Core Group (as defined in Section 5.3.1 below) for Technical Training prior to installation. However, because completion of the Technical Training is a prerequisite to the Clinical Site Visit and because completion of Technical Training and the Clinical Site Visit are prerequisites to the on-site training session during first patient treatment, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training before the Clinical Site Visit. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then only Customer's Core Group personnel who have completed the Technical Training shall be able to participate in the Clinical Site Visit and subsequent on-site training session during first patient treatment. If Customer does not send its entire Initial Group to Technical Training prior to the Clinical Site Visit, then the remaining members of Customer's Initial Group shall only be eligible for Technical Training and must complete such Technical Training within 60 days of the first patient treatment or the option for such Technical Training shall be deemed waived by Customer. *[Note: # of Clinical Site Visits still being considered by Customer.]*

5.3. Technical Training

- 5.3.1. Technical Training will occur at Accuray's training facility in Sunnyvale, California or such other regional training facility as Accuray may establish. At a minimum, Customer must include the following individuals in the first group that Customer sends to Technical Training:

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- (i) at least 1 medical physicist or the individual who will be responsible for commissioning the Accuray System and performing the quality assurance testing and treatment planning at Customer's site if such individual is not a physicist; and
- (ii) at least 1 radiation oncologist or the individual who will be responsible for approving the prescription at Customer's site if such individual is not a radiation oncologist (such individuals, collectively, the "Core Group").

5.3.2. At a minimum, the Core Group must have completed the Technical Training prior to installation. Customer, in its discretion, may select the remaining members of Customer's Initial Group (for example, surgeons, specialists, radiation therapists and additional medical physicists and/or radiation oncologists), however, as described in Section 5.2 above, Accuray strongly recommends that Customer send its entire Initial Group to Technical Training prior to the Clinical Site Visit.

5.4. Clinical Site Visit. Accuray will arrange for 1 Clinical Site Visit for Customer's Initial Group prior to installation. The Clinical Site Visit will take place at an operating CyberKnife Center in the United States. This Clinical Site Visit will involve clinical interaction with personnel at such center and an opportunity to witness actual patient treatment. Accuray will provide each customer with only 1 Clinical Site Visit and thus any members of Customer's Initial Group who wish to attend a Clinical Site Visit must all attend the same Clinical Site Visit. Completion of Technical Training is a prerequisite to participation in the Clinical Site Visit.

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5.5. On-site Training during First Patient Treatment. Accuray shall provide an Accuray trainer to assist with the technical use of the Accuray System at Customer's site during first patient treatment. For clarity, proctoring and credentialing of physicians and medical staff is the responsibility of the Customer and should be performed separately from Accuray training according to the policies and procedures of the particular Customer or affiliated hospital, as applicable. Completion of the Technical Training and Clinical Site Visit by, at a minimum, the Core Group of Customer personnel are prerequisites for Accuray providing a trainer during the first patient treatment at Customer's site. Accuray shall have the right to reschedule the first patient treatment in the event that Customer's Core Group has not completed the Technical Training and the Clinical Site Visit prior to the first patient treatment. In addition, at the first patient treatment the Accuray trainer will only work with Customer personnel who have previously completed both Accuray's Technical Training and Clinical Site Visit.

5.6. Credentials. Customer shall determine and verify any necessary credentials of any personnel that Customer sends for training on the Accuray System. Accuray shall not be responsible for and will not in any way determine, assess or verify any necessary credentials of any personnel that Customer sends for training on the Accuray System.

5.7. Qualification. Accuray strongly recommends that any Customer personnel who will be involved with the Accuray System attend the training programs offered by Accuray, however, Customer shall have the sole responsibility for ensuring that any Customer personnel are appropriately trained with respect to any Accuray Deliverables and Accuray shall not be responsible for any such determinations.

6. Calibration and Local Requirements.

6.1. Calibration. Customer shall be solely responsible for all Accuray System commissioning and calibration. The dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Accuray System for patient treatment. Customer shall be responsible for quality assurance testing and calibrating the Accuray System regularly. Customer also shall be responsible for radiation surveys which may be required by applicable law or regulation or which may be necessary to

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establish that radiation does not exceed safe levels. Accuray has no responsibility for any such commissioning, quality assurance testing, calibration or radiation surveys.

6.2. Pre-Requisite to First Patient Treatment. Proper commissioning, calibration and quality assurance testing ("QA") of the Accuray System are necessary prerequisites to the first patient treatment. Accuray has the right to delay the first patient treatment in the event that Customer, in Accuray's sole opinion, does not have sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Accuray System.

6.3. Local Requirements. Customer shall be responsible for obtaining all permits and for meeting all requirements relating to state and local codes, registration, regulations and ordinances applicable to Customer's use of the Accuray System. Accuray has no responsibility for compliance by the Accuray Deliverables with such requirements.

7. Acceptance. "Acceptance" of the Accuray System shall occur upon the (i) completion by Accuray of its acceptance test procedure that demonstrates that the Accuray System substantially conforms to the Specifications and (ii) execution of Accuray's acceptance form by Customer, Customer's signature not to be unreasonably withheld. In no event shall Customer or its agents use the Accuray System (or any portion thereof) for any purpose before Acceptance thereof without the express written approval of Accuray. Customer shall indemnify and hold Accuray harmless from any such use prior to Acceptance.

8. Intellectual Property Rights Indemnity.

8.1. Indemnity. Accuray shall at its expense defend any action brought against Customer with respect to a claim by a third party that the design or manufacture of any Accuray Deliverable infringes any valid patent, trademark, copyright, or other intellectual property right of the United States, and shall pay any damages awarded by a court arising from such claim, provided Customer gives Accuray prompt written notice of such claim and full authority, information and assistance in settling or defending such claim.

8.2. Certain Remedies. If a court judgment prohibits Customer's continued use of any Accuray Deliverable, or if at any time Accuray determines that any Accuray Deliverable may become subject to a cause of action for infringement, Accuray may at its expense either (i) procure a license to enable Customer to continue using such Accuray Deliverable, (ii) replace such Accuray Deliverable with a non-infringing Accuray Deliverable, or (iii) remove such Accuray Deliverable and refund a pro-rated portion of the Purchase Price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 7-year period beginning on the date of Acceptance (i.e., removal of the Accuray Deliverable at the end of the first year after Acceptance would result in a refund of 86% of the Purchase Price). Accuray shall have no liability hereunder with respect to any claims settled by Customer without Accuray's prior written consent.

8.3. Exclusion. Accuray excludes from any liability hereunder, and Customer shall indemnify and hold Accuray harmless from and against any expense, loss or liability resulting from claimed infringement of any third party intellectual property rights of the United States: (i) arising from the use of an Accuray Deliverable other than in accordance with the Specifications and not otherwise authorized by Accuray, (ii) based on the combination of equipment, processes, programming applications or materials not furnished by Accuray with the Accuray Deliverables, (iii) arising out of compliance by Accuray with Customer's designs, specifications or instructions, or (iv) damages incurred as a result of Customer's continued use of an Accuray Deliverable after Accuray has recommended in writing that Customer suspend such use. This Section 8 states Accuray's entire liability for any claim based upon or related to any alleged infringement by an Accuray Deliverable of intellectual property right.

[Note: To be discussed with counsel.]

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9. Warranty.

- 9.1. Warranty. Accuray warrants that (i) the hardware components of the Accuray Deliverables will be free from defects in material and workmanship and (ii) the hardware and software components of the Accuray Deliverables will operate substantially in accordance with the Specifications, in each case for a period of 1 year from the date of Acceptance, but not to exceed 2 years from date of delivery ("Warranty Period"). Any service with respect to Accuray Deliverables provided by Accuray after the Warranty Period shall be provided in accordance with the terms of a Service Contract executed by the parties.
- 9.2. Warranty Remedy. If Customer notifies Accuray during the Warranty Period of a defect in an Accuray Deliverable that causes such deliverable to fail to conform to the foregoing warranty, Accuray shall at its option either repair or replace the defective deliverable, or, if in Accuray's opinion such repair or replacement is not commercially reasonable, Accuray shall refund a pro-rated portion of the price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5 year period beginning on the date of Acceptance. This Section 9.2 sets forth Customer's sole and exclusive remedies with respect to a breach of the warranty specified in Section 9.1.
- 9.3. Conservation of Materials. In the interest of conservation of scarce materials, and of efficient utilization of high value parts, the Accuray Deliverables may contain re-manufactured parts. Such parts are subject to the same standards of quality control applied to other parts and are covered by the warranty in this Section 9.
- 9.4. Scope of Warranty. The warranty services described in this Section 9 shall not apply to defects or non-conformities caused by: (i) abuse, accident, misuse or neglect of an Accuray Deliverable; (ii) modification of an Accuray Deliverable (including any software therein) without Accuray's express written authorization; (iii) use in an operating environment other than the operating environment described in the Specifications; or (iv) any component of an Accuray Deliverable that has been superseded by a update made available to Customer without charge by Accuray. In-warranty repair or replaced parts are warranted only for the unexpired portion of the original warranty period.
- 9.5. OTHER WARRANTIES. EXCEPT AS SET FORTH IN THIS SECTION 9, ACCURAY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, AND OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. [Note: To be discussed with counsel.]

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10. Mutual Indemnity. To the extent and as is determined by a court in accordance with applicable law that the negligence of a party (the "Responsible Party"), its employees or agents causes damage or injury to a third party, the Responsible Party shall defend, indemnify and pay the other party for any damages awarded by a court or agreed to by the Responsible Party in a settlement arising from such claims, including reasonable attorneys' fees and expenses to the extent such damages reflect the Responsible Party's relative fault therefor. Notwithstanding the foregoing, Accuray shall have no responsibility whatsoever for, and Customer shall indemnify and hold Accuray harmless from, all damage or injury to third parties which (i) results from the use, operation or service of any Accuray Deliverable by other than Accuray personnel prior to Acceptance and completion of the radiation survey by Customer, (ii) results from or relates to any use, operation or service of any Accuray Deliverable by a party not authorized to perform such service by Accuray, or (iii) any use by Customer or its agents of an Accuray Deliverable contrary to any written warning or instruction given by Accuray to Customer. [Note: To be discussed with counsel.]

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11. Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY IN DAMAGES OR OTHERWISE ARISING FROM OR RELATED



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TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID OR PAYABLE HEREUNDER BY CUSTOMER FOR THE ACCURAY DELIVERABLE RESULTING IN THE LOSS OR DAMAGE CLAIMED. [Note: To be discussed with counsel.]

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12. Intellectual Property Ownership and License. Accuray and its licensors retain all intellectual property rights in the Accuray Deliverables. Accuray hereby grants Customer a nonexclusive, non-transferable, royalty-free right to use the software provided in connection with the Accuray Deliverables only in machine readable form and only in combination with the Accuray Deliverable with which such software is provided. No such software shall be copied or decompiled in whole or in part by Customer, and Customer shall not disclose or provide any such software, or any portion thereof, to any third party. All rights in intellectual property not expressly granted hereunder are reserved by the owner of such intellectual property.

13. Trademarks. Accuray is the owner of the trademark CyberKnife® and related trademarks in the U.S. and around the world. If Customer wishes to use the CyberKnife or other Accuray trademarks in association with a business name, Accuray requires that Customer execute Accuray's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to use the Accuray marks with a business name or to otherwise use language which would suggest a license with Accuray.

14. Confidentiality. All drawings, designs, specifications, manuals and software and other non-public information furnished to the Customer by Accuray hereunder shall remain the confidential and proprietary property of Accuray. All patient information and all Customer financials, operational, planning and similar information shall remain the confidential and proprietary information of Customer. Both parties' information shall be collectively the "Confidential Information". All such information, except as may be found in the public domain, shall be held in confidence by Customer and Accuray and shall not be disclosed by Customer or Accuray to any third parties or used by Customer other than in in connection with this Agreement.

Deleted: its operation of the Accuray Deliverables in accordance with the Specifications

15. Patient Information.

15.1. Compliance with HIPAA. In performing any services hereunder, Accuray may receive from Customer patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Customer shall identify to Accuray in writing all such information when Customer provides such information to Accuray, and Accuray shall use Patient Information so identified by Customer only as necessary to provide the services to Customer as set forth herein. Accuray shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

15.2. De-Identified Information. Customer shall provide Accuray with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accuray shall have all identifying patient information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

16. Cancellations. Subject to any contingencies, all payments made hereunder are non-refundable and no order accepted by Accuray may be canceled by Customer without Accuray's prior written consent. If Customer requests cancellation of any order, and Accuray consents to such request, Customer agrees to pay Accuray a reasonable charge determined by Accuray to cover the reasonable costs of order processing, handling, re-testing, shipping, storage, repackaging and similar activities incurred by Accuray in connection with such cancellation. [Note: To be discussed with counsel.]

Deleted: within 90 days of delivery date for the Cyberknife

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Deleted: or if customer cancels order before said above period

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17. Assignment. Neither party may assign this Agreement without the other party's prior written consent, except that either party may assign this Agreement without the other party's consent to an affiliate and either party

CYBERKNIFE G4 PURCHASE AGREEMENT STD 11.14.2006

ACCURAY CONFIDENTIAL

CT, New Haven, Hospital of Saint Raphael - 3.16.07 (Redline)



1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: (408) 716-4600
Fax: (408) 716-4620

CyberKnife® G4 Purchase Agreement

Initials: Customer _____
Accuray _____
Page 11 of 13

may assign this Agreement without the other party's consent to a successor or acquirer in connection with a merger or acquisition, or the sale of all or substantially all of such party's assets or the sale of that portion of such party's business to which this Agreement relates, upon written notice. Notwithstanding the foregoing, Customer shall be permitted to assign its rights and obligations hereunder to any entity (e.g. JV or LLC) formed between Customer and a third party; provided, however, that in the event of such assignment that assignee will assume all Customer's rights and obligations hereunder, and that assignee is properly funded and/or the assignee obligations under this Agreement are financially and otherwise guaranteed in writing by Customer. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. Any attempted assignment in violation of this Section 17 shall be null and void.

18. **Dispute Resolution.** Any dispute between Accuray and Customer arising from or related to this Agreement, excluding disputes regarding payment or Customer's unauthorized use or disclosure of Accuray Confidential Information or intellectual property, shall be settled as follows. The party initiating the dispute shall provide written notification to the other party identifying in detail the nature of the dispute. The other party shall respond in writing to the notification within 15 calendar days from the date of receipt of the notification. The party initiating the dispute shall have an additional 15 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved within the foregoing 15-day period, the parties shall escalate the claim to the President of Accuray and the Chief Executive Officer of Customer. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. If the dispute is not resolved within 15 calendar days after escalation to the President and Chief Executive Officer as described above, then either party may pursue resolution by any means available at law or equity.

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19. **Notices.** All notices required or permitted under this Agreement shall be in writing and if delivered in person, effective immediately, if delivered by reputable national or international overnight delivery service, effective 2 business days after deposit with carrier, or if delivered by registered or certified mail, postage prepaid with return receipt requested, effective 5 business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this section.

To Accuray:	To Customer:
Accuray Incorporated Attention: Chief Financial Officer 1310 Chesapeake Terrace Sunnyvale, CA 94089 Copy to: General Counsel	Saint Raphael Healthcare System, Inc Attention: VP & Chief Information Officer 659 George Street New Haven, CT, 06511 Copy to: Janeanne C. Lubin-Szafranski, Esq., Vice President/General Council

20. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, acts of God, accident, failure or breakdown of components necessary for order completion; subcontractor or supplier caused delays; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.
21. **Governing Law.** The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the United States and the State of Connecticut without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction. No action, regardless of form, arising out of or related to any Accuray Deliverable may be brought by Customer more than 2 years after Customer has or should have become aware of the cause of action.
22. **Waiver.** The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

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ACCURAY™

1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: (408) 716-4600
Fax: (408) 716-4620

CyberKnife® G4 Purchase Agreement

Initials: Customer _____
Accuray _____
Page 12 of 13

23. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.
24. **Amendments.** Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.
25. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
26. **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. In the event of a conflict or inconsistency between the terms stated in a purchase order or other similar document and this Agreement, the terms of this Agreement shall govern.
27. **Insurance.** Accuray shall at all times during this Agreement maintain in effect the following Insurance with respect to Customer's location (1) Workers Compensation insurance covering any an all of its employees who may be providing services to Customer under the terms of this Agreement; and (2) general and products liability insurance covering the acts of Accuray and its employees, agents or representatives, product defects, and any and all equipment and other personal property of Accuray, in amounts sufficient to cover Accuray's indemnity obligations hereunder. [Note: To be discussed with counsel.]
28. **No Violation of Law.** To the best of Accuray's knowledge, as of the date of this Agreement Accuray is in compliance in all material aspects with all laws, ordinances, legal requirements, rules, regulations and orders applicable to it, its operations, properties, assets, products and services, including, without limitation, Medicare and Medicaid. To the best of Accuray's knowledge, as of the date of this Agreement there is no existing law, rule, regulation or order, and Accuray is not aware of any proposed law, rule, regulation or order, and Accuray is not aware of any proposed law, rule, regulation or order, whether federal or state, which would prohibit or materially restrict it from providing the items or services contemplated hereunder. To the best of Accuray's knowledge, as of the date of this Agreement neither Accuray, nor any directors, officers or employees of Accuray has, directly or indirectly, given or agreed to give remuneration, in cash or in kind, in order to induce business reimbursable under Medicare, Medicaid or any health care insurer or provider which could subject Accuray or Customer to any damage or penalty in any civil, criminal or governmental litigation or proceeding.
29. **Reporting and Disclosure Responsibilities.** If Customer is an entity which reports its costs on a cost report required by the Department of Health and Human Services or a state agency, Customer acknowledges and agrees that pursuant to applicable state or federal law, including, without limitation, 42 C.F.R. § 1001.952 and any provision amendatory thereof, supplemental thereto or substituted therefore, it may, in connection with the purchase of products hereunder, have an obligation to: (i) report all discounts, and (ii) provide, upon request by the Secretary of the Department of Health and Human Services or a state agency, certain information provided to Customer by Accuray. In the event of such disclosure, Customer shall wherever possible provide Accuray with advance notice of such disclosure to respond to the requesting agency.
30. **Federal Health Care Program Exclusions.** Accuray certifies that as of the date of this Agreement it has not been convicted of a criminal offense related to health care or been listed as debarred, excluded or otherwise ineligible for participation in a Federal health care program. Accuray agrees to notify Customer in writing within five (5) business days should it receive notice that it is listed as ineligible for participation in such a program. [Note: To be discussed with counsel.]

Deleted: Accuray shall defend, indemnify and hold harmless Customer, its officers, employees and agents from and against claims, damages, losses and expenses including, but not limited to, reasonable attorneys' fees, arising from or related in any way to any and all claims asserted by employees, agents or representatives, of Accuray arising from their performance of services under this Agreement.

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Deleted: At the time of such notification, Customer may terminate this Agreement immediately.

[SIGNATURE PAGE FOLLOWS]

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1310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: (408) 716-4600
Fax: (408) 716-4620

CyberKnife® G4 Purchase Agreement

Initials: Customer _____
Accuray _____
Page 13 of 13

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, thereunto duly authorized. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED

CUSTOMER

By: _____ By: _____

Print Name: Robert E. McNamara

Print Name: _____

Title: Senior Vice President & Chief Financial Officer

Title: _____

Date: _____ Date: _____

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

By: _____
Darren J. Milliken
General Counsel

Date: _____

Please make sure that you have selected a Service Contract (Emerald Elite or Diamond Elite, Section F above). A separate Service Contract is provided for your signature.

Please attach payment to this signed Agreement and forward to:

Accuray Incorporated
ATTN: Contracts Administration
1310 Chesapeake Terrace
Sunnyvale, CA 94089
T. 408.716.4600
F. 408.716.4620

SIGNATURE PAGE TO ACCURAY CYBERKNIFE G4 PURCHASE AGREEMENT

CYBERKNIFE G4 PURCHASE AGREEMENT STD 11.14.2006
CT, New Haven, Hospital of Saint Raphael - 3/6/07 (Redline)

ACCURAY CONFIDENTIAL

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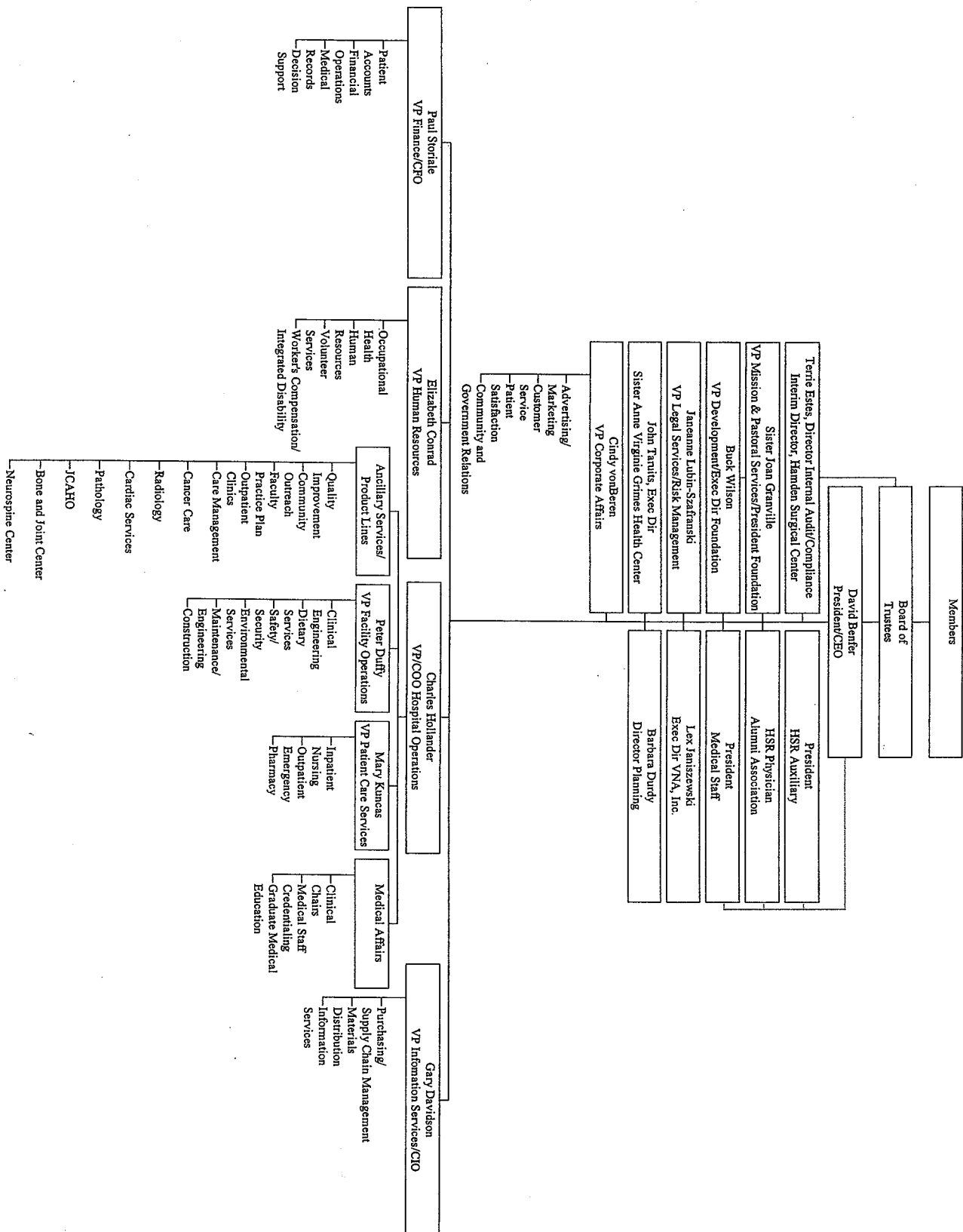
Attachment 6

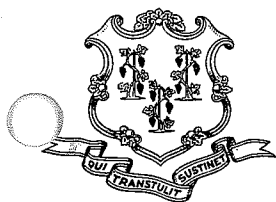
Copy of the Chart of Organization for the Hospital of Saint Raphael

Saint Raphael Health Care System, New Haven, CT

Sponsored by the Sisters of Charity of Saint Elizabeth, Convent Station, NJ

March 2007





M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT

OFFICE OF HEALTH CARE ACCESS

CRISTINE A. VOGEL
COMMISSIONER

May 3, 2007

Barbara Durdy
Planning and Business Development Office
Hospital of Saint Raphael
1450 Chapel Street
New Haven, CT 06511

RE: Certificate of Need Application Forms; Docket Number: 07-30952-CON
Hospital of Saint Raphael's Proposal to Acquire and Operate a new CyberKnife
Radiosurgery System for use at the Father McGivney Cancer Center, at a capital
cost of \$4,000,000.

Dear Ms. Durdy:

Enclosed are the application forms for Hospital of Saint Raphael's Certificate of Need ("CON") proposal for the Hospital of Saint Raphael's Proposal to Acquire and Operate a new CyberKnife Radiosurgery System for use at the Father McGivney Cancer Center, at a capital cost of \$4,000,000. According to the parameters stated in Sections 19a-638 and 19a-639 of the Connecticut General Statutes the CON application may be filed between May 26, 2007, and July 25, 2007.

When submitting your CON Application, please paginate and date each page contained in your submission. In addition, please submit one (1) original and five hard copies; as well as a scanned copy of the complete Application, including all attachments, on CD or Diskette. OHCA requests that the electronic copy be in Adobe or MS Word format and that the Financial Attachment and other data as appropriate be in MS Excel format.

The OHCA analyst assigned to the CON application is Jack A. Huber. Please feel free to contact him at (860) 418-7034, if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kim Martone".

Kimberly Martone
Certificate of Need Supervisor

Enclosure

OFFICE OF HEALTH CARE ACCESS
REQUEST FOR NEW CERTIFICATE OF NEED

FILING FEE COMPUTATION SCHEDULE

APPLICANT: _____ PROJECT TITLE: _____ DATE: _____	FOR OHCA USE ONLY: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;"></th> <th style="width: 15%; text-align: center;">DATE</th> <th style="width: 15%; text-align: center;">INITIAL</th> </tr> </thead> <tbody> <tr> <td>1. Check logged (Front desk)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>2. Check rec'd (Clerical/Cert.)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>3. Check correct (Superv.)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> <tr> <td>4. Check logged (Clerical/Cert.)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">_____</td> </tr> </tbody> </table>		DATE	INITIAL	1. Check logged (Front desk)	_____	_____	2. Check rec'd (Clerical/Cert.)	_____	_____	3. Check correct (Superv.)	_____	_____	4. Check logged (Clerical/Cert.)	_____	_____
	DATE	INITIAL														
1. Check logged (Front desk)	_____	_____														
2. Check rec'd (Clerical/Cert.)	_____	_____														
3. Check correct (Superv.)	_____	_____														
4. Check logged (Clerical/Cert.)	_____	_____														

SECTION A – NEW CERTIFICATE OF NEED APPLICATION	
1. Check statute reference as applicable to CON application (see statute for detail): _____ 19a-638. Additional function or service, Change of Ownership, Service Termination. No Fee Required. _____ 19a-639 Capital expenditure for major medical equipment, imaging equipment or linear accelerator exceeding \$400,000 but less than or equal to \$1,000,000. Fee Required. _____ 19a-639 Capital expenditure for major medical equipment, imaging equipment or linear accelerator exceeding \$1,000,000 or other capital expenditure exceeding \$1,000,000. Fee Required. _____ 19a-638 and 19a-639. Fee Required.	
2. Enter \$0 on "Total Fee Due" line (SECTION B) if application is required pursuant to Section 19a-638 only, otherwise go on to line 3 of this section.	
3. Enter \$400 on "Total Fee Due" line (SECTION B) if application is for capital expenditure for major medical equipment, imaging equipment or linear accelerator exceeding \$400,000 but less than or equal to \$1,000,000	
4. Section 19a-639 fee calculation (applicable if section 19a-639 capital expenditure for major medical equipment, imaging equipment or linear accelerator exceeding \$1,000,000 or other capital expenditure exceeding \$1,000,000 is checked above <u>OR</u> if both 19a-638 and 19a-639 are checked):	
a. Base fee: _____	\$ 1,000.00
b. Additional Fee: (Capital Expenditure Assessment) _____ (To calculate: Total requested Capital Expenditure/Cost excluding capitalized financing costs multiplied times .0005 and round to nearest dollar.) (\$ _____ x .0005)	\$ _____ .00
c. Sum of base fee plus additional fee: (Lines A3a + A3b) _____	\$ _____ .00
d. Enter the amount shown on line A3c. on "Total Fee Due" line (SECTION B).	
SECTION B TOTAL FEE DUE: _____	\$ _____ .00

ATTACH HERE CERTIFIED OR CASHIER'S CHECK ONLY (Payable to: Treasurer, State of Connecticut)

HOSPITAL AFFIDAVIT

Applicant: _____

Project Title: _____

I, _____,
(Name) (Position – CEO or CFO)

of _____ being duly sworn, depose and state that the (Hospital Name) information submitted in this Certificate of Need application is accurate and correct to the best of my knowledge. With respect to the financial impact related to this CON application, I hereby affirm that:

1. The proposal will have a capital expenditure in excess of \$15,000,000.

☐ Yes ☐ No

2. The combined total expenses for the proposal's first three years of operation will exceed one percent of the actual operating expenses of the Hospital for the most recently completed fiscal year as filed with the Office of Health Care Access.

☐ Yes ☐ No

Signature

Date

Subscribed and sworn to before me on _____

Notary Public/Commissioner of Superior Court

My commission expires: _____



State of Connecticut Office of Health Care Access Certificate of Need Application

Please complete all questions. If any question is not relevant to your project, Not Applicable may be an acceptable response. Your Certificate of Need application will be eligible for submission no earlier than May 26, 2007, and may be submitted no later than July 25, 2007. The OHCA Analyst assigned to your application is Steven W. Lazarus and may be reached at the Office of Health Care Access at (860) 418-7034.

Docket Number: 07-30952-CON

Applicant Name: The Hospital of Saint Raphael

Contact Person: Barbara Durdy

Contact Title: Planner and Business Development

Contact Address: The Hospital of Saint Raphael
1450 Chapel Street
New Haven, CT 06511

Project Location: New Haven

Project Name: Acquisition and Operation of a Cyberknife
Radiosurgery System

Proposal Type: Sections 19a-638 and/or 19a-639, C.G.S.

**Estimated Total
Capital Expenditure:** \$4,000,000

1. Expansion of Existing or New Service

What services are currently offered at your facility that the proposed expansion or new service will augment or replace? Please list.

Augment: _____

Replace: _____

2. State Health Plan

No questions at this time.

3. Applicant's Long Range Plan

Is this application consistent with your long-range plan?

☐ Yes ☐ No

If "No" is checked, please provide an explanation.

4. Clear Public Need

A. Explain how it was determined there was a need for the proposal in your service area.

- i) Provide the following information:
 - a) List the primary service area (PSA) towns. Provide a rationale for choosing the selected PSA towns.
 - b) List the secondary service area (SSA) towns. Provide a rationale for choosing the selected SSA towns.
 - c) If an existing service, the unit of service for the past three fiscal years by service area town.
 - d) Describe the population to be served. Include demographic information, as appropriate.
 - e) Scheduling backlogs in service area.
 - f) Travel distance from the McGivney Center to service area towns.
 - g) Hours of operation of existing and /or proposed service.
- ii) Identify the existing providers of the proposed service in your service area.
- iii) Provide the units of service projected for the first three years of operation of the service with the proposed system **Include the derivation/calculation.**

- iv) What will be the effect of your proposal on existing providers (i.e. patient volume, financial stability, quality of care, etc.)?
- v) Provide the information as outlined in the following table concerning the existing providers in the Applicant's PSA and SSA:

Description of Service ¹	Provider Name and Location	Hours and Days of Operation ¹	Current Utilization ²

¹ Specify days of the week and start and end time for each day.

² Service volume performed by Provider for the most recent 12 month period, if known.

- B. Will your proposal remedy any of the following barriers to access?
Please provide an explanation.

- | | |
|--|---|
| <input type="checkbox"/> Cultural | <input type="checkbox"/> Transportation |
| <input type="checkbox"/> Geographic | <input type="checkbox"/> Economic |
| <input type="checkbox"/> None of the above | <input type="checkbox"/> Other (Identify) _____ |

If you checked other than None of the above, please provide an explanation.

- C. Provide copies of any of the following plans, studies or reports related to your proposal:

- | | |
|--|--|
| <input type="checkbox"/> Epidemiological studies | <input type="checkbox"/> Needs assessments |
| <input type="checkbox"/> Public information reports | <input type="checkbox"/> Market share analysis |
| <input type="checkbox"/> Other (Identify) _____ | |
| <input type="checkbox"/> None: <i>explain</i> why no reports, studies or market share analysis was undertaken related to the proposal: | |

5. Quality Measures

- A. Check off all the Standard of Practice Guidelines that will be utilized by the Applicant for the proposed service. Please submit the most recent copy of each report related to the proposal:

- | | | |
|--|--|---|
| <input type="checkbox"/> American College
of Cardiology | <input type="checkbox"/> National Committee
for Quality Assurance | <input type="checkbox"/> Public Health Code
& Federal Corollary |
| <input type="checkbox"/> National Association
of Child Bearing
Centers | <input type="checkbox"/> American College
of Obstetricians &
Gynecologists | <input type="checkbox"/> American College
of Surgeons |
| <input type="checkbox"/> Report of the Inter-
Council for
Radiation Oncology | <input type="checkbox"/> American College
of Radiology | <input type="checkbox"/> Substance Society
Abuse and Mental
Health Services
Administration |

☐ Other: Specify _____

- B. Describe in detail how the Applicant plans to meet the each of the guidelines checked off above.
- C. Submit a list of **all** key professional and administrative personnel, including the Applicant's Chief Executive Officer (CEO) and Chief Financial Officer (CFO), Medical Director, physicians, nurses, etc., related to the proposal and a copy of their Curriculum Vitae.

Note: For physicians, please provide a list of hospitals where the physicians have admitting privileges.

- D. Provide a copy of the most recent inspection reports and/or certificate for your facility:

- | | |
|---|---|
| <input type="checkbox"/> DPH | <input type="checkbox"/> JCAHO |
| <input type="checkbox"/> Fire Marshall Report | <input type="checkbox"/> Other States Health Dept.
Reports (new out-of-state
providers) |
| <input type="checkbox"/> AAAHC | <input type="checkbox"/> AAAASF |
| <input type="checkbox"/> Other: _____ | |

Note: Above referenced acronyms are defined below. ¹

¹ DPH – Department of Public Health; JCAHO – Joint Commission on Accreditation of Hospitals Organization; AAAHC – Accreditation Association for Ambulatory Health Care, AAAASF – American Association for Accreditation of Ambulatory Surgery Facilities, Inc.

- E. Provide copies of any Quarterly Action Reports, Consent Decrees or Statement of Charges against the Hospital, its physicians and any staff related to the proposal, for the past five (5) years.
- F. Provide a copy of any plan of action which has been formulated to address the above action against the Hospital, its physicians working at the Hospital and/or any staff related to the proposal.
- G. Provide a copy of the following (as applicable):
 - ☐ A copy of the related Quality Assurance plan
 - ☐ Protocols for service (new service only)
 - ☐ Patient Selection Criteria/Intake form

6. Improvements to Productivity and Containment of Costs

In the past year has your facility undertaken any of the following activities to improve productivity and contain costs?

- ☐ Energy conservation ☐ Group purchasing
- ☐ Reengineering ☐ None of the above
- ☐ Application of technology (e.g., computer systems, robotics, telecommunication systems, etc.)
- ☐ Other (identify) _____

7. Miscellaneous

- A. Will this proposal result in any change to your teaching or research responsibilities?

☐ Yes ☐ No

If you checked "Yes," please provide an explanation.

- B. Are there any characteristics of your patient/physician mix that makes your proposal unique?

☐ Yes ☐ No

If you checked "Yes," please provide an explanation.

C. Provide the following licensing information:

- i) If you are currently licensed, provide a copy of the State of Connecticut Department of Public Health license currently held.
- ii) The DPH licensure category you are seeking.
- iii) If i) and ii) are not applicable, please explain why.

8. Financial Information

A. Type of ownership: (Please check off all that apply)

- | | |
|---|--|
| <input type="checkbox"/> Corporation (Inc.) | <input type="checkbox"/> Limited Liability Company (LLC) |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Professional Corporation (PC) |
| <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Other (Specify): _____ |

B. Provide the following financial information:

- i) Please submit the Applicant's audited financial statements for the most recently completed fiscal year. If the Applicant has no audited financial statements, please submit a compilation report or an unaudited Balance Sheet and Statement of Operations for the most recently completed fiscal year. These statements should be externally prepared and submitted on the preparer's letterhead.
- ii) Please identify the entity that will be billing for the service.

9. Major Cost Components/Total Capital Expenditure

Submit a final version of all capital expenditures/costs as follows:

Medical Equipment (Purchase)	
Major Medical Equipment (Purchase)	
Non-Medical Equipment (Purchase)*	
Land/Building (Purchase)	
Construction/Renovation	
Other (Non-Construction) Specify: _____	
Total Capital Expenditure	
Medical Equipment (Lease (FMV))	

Major Medical Equipment (Lease (FMV)	
Non-Medical Equipment (Lease (FMV))*	
Fair Market Value of Space – (Capital Leases Only)	
Total Capital Cost	
Capitalized Financing Costs (Informational Purpose Only)	
Total Capital Expenditure with Cap. Fin. Costs	

* Provide an itemized list of all non-medical equipment.

10. Construction Information

- A. Provide a detailed description of the proposed new construction/renovation including the related gross square feet of new construction/renovation.
- B. Provide all schematic drawings related to the project that are available, including existing and proposed floor plans.

C. Provide the following breakdown of the new construction/renovation costs:

Item Designations	New Construction	Renovation	Total Cost
Total Building Work Costs			
Total Site Work Costs			
Total Off-Site Work Costs			
Total Arch. & Eng. Costs			
Total Contingency Costs			
Inflation Adjustment			
Other (Specify) _____			
Total Construction/Renov. Cost			

- D. Explain how the proposed new construction or renovations will affect the delivery of patient care.
- E. Provide the following information regarding the schedule for new construction/ renovation:

Construction Commencement Date	
Construction Completion Date	
DPH Licensure Date	
Commencement of Operations Date	

11. Capital Equipment Purchase

If the CON involves any capital equipment lease and/or purchase, please answer all of the following that apply:

What is the anticipated residual value at the end of the lease or loan term?	\$ _____
What is the useful life of the equipment?	____ Years
Please submit a copy of the vendor quote or invoice as an attachment.	
Please submit a schedule of depreciation for the purchased equipment as an attachment.	

For multiple items, please attach a separate sheet for each item in the above format.

12. Type of Financing

A. Check type of funding or financing source and identify the following anticipated requirements and terms: (Check all which apply)

☐ Applicant's equity:

Source and amount:

Operating Funds	
Source/Entity Name	\$ _____
Available Funds	_____
Contributions	\$ _____
Funded depreciation	\$ _____
Other	\$ _____

☐ Grant:

Amount of grant	\$ _____
Funding institution/ entity	_____

☐

Conventional loan or

☐ Connecticut Health and Educational Facilities Authority (CHEFA)
financing:

Current CHEFA debt	\$ _____
CON Proposed debt financing	\$ _____
Interest rate	_____ %
Monthly payment	\$ _____
Term	_____ Years
Debt service reserve fund	\$ _____

☐ Lease financing or
☐ CHEFA Easy Lease Financing:

Current CHEFA Leases	\$ _____
CON Proposed lease financing	\$ _____
Fair market value of leased assets at lease inception	\$ _____
Interest rate	_____ %
Monthly payment	\$ _____
Term	_____ Years

☐ Other financing alternatives:

Amount	\$ _____
Source (e.g., donated assets, etc.)	_____

B. Please provide copies of the following, if applicable:

- i. Letter of interest from the lending institution
- ii. Letter of interest from CHEFA,
- iii. Amortization schedule (if not level amortization payments),
- iv. Lease agreement.

13. Revenue, Expense and Volume Projections

A.1. Payer Mix Projection

Please provide both the current payer mix and the projected payer mix with the CON proposal for the Total Facility based on Net Patient Revenue in the following reporting format:

Total Facility Description	Current Payer Mix	Year 1 Projected Payer Mix	Year 2 Projected Payer Mix	Year 3 Projected Payer Mix
Medicare*	%	%	%	%
Medicaid* (includes other medical assistance)				
CHAMPUS and TriCare				
Total Government Payers				
Commercial Insurers*				
Uninsured				
Workers Compensation				
Total Non-Government Payers				
Payer Mix	100.0%	100.0%	100.0%	100.0%

*Includes managed care activity.

A.2. Please describe the impact of the proposal on the interests of consumers of health care services and the payers of such services.

B. Does the Applicant have Tax Exempt Status? ☐ Yes ☐ No

C. Provide the following for the financial and statistical projections:

- i) A summary of revenue, expense and volume statistics, without the CON project, incremental to the CON project, and with the CON project. **Please complete Financial Attachment 1, attached.** Please note that the actual results for the fiscal year reported in the first column must agree with the Applicant's audited financial statements.
- ii) The assumptions utilized in developing the projections (e.g., FTE's by position, volume statistics, other expenses, revenue and expense % increases, project commencement of operation date, etc.). Note: Include consideration of the Deficit Reduction

Act of 2005 and the reduction of Medicaid and Medicare reimbursements in the development in the financial projections.

- iii) An explanation for any projected incremental losses from operations contained in the financial projections that result from the implementation and operation of the CON proposal.
- iv) Please complete **Financial Attachment 2**, attached.
- v) Provide a copy of the rate schedule for the service.
- vi) Describe how this proposal is cost effective.

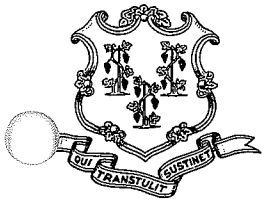
Total Hospital Health System:

***Volume Statistics:**

Provide projected inpatient and/or outpatient statistics for any new services and provide actual and projected inpatient and/or outpatient statistics for any existing services which will change due to the proposal.

13.C(ii). Please provide three years of projections of incremental revenue, expense and volume statistics attributable to the proposal in the following reporting format:

Type of Service Description	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Type of Unit Description:		Rate	Units	Gross Revenue	Allowances/ Deductions	Charity Care	Bad Debt	Net Revenue	Operating Expenses	Gain/(Loss) from Operations
# of Months in Operation				Col. 2 * Col. 3				Col. 4 - Col. 5 -Col. 6 - Col. 7	Col. 1 Total * Col. 4 / Col. 4 Total	Col. 8 - Col. 9
Year 1										
FY Projected Incremental										
Total Incremental Expenses:										
Total Facility by										
Payer Category:										
Medicare				\$0				\$0	\$0	\$0
Medicaid		\$0		\$0				\$0	\$0	\$0
CHAMPUS/TriCare		\$0		\$0				\$0	\$0	\$0
Total Governmental			0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Commercial Insurers		\$0	5	\$0				\$0	\$0	\$0
Uninsured		\$0	2	\$0				\$0	\$0	\$0
Total NonGovernment		\$0	7	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total All Payers		\$0	7	\$0	\$0	\$0	\$0	\$0	\$0	\$0



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

CRISTINE A. VOGEL
COMMISSIONER

May 3, 2007

Ms. Barbara Durdy
Planning and Business Development
1450 Chapel Street
New Haven, CT 06511

Re: Letter of Intent, Docket Number 07-30952
Hospital of Saint Raphael
Proposal to Acquire and Operate a new CyberKnife Radiosurgery System for use
at the Father McGivney Cancer Center
Notice of Letter of Intent

Dear Ms. Durdy:

On May 3, 2007, the Office of Health Care Access ("OHCA") received the Letter of Intent ("LOI") Form of Hospital of Saint Raphael ("Applicant") for Acquiring and Operating a new CyberKnife Radiosurgery for use at the Father McGivney Cancer Center, at a total capital expenditure of \$4,000,000.

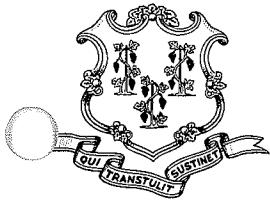
A notice to the public regarding OHCA's receipt of a LOI was published in *The New Haven Register* pursuant to Sections 19a-638 and 19a-639 of the Connecticut General Statutes. Enclosed for your information is a copy of the notice to the public.

Sincerely,

A handwritten signature in cursive script that reads "Kimberly R. Martone".

Kimberly R. Martone
Certificate of Need Supervisor

KRM:lmg



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
OFFICE OF HEALTH CARE ACCESS

CRISTINE A. VOGEL
COMMISSIONER

May 3, 2007

Requisition # HCA07-173
FAX #: (203) 865-8360

New Haven Register
40 Sargent Street
New Haven, CT 06531-0715

Gentlemen/Ladies:

Please make an insertion of the attached copy, in a single column space, set solid under legal notices, in the issue of your newspaper by no later than **Monday, May 7, 2007**.

Please provide the following **within 30 days** of publication:

- Proof of publication (copy of legal ad. acceptable) showing published date along with the invoice.

If there are any questions regarding this legal notice, please contact **Jack Huber** at (860) 418-7001.

KINDLY RENDER BILL IN DUPLICATE ATTACHED TO THE TEAR SHEET.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim R. Martone", written over a horizontal line.

Kimberly R. Martone
Certificate of Need Supervisor

Attachment

KRM:JH:lmg

c: Sandy Salus, OHCA

PLEASE INSERT THE FOLLOWING:

Statute References:	19a-638 and 19a-639
Applicant:	Hospital of Saint Raphael
Town:	New Haven
Docket Number:	07-30952
Proposal:	Acquire and Operate a new CyberKnife Radiosurgery System for use at the Father McGivney Cancer Center
Capital Expenditure:	\$4,000,000

The Applicant may file its Certificate of Need application between May 26, 2007 and July 25, 2007. Interested persons are invited to submit written comments to Cristine A. Vogel, Commissioner Office of Health Care Access, 410 Capitol Avenue, MS13HCA P.O. Box 340308 Hartford, CT 06134-0308.

The Letter of Intent is available for inspection at OHCA. A copy of the Letter of Intent or a copy of Certificate of Need Application, when filed, may be obtained from OHCA at the standard charge. The Certificate of Need application will be made available for inspection at OHCA, when it is submitted by the Applicant.

*** TX REPORT ***

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M. JODI RELL
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OFFICE OF HEALTH CARE ACCESS

CRISTINE A. VOGEL
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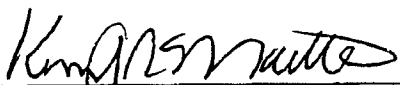
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Sincerely,



Kimberly R. Martone
Certificate of Need Supervisor

LEGALIS
STATE OF CONNECTICUT
Judicial District of New Haven
Judicial District At 233
Church St. New Haven, CT
Return Date: 5-20-07

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