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In re:

FLORHAM PARK SURGERY CENTER,
LLC,

Debtor.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

Chapter 11

Case No.: 16-16964 (JKS)

Hon. John K. Sherwood

Hearing Date: May 30, 2017
at 10:00 a.m.

**CERTIFICATION OF PETER SCHOFEL IN RESPONSE TO
FLORHAM PARK CAPITAL LLC'S MOTION FOR RELIEF FROM
THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 AND RELATED
RELIEF AND A WAIVER OF THE 14 DAY STAY UNDER FED. R.
BANKR. P. 4001 (a)(3) AND IN SUPPORT OF CROSS-MOTION OF
HANOVER ASSOCIATES FOR RELIEF FROM THE AUTOMATIC
STAY UNDER 11 U.S.C. § 362 AND RELATED RELIEF AND A
WAIVER OF THE FOURTEEN (14) DAY STAY UNDER FED. R.
BANKR. P. 4001 (a)(3)**

PETER SCHOFEL, of full age, hereby certifies as follows:

1. I am a Vice President Jafel-JBS Corp., a General Partner of Hanover Associates (“Hanover” or the “Landlord”).
2. I make this certification in response to Florham Park Capital LLC’s motion for relief from the automatic stay under 11 U.S.C. § 362 and related relief and a waiver of the 14 day stay under Fed. R. Bankr. P 4001 (a)(3) (the “FPC Motion”) and in support of the cross-motion of Hanover for relief from the automatic stay under 11 U.S.C. § 362 and related relief

and a waiver of the fourteen (14) day stay under Fed. R. Bankr. P. 4001 (a)(3) (the “Hanover Cross-Motion”).

3. I am duly authorized to make this Certification on behalf of Landlord, which is based upon my personal knowledge, from information derived from the business records of the Landlord, which are under my control, or from the Bankruptcy Court proceedings of Florham Park Surgery Center, LLC (the “Debtor”).

BACKGROUND

1. Landlord and the Debtor are parties to a lease agreement dated October 30, 2007, as amended from time to time (the “Lease Agreement”), for commercial space located at 83 Hanover Road, Florham Park, New Jersey (the “Leased Property”).

2. The Lease Agreement requires that the Debtor pay Basic Rent¹ on the first day of each month, together with Additional Rent, including insurance, water, utilities, taxes, a proportionate share of Landlord’s Operating Expenses and certain repairs.

3. The Debtor operates a state approved ambulatory surgical center from the Leased Property.

4. On April 11, 2016 (the “Petition Date”), Florham Park Surgery Center, LLC (the “Debtor”) filed for relief under Chapter 11, Title 11 of the United States Code (the “Bankruptcy Code”).

¹ All capitalized terms used herein not otherwise defined shall have meanings ascribed to them in the Lease Agreement.

5. On June 6, 2016, the Landlord filed a Proof of Claim in this matter in for pre-petition rent and other lease charges the amount of \$486,445.97. A copy of the Landlord's Proof of Claim is attached hereto as Exhibit "A" and includes copies of the Lease Agreement and the amendments thereto.

6. On August 4, 2016, this Court entered an Order extending the 120 day period set forth in section 365(d)(4)(A) within which the Debtor might assume or reject the Lease Agreement through and including November 7, 2016 [Docket No. 111].

7. On November 7, 2016, this Court entered a Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 132], which extended the time period set forth in section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including February 15, 2017.

8. On February 15, 2017, this Court entered a Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 147], which extended the time period set forth in section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including March 17, 2017.

9. On March 17, 2017, this Court entered a Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 153], which extended the time period set forth in section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including April 17, 2017.

10. On April 24, 2017, this Court entered a Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 161], which extended the time period set forth in

section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including May 1, 2017.

11. On April 24, 2017, this Court entered an Amended Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 162], which extended the time period set forth in section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including May 5, 2017.

12. On May 10, 2017, this Court entered a Consent Order Further Extending Time to Assume or Reject Lease [Docket No. 171], which extended the time period set forth in section 365(d)(4) within which the Debtor might assume or reject the Lease Agreement through and including May 19, 2017.

13. On April 18, 2017, the Court held a Case Management Conference, at which it directed that the Debtor file a plan by May 5, 2017.

14. As of this date, the Debtor has not assumed or rejected the Lease Agreement, nor has it filed a Chapter 11 Plan in compliance with the Court's order.

Hanover is Entitled to Relief from the Automatic Stay to Enforce its Rights with Respect to the Leased Property

15. Since the filing of the Chapter 11 proceedings, the Debtor has been chronically late with the payment of post-petition rent. The Debtor's failure to pay timely rent has created an extreme hardship for the Landlord.

16. The post-petition rent currently due and owing from Debtor is \$388,301.62, as is more fully set forth on **Exhibit "B"** attached hereto.

17. I and other employees of Landlord, as well as Landlord's counsel, have demanded payment of these sums, but to no avail.

18. The Lease Agreement has expired, yet the Debtor remains in possession of the Leased Property.


19. The non-payment of the sums due from the Debtor has created an extreme hardship for the Landlord, which has been required to provide commercial space to the Debtor but has not been paid for that space, both pre-petition and post-petition.

20. I am informed and believe that a Debtor under these circumstances is required to fulfill its post-petition lease obligations.

21. Accordingly, it is respectfully requested that the Court grant the Hanover Cross-Motion to allow the Landlord to enforce its rights under the Lease Agreement and under State and Federal Law, to enforce its rights with respect to the Leased Property and any assets contained therein, and to enforce its rights against any successor or assign of the Debtor with respect to the Lease Agreement and the Leased Property.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 22, 2017


Peter Schofel