C: Dir., Department of Recreation, Parks & Open Space

City of NORFOLK

To the Honorable Council
City of Norfolk, Virginia

January 28, 2014

From: Darrell R. Crittendon, Director of Recreation, Parks & Open Space

Subject: New Two-Year Lease Agreement for the Bon Secours-DePaul Medical Center for space at 7300 Newport Avenue

Reviewed: Wynter C. Benda, Assistant City Manager

Ward/Superward: 1/7

Approved: Marcus D. Jones, City Manager

Item Number: **PH-13**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Bon Secours – DePaul Medical Center, Inc.
861 Glenrock Road, Suite 102
Norfolk, Virginia 23502

III. **Description**

This agenda item is an Ordinance authorizing a new two-year lease agreement with an option to extend an additional year between the City of Norfolk (the "City") and the Bon Secours-DePaul Medical Center, Inc. ("Bon Secours") to use approximately 9,330 square feet of the Norfolk Fitness and Wellness Center located at 7300 Newport Avenue.

IV. **Analysis**

This Lease Agreement allows Bon Secours to use the space at Norfolk Fitness and Wellness Center to provide outpatient rehabilitation services to include physical therapy, occupational therapy, and speech-language therapy as well as senior fitness and wellness programs. The agreement will be in effect during the time period of January 1, 2014 to December 31, 2015 with the optional year commencing from January 1, 2016 to December 31, 2016.

V. Financial Impact

Bon Secours-DePaul Medical Center, Inc. will pay a base rent of $11.40 per square foot for the initial year with a 3% increase each subsequent year. Such fees equate to annual payments of $106,405.56 for the first year; $109,597.68 for the second year; and $112,885.56 during the optional year. These funds have been previously deposited into a general real estate account.

VI. Environmental

There are no known environmental issues related to the Lease Agreement.

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, a legal notice was posted in *The Virginian Pilot*. In addition, public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Lease Agreement

11/4/2013-km

Form and Correctness Approved:

By _____
Office of the City Attorney

Contents Approved:

By _____
DEPT. Recreation, Parks and Open Space

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING A LEASE WITH BON SECOURS-DEPAUL MEDICAL CENTER, INC., FOR CERTAIN PREMISES LOCATED AT 7300 NEWPORT AVENUE, NORFOLK, VIRGINIA.

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BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Lease between the City of Norfolk as lessor and Bon Secours-DePaul Medical Center, Inc., as lessee, whereby the City of Norfolk leases to Bon Secours - DePaul Medical Center, Inc., certain City owned premises in the building known as The Norfolk Fitness and Wellness Center, measuring approximately 9330 square feet, for a period of two years, with the option to extend for one additional one year term, a copy of which is attached as Exhibit A, is hereby approved.

Section 2:- That the City Manager is authorized to execute the Lease on behalf of the City of Norfolk, and to do all things necessary and proper to carry out its terms.

Section 3:- That the City Manager is further authorized to correct, revise or amend the Lease, with the advice and counsel of the City Attorney, as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after thirty days from the date of its adoption.

LEASE AGREEMENT

THIS LEASE AGREEMENT, ("Lease") made and entered into this ____ day of _____, 2013, by and between the **CITY OF NORFOLK,** a municipal corporation of the Commonwealth of Virginia, herein referred to as "Landlord" whose address is 810 Union Street, Suite 900 City Hall Building, Norfolk, Virginia 23510, and **BON SECOURS – DEPAUL MEDICAL CENTER, INC.** herein referred to as "Tenant," whose address is 150 Kingsley Lane, Norfolk, Virginia, 23505.

WITNESSETH:

Landlord, for and in consideration of the rents, covenants and agreements to be performed by Tenant, leases unto Tenant, and Tenant leases from Landlord, a portion of the property owned by the City of Norfolk known as the Norfolk Fitness and Wellness Center, located at 7300 Newport Avenue, Norfolk, Virginia ("Premises"). The Premises consist of approximately **9,330** square feet of leasable space, as shown in Exhibit A, which is attached hereto and made part hereof.

1. **TERM OF LEASE**. The term of this lease shall be for a period of two (2) years ("Term"), beginning January 1, 2014, or the effective date of the City ordinance authorizing the lease whichever shall last occur ("Commencement Date"), and ending on December 31, 2015 ("Termination Date"), subject to the default provisions herein contained. At the Tenant's option, Tenant may extend the lease for one (1) additional one year term by notifying Landlord sixty (60) days prior to the termination date of the current lease or any option period.

2. **USE.** Tenant covenants and agrees to use and occupy the Premises for the following sole purposes: (1) Outpatient Physical Rehabilitation services, to include Physical Therapy, Occupational Therapy and Speech-Language Therapy, as part of the Bon Secours-

DePaul Department of Physical Rehabilitation Services; and (2) Senior wellness, fitness and education programs; office space for the Bon Secours Senior Services Program staff.

3. **ACCEPTANCE OF PREMISES**. Tenant acknowledges that it is familiar with the Premises and hereby agrees to accept the Premises in its present condition, "As Is." Tenant further acknowledges that neither Landlord nor anyone on Landlord's behalf has made any representations or warranties with respect to the condition of the Premises.

4. **BASE RENT**.

4.1 For the initial year of the Term, Tenant agrees to pay Landlord as rent for the Premises the sum of Eleven dollars and Forty cents ($11.40) per square foot of leased space ("Base Rent"). The Base Rent for each subsequent year of this Lease shall be increased by three percent (3%) of the Base Rent for the preceding year. The rental payments for the two years of the Lease Agreement and the optional one year extension will be payable in equal monthly installments, as follows:

January 1, 2014 to December 31, 2014	$8,867.13/mo
January 1, 2015 to December 31, 2015	$9,133.14/mo
January 1, 2016 to December 31, 2016	$9,407.13/mo

4.2 Each monthly installment of rent shall be made promptly in advance of the first day of each and every month during the term of this lease without demand and without offset or deduction, together with such additional rent and other charges required to be paid by Tenant as are hereinafter set forth in this lease (the "Additional Rent"). No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment stipulated in this Lease shall be deemed other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or payment, or any writing accompanying any check or payment of

such rent, be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Rent for any partial month shall be pro-rated.

4.3 The rent payments shall be paid by check or money order made payable to the "Treasurer, City of Norfolk" and sent to the City of Norfolk, Department of Recreation Parks and Open Space, Business Services Division, 501 Boush Street, Norfolk, Virginia, 23510.

5. **ADDITIONAL RENT**

5.1 Additional Rent payable by Tenant shall include Tenant's proportional share of all taxes, assessments, and other governmental charges, if any, assessed due to Tenant's use or occupancy of the Premises. Such charges shall exclude all charges arising from hazardous substances deposited prior to Tenant's tenancy assessed against or levied upon the Premises or related to the use or occupancy thereof.

5.2 Each of the items payable as Additional Rent shall be paid on or before the date when each becomes due, except Tenant may pay any tax, assessment, or other governmental charge after it becomes due but before any penalty or interest accrues thereon. Landlord shall furnish to Tenant any and all bills for items payable as Additional Rent in sufficient time for payments to be made by Tenant. Tenant shall furnish to Landlord, within thirty (30) days after the date upon which any such charge is payable by Tenant as hereinabove provided, official receipts of the appropriate taxing or governmental authority, or other proofs satisfactory to Landlord, evidencing the payment of Additional Rent. If Tenant shall fail to make any payment or to do any act required of it by any provision of this Lease, Landlord may make such payment or do such act and the amount of such payment, or the cost of doing such act, together with interest thereon at the rate of 18% per annum, shall be deemed Additional Rent payable by

Tenant upon demand by Landlord. The making of any such payment or the doing of any such act by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this Lease upon Tenant's default in the making of such payment or the doing of such act. All taxes, assessments, and other governmental charges assessed against or levied upon the Premises shall be apportioned as between Landlord and Tenant at the Commencement Date and Termination Date.

5.3 Tenant shall have the right to contest or review by appropriate proceedings or in any other manner permitted by law, at Tenant's sole cost and expense, in Tenant's name or in Landlord's name, or both, any tax, assessment or charge, and Landlord shall, without expense or charge to it, cooperate with Tenant and execute any documents or pleadings required for such purposes. If required by Landlord, Tenant shall furnish a surety company bond, or other security reasonably satisfactory to Landlord, against any liens by reason of such contest. The aforesaid contest by Tenant may include appeals from any judgments, decrees or orders until a final non-appealable determination shall be made by a court or governmental department or authority having jurisdiction in the matter.

6. **JANITORIAL SERVICES AND TRASH REMOVAL.**

6.1. As permitted by law, Tenant shall store all trash, rubbish and garbage in fully closed containers at the rear of the Premises and Tenant shall pay all costs incidental to the removal thereof, unless Tenant is part of a common trash removal service provided by the Landlord. Tenant shall not burn or otherwise dispose of any trash, waste, rubbish or garbage in and or about the Premises. Tenant shall ensure that waste from the Premises is disposed of in accordance with all local, state, and federal requirements. Tenant shall reimburse any expenses

incurred by Landlord related to the removal of waste, rubbish or garbage and such reimbursement shall be included in Additional Rent.

7. **SECURITY DEPOSIT.** Tenant deposited with Landlord and Landlord retains a security deposit in the amount of one month of rent for the initial year of this Lease ("Security Deposit") as security for the full and faithful performance by Tenant of all terms and covenants of this Lease required to be performed by Tenant. If at any time Tenant shall be in default of any of the covenants of this Lease, Landlord is entitled, at its discretion, to use the Security Deposit, or so much thereof, as may be necessary to rectify or cure such default. In the event that the Landlord utilizes the Security Deposit, Tenant shall promptly restore same to Landlord upon Landlord's demand. No interest shall be paid by Landlord to Tenant with respect to the Security Deposit. The Security Deposit, or that portion that remains, shall be returned to Tenant following the termination of this lease, provided that Tenant has fully and faithfully carried out all its terms and covenants and paid up all its rent and any other fees due Landlord.

8. **INSURANCE**

8.1. Tenant, at its own cost and expense, shall obtain and maintain Comprehensive General Liability Insurance on the Premises for the joint and separate benefit of Landlord and Tenant, in an amount not less than $2,000,000 for any one occurrence. Tenant shall provide Landlord a Certificate of Insurance indicating the coverage described above, and shall provide updates of the most recent effective coverage. Notwithstanding the foregoing, for so long as Tenant is the tenant under this Lease, the commercial general liability policy to be maintained by Tenant may be provided by Bon Secours Assurance Company, Ltd., an affiliate of Tenant("BSAC") which need not be licensed to do business in Virginia so long as BSAC

reinsures all liabilities in excess of $2,000,000 with one or more insurance companies meeting all of the requirements of this Section.

8.2. Tenant is responsible for any and all damages to Tenant's inventory, furniture, fixtures and equipment, and will, at all times during the lease term and at its own cost and expense, maintain all risk property insurance against damage by fire or other perils in an amount equal to the replacement value of all parts of the Premises for which the Tenant is responsible. Each insurance policy shall be so written as to protect the Landlord and the Tenant, as their respective interests may appear, and the insurance policies shall include a waiver of subrogation, and all liability policies shall specifically name the Landlord as an Additional Insured under the policy. If the Tenant fails to provide such insurance, Landlord may terminate this Lease with ten (10) days notice to Tenant. Certificates of Insurance verifying all required insurance policies shall be delivered to the Landlord prior to the Tenant's occupancy of the Premises.

8.3. Tenant agrees to assume all responsibility for indemnity against exposure for casualty losses of property or business interruption that arise as a result of the tenant's lease and, or use of the Landlord's facility. Tenant warrants that its liability, property and business interruption insurers shall have no rights against Landlord by virtue of assignment, loan agreement or otherwise.

8.4 The Tenant shall maintain during the life of this contract such Professional and, or, Errors and Omissions Liability Insurance as shall protect the Tenant against legal liability as a result of alleged negligence or errors and omissions, including personal injury, which may arise from the performance of the Tenant's operations with the facility whether such operations be by the Tenant, the Tenant's staff, or by any Subcontractor or anyone directly or

indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Professional Liability Insurance shall be as follows: $2,000,000 Each Occurence.

9. **UTILITIES**. Landlord shall pay all charges when due for water, sewerage, gas and electricity, and other utility charges and utility taxes in connection with the use of the Premises.

10. **REPAIRS**.

10.1 Landlord covenants that it will, at its own cost and expense and with reasonable dispatch after being notified in writing by Tenant of the need therefore, make such repairs to the "Common Areas", outside utility lines and exterior of the Premises, including the foundation, roof, gutters, down spouts and outside walls, but excepting all storefronts, glass, doors, awnings and canopies, if applicable and as may be necessary, to keep the same in a good, workmanlike condition of repair. Landlord shall also be responsible for maintenance and repair of (i) all plumbing equipment for water and sewage, including exterior water and sewer lines to the main line, and water and sewer lines under the floor slab, if applicable; (ii) the heating and air conditioning equipment, whether interior or exterior; and (iii) the electrical equipment serving the Leased Premises, whether interior or exterior.

10.2 Other than as set forth in Section 10.1, Tenant shall keep and maintain the Premises in a good and complete state of repair and condition, except for ordinary wear and tear. Tenant shall make all repairs and replacements of every kind and character, to include, but not be limited to, storefront glass, awnings and signage, and maintain the Premises and the appurtenances belonging thereto, and will not call upon Landlord during the term of this Lease for the making of any repairs or replacements whatsoever. All repairs and replacements shall:

(a) be performed in a good and workmanlike manner,

(b) be at least substantially equal in quality and usefulness to the original work,

(c) be of first-class modern character, and

(d) not diminish the overall value of the Premises.

In this context "Premises" refers to the partitions, ceilings, floors and other improvements heretofore or hereafter constructed at Tenant's expense.

11. **REQUIREMENTS OF PUBLIC AUTHORITIES**. Tenant shall suffer no waste or injury in or about the Premises and shall comply with all federal, state, county and municipal laws, ordinances and regulations applicable to the structure, use and occupancy of the Premises, including, without limiting the generality of the foregoing, the making of any structural repairs that may be required in order to comply with said laws, ordinances and regulations. In addition, Tenant shall effect the correction, prevention and abatement of nuisances, violations or other grievances in upon or connected with the Premises and shall also promptly comply with all rules, orders and regulations of the Board of Fire Underwriters and any insurance company insuring the Premises. In this context, "Premises" refers to the partitions, ceilings, floors and other improvements heretofore and hereafter constructed at Tenant's expense.

12. **LANDLORD'S RIGHT TO CURE**. Landlord and its agents and workmen shall have the right to enter into and upon the Premises at all reasonable times, for the purpose of inspection and examination of the state of repair and condition thereof. Landlord may, but shall not be obligated to make such repairs as shall be necessary as a consequence of any failure of Tenant to meet its obligations under this Lease. The cost of any such repairs undertaken by Landlord, together with interest thereon at the rate of 18% per annum, shall be deemed to be Additional Rent payable by Tenant upon demand by Landlord. The making of any such repairs

by Landlord shall not constitute a waiver by Landlord of any right or remedy provided by this lease upon Tenant's default in the making of repairs.

13. **NET RENT**. It is the purpose and intent of Landlord and Tenant that the rent shall be absolutely net to Landlord, except as may be otherwise specifically provided herein. The Base Rent specified in Section 4 and Additional Rent specified in Section 5 hereof, shall be paid each month during the term of this Lease without any abatement, deduction, set off or counterclaim, except as hereinafter provided, and all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise or become due during the term of this Lease, unless the charge or obligation arises as a result of an Event of Default (as hereinafter defined) by Tenant hereunder, shall be paid each month by Tenant as set forth herein.

14. **DESTRUCTION**. If, during the term of this Lease, the Premises or any part thereof, including portions of the building not occupied by Tenant, shall be damaged by fire, storm, or other casualty, Landlord shall not be obligated to repair or rebuild the same, and if the Premises become untenantable due to fire, storm, or other casualty and would not be rendered tenantable by Tenant's discharge of the obligation to maintain and repair the Premises, this Lease shall immediately terminate, provided always that there shall be no cessation of rent if the damages shall have been the result of the negligence, default, or willful act of Tenant or its agents or employees. Landlord shall provide written notice to Tenant of its intent to terminate this Lease as provided for in this Section 14 within thirty (30) days of the casualty.

15. **INDEMNIFICATION**. Tenant shall indemnify and save harmless Landlord from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Premises by reason of any breach or nonperformance of any covenant or condition of this Lease by Tenant, or by Tenant's intentional

act or negligence. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by Landlord in the defense of such claims or incurred by Landlord as a result of a breach of any provision of this Lease by Tenant.

16. **NON-LIABILITY OF LANDLORD**. Landlord shall not be liable for any damage or injury which may be sustained by Tenant or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, drains, leaders, gutters, valleys or the like, or of the electrical, or sprinkler, equipment, if any, in the Premises, or by reason of the elements, unless such damage or injury is the result of the negligence or breach of this Lease by Landlord.

17. **ALTERATIONS OR ADDITIONS**.

17.1 Tenant will during the Term keep and at the expiration thereof deliver up said Premises in as good order and condition as the same now are, reasonable wear and tear and damage by accident, fire or storm alone excepted. Tenant shall not make any alterations or additions without Landlord's written consent, which shall not be unreasonably withheld. All alterations, additions or improvements made by either of the parties hereto upon the Premises, except moveable furniture put in at the expense of the Tenant, shall be the property of the Landlord and shall remain upon and be surrendered with the Premises at the Termination of this Lease. All alterations, additions, or improvements to Landlord shall be made in conformity with all building code and permitting requirements.

17.2 In addition to the requirements of paragraph 17.1, all plans for and installation of communication or electronic facilities (e.g. telephone or computer), including any

additional alterations to the Premises necessary for such facilities, must be coordinated with and approved by the City of Norfolk's Department of Information Systems.

17.3 Tenant will be responsible for all costs associated with any alteration or build out to the Premises, including but not limited to any cost associated with communication or electronic installation, equipment, or services.

18. **ASSIGNMENT AND SUBLETTING.** Tenant will not assign this Lease or sublet the Premises without obtaining prior consent in writing from the City of Norfolk City Manager.

19. **AIR AND WATER POLLUTION.** Tenant expressly covenants and agrees to indemnify, defend and save Landlord harmless against any claim, damage, liability, cost, penalty, or fine which Landlord may suffer as a result of air, noise, water or other pollution caused by Tenant in its use of the Premises. Tenant covenants and agrees to notify Landlord immediately of any claim or notice served upon it containing any allegation that Tenant is causing such pollution. Tenant, in any event, will take immediate steps to halt, remedy or cure any such pollution caused by Tenant in connection with its use of the Premises.

20. **COVENANT AGAINST LIENS.** Tenant agrees that it shall not encumber, or suffer or permit to be encumbered, the Premises or the fee thereof by any lien, charge or encumbrance, and Tenant shall have no authority to mortgage or hypothecate this Lease in any way whatsoever.

21. **HAZARDOUS SUBSTANCES PROHIBITED**

21.1 For purposes of this Lease, "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act

(42 U.S.C.§6901 et seq.) (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et seq.) (CERCLA) or any other federal, state or local environmental law, ordinance, rule or regulation.

21.2 Tenant shall be prohibited from bringing upon or permitting any of its employees or agents from bringing upon the Premises any hazardous substances, as defined in subsection 21.1 above. It is understood and agreed that in this context, the term "agent" does not include independent contractors, unless Tenant has knowledge of such violations and acquiesces therein. In the event Tenant, or any of its employees or agents, permits any such hazardous substance to be brought upon the Premises, Tenant hereby agrees to defend (with counsel satisfactory to Landlord) and to indemnify and hold Landlord harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorneys fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances on the Premises and losses and claims against Landlord resulting from Tenant's failure to comply strictly with the provisions of this section. Subject to an applicable defense available to Landlord, Landlord shall be responsible for any and all claims, actions, damages, liabilities and expenses in connection with the release of hazardous substances on Premises or any of the environmental condition existing on the Premises prior to Tenant's occupancy. The provisions of this section shall survive the expiration or earlier termination of this Lease.

22. **SURRENDER BY TENANT AT END OF TERM.**

22.1 Tenant will surrender possession of the Premises and remove all goods and chattels and other personal property in the possession of Tenant by whomsoever owned, at the end of the term of this Lease, or at such other time as Landlord may be entitled to re-enter

and take possession of the Premises, and leave the Premises in as good order and condition as they were on the Commencement Date, reasonable wear and tear excepted. In default of surrender of possession and removal of goods and chattels at the time aforesaid, Tenant will pay to Landlord the rent reserved by the terms of this Lease for such period as Tenant either holds over possession of the Premises or allows its goods and chattels or other personal property in its possession at such time to remain in the Premises, and in addition thereto, statutory penalties and all other damages which Landlord shall suffer by reason of Tenant holding over in violation of the terms and provisions of this Lease, including all reasonable claims for damages made by any succeeding tenant or purchaser of the Premises against Landlord which may be founded upon delay by Landlord in giving possession of the Premises to such succeeding tenant or purchaser, so far as such damages are occasioned by the holding over of Tenant.

22.2 If Tenant fails to remove all goods and chattels and other personal property in possession of Tenant, by whomsoever owned, at the end of the term of this Lease, or at such other time as Landlord may be entitled to re-enter and take possession of the Premises pursuant to any provision of this Lease, Tenant hereby irrevocably makes, constitutes and appoints Landlord as the agent and attorney-in-fact of Tenant to remove all goods and chattels and other personal property, by whomsoever owned, from the Premises to a reasonably safe place of storage, such moving and storage to be at the sole cost and expense of Tenant, and Tenant covenants and agrees to reimburse and pay to Landlord all expenses which Landlord incurs for the removal and storage of all such goods and chattels. In addition, at the option of Landlord, Tenant shall be deemed to have abandoned such goods, chattels and other personal property and the same shall become the property of Landlord. Tenant shall reimburse and pay Landlord for all expenses incurred in the removing or disposing of the abandoned property.

22.3 No act or thing done by Landlord shall be deemed an acceptance of the surrender of the Premises unless Landlord shall execute a written release of Tenant. Tenant's liability hereunder shall not be terminated by the execution by Landlord of a new lease of the Premises.

23. **DEFAULT BY TENANT**

23.1 If before or during the term of this Lease there shall occur any of the following events ("Events of Default"):

(a) if Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or of any material part of its assets, and such appointment shall not have been vacated; or

(b) if, within sixty (60) days after the commencement, any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within sixty (60) days after the appointment without the consent or acquiescence of Tenant of any trustee, receiver or liquidator of Tenant or of any material part of its assets, such appointment shall not have been vacated; or

(c) if the interest of Tenant in the Premises shall be sold under execution or other legal process; or

(d) if Tenant shall fail to pay any installment of Base or Additional Rent within fifteen (15) days of due date; or

(e) if Tenant shall fail to perform or observe any requirement, obligation, agreement, covenant or condition of this Lease, other than the payment of any installment of Base Rent or Additional Rent, and any such failure shall constitute for fifteen (15) days after Landlord gives Tenant notice thereof; or

(f) if any representation or warranty contained in this Lease shall prove to be incorrect in any material respect on the date upon which it was made; then at any time following any of such Events of Default listed above, Landlord, without waiving any other rights herein available to Landlord at law or in equity, may either (1) give Tenant notice of termination of this Lease, or (2) without terminating this Lease, give Tenant notice of Landlord's intention to re-enter and take possession of the Premises, with or without legal process. The giving of either of such notices to Tenant shall terminate Tenant's right to possession of the Premises under this Lease; however, without prejudice, as to the rights of Landlord to exercise all other available legal remedies and without discharging Tenant from any of its liabilities hereunder; provided, however, that if Landlord takes possession of the Premises, Tenant's obligation to pay rent shall cease as of the day Landlord takes possession of the Premises.

23.2 If Landlord elects to terminate Tenant's right to possession of the Premises under Section 23.1 following an Event of Default, Landlord may re-enter and take possession of the Premises, with or without legal process, and Tenant hereby waives any claim for damages as a result thereof, and Tenant shall be obligated to pay to Landlord as damages upon demand, and Landlord shall be entitled to recover of and from Tenant:

(a) all Base Rent and Additional Rent which are in arrears as of the date of termination of Tenant's right to possession, plus

(b) the cost to Landlord of all reasonable legal and other expenses and costs (including reasonable attorney's fees) incurred by Landlord in obtaining possession of the Premises, in enforcing any provision of this Lease, in preserving the Premises during any period of vacancy, in making such alterations and repairs to the Premises as the Tenant was required to make pursuant to the terms of this Lease and in reletting the Premises, including all reasonable brokerage commissions therefore, plus

(c) either:

(i) in the event of Landlord's giving notice of its intention to reenter and take possession without terminating this Lease, damages (payable in monthly installments, in advance, on the first day of each calendar month following the giving of such notice and continuing until the date originally fixed herein for the expiration of the then current term of this Lease) in amounts equal to the Base Rent and Additional Rent due prior to Landlord's reentering and taking possession of the Premises; Landlord may relet the Premises, or any part or parts thereof and Landlord may charge a rental in excess of that provided in this Lease (Tenant shall have no right to any excess); or

(ii) in the event of Landlord's giving notice of termination of this Lease, an award for liquidated damages in an amount which, at the time of such termination, is equal to the excess, if any, of the installments of Base Rent and the aggregate of all sums payable hereunder as Additional Rent for the period which would otherwise have constituted the unexpired portion of the then current term of this Lease, plus the value of all other considerations to be paid or performed by Tenant during such period, over the fair rental value of the Premises,

as of the date of such termination, for such unexpired portion of the then current term of this Lease, or any part thereof if relet by Landlord for the unexpired term of this Lease, or any part thereof. If Landlord shall elect to re-enter and take possession without terminating this Lease, Landlord shall have the right at any time thereafter to terminate this Lease for such previous default, whereupon the provisions of this subsection with respect to termination will thereafter apply.

23.3 Landlord may sue for and collect any amounts which may be due pursuant to the provisions of Section 23.2 above from time to time as Landlord may elect, but no such suit shall bar or in any way prejudice the rights of Landlord to enforce the collection of amounts due at any time or time thereafter by a like or similar proceeding.

23.4 Tenant agrees to pay all costs of proceedings by Landlord for the enforcement of any breach of the terms and conditions of this Lease by the Tenant, including reasonable attorney's fees and expenses, which shall be deemed Additional Rent for the period with respect to which the Event of Default occurred, if Landlord is the prevailing party in such suit.

23.5 No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. The receipt and acceptance by Landlord of rent with knowledge of the default by Tenant in any of Tenant's obligations under this Lease shall not be deemed a waiver by Landlord of such default. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at the time when and governing the

proceedings, in which the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

23.6 No waiver by Landlord of any Event of Default or any default by Tenant in any covenant, agreement or obligation under this Lease shall operate to waive or affect any subsequent Event of Default or default in any covenant, agreement or obligation hereunder, nor shall any forbearance by Landlord to enforce a right or remedy upon an Event of Default or any such default be a waiver of any of its rights and remedies with respect to such or any subsequent default or in any other manner operate to the prejudice of Landlord.

24. **LATE FEE**. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. In such event that Tenant shall fail to pay, when the same is due and payable, any Base Rent, Additional Rent charges or adjustments, and if said sums have not been paid within ten (10) days of their due date, then Tenant shall pay to Landlord a "Late Charge" of One Hundred Dollars ($100.00) or two percent (2%) of the amount due on all rents, whichever is greater. Tenant further covenants and agrees to pay Landlord as a "bad check" or returned check charge the amount of Fifty Dollars ($50.00) per bad check. The payment of any late fee shall not in any way be curative of any Event of Default and payments pursuant to this section shall not affect any of Landlord's rights and remedies under Section 12.

25. **NO JOINT VENTURE.** It is hereby agreed that nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and

Tenant, or between Landlord and any other party, or cause either party to be responsible in any way for the debts or obligations of the other party.

26. **QUIET ENJOYMENT**. Landlord covenants that Tenant, on paying the rental and performing the covenants and conditions contained in this Lease, shall and may peaceably and quietly have, hold and enjoy the Premises for the term aforesaid.

27. **CERTIFICATES BY TENANT AND LANDLORD**. Tenant and Landlord agree at any time and from time to time during the term of this Lease, within ten (10) days after written request from the other, to execute, acknowledge and deliver to the requesting party or to a third party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modification), and the dates to which the Base Rent, Additional Rent and other charges have been paid in advance, if any, and stating whether to the best knowledge of the party, the requesting party is in default in the performance of any covenant, agreement or condition contained in this lease, and, if so, specifying each such default of which such party may have knowledge. Such third party shall have the right to rely upon the contents of any such written statement.

28. **NOTICES**

28.1 Whenever it is provided herein that notice, demand, request or other communication shall or may be given to or served upon either of the parties, or if either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or the Premises, each such notice, demand, request or other communication shall be in writing, and any law or statute to the contrary notwithstanding, shall be given or served as follows:

(a) if given or served by Landlord, either by hand delivery, overnight courier or by mailing the same to Tenant by registered or certified mail, postage prepaid, return receipt requested, addressed to

Bon Secours – DePaul Medical Center, Inc.
861 Glenrock Road, Suite 102
Norfolk, Virginia, 23502

or at such other address as Tenant may from time to time designate by notice given to Landlord in the manner herein provided; and

(b) if given or served by Tenant, either by hand delivery, overnight courier or by mailing the same to Landlord by registered or certified mail, postage prepaid, return receipt requested, addressed to

City of Norfolk
Department of Recreation, Parks and Open Space
Attn: Business Services Division
501 Boush Street
Norfolk, Virginia, 23510

or at such other address as Landlord may from time to time designate by notice given to Tenant in the manner herein provided.

28.2 Every notice, demand, request or other communication hereunder shall be deemed to have been given or served at the time that the same shall be hand delivered or deposited in the United States mail, postage prepaid, in the manner aforesaid.

29. **CAPTIONS**. The captions to the sections of this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this lease or any part thereof nor in any way affect this lease or any part thereof.

30. **COVENANTS AND CONDITIONS**. All of the terms and provisions of this Lease shall be deemed and construed to be "covenants" and "conditions" to be performed by the

respective parties as though words specifically expressing or importing covenants and conditions were used in each separate term and provision hereof.

31. **BROKERAGE REPRESENTATION**. Landlord shall have no obligation for the payment of any real estate commission in regard to this Lease, and Tenant shall indemnify and hold harmless Landlord from and against any claim by a real estate agent for any commission relative to this Lease.

32. **ENTIRE AGREEMENT**. This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

33. **APPLICABLE LAW**. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, and any suit arising out of this Lease only shall be brought in the State or Federal Courts located in the State of Virginia. In the event of any such suit, the parties hereto consent to the personal jurisdiction of such courts and waive any defense based on improper venue.

34. **BIND AND INURE CLAUSE**. The terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

35. **TENANT'S RECOURSE.** In any action or proceeding brought by Tenant against Landlord on this Lease, Tenant shall look solely to the Landlord's interest in the Premises for the payment of any damages or satisfaction of any liabilities or obligations of Landlord, and no judgment obtained by Tenant shall be enforceable against, or a lien upon, any property of Landlord other than the Premises.

36. **ATTORNEY'S FEES**. If any legal action is commenced by any party to enforce any provision of this Agreement, the losing party shall pay to the prevailing party all reasonable expenses incurred by the prevailing party in connection with such action, including costs and attorneys' fees.

IN WITNESS WHEREOF, the parties have executed or have caused this Lease to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

CITY OF NORFOLK

By: _____[SEAL]
City Manager

ATTEST:

_____
City Clerk

BON SECOURS-DEPAUL MEDICAL CENTER, INC.

By:_____[SEAL]

Title:_____

Approved as to content:

_____
Darrell R. Crittendon, Director of Recreation, Parks & Open Space

Approved as to form and correctness:

_____
Deputy City Attorney

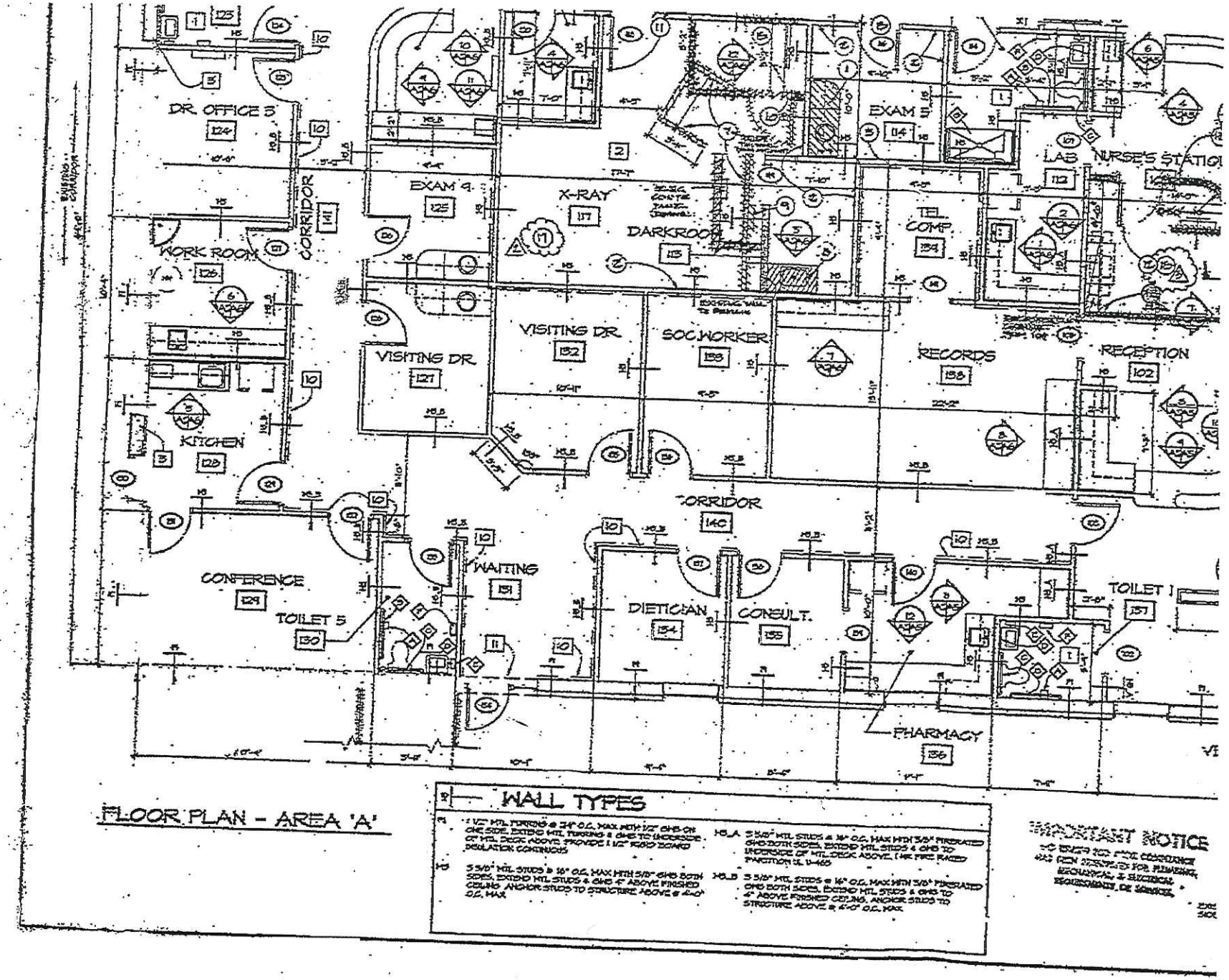
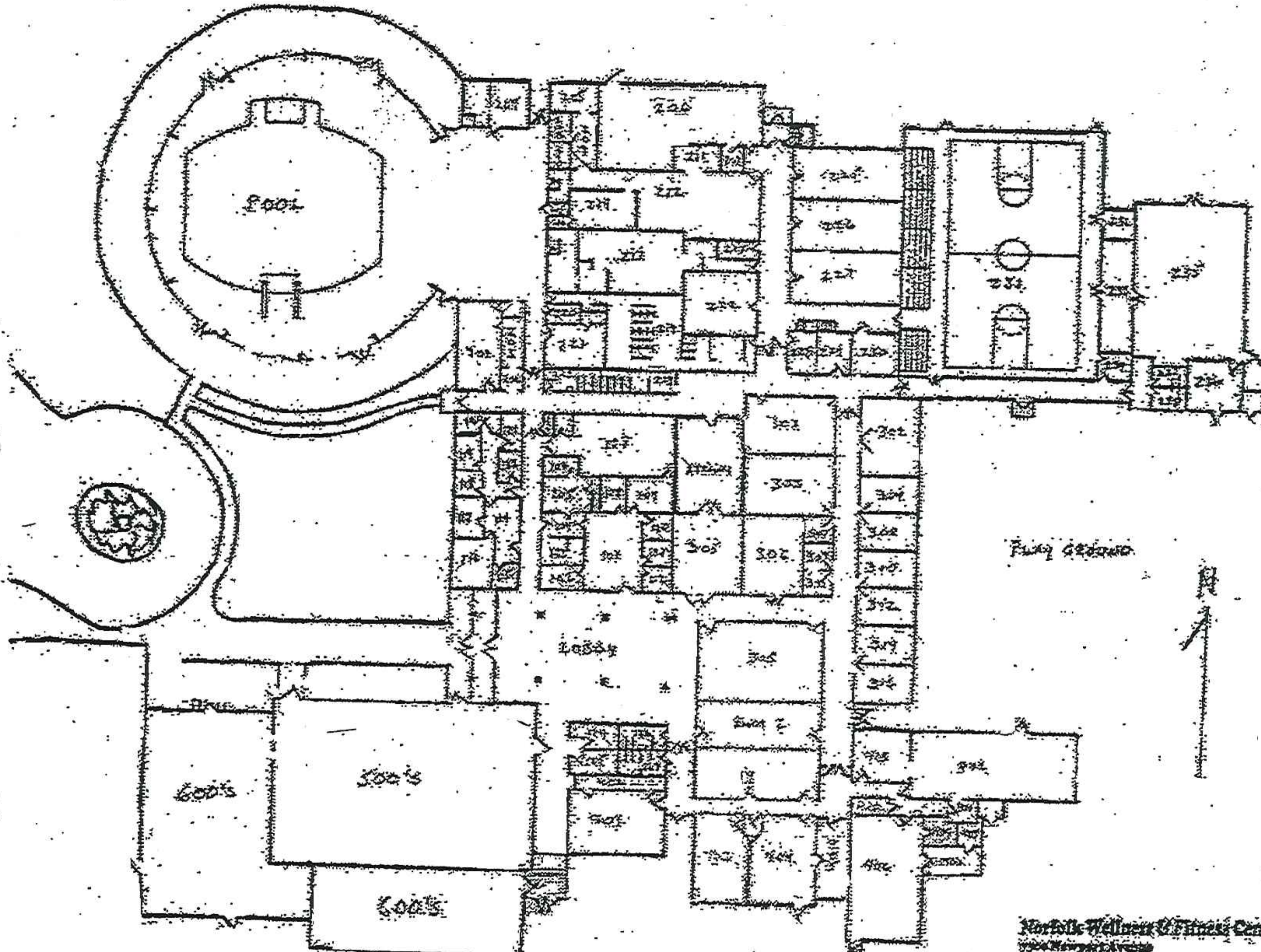


Exhibit A to Lease



Norfolk Wellness & Fitness Center