



Ray M Freeman, MD      David J. Grasic, MD  
Ivette Hurtado, PA-C      Renzo Zaldivar, MD      Michael G. Woodcock, MD SEE

To: The North Carolina Division of Health and Human Services, Certificate of Need  
Attn: Tanya Saporito, Review Analyst & Michaela Mitchell, Chief Healthcare Planning  
and Certificate of Need  
Subject: M-012222-22

I have written and rewritten this opposition email. The reason for the rewrites is that it is difficult to have balance and maintain proper decorum when describing what is being attempted by the Applicant and the misleading claims or omitted financial facts being utilized to advance its true agenda.

I served in the North Carolina State Senate for two terms from 1995-1999. This is not my first rodeo. Having witnessed firsthand human nature, group think and justifying means to an end this Application certified by the Applicant takes cynicism and greed to another level.

The real goal of this Application, which universally detrimentally effects over 700,000 North Carolinians in and around Cumberland County, is nothing more than an under handed attempt to undermine the CON Process and establish a Health Care Monopoly. That Monopoly will ultimately be used to more than double the cost people and third-party payers pay for outpatient surgical care with no patient choice but for lengthy travel.

This Application has been certified by the Applicant as complete, thorough, transparent, and truthful. The following information gleaned from that Application clearly shows that the opposite is true.

This certified Application claims that there are only two choices, the "status quo" in the current building where surgery is being performed or a new structure that when the real costs are discussed is ruinous financially using Ambulatory Surgical Center reimbursement rates. Not one word in the entirety of the Application mentions the costs of renovating the current structure where walls are easily moved, and the space is plentiful. In fact, only 8 of the licensed 11 operating rooms are being utilized. Creative sealed renovations could be accomplished at a fraction of the cost of the implausibly costly proposed new structure with its vast expansion of land use which would be leased.

The current land lease is \$68,000 per month or \$816,000 annually on 1.03 acres of

land. The new land lease where the new building would be constructed would occupy 8.62 acres an increase of 837%. The increased price for the sole remaining ASC for such an expansion of land owned by and adjacent to the sole Hospital in Cumberland County is not disclosed. The Applicant says the Hospital will charge "fair market" for the new land lease. Will the new land lease be the same for more than 8 times the land mass? Will the new land lease double, treble or increase by 837%? The Applicant won't say. For every multiple the new land lease would increase by \$816,000. The projected income statements ignore the land lease cost completely including the current amount paid. Is that an \$816,000 annual cost omission? \$1,632,000? \$2,448,000? \$6,829,920? The Applicant leaves this blank. Considering the current ASC has collected revenue of approximately \$16,000,000 such an omission is misleading and deeply troubling.

The current ASC has zero debt. The Application certified by the Applicant says that there will be a new loan for the new structure and equipment of \$22,500,000 which the Applicant says will be amortized over 10 years at 4.5%. The ASC would go from no debt service cost to \$233,186 per month or \$2,798,232 annually. The ASC has no debt service to pay out of its current \$16,000,000 in annual revenue and would be expected to suddenly adjust to paying out 17.4% of its total collections to a bank payment.

Forget that the loan is projected to be 4.5% at a time when interest rates are being raised by the Fed every couple of months. At the 4.5% range it is unsustainable.

Nothing in the rosy colored revenue increases covers these new costs. The building alone would carry debt service of \$176,184.98 per month or \$2,114,219.73 annually. The new building according to the certified Application would be leased for \$33 per square foot. At 38,500 square feet that rent would be \$1,270,500 annually. That is \$843,719.73 of annual red ink. That red ink assumes a full-blown triple net lease. Who pays for the Land Lease? The ASC?

Speaking of triple net leases the projected income statements project zero costs for the ASC for Building Maintenance and Grounds Maintenance. Who pays for that? The already bleeding landlord?

And the ASC lists zero costs for all business-related liability coverage, building insurance and malpractice. No insurance on the equipment.

And the ASC lists zero costs for utilities. Zero costs for power, gas, heat, and air conditioning. No phones or computer equipment or power to run lights in the ORs or for the surgical equipment to operate.

A new building and equipment combined worth \$22,500,000 is listed as having a property tax price tag of \$67,280 annually. The actual property tax rate for Fayetteville/Cumberland County is \$1.2985 per one hundred of value. The actual property tax would be \$292,162.50. That understates the annual property tax \$224,882.50.

Why would any Applicant leave such holes and omit ruinous payments which would lead the current ASC into bankruptcy? This ASC provides the sole alternative to Hospital rates in Cumberland County and surrounding Counties which are 2.09 times higher for outpatient surgical procedures.

The proposed new land lease just happens to be on hospital owned land which is directly adjacent to the Cumberland Hospital itself. That would make a surgical center eligible for being converted into a Hospital based Outpatient Surgical Facility and carry with it 2.09 times more revenue if the current ASC fails financially. That would cause patient copays to rise dramatically, and third-party payers would endure more costs and mean higher premiums.

The General Partner of the current ASC is directly controlled by the Cumberland Hospital. The Cumberland Hospital CEO Mike Nagowski has long expressed his goal of establishing a total health care Monopoly in Cumberland and surrounding Counties. The current ASC which Cumberland Hospital and Mr. Nagowski control is the only obstacle to the receipt of Hospital Rates for every surgical procedure in the entire region.

The ASC cannot carry the indebtedness of \$22,500,000 proposed by the Applicant. A hidden additional cost is the notation in the Application that the payments on that \$22.5million loan would begin on November 1, 2023. Including the July 1, 2024 opening day for the new facility that is an additional \$2,098,674 that the already cash poor ASC would have to come up with before the doors open. The Applicant does not say when the new Land Lease would begin but what is certain is the existing Land Lease of \$68,000 would continue through to June 30, 2024. If that new land lease starts at the same time the bank payments begin and if 8.62 acres somehow is no different than a Land Lease on 1.03 acres, it would mean another \$612,000 would have to be raised for a total deficit of \$2,710,674 before the first surgical patient is treated in the new proposed facility. No explanation is given in the Application as to this additional financial pressure.

Why would anyone with any competency produce such an Application with such ruinous financial omissions and a certain financial failure? Why indeed.

Take this ASC which down the road by financial necessity has to be converted to hospital-based rates to survive. \$16,000,000 in annual ASC revenue converts to \$3,440,000 for the exact same number of cases. The rose-colored projection of \$24,000,000 in ASC revenue in 2027 and with all the omissions continuing to be excluded shows a paltry \$1.99 million profit which in reality would be a loss. However, with Hospital Based Rates that \$24,000,000 would convert into \$50,160,000 and an enormous profit. All at the expense of the very people who own this Cumberland County public Hospital.

North Carolina General Statute 131E-183 establishes Review criteria for this Department.

The very least an Applicant should be providing is a demonstration of a fully functioning

ASC which can deliver quality care at the least possible cost, be economically viable and enhance competition in a positive way for the people that ASC serves.

Under the Statute (a) (4) The serious omissions and misleading commentary run contrary to that most basic requirement. Not once does the Applicant address the option of renovating the current facility. It addresses some issues on Page 31 of the Application and fails to say that moving walls for better accommodation was even inquired about. Instead of addressing a relatively inexpensive renovation it leaps to the need to spend \$22,500,000 and encumber a now debt free ASC into a crippling debt which the above clearly shows cannot be paid.

Under the Statute (a)(5) the Applicant's omissions make it clear that the operational projections are incomplete and omit millions of dollars of annual expenses which if disclosed would show a failing ASC with no prospects for survival.

Under the Statute (a) (18a) the need to demonstrate enhanced care will ultimately stifle all competition and dramatically increase outpatient surgical care costs for over 700,000 North Carolinians.

It is respectfully requested that this Department reject this Application as written and require that any resubmitted Application comply in all respects with the needs of this Department to make a fully informed decision.

Submitted this day July 28, 2022

Sincerely,

J. Mark McDaniel Jr.

Consultant, Certified by the North Carolina Superior Court as a Legal Expert  
For the Management of Medical Practices and Ambulatory Surgery Centers

## Service Area Demographics

The service area for surgical operating rooms per 10A NCAC 14C .2101 (12) means the OR service area as defined in Chapter 6 in the 2022 SMFP. The 2022 SMFP identifies Cumberland County as a single county OR service area. As shown in Section C.2, FASC also serves patients from Bladen, Harnett, Robeson, and Sampson counties. The following table summarizes recent ambulatory surgery utilization originating from the counties in FASC’s catchment area.

### FASC Catchment Area Ambulatory Surgery Cases by County of Residence

County of Residence	Ambulatory Surgery Cases Performed on County Residents			2-YR CAGR
	FFY2017	FFY2018	FFY2019	
Cumberland	16,852	16,966	17,434	1.7%
Harnett	6,260	6,561	6,801	4.2%
Robeson	8,411	7,556	8,111	-1.8%
Sampson	3,947	3,919	4,237	3.6%
Bladen	2,161	2,972	2,158	-0.1%
<b>Total</b>	<b>37,631</b>	<b>37,974</b>	<b>38,741</b>	<b>1.5%</b>

Source: DHR Healthcare Planning Section Ambulatory Surgery Patient Origin Reports, Ambulatory Surgical Cases: Patient's County of Residence

In total, residents of FASC’s catchment area resulted in over 38,000 ambulatory surgery cases during FFY2019. Approximately 22 percent of these cases were performed at FASC. The demographics of Cumberland County and surrounding communities support continued access to and utilization of FASC’s ambulatory surgery services. North Carolina Office of State Budget and Management (NCOSBM), projects the following annual population for the service area and surrounding counties.

### FASC Catchment Area Projected Population

Year	Bladen	Cumberland	Harnett	Robeson	Sampson	Total
2022	34,167	333,177	139,894	130,364	63,851	<b>701,453</b>
2023	34,123	333,644	141,778	130,277	63,898	<b>703,720</b>
2024	34,078	333,971	143,660	130,187	63,934	<b>705,830</b>
2025	34,034	334,207	145,536	130,094	63,967	<b>707,838</b>
2026	33,990	334,378	147,418	129,997	63,991	<b>709,774</b>
2027	33,947	334,505	149,293	129,905	64,009	<b>711,659</b>

Source: North Carolina Office of State Budget & Management

There are more than 700,000 residents in FASC’s catchment area. NCOSBM projects the population in the catchment area will increase by a CAGR of 0.3 percent during the next five years.

Do not change headers, footers, margins, font, font size, page orientation, or formatting of tables

# PULSE+ DESIGN GROUP

May 24, 2022

Ms. Micheala Mitchell  
Chief, Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
2704 Mail Center Service  
Raleigh, NC 27699-2704

Re: Cost Certification for FASC CON Application

Dear Ms. Mitchell:

Having worked with Fayetteville Ambulatory Surgery Center (FASC) to develop the design for the replacement facility, I am pleased to provide the cost certification letter for the CON application.

This is to certify that I have reviewed the Construction Costs for the referenced project. Based upon my review and comparison of this project with similar projects, I believe the costs indicated are a reasonable estimate of the Construction Costs to be expected on a project of the scope defined. The Anticipated Construction Cost is \$16,131,500 which excludes \$731,500 for estimated Architectural and Engineering Fees. The total square feet to be built for the ASC is approximately 38,500 SF.

In my professional opinion, the proposed program and plans represent the most reasonable and cost-effective design for FASC at this location. FASC will be built in conformance with all applicable federal, state, and local requirements. These spaces will meet or exceed current energy efficiency and water conservation standards indicated in the North Carolina State Building and Energy Codes. The ASC will include water-conserving fixtures and new energy-efficient LED lighting to the extent consistent with clinical needs and patient safety.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Basil Sherman II AIA, NCARB, ACHA, EDAC  
Principal

**Amortization Table  
FASC Replacement Facility**

**Annual Interest Rate**  
**Years**  
**Number of Payments**  
**Amount**

**4.50%**  
**10**  
**120**  
**\$22,500,000**

233,186  
9  
-----  
2,098,674

Date	Payment Number	Payment	Principal	Interest	Balance
11/1/2023	1	\$233,186	\$148,811	\$84,375	\$22,351,189
12/1/2023	2	\$233,186	\$149,369	\$83,817	\$22,201,819
1/1/2024	3	\$233,186	\$149,930	\$83,257	\$22,051,890
2/1/2024	4	\$233,186	\$150,492	\$82,695	\$21,901,398
3/1/2024	5	\$233,186	\$151,056	\$82,130	\$21,750,342
4/1/2024	6	\$233,186	\$151,623	\$81,564	\$21,598,719
5/1/2024	7	\$233,186	\$152,191	\$80,995	\$21,446,528
6/1/2024	8	\$233,186	\$152,762	\$80,424	\$21,293,766
7/1/2024	9	\$233,186	\$153,335	\$79,852	\$21,140,431
8/1/2024	10	\$233,186	\$153,910	\$79,277	\$20,986,521
9/1/2024	11	\$233,186	\$154,487	\$78,699	\$20,832,034
10/1/2024	12	\$233,186	\$155,066	\$78,120	\$20,676,968
11/1/2024	13	\$233,186	\$155,648	\$77,539	\$20,521,320
12/1/2024	14	\$233,186	\$156,231	\$76,955	\$20,365,089
1/1/2025	15	\$233,186	\$156,817	\$76,369	\$20,208,271
2/1/2025	16	\$233,186	\$157,405	\$75,781	\$20,050,866
3/1/2025	17	\$233,186	\$157,996	\$75,191	\$19,892,870
4/1/2025	18	\$233,186	\$158,588	\$74,598	\$19,734,282
5/1/2025	19	\$233,186	\$159,183	\$74,004	\$19,575,099
6/1/2025	20	\$233,186	\$159,780	\$73,407	\$19,415,319
7/1/2025	21	\$233,186	\$160,379	\$72,807	\$19,254,940
8/1/2025	22	\$233,186	\$160,980	\$72,206	\$19,093,960
9/1/2025	23	\$233,186	\$161,584	\$71,602	\$18,932,376
10/1/2025	24	\$233,186	\$162,190	\$70,996	\$18,770,186
11/1/2025	25	\$233,186	\$162,798	\$70,388	\$18,607,388
12/1/2025	26	\$233,186	\$163,409	\$69,778	\$18,443,979
1/1/2026	27	\$233,186	\$164,021	\$69,165	\$18,279,957
2/1/2026	28	\$233,186	\$164,637	\$68,550	\$18,115,321
3/1/2026	29	\$233,186	\$165,254	\$67,932	\$17,950,067
4/1/2026	30	\$233,186	\$165,874	\$67,313	\$17,784,193
5/1/2026	31	\$233,186	\$166,496	\$66,691	\$17,617,698
6/1/2026	32	\$233,186	\$167,120	\$66,066	\$17,450,578
7/1/2026	33	\$233,186	\$167,747	\$65,440	\$17,282,831
8/1/2026	34	\$233,186	\$168,376	\$64,811	\$17,114,455
9/1/2026	35	\$233,186	\$169,007	\$64,179	\$16,945,448
10/1/2026	36	\$233,186	\$169,641	\$63,545	\$16,775,807
11/1/2026	37	\$233,186	\$170,277	\$62,909	\$16,605,530
12/1/2026	38	\$233,186	\$170,916	\$62,271	\$16,434,614
1/1/2027	39	\$233,186	\$171,557	\$61,630	\$16,263,057

2,098,674 + Land lease  
+ current lease

5/1/2032	103	\$233,186	\$217,993	\$15,193	\$3,833,497
6/1/2032	104	\$233,186	\$218,811	\$14,376	\$3,614,686
7/1/2032	105	\$233,186	\$219,631	\$13,555	\$3,395,055
8/1/2032	106	\$233,186	\$220,455	\$12,731	\$3,174,600
9/1/2032	107	\$233,186	\$221,282	\$11,905	\$2,953,319
10/1/2032	108	\$233,186	\$222,111	\$11,075	\$2,731,207
11/1/2032	109	\$233,186	\$222,944	\$10,242	\$2,508,263
12/1/2032	110	\$233,186	\$223,780	\$9,406	\$2,284,482
1/1/2033	111	\$233,186	\$224,620	\$8,567	\$2,059,863
2/1/2033	112	\$233,186	\$225,462	\$7,724	\$1,834,401
3/1/2033	113	\$233,186	\$226,307	\$6,879	\$1,608,093
4/1/2033	114	\$233,186	\$227,156	\$6,030	\$1,380,937
5/1/2033	115	\$233,186	\$228,008	\$5,179	\$1,152,929
6/1/2033	116	\$233,186	\$228,863	\$4,323	\$924,066
7/1/2033	117	\$233,186	\$229,721	\$3,465	\$694,345
8/1/2033	118	\$233,186	\$230,583	\$2,604	\$463,763
9/1/2033	119	\$233,186	\$231,447	\$1,739	\$232,315
10/1/2033	120	\$233,186	\$232,315	\$871	\$0



Michael Tate, Professional Land Surveyor  
No. L-2450, certify that this is a true and correct  
survey of an existing parcel or parcels of  
land.

*Michael Tate*  
MICHAEL TATE, PLS

NO APPROVAL REQUIRED  
BY THE CITY OF FAYETTEVILLE  
SIGNATURE  
DATE 12-18-03

Planning Dept.

Seal: NORTH CAROLINA PROFESSIONAL LAND SURVEYOR, MICHAEL TATE, L-2450



NO APPROVAL REQUIRED  
BY THE CITY OF FAYETTEVILLE  
SIGNATURE  
DATE 12-18-03

Planning Dept.

Seal: NORTH CAROLINA PROFESSIONAL LAND SURVEYOR, MICHAEL TATE, L-2450

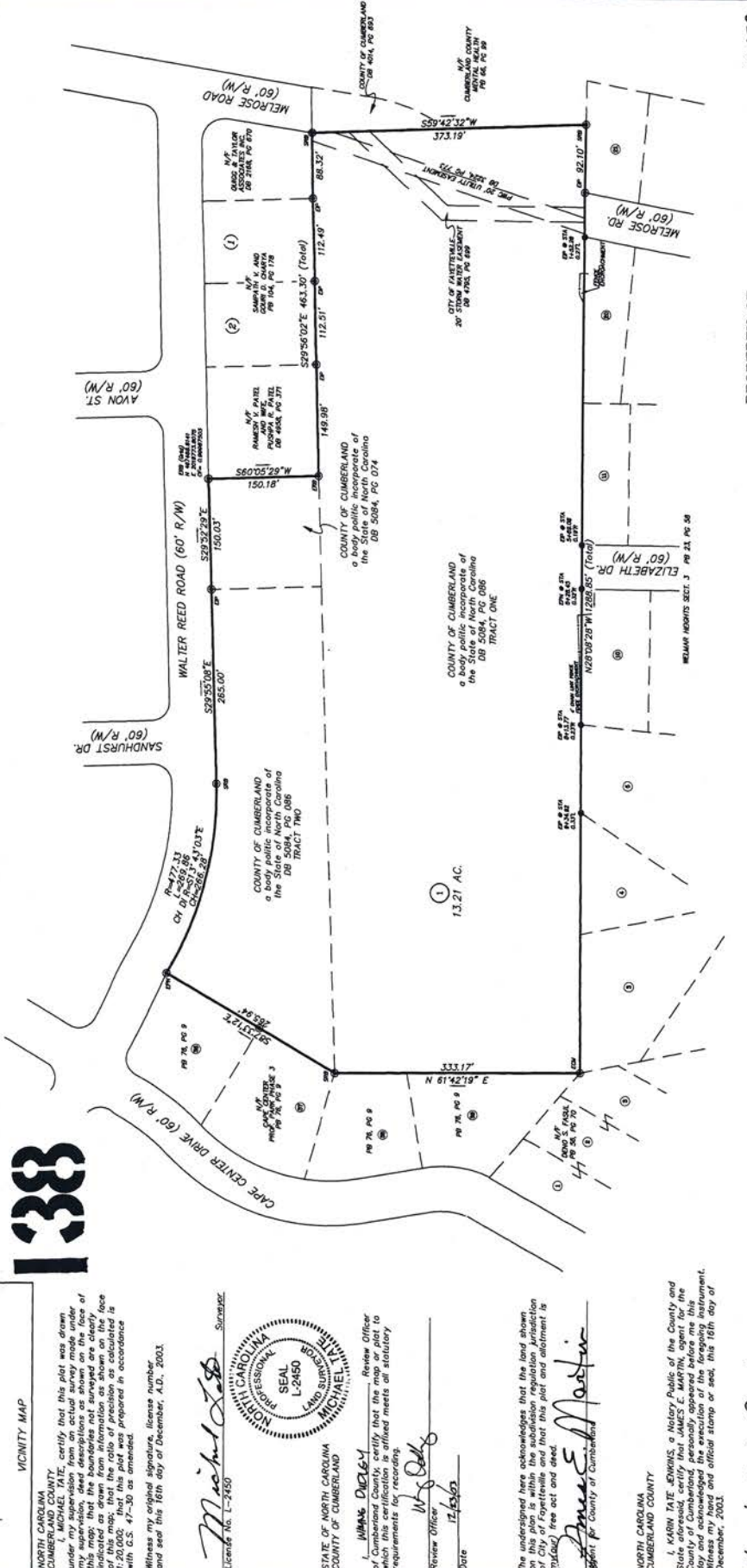
Notes:  
1. Zone PI  
2. Acreage computed by DMD method  
3. Grid control established by two receiver static survey of  
Cumberland County, North Carolina  
N 467135.545, E 2013686.677 and APP NO10229 elevation  
of 166.21'

Legend:  
EIP = Existing Iron Pipe  
EPK = Existing Pin  
EBS = Existing Iron Stake  
ECM = Existing Concrete Monument  
EPK = Existing Pin  
SNR = Sh. Rebar

Fayetteville  
ENGINEERING DIVISION  
NO APPROVAL REQUIRED

*Michael Tate*  
NAME  
DATE 12-18-2003

CRIP ROAD 89



PROPERTY OF  
71179

COUNTY OF CUMBERLAND, a body politic, a body politic of the State of North Carolina, incorporate of the State of North Carolina  
City of Fayetteville ~ Cross Creek Township  
Cumberland County ~ North Carolina

RECEIVED  
R-23-2003 AM 11:45:3  
LEE WHERREN, JR.  
CUMBERLAND COUNTY, N.C.

138  
DRAWN BY: TCF  
CHECKED BY: MT  
DATE: 12-16-03  
SCALE: 1" = 100'  
JOB NO. 2508  
JOB NO. 2508-2  
SHEET 1

MICHAEL TATE PROFESSIONAL LAND SURVEYOR  
3621 CLINTON RD. FAYETTEVILLE, NC 28301  
PHONE 910-483-7387

GRAPHIC SCALE  
( IN FEET )  
1 inch = 100 ft.

NOTARY PUBLIC  
JAMES E. MARTIN  
CUMBERLAND COUNTY, NORTH CAROLINA

NOTARY PUBLIC  
JAMES E. MARTIN  
CUMBERLAND COUNTY, NORTH CAROLINA

NOTARY PUBLIC  
JAMES E. MARTIN  
CUMBERLAND COUNTY, NORTH CAROLINA

BR 110 P 138

Medical supplies cost is based on FY2021 average cost per surgical case consistent with FASC experience, inflated 2.0 percent annually.

Other supplies are based on FY2021 average cost per surgical case consistent with FASC experience, inflated 2.0 percent annually.

Equipment maintenance based on FY2021 expense, inflated 2.0 percent annually.

Professional fees are based on FY2021 average cost per surgical case consistent with FASC experience, inflated 2.0 percent annually.

Interest expense is based on capital cost loan assuming 4.5 percent interest. See Loan Amortization following the assumptions.

Rental expense reflects existing annual lease expense which expires 07/01/2024. Thereafter, lease expense reflects 38,500 sq feet with a lease rate of \$33/SF. — *Doesn't cover debt service*

Taxes based on Cumberland County rate per \$100 valuation (0.799) and Fayetteville rate per \$100 valuation (0.4995).

Depreciation - The building renovation depreciation expense of the proposed project is calculated using the straight-line method of depreciation over a useful life of 30 years.

Depreciation - The equipment depreciation expense of the proposed project is calculated using the straight-line method of depreciation over a useful life of six years.

Depreciation - The capitalized fees depreciation expense of the proposed project is calculated using the straight-line method of depreciation over 15 years. This is consistent with IRS rules for deducting business expenses, which includes amortization of qualified capitalized expenses over 180 months (15 years).

Purchased services expense based on FY2021 experience, inflated 2.0 percent annually.

Management fee based on 3.55 percent of net revenue. — *Deals included*

Other services based on FASC FY2021 experience, inflated 2.0 percent annually. Other services includes administration, human resources, quality improvement, continuing education, certifications, courier services, and all other costs necessary to provide the proposed service.

### Form H Staffing Assumptions

See Form H for staffing detail regarding the current and expected FTEs by position and the respective current and projected average annual salaries.

- FTEs provided by FASC Director based on a review of the anticipated volumes by year.
- Salary rates based on average salaries per staff position.
- Inflation rate: 2.5%

**Form F.3a Historical & Projected Operating Costs**

	Prior Full FY	Interim Full FY	Interim Full FY	Interim Full FY
Form F.3 Operating Costs	FFY2021	FFY2022	FFY2023	FFY2024
Criterion (5)	From (10/01/2020)	From (10/01/2021)	From (10/01/2022)	From (10/01/2023)
Complete a separate Form F.3 for the entire facility and each service component	To (09/30/2021)	To (09/30/2022)	To (09/30/2023)	To (09/30/2024)
Salaries (from Form H Staffing)	\$3,287,578	\$3,371,875	\$3,489,890	\$3,612,037
Taxes and Benefits	\$657,516	\$674,375	\$697,978	\$722,407
Equipment Lease				
Independent Contractors (1)				
Medical Supplies	\$6,351,951	\$6,805,321	\$7,009,480	\$7,359,954
Other Supplies	\$364,004	\$389,985	\$401,684	\$421,768
Dietary (2)				
Housekeeping/Laundry (2)				
Equipment Maintenance	\$274,202	\$279,686	\$285,280	\$290,985
Building & Grounds Maintenance (2)				
Utilities				
Insurance				
Professional Fees	\$78,328	\$82,273	\$84,741	\$88,978
Interest Expense	\$2,375	\$2,375	\$2,375	\$396,372
Rental Expense	\$800,117	\$824,121	\$848,844	\$1,340,445
Property and Other Taxes (except Income)				\$22,427
Depreciation-Equipment	\$447,388	\$447,388	\$447,388	\$613,899
Depreciation - Renovation				\$170,985
Depreciation - Capitalized Expenses				\$13,944
Purchased Services	\$168,633	\$172,006	\$175,446	\$178,955
Other (Management Fee)	\$583,447	\$596,622	\$620,665	\$658,216
Other Services (See Assumptions)	\$1,033,862	\$1,107,654	\$1,140,883	\$1,197,928
Other Expenses (N/A)				
<b>Total Expenses</b>	<b>\$14,049,401</b>	<b>\$14,753,679</b>	<b>\$15,204,656</b>	<b>\$17,089,301</b>

Isn't that \$234,000

Do not change headers, footers, margins, font, font size, page orientation, or formatting of tables

**Form F.3b Projected Operating Costs upon Project Completion**

Form F.3 Operating Costs Criterion (5) Complete a separate Form F.3 for the entire facility and each service component	Interim Full FY	Interim Full FY	Interim Full FY
	CY2025	CY2026	CY2027
	From (01/01/2025) To (12/31/2025)	From (01/01/2026) To (12/31/2026)	From (01/01/2027) To (12/31/2027)
Salaries (from Form H Staffing)	\$4,017,099	\$4,375,546	\$4,694,082
Taxes and Benefits	\$803,420	\$875,109	\$938,816
Equipment Lease			
Independent Contractors (1)			
Medical Supplies	\$8,237,629	\$8,792,606	\$9,297,206
Other Supplies	\$472,064	\$503,868	\$532,784
Dietary (2)			
Housekeeping/Laundry (2)			
Equipment Maintenance	\$296,805	\$302,741	\$308,796
Building & Grounds Maintenance (2)			
Utilities			
Insurance			
Professional Fees	\$99,589	\$106,299	\$112,399
Interest Expense	\$877,127	\$788,872	\$696,562
Rental Expense	\$1,305,439	\$1,341,338	\$1,378,261
Property and Other Taxes (except Income)	\$67,280	\$67,280	\$67,280
Depreciation-Equipment	\$965,525	\$965,525	\$965,525
Depreciation - Renovation	\$537,717	\$537,717	\$537,717
Depreciation - Capitalized Expenses	\$42,256	\$42,256	\$42,256
Purchased Services	\$182,534	\$186,184	\$189,908
Other (Management Fee)	\$744,075	\$802,146	\$856,662
Other Services (See Assumptions)	\$1,340,780	\$1,431,110	\$1,513,240
Other Expenses (N/A)			
<b>Total Expenses</b>	<b>\$19,989,338</b>	<b>\$21,118,597</b>	<b>\$22,131,496</b>

*Where are the land lease and the purchase payment*

*no new Equip for 4 years*

*615,666 + Land lease + 220,970 Property Taxes*

## Comparison of CMS Payment Rates for Hospital-Based vs. ASC Surgical Procedures

HCPCS Code	Short Descriptor	Hospital-Based Payment CY2022	ASC Payment CY2022	Variance (ASC - OPPS)
29827	Arthroscop rotator cuff repr	\$6,397	\$2,998	(\$3,399)
29880	Knee arthroscopy/surgery	\$2,892	\$1,360	(\$1,532)
29881	Knee arthroscopy/surgery	\$2,892	\$1,360	(\$1,532)
42820	Remove tonsils and adenoids	\$5,194	\$2,443	(\$2,751)
42830	Removal of adenoids	\$2,794	\$1,108	(\$1,686)
43235	Egd diagnostic brush wash	\$826	\$419	(\$408)
43239	Egd biopsy single/multiple	\$826	\$419	(\$408)
43248	Egd guide wire insertion	\$826	\$419	(\$408)
43249	Esoph egd dilation <30 mm	\$1,659	\$706	(\$953)
45378	Diagnostic colonoscopy	\$810	\$411	(\$400)
45380	Colonoscopy and biopsy	\$1,059	\$537	(\$522)
45384	Colonoscopy w/lesion removal	\$1,059	\$537	(\$522)
45385	Colonoscopy w/lesion removal	\$1,059	\$537	(\$522)
62322	Njx interlaminar lmb/sac	\$649	\$329	(\$320)
62323	Njx interlaminar lmb/sac	\$649	\$329	(\$320)
64483	Inj foramen epidural l/s	\$841	\$426	(\$415)
64721	Carpal tunnel surgery	\$1,793	\$825	(\$968)
66821	After cataract laser surgery	\$514	\$260	(\$254)
66982	Cataract surgery complex	\$2,121	\$1,062	(\$1,058)
66984	Cataract surg w/iol 1 stage	\$2,121	\$1,062	(\$1,058)
69436	Create eardrum opening	\$1,382	\$526	(\$856)

Source: CMS April 2022 OPSS Fee Schedule Addendum B.-Final OPSS Payment by HCPCS Code for CY 2022, April 2022 ASC Fee Schedule Addendum AA -- Final ASC Covered Surgical Procedures for CY 2022

As demonstrated in the previous table, CMS payments are typically dramatically lower for surgical procedures performed in an ASC setting compared to a hospital setting.

Private insurance companies tend to save similarly, which means employers also incur lower health care costs when employees utilize ASC services. For this reason, both employers and insurers have recently been exploring ways to incentive the movement of patients and procedures to the ASC setting. An analysis of actual Medicare claims data released in 2020 by internationally recognized health economics and policy consulting company KNG Health Consulting, LLC, shows that ASCs reduced Medicare costs by \$28.7 billion from 2011 through 2018. The report projects that ASCs can be expected to reduce Medicare costs by an additional \$73.4 billion from 2019 to 2028. In 2018, Medicare savings tied to ASCs totaled \$4.2 billion and in 2028, they are projected to be more than \$12 billion each year.<sup>11</sup>

Throughout the COVID-19 pandemic, hospital capacity at FASC facilities has been taxed considerably, with inpatient census surging with COVID-19 hospitalizations throughout the past two years. The surges in COVID-19 hospitalizations underscore the critical role that ambulatory care serves in the healthcare landscape by providing an alternative site

<sup>11</sup> Ambulatory Surgery Center Association & KNG Health Consulting, LLC. REDUCING MEDICARE COSTS by Migrating Volume from Hospital Outpatient Departments to Ambulatory Surgery Centers, October 2020

Can reconstruct -  
 in hospital 3350 fees for  
 by migrating to HASCs

The need for the proposed project is qualitative in nature because FASC seeks to modernize its facility to promote the cost-effective delivery of ambulatory surgery supported. The need patients have to replace and relocate FASC, as proposed in this application, is described in detail on the following pages.

## Need to Replace FASC

Utilization at FASC is impacted by the age and design of the building in which the ASC is located. As previously described, FASC leases space from a third party where it operates the licensed facility. The building in which the facility is currently located was constructed in 1981. The age and design of the building presents several challenges to FASC's ongoing operations.

First, the ORs within the existing building are significantly undersized compared to contemporary OR standards. Today, most ORs are being constructed with an average size of 500-600 square feet versus the former standard of 400 square feet. FASC's smallest OR is only 182 SF. Other ORs measure 221 SF, 290 SF, 294 SF, and 347, which are all below the former standard of 400 square feet and well below the current industry standard of 500-600 square feet.

FASC's surgical capacity is severely limited because of its facility constraints. For example, only one (1) of FASC's existing 11 ORs can accommodate joint replacement cases. Additionally, FASC cannot perform spine and joint replacement cases at the same time because only one OR is large enough to accommodate these types of orthopaedic cases. Therefore, FASC's capacity is effectively restricted based on which ORs are being utilized and what surgical procedures are being performed. If FASC's ORs were uniformly sized and consistent with industry-standard OR design, the facility would not be restricted by capacity constraints and could accommodate a greater number of surgical cases.

The size of the ORs also restricts the type of surgical cases FASC can perform. For example, several of the ORs are too small to accommodate the ophthalmology equipment needed for certain ophthalmic surgical procedures. From an operational perspective, FASC must schedule OR block time based on room availability. In other words, if a surgical specialty requires a larger room, FASC is limited as to when it can schedule OR block time for the surgeon. As previously described, FASC cannot perform spine and joint replacement cases at the same time because only one OR is large enough to accommodate these types of orthopaedic cases. Thus, many surgeons among various specialties must either face delays in scheduling OR block time or decide to utilize other surgical facilities which may be more distant for patients or in a higher cost setting.

FASC has a clinical training affiliation with Campbell University Jerry M. Wallace School of Osteopathic Medicine for surgical residents to rotate at the facility. The size of FASC's ORs often present challenges when residents are onsite because there is insufficient room to accommodate an additional person in the OR. Therefore, the existing facility limits FASC's ability to support Campbell's residency program, which is inconsistent with Statutory Review Criterion (14).

Second, the layout of the facility is highly inefficient. For example, the pre-operative and post anesthesia care units (PACU) are located on opposite sides of building. Thus, it is physically taxing on staff to move patients through the facility during their encounter. The pre-operative unit is distant from the waiting area; thus, older patients have to walk across the building to get from the lobby to the pre-operative unit. Many older patients are utilizing the facility for ophthalmic surgical procedures; thus, they may be visually impaired and have difficulty navigating the building. Orthopaedic patients may have difficulty ambulating from the lobby to the pre-operative area. In addition to being inconvenient, the existing layout is a safety risk for patients.

The existing building has undergone multiple renovations and expansions such that there are two entrances to the building, which is extremely confusing for patients. Patients often arrive at the wrong entrance which can cause

# Fayetteville Ambulatory Surgical Real Estate Holdings, LLC

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June 2, 2022

Ms. Micheala Mitchell  
Chief, Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
2704 Mail Center Service  
Raleigh, NC 27699-2704

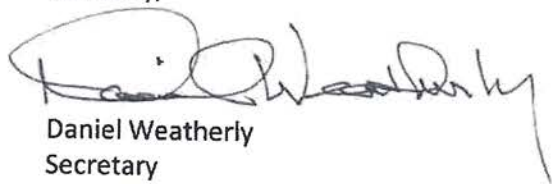
RE: Facility Lease Documentation for CON Application

Dear Ms. Mitchell:

It is my understanding that Fayetteville Ambulatory Surgery Center, Limited Partnership (FASC) is seeking Certificate of Need (CON) approval to replace and relocate its existing Ambulatory Surgery Center (ASC) in Cumberland County. If the CON application is approved, Fayetteville Ambulatory Surgical Real Estate Holdings, LLC is willing to develop a medical office building (MOB) at the proposed site, located on Walter Reed Road in Fayetteville, NC. In addition, Fayetteville Ambulatory Surgical Real Estate Holdings, LLC is willing to lease space in the future MOB to FASC to upfit space for the replacement ASC. The lease rate would be assessed based on a fair market rental value. I understand that FASC's CON application will include the cost for the upfit of the space for the ASC. Fayetteville Ambulatory Surgical Real Estate Holdings, LLC intends to file an MOB exemption letter with the CON Section at the appropriate time to address the rest of the space.

If I can be of any further assistance on this matter, please feel free to contact me.

Sincerely,



Daniel Weatherly  
Secretary  
Fayetteville Ambulatory Surgical Real Estate Holdings, LLC  
910-615-6700

Under the Statute (a) (18a) the need to demonstrate enhanced care will ultimately stifle all competition and dramatically increase outpatient surgical care costs for over 700,000 North Carolinians.

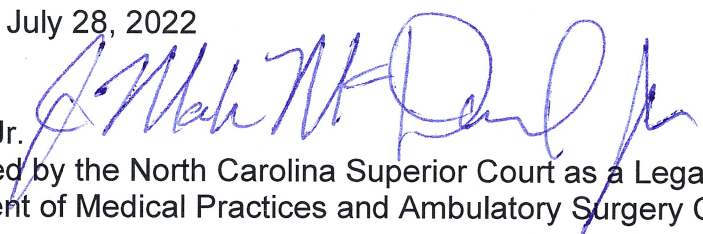
It is respectfully requested that this Department reject this Application as written and require that any resubmitted Application comply in all respects with the needs of this Department to make a fully informed decision.

Submitted this day July 28, 2022

Sincerely,

J. Mark McDaniel Jr.

Consultant, Certified by the North Carolina Superior Court as a Legal Expert  
For the Management of Medical Practices and Ambulatory Surgery Centers

A handwritten signature in blue ink, appearing to read "J. Mark McDaniel Jr.", is written over the typed name and title. The signature is fluid and cursive.



application and whether or not Cumberland has the lawful authority to cause FASC to file this application. The lawsuit is based upon the contractual obligations of the General Partner and Cumberland. Among the contentions in the lawsuit are that Cumberland was contractually forbidden from transferring individual stock and would not be effective "if it would result in the Limited Partners (or any successor in interest of the Limited Partners) owning directly or indirectly, individually or in the aggregate more than twenty percent of the stock or other equity interest of the General Partner or any of the affiliates of the General Partner." (Section 15.9, 1995 Agreement). Cumberland Hospital has come to own 100% of the equity of the General Partner. The Court will decide if Cumberland can lawfully own 100% of the equity in the General Partner. Certain portions of the Complaint are redacted, but the unsealed portions are supplied with this response. (Exhibit 5).

The Application states that FASC will be much improved in the care of patients once the facility is moved over to the land on the campus of Cumberland Hospital. Cumberland Hospital, however, was recently rated by Centers for Medicare and Medicaid Services (CMS). The Cape Fear Valley Medical Center in Fayetteville (Cumberland Hospital) was 1 of 192 hospitals in the United States only given one star out of a possible 5 star rating scale. (Exhibit 5 – the complete report can be found at <https://www.beckershospitalreview.com/rankings-and-ratings/192-hospitals-with-1-star-from-cms-2022.html>) This means that 93.8 percent of the hospitals in the United States are rated above Cumberland and Cumberland has the lowest rating possible on the CMS scale. These statistics do not suggest that the quality of patient care with FASC will improve once it is under the total domination of Cumberland hospital.

It is respectfully requested that the Department reject this application on grounds that it is incomplete and misleading and on the ground that the Applicant has failed to meet the mandates as indicated by the language "shall demonstrate" under numbers 4 and 5 of the review criteria.

Submitted, this the 28th day of July, 2022.

*Michael G. Woodcock, MD*  
/s/ Michael G. Woodcock, M.D.  
Michael G. Woodcock, M.D.  
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2047 Valleygate Dr.  
Fayetteville, NC 28304  
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