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June 26, 2020

John P. Asiello
Chief Clerk
New York Court of Appeals
20 Eagle Street
Albany, NY 12207 - 1095

Re: *Jean-Pascal Simon v. French-American Surgery Center, Inc., et al.*,
New York County Clerk Index #162867/2014
Rule 500.10 Jurisdictional Response on behalf of Plaintiff-Appellant Jean-Pascal Simon

Dear Mr. Asiello:

I am Plaintiff-Appellant pro se in the above-referenced matter and a physician licensed to practice medicine in New York. I write in response to this Court's request, dated June 17, 2020, for a "Jurisdictional Response" concerning i) whether the orders appealed from finally determine the action within the meaning of the Constitution; and ii) whether a substantial constitutional question is directly involved in the Appellate Division order.

For the reasons set forth below, this appeal presents substantial constitutional questions to support the appeal taken "as of right" under CPLR § 5601(b) and this appeal concerns final determinations as set forth in the New York Constitution, Art. VI, §§3(1) and (2).

Background

The relevant background is detailed in my Appellate Division Motion for Leave to Reargue, dated January 3, 2020 (a copy of which is submitted herewith as Exhibit E), and I summarize it here only briefly. The matter concerns issues of Home Rule and Public Health arising in the context of a fraudulent scheme to secretly transfer the operating license of my for-profit ambulatory surgery center in Manhattan to Defendant Fifth Avenue Surgery Center, LLC, f/k/a Fifth Avenue ASC Acquisition, Inc. (referred variously as "Fifth LLC" and "FAAA").

In 1988, I was granted a license to operate an ambulatory surgery center after satisfying the requirements of two regulatory agencies: i) the NYC Department of Health (the "City"); and ii) the New York State Department of Health (the "State"). The City requirements included, pursuant to NYC City Charter §555(a)(1)(b), submission of plans to the Commissioner of Health, who "shall consider... [T]he character, competence and standing in the community of the

owners and licensees, in the case of private institutions.” The City also required, pursuant to NYC Hospital Code, Sec. 11.02 (Exhibit A):

An applicant must be a NATURAL PERSON over the age of twenty-one (21) years; a citizen of the United States or a person who has declared his intention of becoming a citizen; a resident of New York State; of reputable character; financially responsible; and who has not had a license to operate a hospital revoked or not renewed for cause. Each applicant shall furnish such other and further pertinent information as is indicated in the application or required by the Commissioner. Each applicant shall authorize the Commissioner to investigate and verify the information submitted to support the application for licensure.

2. This amendment shall take effect immediately.

This resolution was adopted by the Board of Hospitals at its meeting held on September 20, 1967. [Emphasis added.]

The State, pursuant to the provisions of Public Health Law Art. 28, requires a Certificate of Need (“CON”). In 1988, the name of the ambulatory surgery center (“ASC”), as filed with the Department of State, was French-American Surgery Center, Inc. In 1991, the NYS Dept. of Education approved the name French-American Surgery Center, Inc. d/b/a Fifth Avenue Surgery Center (“FASC”).

As the FASC by-laws show, (Exhibit B), I was vice-president of FASC and, in deference and respect to my father, who resided in France, he was listed as president. The by-laws include language that comport with the language of NYC Hospital Code 11.02 (supra). On page 7 of the FASC by-laws, Section 4 states: “[A] director *need not be* a shareholder, a citizen of the United States or a resident of the State of New York” (emphasis added) This language was expressly required to customize FASC’s by-laws to comport with NYC Hospital Code, Art. IX, §11.02, which does not permit ownership of a proprietary ambulatory surgery center by a person who is not New York resident, nor planning to become a citizen of United States.

Because my late father, my brother, and I each share nearly identical names, which, without a hyphen, appear on paper as “Jean Simon,” defendants were able to effectuate a scheme to defraud me of my ownership of FASC. While I believed that they were managing it for the benefit of the Simon family, I learned for the first time in 2014, that Defendants Fifth LLC and their consulting firm, VCC, Inc. d/b/a Cicero Consulting Associates (“Cicero”), had filed a CON application in 2009 with the State that falsely misrepresented to the State that my late father was a 90% owner and that Francois was a 5% owner.

Substantial Constitutional Question

Two of Fifth LLC’s managing members, Charles Raab and Greg Rock, are not residents of New York and therefore Fifth LLC’s operating license is unlawful, in violation of NYC Hospital Code Sec. 11.02, which requires that licensees be residents of New York. Indeed, defendant Fifth LLC never filed for approval as an owner of the license to operate an ASC within the City, as mandated by NYC City Charter Sec. 555(a)(1)(b), yet the State, in derogation

of the City's Home Rule, granted Fifth LLC a license to do so. Put most simply, the NYS Department of Health, as a regulatory agency, did not have the authority to waive the NYC Department of Health's scrutiny of the proposed Fifth LLC members pursuant to the City statutes, and in doing so it violated the constitutional separation of powers between the State and the City.

In a recent First Department case, *Ctr. for Indep. of the Disabled v. Metro. Transp. Auth.*, 2020 NY Slip Op 3203 (1st Dept., 2020), the Decision noted that "[M]unicipalities generally have broad authority to adopt local laws provided that they are not inconsistent with either the State Constitution or any general State law," citing *DJL Rest. Corp. v City of New York*, 96 NY2d 91, 94 [2001]; NY Const, art IX, § 2 [c][ii]; Municipal Home Rule Law § 10[1]).

As the Court of Appeals noted in *DJL Rest. Corp. v. City of NY*, 2001 WL 301925, 96 N.Y.2d 91, 749 N.E.2d 186, 725 N.Y.S.2d 622 (N.Y. 2001):

Article IX, § 2 (c) (ii) of the New York State Constitution provides that "every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law except to the extent that the legislature shall restrict the adoption of such a local law."

To implement article IX, the Legislature enacted the Municipal Home Rule Law (see generally, *Kamhi v Town of Yorktown*, 74 NY2d, at 428-429, supra; Analysis of the Municipal Home Rule Law, Mem of Office for Local Government, reprinted in McKinney's Cons Laws of NY, Book 35C, at XV). It specifically gives a municipality, such as the City of New York, the power to enact local laws for the "protection and enhancement of its physical and visual environment" and for the "government, protection, order, conduct, safety, health and well-being of persons or property therein" (see, Municipal Home Rule Law § 10 [1] [ii] [a] [11]-[12]). In keeping with article IX, however, the Municipal Home Rule Law prohibits the City from adopting local laws inconsistent with the State Constitution or any general law of the State (see, Municipal Home Rule Law § 10 [1] [ii]).

The constitutional questions in *DJL Rest. Corp.* are similar to those in the present controversy, which concerns NYC statutes and regulations that are *peripheral* to a state statute. The "fact that both the [s]tate and local laws seek to regulate the same subject matter does not in and of itself give rise to an express conflict" (*Garcia v New York State Dept. of Health & Mental Hygiene*, 31 NY3d 601 [N.Y. 2018] quoting *Jancyn Mfg. Corp. v County of Suffolk*, 71 NY2d 91, 97 [N.Y. 1987]).

As noted in *DJL Rest.* supra, at 96, the thrust of NYC's regulations in that case concerned municipal zoning and not the regulation of alcohol by the State. Similarly, NYC's statutes and regulations concern the character and fitness of licensees and operators of private for-profit hospitals and ambulatory surgery centers, and require the owners and licensees of ASC's to reside within the State. Because neither the State nor the City require ASC's to be owned by physicians, the system is ripe for abuse by non-physicians catering to the lucrative no-fault

insurance market instead of providing needed medical services to the City's residents. Thus, where the Court of Appeals, in *DJL Rest.*, upheld the NYC statute because it applied across the board to all adult establishments, whether they sell alcoholic beverages or not, the City's statutory oversight of hospitals applies to all hospitals, ambulatory surgery centers, diagnostic and treatment centers, and all changes of ownership must be vetted by the City as well as the State.

Here, the State usurped the City's authority to regulate ambulatory surgery centers within the City of New York by permitting the unlawful transfer of FASC's license to Fifth LLC, in violation of the City's prescribed standards. The public was harmed, because the City has an interest in ensuring that parties that own for-profit ASC's reside with the State and are subject to the jurisdiction of our State Courts and execution of judgments. As Plaintiff, I was harmed because I have a direct property interest and was deprived of a substantial investment, which was documented. I therefore have standing to pursue my claims that the State's actions were unconstitutional. "Standing" is an element of the larger question of "justiciability" *Community Bd. 7 of Borough of Manhattan v. Schaffer*, 615 N.Y.S.2d 644, 84 N.Y.2d 148, 639 N.E.2d 1 (N.Y. 1994), citing *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 769, 570 N.Y.S.2d 778, 573 N.E.2d 1034 (N.Y. 1991). "Capacity is often confused with the concept of standing, but the two legal doctrines are not interchangeable," *Community Bd. 7 of Borough of Manhattan*, supra.

The Appeal Record and my Motion for Leave to Reargue provide documentary evidence of my investments. That I was the owner of FASC is borne out by the very language of NYC Hospital Code Sec. 11.02, which requires owners to be residents of New York and on track to becoming U.S. citizens and I was the only "Jean Simon" that satisfied that City statute.

Finality

As set forth in the Court of Appeals Civil Practice outline, Section VI (C), the following Exceptions to non-finality apply to this case.

1. Express Severance

The order appealed from expressly severs of the following direct causes of action (see *Burke v. Crosson*, 623 N.Y.S.2d 524, 85 N.Y.2d 10, 647 N.E.2d 736 (N.Y. 1995)).

To wit, the following direct claims have been dismissed in totality, and those parties where there is also party finality are asterisked:

- i) the third cause of action, for rescission, against FAAA a/k/a Fifth LLC,* FAC, FASC, and Francois;
- ii) the sixth cause of action, direct claim for fraud-sale of FASC, against Francois;
- iii) the seventh cause of action, for aiding and abetting fraud, against VCC,* FAAA,* and Raab;

iv) the sixteenth cause of action, for accounting, against FAC, FASC, JJS, and Francois; and

v) the seventeenth cause of action, for Injunction, against all defendants.

2. **Party Finality**

Pursuant to the lower court's orders, (Exhibits C and D) the following parties were removed from the caption after their motions for summary judgment, granted by the lower court, and affirmed by the Appellate Division, First Department:

i) Fifth Avenue Surgery Center, LLC. f/k/a Fifth Avenue ASC Acquisition, LLC;
and

ii) VCC, Inc. d/b/a Cicero Consulting Associates (a/k/a CCA).

There is party finality because all of the causes of actions against these defendants have been dismissed. The third cause of action for rescission, the seventh cause of action for aiding and abetting fraud, and the seventeenth cause of action for injunction, have been dismissed as against Fifth LLC. The seventh cause of action, for aiding and abetting fraud and the seventeenth cause of action, for injunction, have been dismissed as against Cicero. See *Barile v. Kavanaugh*, 67 N.Y.2d 392, 502 N.Y.S.2d 977, 494 N.E.2d 82, n. 2 (N.Y. 1986).

3. **Irreparable Injury**

Plaintiff's direct claims for rescission and injunction were erroneously dismissed and severed from this case, although defendants on those claims were not *bona fide* purchasers in good faith of FASC, and continue to profit from their deceptive acts at my expense. Although the litigation was filed in 2014, defendants have dragged out the litigation for six years because delay has been their only possible defense. Money damages cannot adequately compensate me for the intangible injuries I have suffered and will continue to suffer as a result of their fraudulent take-over of FASC.

The assets FASC conveyed to Fifth LLC consisted of good will, cash, a lease, the right to use the name "Fifth Avenue Surgery Center," and the operating license. Notably, FASC received no consideration and the check produced by defendants as evidence of consideration was actually a bank check made payable to a non-existent entity. The remaining defendants have rendered themselves judgment-proof and even if, arguendo, that were not the case, money damages alone are inadequate for the following reasons:

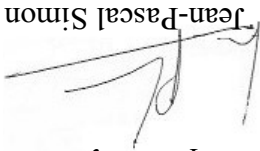
Firstly, Fifth LLC is the party that benefitted from the fraud, the substantial value of the operating license stems from the opportunity value of the license, and of operating an ASC at that location, on Fifth Avenue and 86th Street, one of the most affluent and exclusive areas in the heart of New York City.

Secondly, as stated above, there is party finality as against Fifth LLC, therefore I will be unable to recover damages attributable to Fifth LLC's role in the scheme.

Thirdly, my medical practice, Fifth Avenue Obstetrics and Gynecology, P.C. was incorporated in 1991, at the same time that FASC received permission to use the assumed name "Fifth Avenue Surgery Center." Fifth LLC should not be permitted to continue operating my ASC and using the trade-style name that uses my identity and reputation. Because there is party finality, the lower courts will no longer have jurisdiction over Fifth LLC.

Moreover, the Attorney General's office is empowered to apply to enjoin fraudulent activities without a showing of irreparable injury, pursuant to Executive Law § 63 (12). See *People v. Marcus Garvey Nursing Home, Inc.*, 57 A.D.3d 201, 867 N.Y.S.2d 676, 2008 NY Slip Op 9436 (1st Dept., 2008). The "irreparable injury" prong of an injunction analysis is similar to the inquiry here. Because this case also involves matters of public health, "[t]raditional concepts of irreparable damage which apply to private parties do not govern this public interest field...." "this is because [t]he irreparable injury to be enjoined is an injury to the public, which need not be focused upon an individual to be actionable" " (*State of New York v Terry Buick*, 137 Misc.2d 290, 296 [Supreme Court, Dutchess County 1987]).

Respectfully,



Jean-Pascal Simon

EXHIBIT A

BOARD OF HOSPITALS

Filed with the City Clerk on October 2, 1967 and published in THE CITY RECORD on October 5, 6 and 7, 1967.

Amendments to Hospital Code

Note: Matter in parentheses (), to be deleted. Matter in capitals and *italics* is new.
Resolved, 1. That Section 11.02, sub-division (i) of the Hospital Code of The City of New York is amended to read as follows:

"§ 11.02 Licensure—General Provisions

(i) An applicant must be a *NATURAL PERSON* (physician currently licensed to practice medicine or osteopathy in the State of New York) over the age of twenty-one (21) years; a citizen of the United States or a person who has declared his intention of becoming a citizen; a resident of New York State; of reputable character; financially responsible; and who has not had a license to operate a hospital revoked or not renewed for cause. (Notwithstanding the foregoing, a partnership of such physicians may include not more than one (1) dentist currently licensed to practice dentistry in the State of New York.) Each applicant shall furnish such other and further pertinent information as is indicated in the application or required by the Commissioner. Each applicant shall authorize the Commissioner to investigate and verify the information submitted to support the application for licensure."

2. This amendment shall take effect immediately.

This resolution was adopted by the Board of Hospitals at its meeting held on September 20, 1967.

Resolved, 1. That Section 16.03, sub-division (h) of the Hospital Code of The City of New York is amended to read as follows:

"§ 16.03 Medical Records Department

(h) Length of time for records to be kept.

All medical records shall be kept readily accessible for a period of at least six (6) years, *OR IN THE CASE OF A MINOR, SIX YEARS AFTER MAJORITY*. In the event that a hospital discontinues operation for any reason whatsoever, the licensee immediately preceding the discontinuance of the operation of a hospital shall maintain, store and service, in New York City, all medical records for a period not less than that required herein. The licensee shall notify the Department in writing, where the medical records will be stored and serviced."

2. This amendment shall take effect immediately.

This resolution was adopted by the Board of Hospitals at its meeting held on September 20, 1967.

JOSEPH V. TERENCE, Chairman; GEORGE BAEHR, M.D., DAVID A. CONNORS, M.D., WILLARD C. RAPPLEYE, M.D., HOWARD A. RUSK, M.D., MARTIN E. SEGAL, SAMUEL A. TURVEY.

Attest: ESTELLE RODMAN, Secretary to the Board of Hospitals.

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THE CITY OF NEW YORK

BOARD OF HOSPITALS

HOSPITAL CODE—PART II
PROPRIETARY HOSPITALS

(New Article XII Is Not Contained Herein)



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THE HOSPITAL CODE OF THE CITY OF NEW YORK AND REGULATIONS

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EXHIBIT B

MINUTES AND BY-LAWS
FRENCH AMERICAN SURGERY CENTER INC.

A New York Corporation

COMMENCING June 6th, 19 88

ENDING 19

Law Offices

BY-LAWS

ARTICLE I

The Corporation

Section 1. Name. The legal name of this corporation (hereinafter called the "Corporation") is

Section 2. Offices. The Corporation shall have its principal office in the State of New York. The Corporation may also have offices at such other places within and without the United States as the Board of Directors may from time to time appoint or the business of the Corporation may require.

Section 3. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, New York". One or more duplicate dies for impressing such seal may be kept and used.

ARTICLE II

Meetings of Shareholders

Section 1. Place of Meetings. All meetings of the shareholders shall be held at the principal office of the Corporation in the State of New York or at such other place, within or without the State of New York, as is fixed in the notice of the meeting.

Section 2. Annual Meeting. An annual meeting of the shareholders of the Corporation for the election of directors and the transaction of such other business as may properly come before the meeting shall be held on the first Monday of

in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at ten o'clock A.M., Eastern Standard Time, or at such other time as is fixed in the notice of the meeting. If for any reason any annual meeting shall not be held at the time herein specified, the same may be held at any time thereafter

upon notice, as herein provided, or the business thereof may be transacted at any special meeting called for the purpose.

Section 3. Special Meetings. Special meetings of shareholders may be called by the President whenever he deems it necessary or advisable. A special meeting of the shareholders shall be called by the President whenever so directed in writing by a majority of the entire Board of Directors or whenever the holders of one-third (1/3) of the number of shares of the capital stock of the Corporation entitled to vote at such meeting shall, in writing, request the same.

Section 4. Notice of Meetings. Notice of the time and place of the annual and of each special meeting of the shareholders shall be given to each of the shareholders entitled to vote at such meeting by mailing the same in a postage prepaid wrapper addressed to each such shareholder at his address as it appears on the books of the Corporation, or by delivering the same personally to any such shareholder in lieu of such mailing, at least ten (10) and not more than fifty (50) days prior to each meeting. Meetings may be held without notice if all of the shareholders entitled to vote thereat are present in person or by proxy, or if notice thereof is waived by all such shareholders not present in person or by proxy, before or after the meeting. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned to another time, not more than thirty (30) days hence, or to another place, and if an announcement of the adjourned time or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment fix a new record date for the adjourned meeting. Notice of the annual and each special meeting of the shareholders shall indicate that it is being issued by or at the direction of the person or persons calling the meeting, and shall state the name and capacity of each such person. Notice of each special meeting shall also state the purpose or purposes for which it has been called. Neither the business to be transacted at nor the purpose of the annual or any special meeting of the shareholders need be specified in any written waiver of notice.

Section 5. Record Date for Shareholders. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or for the purpose of determining shareholders entitled to receive payment of any

dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than fifty (50) days nor less than ten (10) days before the date of such meeting, nor more than fifty (50) days prior to any other action. If no record date is fixed, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; the record date for determining shareholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed; and the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Proxy Representation. Every shareholder may authorize another person or persons to act for him by proxy in all matters in which a shareholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the shareholder or by his attorney-in-fact. No proxy shall be voted or acted upon after eleven months from its date unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in Section 608 of the New York Business Corporation Law.

Section 7. Voting at Shareholders' Meetings. Each share of stock shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the New York Business Corporation Law prescribes a different percentage of votes or a different exercise of voting power. In the election of directors, and for any other action, voting need not be by ballot.

Section 8. Quorum and Adjournment. Except for a special election of directors pursuant to Section 603 of the New York Business Corporation Law, the presence, in person or by proxy, of the holders of

a majority of the shares of the stock of the Corporation outstanding and entitled to vote thereat shall be requisite and shall constitute a quorum at any meeting of the shareholders. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any shareholders. If at any meeting of shareholders there shall be less than a quorum so present, the shareholders present in person or by proxy and entitled to vote thereat, may adjourn the meeting from time to time until a quorum shall be present, but no business shall be transacted at any such adjourned meeting except such as might have been lawfully transacted had the meeting not adjourned.

Section 9. List of Shareholders. The officer who has charge of the stock ledger of the Corporation shall prepare, make and certify, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders, as of the record date fixed for such meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city or other municipality or community where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the right to vote at any meeting is challenged, the inspectors of election, if any, or the person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

Section 10. Inspectors of Election. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, and at the request of any shareholder entitled to vote thereat shall, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock

represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by him or them and execute a certificate of any fact found by him or them. Any report or certificate made by the inspector or inspectors shall be prima facie evidence of the facts stated and of the vote as certified by them.

Section 11. Action of the Shareholders Without Meetings. Any action which may be taken at any annual or special meeting of the shareholders may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon. Written consent thus given by the holders of all outstanding shares entitled to vote shall have the same effect as a unanimous vote of the shareholders.

ARTICLE III

Directors

Section 1. Number of Directors. The number of directors which shall constitute the entire Board of Directors shall be at least three, except that where all outstanding shares of the stock of the Corporation are owned beneficially and of record by less than three shareholders, the number of directors may be less than three but not less than the number of shareholders. Subject to the foregoing limitation, such number may be fixed from time to time by action of a majority of the entire Board of Directors or of the shareholders at an annual or special meeting, or, if the number of directors is not so fixed, the number shall be three or shall be equal to the number of shareholders (determined as aforesaid), whichever is less. Until such time as the corporation shall issue shares of its stock, the Board of Directors shall consist of two persons. No decrease in the number of directors shall shorten the term of any incumbent director.

Section 2. Election and Term. The initial Board of Directors shall be elected by the incorporator and each initial director so elected shall hold office until the first annual meeting of shareholders and until

his successor has been elected and qualified. Thereafter, each director who is elected at an annual meeting of shareholders, and each director who is elected in the interim to fill a vacancy or a newly created directorship, shall hold office until the next annual meeting of shareholders and until his successor has been elected and qualified.

Section 3. Filling Vacancies, Resignation and Removal. Any director may tender his resignation at any time. Any director or the entire Board of Directors may be removed, with or without cause, by vote of the shareholders. In the interim between annual meetings of shareholders or special meetings of shareholders called for the election of directors or for the removal of one or more directors and for the filling of any vacancy in that connection, newly created directorships and any vacancies in the Board of Directors, including unfilled vacancies resulting from the resignation or removal of directors for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director.

Section 4. Qualifications and Powers. Each director shall be at least eighteen years of age. A director need not be a shareholder, a citizen of the United States or a resident of the State of New York. The business of the Corporation shall be managed by the Board of Directors, subject to the provisions of the Certificate of Incorporation. In addition to the powers and authorities by these By-Laws expressly conferred upon it, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done exclusively by the shareholders.

Section 5. Regular and Special Meetings of the Board. The Board of Directors may hold its meetings, whether regular or special, either within or without the State of New York. The newly elected Board may meet at such place and time as shall be fixed by the vote of the shareholders at the annual meeting, for the purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a majority of the entire Board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all directors. Regular meetings of the Board may be held with or without notice at such time and place as shall from time to time be determined by resolution of the Board. Whenever the time or place of regular meetings of the Board shall have been determined by resolution of the Board, no regular meetings shall be held pursuant to any resolution of the Board.

altering or modifying its previous resolution relating to the time or place of the holding of regular meetings, without first giving at least three days written notice to each director, either personally or by telegram, or at least five days written notice to each director by mail, of the substance and effect of such new resolution relating to the time and place at which regular meetings of the Board may thereafter be held without notice. Special meetings of the Board shall be held whenever called by the President, Vice-President, the Secretary or any director in writing. Notice of each special meeting of the Board shall be delivered personally to each director or sent by telegraph to his residence or usual place of business at least three days before the meeting, or mailed to him to his residence or usual place of business at least five days before the meeting. Meetings of the Board, whether regular or special, may be held at any time and place, and for any purpose, without notice, when all the directors are present or when all directors not present shall, in writing, waive notice of and consent to the holding of such meeting, which waiver and consent may be given after the holding of such meeting. All or any of the directors may waive notice of any meeting and the presence of a director at any meeting of the Board shall be deemed a waiver of notice thereof by him. A notice, or waiver of notice, need not specify the purpose or purposes of any regular or special meeting of the Board.

Section 6. Quorum and Action. A majority of the entire Board of Directors shall constitute a quorum except that when the entire Board consists of one director, then one director shall constitute a quorum, and except that when a vacancy or vacancies prevents such majority, a majority of the directors in office shall constitute a quorum, provided that such majority shall constitute at least one-third of the entire Board. A majority of the directors present, whether or not they constitute a quorum, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the New York Business Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 7. Telephonic Meetings. Any member or members of the Board of Directors, or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 8. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 9. Compensation of Directors. By resolution of the Board of Directors, the directors may be paid their expenses, if any, for attendance at each regular or special meeting of the Board or of any committee designated by the Board and may be paid a fixed sum for attendance at such meeting, or a stated salary as director, or both. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; provided however that directors who are also salaried officers shall not receive fees or salaries as directors.

ARTICLE IV

Committees

Section 1. In General. The Board of Directors may, by resolution or resolutions passed by the affirmative vote therefore of a majority of the entire Board, designate an Executive Committee and such other committees as the Board may from time to time determine, each to consist of three or more directors, and each of which, to the extent provided in the resolution or in the certificate of incorporation or in the By-Laws, shall have all the powers of the Board, except that no such Committee shall have power to fill vacancies in the Board, or to change the membership of or to fill vacancies in any Committee, or to make, amend, repeal or adopt By-Laws of the Corporation, or to submit to the shareholders any action that needs shareholder approval under these By-Laws or the New York Business Corporation Law, or to fix the compensation of the directors for serving on the Board or any committee thereof, or to amend or repeal any resolution of the Board which by its terms shall not be so amendable or repealable. Each committee shall serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 2. Executive Committee. Except as otherwise limited by the Board of Directors or by these By-Laws, the Executive Committee, if so designated by the Board of Directors, shall have and may exercise, when the Board is not in session, all the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it. The Board shall have the power at any time to change the membership of the Executive Committee, to fill vacancies in it, or to dissolve it. The Executive Committee may make rules for the conduct of its business and may appoint such assistance as it shall from time to time deem necessary. A majority of the members of the Executive Committee, if more than a single member, shall constitute a quorum.

ARTICLE V

Officers

Section 1. Designation, Term and Vacancies. The officers of the Corporation shall be a President, one or more Vice-Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time deem necessary. Such officers may have and perform the powers and duties usually pertaining to their respective offices, the powers and duties respectively prescribed by law and by these By-Laws, and such additional powers and duties as may from time to time be prescribed by the Board. The same person may hold any two or more offices, except that the offices of President and Secretary may not be held by the same person unless all the issued and outstanding stock of the Corporation is owned by one person, in which instance such person may hold all or any combination of offices.

The initial officers of the Corporation shall be appointed by the initial Board of Directors, each to hold office until the meeting of the Board of Directors following the first annual meeting of shareholders and until his successor has been appointed and qualified. Thereafter, the officers of the Corporation shall be appointed by the Board as soon as practicable after the election of the Board at the annual meeting of shareholders, and each officer so appointed shall hold office until the first meeting of the Board of Directors following the next annual meeting of shareholders and until his successor has been appointed and qualified. Any officer may be removed at any time, with or without cause, by the affirmative vote therefor of a majority of the entire Board of Directors. All other agents and employees of the Corporation shall hold office during the pleasure of the Board of Directors. Vacancies occurring

among the officers of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 2. President. The President shall preside at all meetings of the shareholders and at all meetings of the Board of Directors at which he may be present. Subject to the direction of the Board of Directors, he shall be the chief executive officer of the Corporation, and shall have general charge of the entire business of the Corporation. He may sign certificates of stock and sign and seal bonds, debentures, contracts or other obligations authorized by the Board, and may, without previous authority of the Board, make such contracts as the ordinary conduct of the Corporation's business requires. He shall have the usual powers and duties vested in the President of a corporation. He shall have power to select and appoint all necessary officers and employees of the Corporation, except those selected by the Board of Directors, and to remove all such officers and employees except those selected by the Board of Directors, and make new appointments to fill vacancies. He may delegate any of his powers to a Vice-President of the Corporation.

Section 3. Vice-President. A Vice-President shall have such of the President's powers and duties as the President may from time to time delegate to him, and shall have such other powers and perform such other duties as may be assigned to him by the Board of Directors. During the absence or incapacity of the President, the Vice-President, or, if there be more than one, the Vice-President having the greatest seniority in office, shall perform the duties of the President, and when so acting shall have all the powers and be subject to all the responsibilities of the office of President.

Section 4. Treasurer. The Treasurer shall have custody of such funds and securities of the Corporation as may come to his hands or be committed to his care by the Board of Directors. Whenever necessary or proper, he shall endorse on behalf of the Corporation, for collection, checks, notes, or other obligations, and shall deposit the same to the credit of the Corporation in such bank or banks or depositories, approved by the Board of Directors as the Board of Directors or President may designate. He may sign receipts or vouchers for payments made to the Corporation, and the Board of Directors may require that such receipts or vouchers shall also be signed by some other officer to be designated by them. Whenever required by the Board of Directors, he shall render a statement of his cash accounts and such other statements respecting the affairs of the Corporation as may be required. He shall keep proper and accurate books of account. He shall perform all

acts incident to the office of Treasurer, subject to the control of the Board.

Section 5. Secretary. The Secretary shall have custody of the seal of the Corporation and when required by the Board of Directors, or when any instrument shall have been signed by the President duly authorized to sign the same, or when necessary to attest any proceedings of the shareholders or directors, shall affix it to any instrument requiring the same and shall attest the same with his signature, provided that the seal may be affixed by the President or Vice-President or other officer of the Corporation to any document executed by either of them respectively on behalf of the Corporation which does not require the attestation of the Secretary. He shall attend to the giving and serving of notices of meetings. He shall have charge of such books and papers as properly belong to his office or as may be committed to his care by the Board of Directors. He shall perform such other duties as appertain to his office or as may be required by the Board of Directors.

Section 6. Delegation. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board may temporarily delegate the powers or duties, or any of them, of such officer to any other officer or to any director.

ARTICLE VI

Stock

Section 1. Certificates Representing Shares. All certificates representing shares of the capital stock of the Corporation shall be in such form not inconsistent with the Certificate of Incorporation, these By-Laws or the laws of the State of New York and shall set forth thereon the statements prescribed by Section 508, and where applicable, by Sections 505, 616, 620, 709 and 1002 of the Business Corporation Law. Such shares shall be approved by the Board of Directors, and shall be signed by the President or a Vice-President and by the Secretary or the Treasurer and shall bear the seal of the Corporation and shall not be valid unless so signed and sealed. Certificates countersigned by a duly appointed transfer agent and/or registered by a duly appointed registrar shall be deemed to be so signed and sealed whether the signatures be manual or facsimile signatures and whether the seal be a facsimile seal or any other form of seal. All certificates shall be consecutively numbered and the name of the person owning the shares represented thereby, his

residence, with the number of such shares and the date of issue, shall be entered on the Corporation's books. All certificates surrendered shall be cancelled and no new certificates issued until the former certificates for the same number of shares shall have been surrendered and cancelled, except as provided for herein.

In case any officer or officers who shall have signed or whose facsimile signature or signatures shall have been affixed to any such certificate or certificates, shall cease to be such officer or officers of the Corporation before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation, and may be issued and delivered as though the person or persons who signed such certificates, or whose facsimile signature or signatures shall have been affixed thereto, had not ceased to be such officer or officers of the Corporation.

Any restriction on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

Section 2. Fractional Share Interests. The Corporation, may, but shall not be required to, issue certificates for fractions of a share. If the Corporation does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (3) issue scrip or warrants in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any distribution of the assets of the Corporation in the event of liquidation. The Board of Directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip or warrants are exchangeable may be sold by the Corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the Board of Directors may impose.

Section 3. Addresses of Shareholders. Every shareholder shall furnish the Corporation with an address to which notices of meetings and all other notices may be served upon or mailed to him, and in

default thereof notices may be addressed to him at his last known post office address.

Section 4. Stolen, Lost or Destroyed Certificates. The Board of Directors may in its sole discretion direct that a new certificate or certificates of stock be issued in place of any certificate or certificates of stock theretofore issued by the Corporation, alleged to have been stolen, lost or destroyed, and the Board of Directors when authorizing the issuance of such new certificate or certificates, may, in its discretion, and as a condition precedent thereto, require the owner of such stolen, lost or destroyed certificate or certificates or his legal representatives to give to the Corporation and to such registrar or registrars and/or transfer agent or transfer agents as may be authorized or required to countersign such new certificate or certificates, a bond in such sum as the Corporation may direct not exceeding double the value of the stock represented by the certificate alleged to have been stolen, lost or destroyed, as indemnity against any claim that may be made against them or any of them for or in respect of the shares of stock represented by the certificate alleged to have been stolen, lost or destroyed.

Section 5. Transfers of Shares. Upon compliance with all provisions restricting the transferability of shares, if any, transfers of stock shall be made only upon the books of the Corporation by the holder in person or by his attorney thereunto authorized by power of attorney duly filed with the Secretary of the Corporation or with a transfer agent or registrar, if any, upon the surrender and cancellation of the certificate or certificates for such shares properly endorsed and the payment of all taxes due thereon. The Board of Directors may appoint one or more suitable banks and/or trust companies as transfer agents and/or registrars of transfers, for facilitating transfers of any class or series of stock of the Corporation by the holders thereof under such regulations as the Board of Directors may from time to time prescribe. Upon such appointment being made all certificates of stock of such class or series thereafter issued shall be countersigned by one of such transfer agents and/or one of such registrars of transfers, and shall not be valid unless so countersigned.

ARTICLE VII

Dividends and Finance

Section 1. Dividends. The Board of Directors shall have power to fix and determine and to vary, from time to time, the amount

of the working capital of the Corporation before declaring any dividends among its shareholders, and to direct and determine the use and disposition of any net profits or surplus, and to determine the date or dates for the declaration and payment of dividends and to determine the amount of any dividend, and the amount of any reserves necessary in their judgment before declaring any dividends among its shareholder, and to determine the amount of the net profits of the Corporation from time to time available for dividends.

Section 2. Fiscal Year. The fiscal year of the Corporation shall end on the last day of June in each year and shall begin on the next succeeding day, or shall be for such other period as the Board of Directors may from time to time designate with the consent of the Department of Taxation and Finance, where applicable.

ARTICLE VIII

Miscellaneous Provisions

Section 1. Stock of Other Corporations. The Board of Directors shall have the right to authorize any director, officer or other person on behalf of the Corporation to attend, act and vote at meetings of the Shareholders of any corporation in which the Corporation shall hold stock, and to exercise thereat any and all rights and powers incident to the ownership of such stock, and to execute waivers of notice of such meetings and calls therefor; and authority may be given to exercise the same either on one or more designated occasions, or generally on all occasions until revoked by the Board. In the event that the Board shall fail to give such authority, such authority may be exercised by the President in person or by proxy appointed by him on behalf of the Corporation.

Any stocks or securities owned by this Corporation may, if so determined by the Board of Directors, be registered either in the name of this Corporation or in the name of any nominee or nominees appointed for that purpose by the Board of Directors.

Section 2. Books and Records. Subject to the New York Business Corporation Law, the Corporation may keep its books and accounts outside the State of New York.

Section 3. Notices. Whenever any notice is required by these By-Laws to be given, personal notice is not meant unless expressly so

stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper, addressed to the person entitled thereto at his last known post office address, and such notice shall be deemed to have been given on the day of such mailing.

Whenever any notice whatsoever is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation or these By-Laws a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 4. Amendments. Except as otherwise provided herein, these By-Laws may be altered, amended or repealed and By-Laws may be made at any annual meeting of the shareholders or at any special meeting thereof if notice of the proposed alteration, amendment or repeal, or By-Law or By-Laws to be made be contained in the notice of such special meeting, by the holders of a majority of the shares of stock of the Corporation outstanding and entitled to vote thereat; or by a majority of the Board of Directors at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors, if notice of the proposed alteration, amendment or repeal, or By-Law or By-Laws to be made, be contained in the Notice of such Special Meeting.

The first order of business was the election or designation of officers at this corporation. There being no contest, the following were elected by proclamation to serve as officers until the next annual meeting of the Board or until their successors are elected and qualified:

<u>Office</u>	<u>Name</u>
President	DR. JEAN JACQUES SIMON
Vice President	DR. JEAN PASCAL SIMON
Secretary	GEORGE H. KESSLER
Treasurer	JEAN FRANCOIS SIMON

The president and secretary assumed their respective offices, in the places of those who had temporarily acted as such for this meeting.

The minutes of the organizational meeting of the incorporator (s) held on 19 , were read and it was thereupon unanimously

RESOLVED, that the actions and business transacted by the incorporator (s) at the organizational meeting held on 19 , and entered on the minutes of that meeting, be and they are hereby ratified and adopted by this Board.

The annexed resolutions, deemed necessary to complete the organizational procedures, were introduced, discussed and adopted.

NUMBER
0

SHARES



INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

FRENCH-AMERICAN SURGERY CENTER, INC.

200 SHARES WITHOUT PAR VALUE

(1) No person shall own ten percent (10%) or more of the stock of the Corporation unless he has been approved for such ownership by the Public Health Council;

(see over)

This Certifies that _____ **SPECIMEN** _____ *is the owner of*
_____ *fully paid and non-assessable Shares of the Capital*
Stock of the above named Corporation transferable only on the books of the Corporation
by the holder hereof in person or by duly authorized Attorney upon surrender of this
Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate
Seal to be hereunto affixed this _____ *day of* _____ *19* _____

SECRETARY

PRESIDENT



THOUSANDS
0 1 2
3 4 5
HUNDREDS
1 1 1
2 2 2
3 3 3
4 4 4
5 5 5
6 6 6
7 7 7
8 8 8
9 9 9
0 0 0
SHARES

**ORGANIZATIONAL RESOLUTIONS
ADOPTED BY THE BOARD OF DIRECTORS
OF**



1. The seal, an impressions of which is affixed to the left hereof, is adopted as the seal of the corporation.
2. The form of stock certificate annexed hereto is adopted as the form of stock certificate for the corporation.

3. (a) The corporation accepts the offer of the following persons to purchase the number of shares of stock of the corporation shown in exchange for the consideration set opposite their names:

Name of Subscriber	Number and Classes of Shares	Consideration Per Share	Aggregate Consideration
-----------------------	---------------------------------	----------------------------	----------------------------

(b) The president, and secretary or treasurer of the corporation are hereby authorized and empowered to issue to the foregoing named persons certificates evidencing the number of shares of the stock of the corporation set opposite each name upon receipt by the corporation of the aggregate consideration specified.

with 4. The corporation shall open a banking account or accounts

and execute the annexed banking resolution for that purpose.

5. (a) The president and treasurer of the corporation are authorized and empowered to pay all expenses incurred in connection with the organization of the corporation, including filing, license, attorneys' and accountants' fees.

(b) The corporation elects to deduct on its first federal income tax return the foregoing expenses ratably over a sixty month period, starting with the month in which the corporation begins business, pursuant to Section 248 of the Internal Revenue Code of 1954.

6. The president and all other officers of the corporation are authorized and directed to take all steps necessary to cause the corporation to engage in the business of

7. (a) The president is authorized on behalf of the corporation to negotiate for and to _____ in the name of the corporation the premises commonly described as _____ upon the terms and conditions specified in Schedule _____ annexed hereto, and upon such further terms and conditions as the president shall deem necessary, proper and in the best interests of the corporation.

(b) The president and secretary, or an assistant secretary, are authorized to execute in the name of the corporation all documents necessary in the judgement of the president to effectuate this resolution.

8. The following plan is adopted in order to issue stock pursuant to Section 1244 of the Internal Revenue Code of 1954:

WHEREAS, the corporation wants to attract investment in the corporation. And Compliance with Section 1244 of the Internal Revenue Code will enable shareholders who suffer a loss on the sale or exchange of their shares to treat that loss as an "ordinary loss" on their personal income tax returns;

NOW THEREFORE, BE IT RESOLVED, that the proper officers of the corporation are hereby authorized to sell and issue common shares provided that the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed \$1,000,000.00; and RESOLVED, that the sale and issuance of such shares be conducted in accordance with IRC Sec. 1244; and

RESOLVED, that the corporation keep proper accounting records so that any shareholder who experiences a loss on the transfer of common shares may properly determine if they qualify for "ordinary loss" treatment on their personal income tax returns.

9. (a) The corporation elects to be taxed for federal income tax purposes in accordance with the provisions of Subchapter S of the Internal Revenue Code of 1954.

(b) The officers of the corporation shall take all actions necessary and proper to effectuate the foregoing resolution, including obtaining the requisite consents from shareholders and executing and filing appropriate forms on behalf of the corporation within the time limits specified by law.

No further business being presented, the meeting was duly
adjourned.

Dated: June 23, 1988

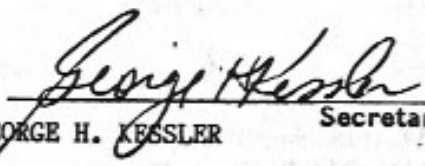

GEORGE H. KESSLER Secretary

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
JEAN-PASCAL SIMON,

Index No. 162867/2014

Plaintiff,

**NOTICE TO COUNTY
CLERK – CPLR 8019 (c)**

-against-

FRANCINVEST, S.A. and JJS GROUP, INC.,

Nominal Defendants,

-and-

FRENCH-AMERICAN SURGERY CENTER, INC.,
FRENCH AMERICAN CLINIC, INC., FIFTH AVENUE
SURGERY CENTER LLC, JEAN-FRANCOIS SIMON, and
CHARLES RAAB,

Defendants.
-----X

By so-ordered stipulation, dated December 11, 2019, and filed on December 13, 2019, the Court directed the County Clerk to remove defendants VCC, Inc. d/b/a Cicero Consulting Associates, George Kessler, and Lynn Rosenberg from the caption of the within action. As required by the aforesaid so-ordered stipulation and pursuant to CPLR 8019 (c), notice of the aforesaid order is hereby given to the Clerk of the County and the Trial Support Office to amend the caption accordingly.

Dated: Hawthorne, New York
December 16, 2019

**TRAUB LIEBERMAN STRAUS
& SHREWSBERRY LLP**

*Attorneys for Defendant
VCC, Inc. d/b/a Cicero Consulting Associates*

By:



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vmarzano@tlsslaw.com

TO (VIA NYSCEF):

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French American Clinic,
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Jean-Francois Simon*
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WILLIAM W. SIEGAL, ESQ.

*Attorney for Defendants
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Lynn Rosenberg*
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SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK

SIMON, JEAN-PASCAL

INDEX NO. 162867/2014

Plaintiff(s)

- against -

IAS PART 39

FRANCINVEST, S.A.

Defendant(s)

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between or among the attorneys named below as follows:

The caption is hereby amended to remove defendants
• VCC, Inc. d/b/a Cicero Consulting Associates
• George Keesler; and
• Lynn Rosenberg.

Handwritten initials and signatures: JPS, W, US, etc.

VCC Inc. d/b/a Cicero Consulting Associates shall serve this stipulation upon the Clerk of the Court.

Handwritten signature of Plaintiff's attorney
Attorney for Plaintiff(s)
Prose

Handwritten signature of Defendant's attorney
Attorney for Defendant VCC, Inc. d/b/a Cicero

Handwritten signature of Plaintiff's attorney
Attorney for Plaintiff(s)
Plaintiff on the derivative claims

Handwritten signature of Defendant's attorney
Attorney for Defendant
WILLIAM W. SIEGEL

Dated: 12/11/2019

SO ORDERED:

ENTER: SALIANN SCARPULLA J.S.C.

Defendants are directed to serve a copy of this stipulation and order AMENDING CAPTION on the Clerk of the County and upon Trial Support Office, so that they may amend the Court's records.

Handwritten signature: SALIANN SCARPULLA

EXHIBIT D

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

----- X
JEAN-PASCAL SIMON,

Plaintiff,

-against-

FRANCINVEST, S.A. and JJS GROUP, INC,

Nominal Defendants,

-and-

**FRENCH-AMERICAN SURGERY CENTER, INC.,
FRENCH AMERICAN CLINIC, INC.,
JEAN-FRANCOIS SIMON and CHARLES RAAB,**

Defendants.
----- X

Index No. 162867/2014

**NOTICE TO COUNTY
CLERK - CPLR 8019(c)**

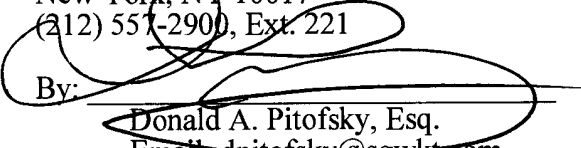
**Assigned to: Scarpulla, J.
IAS Part 39**

S I R S:

PLEASE TAKE NOTICE that pursuant to the “SO ORDERED” Stipulation and Order Amending Caption dated December 18, 2019, and entered on December 20, 2019 (NYSCEF Document No. 790), the Court, per the Hon. Saliann Scarpulla, has directed that the County Clerk amend the caption in the within action to remove Defendant FIFTH AVENUE SURGERY CENTER, LLC from the caption. As required by the “SO ORDERED” Stipulation, a copy of which is annexed hereto, and pursuant to CPLR 8019(c), notice of the aforesaid Order (NYSCEF Document No. 790) is hereby given to the Clerk of New York County and to the Trial Support Office to amend the caption accordingly.

Dated: New York, New York
December 23, 2019

**SCHWARTZMAN GARELIK
WALKER & TROY, P.C.**
Attorneys for Defendants
FIFTH AVENUE SURGERY CENTER, LLC
and CHARLES RAAB
355 Lexington Ave., 8th Floor
New York, NY 10017
(212) 557-2900, Ext. 221

By: 
Donald A. Pitofsky, Esq.
Email: dpitofsky@sgwkt.com

TO: **VIA NYSCEF**

JEAN-PASCAL SIMON
Plaintiff Pro Se on Direct Claims
43 West 43rd Street
New York, New York 10036
Email: drjpsimon@aol.com

NANCY J. VOLIN, ESQ.
Attorney for Plaintiff on Derivative Claims
43 West 43rd Street, Suite 199
New York, New York 10036
(212) 452-0888
Email: drjpsimon@aol.com

LEBOW & SOKOLOW LLP
Attorneys for Defendants
French-American Surgery Center, Inc.,
French-American Clinic, Inc.,
and Jean-Francois Simon
770 Lexington Avenue, 6th Floor
New York, NY 10065
(212) 935-6000
Attn: Mark D. Lebow, Esq.
Email: mark@lebow.net

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
JEAN-PASCAL SIMON,

Plaintiff,

-against-

FRANCINVEST, S.A. and JJS GROUP, INC.,

Nominal Defendants,

-and-

**FRENCH-AMERICAN SURGERY CENTER, INC.,
FRENCH AMERICAN CLINIC, INC., FIFTH
AVENUE SURGERY CENTER, LLC,
JEAN-FRANCOIS SIMON and CHARLES RAAB.**

Defendants.
-----X

Index No. 162867/2014

**STIPULATION AND ORDER
AMENDING CAPTION**

**Assigned to:
Hon. Salim Scarpulla**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned

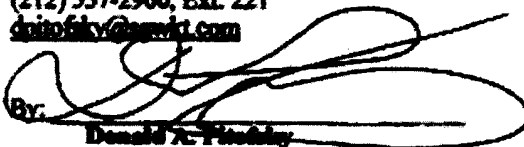
**Plaintiff Pro Se and the attorneys of record for Defendant FIFTH AVENUE SURGERY
CENTER, LLC, that:**

- 1. The caption of the within action shall be amended to remove Defendant FIFTH AVENUE SURGERY CENTER, LLC from the caption;**
- 2. Counsel for FIFTH AVENUE SURGERY CENTER, LLC shall serve a copy of this Stipulation and Order Amending Caption, once SO ORDERED by the Hon. Salim Scarpulla, on the Clerk of New York County and upon the Trial Support Office, so that they may amend the Court's records accordingly.**
- 3. This Stipulation may be signed by facsimile or electronic signature, and in counterparts, which, collectively, shall be deemed to be a single document.**

**Dated: New York, New York
December 18, 2019**

**SCHWARTZMAN GARELIK
WALKER & TROY, P.C.
Attorneys for Defendants
Fifth Avenue Surgery Center, LLC and Charles Raab
355 Lexington Avenue, 8th Floor
New York, New York 10017
(212) 557-2900, Ext. 221
dntofsky@sgwt.com**

①

By: 
Donald X. Fiodaly

LPL 12/18/2019

JEAN-PASCAL SIMON
Pro Se Plaintiff-Appellant
43 West 43rd Street
New York, New York 10036
jspsimon@aol.com

u
page 2 out of 3
from DEC, 15, 2019
STIPULATION AND ORDER
AMENDING CAPTION

SO ORDERED.

(Signature)

HON. SALVANN SCARPULLA, J.S.C.

DATED: 12/20/2019

(2)

EXHIBIT E

**COPY OF ORIGINAL
WITH PROOF OF SERVICE**

**NEW YORK SUPREME COURT
APPELLATE DIVISION-FIRST DEPARTMENT**

JEAN-PASCAL SIMON,

Plaintiff-Appellant

v.

FRANÇINVEST, S.A.,

Nominal Defendant,

-and-

FRENCH-AMERICAN SURGERY CENTER, INC., FRENCH
AMERICAN CLINIC, INC., JJS GROUP, INC., FIFTH
AVENUE SURGERY CENTER, LLC.,
JEAN-FRANCOIS SIMON, VCC, INC.
D/B/A CICERO CONSULTING ASSOCIATES, and
CHARLES RAAB

Defendant-Respondents,

LYNN ROSENBERG, and GEORGE KESSLER

Defendants.

New York County Clerk's
Index No. 162867/2014

**NOTICE OF MOTION
FOR REARGUMENT AND
FOR LEAVE TO APPEAL**

RECEIVED

JAN 08 2020

SUP COURT APP. DIV.
FIRST DEPT.

PLEASE TAKE NOTICE that upon Plaintiff-Appellant Jean-Pascal


Simon's annexed Affidavit in support of his Motion to Reargue or, in the alternative, for Leave to Appeal to the Court of Appeals, the Exhibits 1-10 annexed thereto, and upon all pleadings and proceedings heretofore had herein, the undersigned will move this Court at the Appellate Division, First Department Courthouse, 27 Madison Avenue, New York, New York, for an Order:

- (1) To reargue this Court's order denying Jean-Pascal Simon's standing as a shareholder of French-American Surgery Center, Inc.; or, in the alternative,
- (2) Granting leave to appeal to the Court of Appeals; or, in the alternative,
- (3) Construing Jean-Pascal Simon's motion for leave to appeal under CPLR 5701(c) as an appeal as of right under CPLR 5601(b).

PLEASE TAKE FURTHER NOTICE, that the motion is returnable at 10 o'clock in the forenoon on Monday, January 13, 2020, which is at least 9 days from the date of service of these papers. The Respondents are hereby given notice that the motion will be submitted on these papers and their personal appearance in opposition is neither required nor permitted.

Dated: January 3, 2020

Respectfully submitted,



Jean-Pascal Simon
43 West 43 Street, Ste 199
New York, N.Y. 10036
(212) 677-1000
drjpsimon@aol.com
Plaintiff-Appellant Pro Se

To:
New York State Supreme Court
Appellate Division-First Department
Clerk's Office
27 Madison Avenue
New York, New York 10010
(212) 340-0400

**NEW YORK SUPREME COURT
APPELLATE DIVISION-FIRST DEPARTMENT**

JEAN-PASCAL SIMON,

Plaintiff-Appellant

v.

FRANCINVEST, S.A.,

Nominal Defendant,

-and-

FRENCH-AMERICAN SURGERY CENTER, INC., FRENCH
AMERICAN CLINIC, INC., JJS GROUP, INC., FIFTH
AVENUE SURGERY CENTER, LLC.,
JEAN-FRANCOIS SIMON, VCC, INC.
D/B/A CICERO CONSULTING ASSOCIATES, and
CHARLES RAAB

Defendant-Respondents,

LYNN ROSENBERG, and GEORGE KESSLER

Defendants.

New York County Clerk's
Index No. 162867/2014

**AFFIDAVIT IN SUPPORT
OF MOTION FOR
REARGUMENT AND FOR
LEAVE TO APPEAL**

JEAN-PASCAL SIMON, being duly sworn, deposes and says:

1. I am the Plaintiff-Appellant in this case. As such, I have personal knowledge of the facts and circumstances in this matter.
2. I submit this affidavit in support of my motion for reargument or, in the alternative, for leave to appeal. Pursuant to 22 NYCRR Part 1250, §1250.16(d), I will briefly set forth the points I believe may have been overlooked or misapprehended by the court.

3. In the Supreme Court, Appellate Division's Decision and Order December 3, 2019, this Court stated:

“[H]e conceded that he does not own shares in FASC, and he cites no evidence of any agreement to issue him shares or make him a shareholder or owner in exchange for his loans to FASC or the salary he waived as FASC's Medical Director; thus, these contributions were not agreed upon as "consideration for the issue of shares” (see Business Corporation Law ~ 504[a]; *Kun v Fulop*, 71 AD3d 832, 834 [2d Dept 2010], *lv denied* 15 NY3d 701 [2010]). Thus, he lacks standing to bring a derivative suit against Francois on FASC's behalf (*Silverstein v Exciting Fashions, Inc.*, 281 AD 854, 854 [2d Dept 1953]).”

4. I submit here the evidence of an agreement. The agreement proves that the contributions were consideration for the issuance of shares. The agreement is a handwritten memorandum, dated April 19, 1991, and signed at the bottom by my father, Jean-Jacques, and myself.

The Handwritten April 19, 1991 Memorandum

5. Exhibit 1 is a copy of that document, along with a certified translation. This handwritten memorandum sets forth promises I made, and accepted by FASC. (I have the original document, which shows that, at the bottom of the page, the legend FAS is actually FASC, where the C is very faded).

6. On April 19, 1991, my father, Jean-Jacques, as president of FASC, and I, as vice-president of FASC, signed this handwritten memorandum.¹ It satisfies the statute of frauds, General Obligations Law §5-701, because it is

¹ The document was not part of the record reviewed on appeal because that record reflected moving papers and evidence submitted by a prior attorney, who was excused from representation because of a conflict of interest.

evidence of an agreement and it is subscribed by both parties at the bottom. See *300 West End Ave. Corp. v. Warner*, 250 N.Y. 221, 165 N.E. 271 (N.Y. 1929).

7. This memorandum was submitted in evidence to the lower court and appears on the electronic docket at EF #674. Notably, its validity was not contested by any of the defendants, who were even provided extra time by the lower Court. Defendants do not dispute that this document was handwritten by my father, Jean-Jacques nor that it was signed by both of us at the bottom.

8. I also referred to this document in my Plaintiff-Appellant's Reply Brief (page 14-15).

9. Exhibit 2 is a true and correct copy of a hand-written will, submitted here for the purpose of comparing his handwriting to the April 19, 1991 memorandum. This handwritten will was certified by Michelez Motel Moliere Bonduelle Lioussou, Notaires, 128 boulevard de Courcelles, Paris 17e, France.

10. Exhibit 3 is an excerpt, from Acris of JJS Group, Inc.'s 1995 purchase money mortgage document. It is submitted here for the purpose of evidencing his signature and initialing, which is identical to the subscription at the bottom of the April 19, 1991 memorandum.

My Performances of the Promises As Set Forth in the April 19, 1991 Handwritten Memorandum

11. Concerning item (1) on that 1991 memorandum, Francois does not

dispute that I acquired the apartment at Continental Towers, 301 E 79th Street, apt 34R, for the sole purpose of providing \$190,000 funding for FASC, nor does he dispute that I then mortgaged that property, paid Kessler for his legal services, then gave the proceeds from that financing to my father to fund FASC. I made all mortgage payments, as well as common charges and real estate taxes. I own a co-op elsewhere that is my personal residence, so I received no benefit from this purchase.

12. Exhibit 4 shows my purchase of that condominium. I was represented on the purchase and mortgage transactions by Defendant George Kessler, and I also paid his bill for those services. Exhibit 5.

13. Defendants do not dispute that, pursuant to my father's request, as evidenced by that April 19, 1991 handwritten memorandum, I entered into a lease with FAC, whereby I paid \$78,000 per year in rent for the tiny office I occupied as FASC Medical Director, and also guaranteed the master lease with the landlord, annual rent of \$132,500, in order to provide additional funding to FASC.

14. Exhibit 6 is a copy of the lease between me and FAC, drafted by Defendant George Kessler, who acting as attorney for me, my father, and the defendant corporations and was aware of the memorandum and its terms.

15. Exhibit 7 is a copy of the master lease rent that I guaranteed

16. Exhibit 8 are copies of UCC financial filings. Defendants do not dispute the truth of the contents of that document, because it is evidence of my father's promise and acceptance of the funds and my financial undertaking. Notably, the equipment leases referred to as item (3) were for surgical equipment for specialties other than mine, and were, pursuant to that document and as the lease assignments produced here show, paid for by me but titled to and depreciated by, on their tax filings, FASC. This is also evidenced in the handwritten 1991 memorandum, which states that the equipment will be owned by FASC.

The FASC By-laws, Dated June 23, 1988, Also Prove My Standing As Owner of FASC

17. Exhibit 9 is a copy of the FASC by-laws, from June 1988. The board of directors (page 19) are: Jean-Jacques, President; Plaintiff-Appellant Jean-Pascal Simon, Vice-President; Defendant-Respondent Jean-Francois Simon, Treasurer; and Defendant George Kessler, Secretary. Page 5 of the FASC by-laws show that there was a list of shareholders maintained by "the officer who has charge of the stock ledger." Page 9, Section 5 states that the secretary "shall have charge of such books and papers and properly belong to his office..." Defendant Kessler, who did not produce a stock ledger or list of shareholders pursuant to my document demands, willfully disposed of all evidence of my ownership of FASC. If he had evidence of other shareholders, he would have produced them.

18. On page 7 of the FASC by-laws, Section 4 states: “A director need not be a shareholder, a citizen of the United States or a resident of the State of New York”. This statement was expressly added, in order to customize FASC’s by-laws to comport with NYC Hospital Code, Art. IX, §11.02, which does not permit ownership of a proprietary ambulatory surgery center by a person who is not New York resident, nor planning to become a citizen of United States.

19. This is an important point. *Firstly*, of the four FASC directors set forth in the FASC by-laws, the only one who was not a New York resident was my father, Jean-Jacques (see Exhibit 9, page 19).

20. *Secondly*, Jean-Jacques wanted to ensure that, despite not being eligible as a shareholder under NYC’s proprietary hospital statute, no one would ever question his serving as a non-shareholder director of FASC.

21. *Thirdly*, this detail was on advice of our special attorney, Kenneth Harfenist, who was hired for the purpose of complying with the complex state and city regulatory requirements. Exhibit 10 evidences that he prepared the FASC corporate documents and stock certificate specimen, which also appears in the by-laws of Exhibit 9. His preparations reflect adherence to both the state, and New York City statutes.

22. Pursuant to Municipal Home Rule Law §10, “General Powers of Local Governments to Make and Amend Laws,” NYC is permitted to legislate in

areas such as the health of its residents. Those statutes may be stricter than state standards. NYC's City Charter, §555 requires today, as it required in 1988, that applications for transfer of ownership interests in private hospitals and ambulatory surgery centers must be submitted to the Commission of Health. And applicants must be residents of New York.

19. I argued that NYC Hospital Code² Art. IX, § 11-02 was good law in 1988 (see Plaintiff-Appellant's Brief, p. 21). That FASC's by-law's track the language of the statute is evidence of the fact that all of the parties, including my father Jean-Jacques were also aware of that this NYC statute was controlling. Because he was not a New York resident, he could not be a shareholder of FASC. I was the Jean Simon that was the sole shareholder of FASC. My father was a director, he served as President, but he was not a shareholder, because NYC statute did not permit him to be a shareholder. Even without evidence of a writing, such as the April 19, 1991 handwritten memorandum, which I have now submitted to this Court, the incontrovertible fact is that my father could not be a shareholder of FASC because of this NYC statute controlled in 1988. Further

² NYC Hospital Code, Art XI, Part II, "Proprietary Hospitals" Sec. 11.02, "Licensure-General Provisions" (amended October 2, 1967) states: "an applicant must be a Natural Person, over the age of twenty-one years, a citizen of the United States or a person who has declared his intentions of becoming a citizen; a resident of New York State..."

evidence, that the FASC by-laws reflect identical language to comport with the language of NYC's Hospital Code §11-02, is just the icing on the cake.

20. Prior counsel did not speak nor read French, therefore he was not aware of the importance of the handwritten memorandum.

21. I also have not conceded that I do not own shares in FASC. I have stated that there are no stock certificates to evidence that ownership. This is not the same thing as conceding that I did not own shares. Thus Francois's assertion, in his affidavit in support of his motion to dismiss (R.45) is false. Prior counsel's statement to the lower court, at oral argument is that there were no stock certificates to prove ownership. There were no stock certificates to prove that anyone owned FASC. This was because there were never any formal share documents that were created at the time of the formation of FASC, nor at any time thereafter. For that reason, no other defendant or alleged FASC shareholder produced stock certificates proving that they were shareholders, not that I was not a shareholder. As Exhibit 9, the FASC 1988 by-laws demonstrate, defendant George Kessler was secretary and defendant-respondent Francois was treasurer. Neither Kessler nor Francois has argued that there ever were stock certificates, nor have they produced corporate records as evidence.

22. While this appeal was pending, a motion was pending in the lower court, Defendant-Respondents Jean-Francois Simon ("Francois"), French-

American Surgery Center, Inc. (“FASC”), and French-American Clinic, Inc., (“FAC”) had filed a motion to dismiss the Third Amended Verified Complaint and I had filed a cross-motion for summary judgement, on the fourth and fifth direct causes of action, for the equitable claims of unjust enrichment and constructive trust against FASC and FAC.

25. The following documents were submitted into evidence to support that summary judgment motion.

- i) April 19, 1991 handwritten memorandum between Jean-Jacques and myself detailing some of the financial contributions I made and would make (EF #674);
- ii) The East 79th Street condominium deed and mortgage (EF# 675);
- iii) Lease payments to FAC, and master lease guarantee (EF #676);
- iv) 1989 sale of my house in Behoust to finance FASC construction (EF #677);
- v) 2002 Letter from Francine’s attorney (EF #678);
- vi) FASC valuation (EF# 680);
- vii) Copelco Leasing Personal Guarantees for FASC’s equipment leases which were referenced in the 1991 holographic contract (EF #729);
- viii) Assignments of Equipment Leases accepted by Francois (EF#730);
- ix) UCC Financing Statements against my name and SSN, signed by Francois (EF#731);
- x) NYS DOH correspondence addressed to me as Medical Director of FASC (EF #734);
- xi) Revised FASC valuation (EF #744).

26. In addition, because the direct claims for unjust enrichment and constructive trust are equitable, the following documents evidenced Francois’s unclean hands, concerning FAC and FASC:

- i) HSBC bank records demonstrating Francois’s theft of \$525,000 in 2002 (EF #459);

- ii) My father's April 2002 hospital intake record directly after learning of Francois's theft of the \$525,000 that had been set aside to pay taxes (EF #739);
- iii) 1991 reimbursement checks from Francois's "secret" FASC account on Montague Street, Brooklyn (EF# 679);
- iv) Letter to Court regarding Anne-Valerie's death (EF # 785).

Francois Kept My Sister, Anne-Valerie's Death on June 25, 2019 Secret And I Learned Of It From His Attorney In Court on December 11, 2019

27. Not part of the appeal record was the fact that my sister, Anne-Valerie, a healthy woman, had died of mysterious causes on June 25, 2019 in Paris and these facts were willfully kept a secret from me by Francois. Francois also abused my 89-year-old mother by preventing her from disclosing to me, nor of sharing her grief and sorrow. Francois also caused my sister's body to be cremated. These outrageous facts are further evidence of Francois's proclivities for keeping secrets and deceiving others, as has been exemplified throughout this five-year litigation.

28. I learned these facts from Francois's attorney, Mark Lebow, on December 11, 2019, in the courthouse, after a compliance conference before the lower court, in the context of why it was not necessary for me to set up a trust for her.

29. I just learned of this, therefore it is new information under CPLR 2221 (e), and I was shocked by the depth of Francois's heartlessness. If one were to weigh this last outrageous act on the scales of equity, the outcome is obvious.

30. From the onset of litigation, Francois promised me that his defense would be a war of attrition because he controls all the JJS monies. But keeping Anne-Valerie's death a secret, where there were mysterious circumstances, then having her cremated to forestall any further inquiry, when that final end was not her intention, is still so incomprehensible to me, such that my wife and I are still processing this.


31. More shocking is Francois's abuse of my mother, who told me she had desperately wanted to share her grief and sorrow with me, but was restrained from doing so.

32. This Court is well familiar with Francois's disregard for the Court's authority and jurisdiction; now the Court is familiar with another dimension unfolding in real time: Francois's cruel disregard of his family, and his utter lack of humanity and decency.

33. In light of the foregoing, I respectfully request that the Court grant this Motion for Leave to Reargue, or, in the alternative, Leave to Appeal to the Court of Appeals and any other relief the Court deems just, proper, and equitable.

Dated: New York, New York
January 3, 2020

Respectfully submitted,



Jean-Pascal Simon, M.D.

EXHIBIT 1

April 19th
1991 10
11/2/91

Jean Pascal acquiert la totalité des
parts de Tradel, franchise de l'offt 361
301 E 79 St NY
ou fin net vendeur \$ 190.000.00

2) J.P. a versé à ce jour à titre d'acompte
\$ 60.000. cheque à FSC.
23 400 lessus intérieurs -
fourniturement: \$ 600 devoirs, cash déjà payé -

\$ 90.000
solde

\$ 100.000 payable \$ 20.000 fin solde

50.000 June 17 -

20.000 fin mai

10.000 fin juin

3) A parti du 1^{er} MAI 1991:
\$ 3000 - loyer bureau JPS en 2E 86 St

4) JPS paye mensuellement le montant des
lessus, équipement déjà achetés, sauf gastro scope
et colofscope.
L'ensemble de ces équipements est la propriété de FAS
Fin

[Translation of handwritten note]

April 19th

1991

4:00 PM

- 1) Jean Pascal acquires all of the shares of Pradel, owner of apartment 34R 301 E 79 St NY at the net selling price \$190,000.00

- 2) To date, J. P has paid as a deposit \$60,000 check to FSC. 23,400 prior leasing – lump sum: 6,600 various, cash already paid –

\$90,000
 balance \$100,000
 payable \$20,000 end of April
 50,000 June 17
 20,000 end of May
 10,000 end of June

- 3) Starting May 1, 1991: \$3000 – monthly rent of JPS's office at 2 E 86 Street

- 4) JPS will pay monthly the amount of the leasing, equipment already purchased, except for gastroscop and laparoscope.

|
 | All of this equipment is the property of [crossed out] FAS
 \\| [P Simon]

CERTIFICATE OF ACCURACY

I, Nicole Efros, declare that I am certified by the American Translators Association in translation of French into English and that on May 2, 2019, I translated the following document from French into English:

Jean-Jacques Holographic Acknowledgment of FASC

Both a copy of the original and a translation thereof are attached hereto. To the best of my ability, knowledge and belief, said translation is true, accurate and complete.

I hereby certify under penalty of perjury, under the laws of the state of New York that the foregoing is true and correct. Dated and signed on May 2, 2019.



Verify at www.atanet.org/verify



Nicole Efros, CT

EXHIBIT 2

Docteur Jean-Jacques SIMON
88, avenue Henri-Martin
75116 PARIS
Téléphone 45 04 30 45
Télécopie 45 04 90 45

COPIE

Paris le 27 Juin 1993

Ceci est mon testament

Je soussigné, Jean Jacques Simon, sain d'esprit
lègue, en cas de décès, mes biens à
Madame Françoise Simon, née Lebar, mon épouse
et l'inst. Fine lègue à titre universel
et exécuteur testamentaire.

le 24 Juin 1993

"COPIE CERTIFIÉE"
CONFORME A L'ORIGINAL
Le 30 septembre 2002.

renouvelé le 15 Avril 1997

MICHELEZ MOTEL MOLLIERE
BONDUELLE LIOUSSOU
NOTAIRES
128, bd de Courcelles 75017 PARIS
Tél. 01 56 33 80 00 Fax 01 46 22 08 05

EXHIBIT 3

REEL 2234 PG 1066

This Mortgage may not be changed or terminated orally, the covenants contained in this Mortgage shall run with the land and bind the Mortgagor, the heirs, personal representatives, successors and assigns of the Mortgagor and all subsequent encumbrances, tenants and subtenants of the Premises, and shall inure to the benefit of the Mortgagee, the successors and assigns of the Mortgagee. The word "Mortgagor" shall be construed as if it read "Mortgagee" whenever the sense of this Mortgage so requires. The Mortgagor irrevocably waives all rights to trial by jury in any action, proceeding or counterclaim arising on, out of, or by reason of this Mortgage.

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage on the date first above written.

JJS GROUP INC.

By: *[Signature]*
Title: ~~VP~~ President

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 28th day of July, 1995, before me personally came JEAN-~~Philippe~~ SIMON, to me known, who, being by me duly sworn, did depose and say that he resides at 10 VCF ~~10 VCF~~ *Page 10028*, that he is the ~~VP~~ President of JJS GROUP INC., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

[Signature]
Notary Public

HOWARD ROSEMAN
Notary Public, State of New York
No. 02804687179
Qualified in Kings County
Commission Expires Jan. 31, 1997

EXHIBIT 4

New York City Department of Finance
Office of the City Register

HELP

[Click help for additional instructions]
Selecting a help option will open new window

Current Search Criteria:	
Borough:	MANHATTAN / NEW YORK
Block:	1542
Lot:	1495
Unit:	N/A
Date Range:	To Current Date
Document Class:	All Document Classes

Detailed Document Information

DOCUMENT ID:	FT_1670000383567	CRFN:	N/A	COLLATERAL:	N/A
# of PAGES:	15	REEL-PAGE:	1820-2384	EXPIRATION DATE:	N/A
DOC. TYPE:	MORTGAGE	FILE NUMBER:	N/A	ASSESSMENT DATE:	N/A
DOC. DATE:	N/A	RECORDED / FILED:	10/22/1991	SLID #:	N/A
DOC. AMOUNT:	\$138,750.00	BOROUGH:	MANHATTAN	MAP SEQUENCE #:	0
% TRANSFERRED:	N/A	RPTT #:	N/A		
MESSAGE:	N/A				

PARTY 1

NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP	COUNTRY
SIMON, J PASCAL	301 EAST 79TH ST		NY	NY	10021	US

PARTY 2

NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP	COUNTRY
MANHATTAN SAVINGS BANK	ONE HANSON PLACE		BKLYN	NY	11243	US

PARTY 3/Other

NAME	ADDRESS 1	ADDRESS 2	CITY	STATE	ZIP	COUNTRY
------	-----------	-----------	------	-------	-----	---------

PARCELS

BOROUGH	BLOCK	LOT	PARTIAL	PROPERTY TYPE	EASEMENT	AIR RIGHTS	SUBTERRANEAN RIGHTS	PROPERTY ADDRESS	UNIT	REMARKS
MANHATTAN / NEW YORK	1542	1495	ENTIRE LOT	PRE-ACRIS	N	N	N	1522 2 AVENUE		

REFERENCES

CRFN	DOCUMENT ID	BOROUGH	YEAR	REEL	PAGE	FILE NBR
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REMARKS

DISCHGD 09/23/93 R2010 P868

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REEL 1820 PG 2397

Government National Mortgage Association (GNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) buys all or some of the Lender's rights under the Mortgage and the Note, the promises and agreements in Paragraphs 24 to 39 of this Rider will no longer have any force or effect.

This Rider is a part of the attached Mortgage and by signing below, I agree to all of the above.

WITNESS:

George Kessler Dr. J. Pascal Simon
Dr. J. Pascal Simon

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 9th day of October, 1991, before me personally came Dr. J. Pascal Simon, to me known to be the individual(s) described in and who executed the foregoing instrument and acknowledged that he executed the same.

J. M. Wilson
Notary Public
JAMES S. WILSON
Notary Public, State of New York
No. 44,341-91
County of the County of 93
COMMISSION EXPIRES JUNE 30, 1992

REEL 1820 PG 2398

20569

M/100338

MORTGAGE BY: Dr. J. Pascal Simon

PREMIERS: 301 East 79th Street, #34R,
New York, New York 10021

SECTION: 1542
BLOCK: 1495
LOT: 1495

MORTGAGE TO: THE MANHATTAN SAVINGS BANK
ONE HANSON PLACE
BROOKLYN, NEW YORK 11243

RECORD AND RETURN TO: FRIEDMAN, KRAUSS & ZLOTOW
888 SEVENTH AVENUE
NEW YORK, NEW YORK 10019
ATTN: JULIE NOLLETTI, ESQ.

RECORDED BY
ABSTRACT CORPORATION
26 COURT STREET
BROOKLYN, N. Y. 11243
(718) 822-8368

D-45

RECORDING TAX
2,749-

Handwritten signature/initials

RECEIVED
RECORDING TAX OF \$ 2,749-
Includes Special 376.75
Add'l Tax \$ 275.00
SERIAL No. 1111

OCT 22 1991

Jay L. Bobrow
CITY REGISTER

MORT 407325
\$45.00
MTGETX 407326
\$2,749.00

RECORDED IN NEW YORK COUNTY



91 OCT 22 PM 2:46

OFFICE OF CITY REGISTER
New York County
RECORDED
Witness my hand
and official seal

Jay L. Bobrow
CITY REGISTER

New York City Department of Finance
Office of the City Register

HELP

Selecting a help option will open new window

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FT_1920000377892

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REEL 4 004 PG 0179

Ms54

This Indenture, made the 30 day of July, 1991, between PRADEL COMMERCIAL CORP., a foreign corporation having an address at 301 East 79th Street, New York, N.Y. (the grantor) and DR. J. PASCAL SIMON residing at 301 East 79th Street, New York, N.Y. (the grantee).

WITNESSETH:

That the grantor, in consideration of Ten (\$10.00) Dollars and other valuable consideration paid by the grantee, does hereby grant and release unto the grantee, and the heirs or successors and assigns of the grantee, forever:

The Condominium Unit (the "Unit") known as Unit No. 34R in the building (the "building") known as Continental Towers Condominium and by the street number 301 East 79th Street, Borough of Manhattan, City, County and State of New York, said Unit being designated and described in that certain Declaration dated October 21, 1985 (the "Declaration"), made by the grantor, pursuant to Article 9-B of the Real Property Law of the State of New York (the "New York Condominium Act"), establishing a plan for condominium ownership of the building and the land (the "Land") upon which the building is situate (which land is more particularly described in Schedule A annexed hereto and by this reference made a part hereof), which Declaration was recorded in the New York County office of the Register of the City of New York (the "City Register's Office") on October 21, 1985, in Real 974, page 48, and also designated as Tax Lot 1495 in Block 1542 of Section 5 of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans of the building (the "Floor Plans"), certified by Keller and Kirkpatrick, Architects, on August 1st, 1985, as Condominium Plan No. 250 and also filed in The City Register's Office on October 21, 1985, as Condominium Plan No. 250. all capitalized terms herein which are not separately defined herein shall have the meanings given to those terms in the Declaration or in the By-Laws of Continental Towers Condominium (said By-Laws, as the same may be amended from time to time, are hereinafter referred to as the "By-Laws).

Together with an undivided .135% interest in the Common Elements;

Together with the appurtenances and all the estate and rights of the grantor in and to the Unit,

Together with, and subject to, the rights, obligations, easements, restrictions and other provisions set forth in the Declaration, Floor Plans and the By-Laws, all of which shall constitute covenants running with the Land and shall bind any person having at any time any interest estate in the Unit, as though recited and stipulated at length herein;

subject to the obligations and unperformed duties of the Lessee under an Agreement of Lease dated January 1, 1972 and recorded in the City Register's Office on January 5, 1972 at Reel 424, Page 942, which obligations and unperformed duties grantee hereby assumes and agrees to perform on the condition that Lessee under the above-referenced Lease Agreement agrees to indemnify and hold grantee harmless against any claim by the Lessor against grantee which relates to the Agreement of Lease;

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EXHIBIT 5

*Rec'd
small business*

GEORGE H. KESSLER

ATTORNEY AT LAW

26 COURT STREET • BROOKLYN, NEW YORK 11242

(718) 858-7484, (718) 858-7598

October 22nd, 1991

Jean P. Simon, M.D.
1049 Fifth Avenue
New York, N.Y. 10028

MINUTES

4/2/91	Demand letter to Rice	10
4/11/91	Meeting with client	30
4/15/91	Review of NY Telephone Contract for cancellation	15
4/22/91	Telephone conversation with client re application	10
4/25/91	Receipt and review of application papers from client- Meeting at bank re execution of papers. Telephone call to client	60
4/29/91	Telephone conversation with client to provide IRS info, etc.	10
5/6/91	Telephone conversation with client re status and to expect call from Accountant-telephone conversation with Accountant Larry Jacobs (212) 686-0569.	20
5/7/91	Follow up telephone conversation with Larry Jacobs. Will Provide Profit & Loss for 1991 and list 2 years tax returns	10
5/8/91	Receipt and review of tax returns. Meeting at bank with documents	25
5/16/91	Follow up conversatin with John Matthews re applciation	10
5/20/91	Telephone conversation with client	10
5/21/91	Meeting with client-review of loan papers, etc.	60
5/23/91	Telephone conversation with client and accountant for meeting	15
5/28/91	Review of papers with Mathews	15
5/29/91	Telephone conversation with Larry Jacobs confirming meeting and client	15
5/30/91	Meeting with Larry Jacobs at office-Review iof shareholder's list re possible S incorporation etc.	30

GEORGE H. KESSLER

ATTORNEY AT LAW

26 COURT STREET · BROOKLYN, NEW YORK 11242

(718) 858-7484, (718) 858-7598

an P. Simon, M.D.

10/1/1	Telephone call to Matthews. He advises Wendy Greenidge has the documents and is reviewing them	10
10/2	Telephone call to Julie Nolletti-will get back to me on a closing date.	10
10/3	Telephone call to Nolletti-advises will get confirmation for closing	10
10/4	Telephone calls to Nolletti to set up closing date. Several calls later-obtained 10/4 closing at 9:30. Advised Camille to diary closing for Pascal Simon and call Blue Cross for cancelled check on Ripp	30
10/7	Telephone call to Title Co. (Alba) to have closer at attorney's office on 10/9. Telephone call to Julie Nolletti - not in	20
10/8	Telephone conversation with Julie Nolletti-reviewed title report etc. for up date to close. She requires up date common charge letter and Power of Attorney from Condo. Required Omit on Condo arrears from Title Co. as they are liens. Called Julie of Condo-will fax documents. Telephone conversation with client re closing and confirmation with Title Co. Receipt of faxed Power. Telephone call to Julie again. She faxed incorrect pages. Will fax again. Office Appearance at Title Co. who agreed to omit building liens on mortgages (will pick them up if we sell condo and not cleared). Telephone call to Nolletti who agreed to accept terms.	60
10/9	Review of documentation and Closing appearance at attorney's office for bank.	120
11/27	Preparation of Closing report	20

40.5 hours

at \$200.00 per hour = \$8100.00

EXHIBIT 6

Window
Cleaning

25th. Tenant will not clean, nor require, permit, suffer or allow any window in the leased premises to be cleaned, from the outside by violation of Section 24 of the Labor Law or of the rules of the Board of Standards and Appeals, or of any other board or body having or exercising jurisdiction.

Premises

26th. Landlord shall not be liable for failure to give possession of the premises upon commencement date by reason of the fact that premises are not ready for occupancy, or due to a party Tenant wrongfully holding over or any other person wrongfully in possession or for any other reason. In such event the rent shall not abate and possession shall be given as to available, but the tenant herein shall not be required.

26th. Tenant acknowledges that the landlord is itself a Tenant under a Master Lease "Master lease" with Adams Hotel Associates dated December 30, 1982. Tenant acknowledges receiving a copy of the Master Lease. Tenant agrees that, vis a vis landlord, Tenant will assume the obligations of the tenant under the Master lease, and will be bound by any clause of the Master lease which is more restrictive than the provision lease. The obligations of tenant hereunder shall be limited to the premises only.

27th. Tenant shall provide landlord with a proof of his Malpractice insurance policy.
Policy #

28th. Landlord shall furnish tenant's office at landlord's expenses with a desk, an armchair, two chairs and a credenza.

29th. Tenant shall have the use of an examination room adjacent to his office containing an examination table, a medicine cabinet, scale, foot step and examination lamp.

30. Electricity and heat are furnished by the building to landlord under the Master lease and landlord shall make no additional charge to tenant therefor. In the event, however, tenant shall require any special equipment, the cost of any additional electricity used by such equipment shall be charged to tenant as additional rent hereunder.

31. Tenant acknowledges that landlord may be undertaking substantial construction work on the premises and such construction may create an inconvenience to tenant and require a substitution of offices thereat.

Headings

The original headings are inserted only as a matter of convenience and by no way define the scope of this lease or the intent of any provision thereof.

Quiet
Enjoyment

Landlord covenants that the said Tenant on paying the rent, and performing all the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said leased premises for the term aforesaid, provided however, that this covenant shall be conditioned upon the retention of title to the premises by Landlord.

And it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties herein and upon their respective executors, heirs, successors and administrators.

In Witness Whereof, Landlord and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Signed, sealed and delivered
in the presence of

RULES AND REGULATIONS

1. The elevator, entrance, passageway, pressure, shaftway, shaftway, or lobby shall not be designated for any Tenant or used for any purpose other than those set forth in the proposed project, and it shall remain the estate of the grantor. The Tenant shall be responsible for the safety and security of the building and shall not be permitted to use the building for any purpose other than those set forth in the proposed project.

2. Maintenance of parts in or out of the premises and building shall only be allowed through entrance and egress openings for this purpose. No load trucks, vans, etc. shall be used for the loading and unloading of goods and materials.

3. No storage or other projections shall be attached to the outside walls of the building and no awnings, shades, awnings, or screens shall be used without the prior written consent of the Landlord.

4. The skylights, windows, and doors that reflect or admit light and air into the lobby or other public places in the building shall not be covered or obstructed by any Tenant, nor shall any thing be placed on the windowsills.

5. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were intended, and no rubbish, soap, or other substances shall be thrown, dumped, or otherwise disposed of from any fixture of the building. The Tenant shall be responsible for the maintenance, repair, and replacement of such fixtures.

6. The Tenant shall not erect, place, or use any sign, banner, or other thing on the building or the premises of which any part is part. No hanging, cutting or striking of wires shall be permitted, except with the prior written consent of the Landlord, and any Landlord may direct the Tenant to remove any such banner, sign, or other thing from the premises. No sign shall be placed on the building or on the premises of which any part is part, or on any other structure, which is not in accordance with the provisions of the proposed project.

7. The Tenant shall not, or permit to be made, any alteration or modification of any structure, with or without the consent of the Landlord, including, but not limited to, the following:

8. The Tenant, for any of Tenant's employees, agents, visitors or licensees, shall at any time bring or have upon the premises any materials, goods, or articles, or any other thing, or permit any material or goods to be placed or kept on the premises.

9. No machine may be operated on the premises without the written consent of the Landlord; machinery shall be placed in approved locations in respect of general safety rules or regulations.

10. No Tenant shall place a load upon any part of the building exceeding the floor load per square foot area which such load was designed to carry, and all floor loads shall be evenly distributed. All removal or disassembly of any structure, freight, furniture or bulky any part of any description must take place during the hours which the Landlord or Landlord's agent may designate from time to time. The Landlord reserves the right to prescribe the weight and position of all loads which must be placed on any part of the building at his pleasure. The Landlord reserves the right to inspect all freight to be brought from the building and to remove from the premises all freight which exceeds any of these floor load requirements or this heavy floor load and machinery load per the provisions.

11. Changing, substituting and putting to the building or premises or other structure shall be prohibited or shall be by the Tenant without the written consent of the Landlord.

12. No Tenant shall, or shall permit to be made, any alteration or modification of any structure, with or without the consent of the Landlord, including, but not limited to, the following:

State of New York, County of _____	City of _____	Day of _____	Year _____
On this _____ day of _____, 20____, before me personally came _____ of _____	State of New York, County of _____	City of _____	Day of _____
to me known and known to me to be the undersigned described in and who executed the foregoing instrument and advised me that he executed the same.	On this _____ day of _____, 20____, before me personally came _____ of _____	State of New York, County of _____	City of _____
	The signature described in and which executed the foregoing instrument, that he knows the said of said signatory, that the said instrument is not subject to such conditions that he is not an officer of the State or of the County or of said corporation, and that he signed the same therein by the said _____		

In Consideration of the making of the premises which mentioned in the within named Tenants and the sum of _____ paid to the undersigned by the within named Landlord, the undersigned hereby certifies and agrees, to and with the Landlord and the Landlord's successors and assigns, that it stands shall at any time be made by the said Tenant in the payment of the rent and the performance of the covenants contained in the within lease, on the Tenant's part to be paid and performed, that the undersigned will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said Landlord, and also pay all damages that may arise in consequence of the non-performance of said covenants, or either of them, without requiring justice of any such default from the said Landlord. The undersigned hereby waives all right to trial by jury in any action or proceeding hereinafter mentioned by the Landlord, in which the undersigned may be a party.

In Witness Whereof, the undersigned has hereunto set hand and seal this _____ day of _____, 20____.

WITNESSES _____

EXHIBIT 7

RIDER ANNEXED TO AND FORMING PART OF A LEASE MADE BETWEEN ADAMS HOTEL ASSOCIATES AND *FRENCH BROTHEN CLINIC, INC.*
DATED DECEMBER 3rd, 1982

40. Tenant shall pay an annual basic rental rate of:

a. \$100,000 (payable monthly \$8,333.34) commencing ^{February} ~~December~~ 1, 1982³ and ending on ^{January 31} ~~November 30~~, 1983⁹.

b. \$115,000 (payable \$9,583.34 monthly) for the period commencing ^{February 9} ~~December 1~~, 1982⁹ and ending on ^{January 31} ~~November 30~~, 1992².

c. \$132,250 (payable \$11,020.84 monthly) for the period commencing ^{February 2} ~~December 1~~, 1992² and ending on ^{January 31} ~~November 30~~, 1994⁵.

which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly instalments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof.

41. Tenant shall use and occupy demised premises for

(a) Medical offices; clinic; laboratories; and facilities *in connection with medical practice uses, all* offices, to the extent permitted by law, and for no other purpose.

(b) Tenant agrees and as an express inducement to Owner to enter into this lease that Tenant shall not perform any abortions in the demised premises and in the event that the Tenant shall be in default of this provision, Owner shall have the right to terminate this lease as hereinafter provided upon notice to Tenant as provided in Article 17 of this lease.

(c) Tenant agrees to operate and conduct its activities consistent with the character and setting of the premises as a first-class hotel. Tenant agrees not to cause, suffer or permit any odors to emanate from the demised premises and

EXHIBIT 8



CELEBRATING OUR
20TH ANNIVERSARY

INSURANCE REQUIREMENTS UNDER TERMS OF LEASE

Under the terms of the Lease Agreement, continuous insurance coverage must be maintained on the leased equipment during the entire term of the lease. This insurance must be in place when the equipment is delivered. Copelco Leasing Corporation must be named as Loss Payee on property insurance and Additional Insured on liability insurance. If, during the term of the lease, lessee changes insurance agents, insurance carrier, or otherwise terminates or lets insurance policy expire, lessee agrees to notify lessor in writing and provide lessor with current insurance agent and insurance carrier in order for lessor to maintain evidence of continuous coverage.

PLEASE NOTIFY YOUR AGENT THAT COPELCO WILL BE CONFIRMING YOUR INSURANCE COVERAGE PRIOR TO LEASE COMMENCEMENT.

LESSEE'S INSURANCE AGENT

PROPERTY INSURANCE AGENT INFORMATION

GENERAL COMPREHENSIVE LIABILITY
INSURANCE AGENT INFORMATION

Agent Name

Agent Name

Contact

Contact

Address

Address

City & State

City & State

Phone No.

Phone No.

Policy No.

Policy No.

LESSEE: French-American Surgery Center, Inc.
and Fifth Avenue Surgery Center, Inc.
as Co-Lessees

LEASE #0219800, 0398270, 0469740

✓ By: [Signature]
French-American Surgery Center, Inc.

✓ By: [Signature]
Fifth Avenue Surgery Center, Inc.

Date:

Debtor name (last name first if individual) and mailing address:
NYSCEF DOC. NO. 731

Jean P. Simon, M.D.
DBA Fifth Avenue Surgery Center
1049 Fifth Avenue
New York, NY 10028
SS# [REDACTED]

FINANCING STATEMENT CHANGE
Uniform Commercial Code Form UCC-3
IMPORTANT - Please read instructions on
reverse side of page 4 before completing

RECEIVED NYSCEF: 06/11/2019

Filing No. (stamped by filing officer): Date, Time, Filing Office (stamped by filing officer)

Debtor name (last name first if individual) and mailing address:

This Financing Statement Change is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box):

- Secretary of the ~~CORPORATION~~ State NY
- Prothonotary of _____ County
- Real Estate Records of _____ County

Number of Additional Sheets (if any): 7

Optional Special Identification (Max. 10 characters): Lease No. 0398270

ORIGINAL FINANCING STATEMENT BEING CHANGED

This Financing Statement Change relates to an original Financing Statement No. 266372 filed with the:

- Secretary of the ~~CORPORATION~~ (date) 12-26-91
- Prothonotary of _____ County on (date) _____
- Real Estate Records of _____ County on (date) _____

DESCRIPTION OF FINANCING STATEMENT CHANGE

- Continuation - The original Financing Statement identified above is still effective.
- Termination - The Secured Party of Record no longer claims a security interest under the original Financing Statement identified above.
- Release - The Secured Party of Record has released the collateral described in block 11 from the collateral covered by the original Financing Statement identified above.
- Assignment - The Secured Party of Record has assigned to the Assignee, whose name and address are contained in block 11, rights in the collateral described in block 11 under the original Financing Statement identified above.
- Amendment - The original Financing Statement identified above is amended as set forth in block 11 (signatures of Debtor and Secured Party of Record are required)

Secured Party(ies) of Record name(s) (last name first if individual) and address for security interest information:

Copelco Leasing Corporation
One MediQ Plaza
Pennsauken, NJ 08110

Description of collateral released, rights assigned, Assignee (name and address), or amendment (as indicated in block 10):

Original debtor's name and address is amended to:

French-American Surgery Center, Inc. and
Fifth Avenue Surgery Center, Inc., as Co-Lessees
1049 Fifth Avenue
New York, New York 10028

Equipment location: 1049 Fifth Avenue
New York, NY 10028

Special Types of Parties (check if applicable):

- The terms "Debtor" and "Secured Party" mean "Lessee" and "Lessor," respectively
- The terms "Debtor" and "Secured Party" mean "Consignee" and "Consignor," respectively.
- Debtor is a Transmitting Utility.

SIGNATURE(S)

Debtor Signature(s) (only if Amendment): French-American Surgery Center, Inc., and Fifth Avenue Surgery Center, Inc., as Co-Lessees

[Handwritten signatures]
VP, VP

Secured Party Signature(s): Copelco Leasing Corporation

Doris Plungis, Mgr. Documentation

RETURN RECEIPT TO:

Copelco Leasing Corporation
1700 Suckle Plaza
Pennsauken, NJ 08110

NYSCEF DOC. NO. 731

PARTIES

Debtor name (last name first if individual) and mailing address:

Jean P. Simon, M.D.
DBA Fifth Avenue Surgery Center
1049 Fifth Avenue
New York, NY 10028
SS# [REDACTED]

1

Debtor name (last name first if individual) and mailing address:

1

Debtor name (last name first if individual) and mailing address:

1a

Secured Party(ies) of Record name(s) (last name first if individual) and address for security interest information:

Copelco Leasing Corporation
One Mediq Plaza
Pennsauken, NJ 08110

1b

Special Types of Parties (check if applicable):

- The terms "Debtor" and "Secured Party" mean "Lessor" and "Lessor," respectively.
- The terms "Debtor" and "Secured Party" mean "Consignee" and "Consignor," respectively.
- Debtor is a Transmitting Utility.

2

SIGNATURE(S)

Debtor Signature(s) (only if Amendment): French-American Surgery Center, Inc., and Fifth Avenue Surgery Center, Inc., as Co-Lessees

[Handwritten signatures]
VP
VP

Secured Party Signature(s): Copelco Leasing Corp.

Doris Plungis, Mgr. Documentation

4

FINANCING STATEMENT CHANGE
Uniform Commercial Code Form UCC-3
IMPORTANT - Please read instructions on reverse side of page 4 before completing

RECEIVED NYSCEF: 06/11/2019

Filing No. (stamped by filing officer):

Date, Time, Filing Office (stamped by filing officer):

5

This Financing Statement Change is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box):

- Secretary of the Commonwealth.
- Prothonotary of New York County.
- Real Estate Records of _____ County.

Number of Additional Sheets (if any):

Optional Special Identification (Max. 10 characters): Lease No. 0398270

ORIGINAL FINANCING STATEMENT BEING CHANGED

This Financing Statement Change relates to an original Financing Statement No. 92NO1329 filed with the:

- Secretary of the Commonwealth on (date) _____
- Prothonotary of New York County on (date) 1-9-92
- Real Estate Records of _____ County on (date) _____

DESCRIPTION OF FINANCING STATEMENT CHANGE

- Continuation - The original Financing Statement identified above is still effective.
- Termination - The Secured Party of Record no longer claims a security interest under the original Financing Statement identified above.
- Release - The Secured Party of Record has released the collateral described in block 11 from the collateral covered by the original Financing Statement identified above.
- Assignment - The Secured Party of Record has assigned to the Assignee whose name and address are contained in block 11, rights in the collateral described in block 11 under the original Financing Statement identified above.
- Amendment - The original Financing Statement identified above is amended as set forth in block 11 (signatures of Debtor and Secured Party of Record are required).

Description of collateral released, rights assigned, Assignee (name and address), or amendment (as indicated in block 10):

Original debtor's name is amended to:

French-American Surgery Center, Inc. and
Fifth Avenue Surgery Center, Inc. as Co-Lessees
1049 Fifth Avenue
New York, NY 10028

Equipment location: 1049 Fifth Avenue
New York, NY 10028

RETURN RECEIPT TO:

Copelco Leasing Corporation
1700 Suckle Plaza
Pennsauken, NJ 08110

11

12

NYSCEF DOC. NO. 731

PARTIES

Debtor name (last name first if individual) and mailing address:

Simon, Jean P., M.D.
2 E. 86th Street
New York, NY 10028

SS# [REDACTED]

1

Debtor name (last name first if individual) and mailing address:

This Financing Statement Change is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box):

- Secretary of the ~~Commonwealth~~ New York
- Prothonotary of _____ County
- Real Estate Records of _____ County

Number of Additional Sheets (if any):

Optional Special Identification (Max. 10 characters): Lease 0219800

ORIGINAL FINANCING STATEMENT BEING CHANGED

This Financing Statement Change relates to an original Financing Statement No. 217511

filed with the:

- Secretary of the Commonwealth on (date) 10-11-90
- Prothonotary of _____ County on (date) _____
- Real Estate Records of _____ County on (date) _____

DESCRIPTION OF FINANCING STATEMENT CHANGE

- Continuation - The original Financing Statement identified above is still effective
- Termination - The Secured Party of Record no longer claims a security interest under the original Financing Statement identified above
- Release - The Secured Party of Record has released the collateral described in block 11 from the collateral covered by the original Financing Statement identified above
- Assignment - The Secured Party of Record has assigned to the Assignee, whose name and address are contained in block 11, rights in the collateral described in block 11 under the original Financing Statement identified above
- Amendment - The original Financing Statement identified above is amended as set forth in block 11 (signatures of Debtor and Secured Party of Record are required).

Description of collateral released, rights assigned, Assignee (name and address), or amendment (as indicated in block 10).

Original debtor's name is amended to:

French-American Surgery Center, Inc. and
Fifth Avenue Surgery Center, Inc. as Co-Lessees
1049 Fifth Avenue
New York, New York 10028

Equipment location: 1049 Fifth Avenue
New York, NY 10028

RETURN RECEIPT TO

Copelco Leasing Corporation
1700 Suckle Plaza
Pennsauken, NJ 08110

Debtor name (last name first if individual) and mailing address:

Secured Party(ies) of Record name(s) (last name first if individual) and address for security interest information

Copelco Leasing Corporation
One Mediq Plaza
Pennsauken, NJ 08110

Special Types of Parties (check if applicable):

- The terms "Debtor" and "Secured Party" mean "Lessee" and "Lessor," respectively
- The terms "Debtor" and "Secured Party" mean "Consignee" and "Consignor," respectively.
- Debtor is a Transmitting Utility.

SIGNATURE(S)

Debtor Signature(s) (only if Amendment): French-American
Surgery Center, Inc. and Fifth
Avenue Surgery Center, Inc. as Co-Lessees

[Handwritten signatures] VP
[Handwritten signatures] VP

Secured Party Signature(s): Copelco Leasing Corp.

Doris Plungis, Mgr. Documentation

4

12

NYSCEF DOC NO 731

PARTIES

Debtor name (last name first if individual) and mailing address:

Jean P. Simon, M.D.
2 E. 86th Street
New York, NY 10028

SS# [REDACTED]

Debtor name (last name first if individual) and mailing address:

Debtor name (last name first if individual) and mailing address:

Secured Party(ies) of Record name(s) (last name first if individual) and address for security interest information:

Copelco Leasing Corporation
One Mediq Plaza
Pennsauken, NJ 08110

Special Types of Parties (check if applicable):

- The terms "Debtor" and "Secured Party" mean "Lessee" and "Lessor," respectively
- The terms "Debtor" and "Secured Party" mean "Consignee" and "Consignor," respectively.
- Debtor is a Transmitting Utility

SIGNATURE(S)

Debtor Signature(s) (only if Amendment): French-American Surgery Center, Inc. and Fifth Avenue Surgery Center, Inc. as Co-Lessees

[Handwritten signatures]

Secured Party Signature(s): Copelco Leasing Corp.

Doris Plungis, Mgr. - Documentation

FINANCING STATEMENT CHANGE
Uniform Commercial Code Form 9-103
IMPORTANT - Please read instructions on reverse side of page 4 before completing

Filing No. (stamped by filing office):

Date, Time, Filing Office (stamped by filing office)

This Financing Statement Change is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box):

- Secretary of the Commonwealth.
- Prothonotary of New York County
- Real Estate Records of _____ County

Number of Additional Sheets (if any):

Optional Special Identification (Max. 10 characters): Lease No. 0219800

ORIGINAL FINANCING STATEMENT BEING CHANGED

This Financing Statement Change relates to an original Financing Statement No. 90PN35900 filed with the:

- Secretary of the Commonwealth on (date) _____
- Prothonotary of New York County on (date) 7-24-90
- Real Estate Records of _____ County on (date) _____

DESCRIPTION OF FINANCING STATEMENT CHANGE

- Continuation - The original Financing Statement identified above is still effective
- Termination - The Secured Party of Record no longer claims a security interest under the original Financing Statement identified above
- Release - The Secured Party of Record has released the collateral described in block 11 from the collateral covered by the original Financing Statement identified above
- Assignment - The Secured Party of Record has assigned to the Assignee, whose name and address are contained in block 11, rights in the collateral described in block 11 under the original Financing Statement identified above
- Amendment - The original Financing Statement identified above is amended as set forth in block 11 (signatures of Debtor and Secured Party of Record are required)

Description of collateral released, rights assigned, Assignee (name and address), or amendment (as indicated in block 10):

Original debtor's name is amended to:

French American Surgery Center, Inc. and
Fifth Avenue Surgery Center, Inc. as Co-Lessees
1049 Fifth Avenue
New York, NY 10028

Equipment location: 1049 Fifth Avenue
New York, NY 10028

RETURN RECEIPT TO:

Copelco Leasing Corporation
1700 Suckle Plaza
Pennsauken, NJ 08110

NYSCEF DOC. NO. 91 Debtor name (last name first if individual) and mailing address.

Jean P. Simon, M.D.
2 E. 86th Street
New York, NY 10028

SS# [REDACTED]

Debtor name (last name first if individual) and mailing address:

Debtor name (last name first if individual) and mailing address:

Secured Party(ies) of Record name(s) (last name first if individual) and address for security interest information:

Copelco Leasing Corporation
One Mediq Plaza
PENNSAUKEN, NJ 08110

Special Types of Parties (check if applicable):

- The terms "Debtor" and "Secured Party" mean "Lessee" and "Lessor," respectively.
- The terms "Debtor" and "Secured Party" mean "Consignor" and "Consignor," respectively.
- Debtor is a Transmitting Utility.

SIGNATURE(S)

Debtor Signature(s) (only if Amendment): French-American Surgery Center, Inc. and Fifth Avenue Surgery Center, Inc. as Co-Lessees

[Handwritten signatures]

Secured Party Signature(s): Copelco Leasing Corp.

Doris Plungis, Mgr. Documentation

FINANCING STATEMENT CHANGE
Uniform Commercial Code Form UCC-9
IMPORTANT - Please read instructions on reverse side of page 4 before completing

RECEIVED NYSCEF: 06/11/2019

Filing No. (stamped by filing officer): Date, Time, Filing Office (stamped by filing officer)

This Financing Statement Change is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box):

- Secretary of the Commonwealth, State
- Prothonotary of _____ County
- Real Estate Records of _____ County

Number of Additional Sheets (if any):

Optional Special Identification (Max. 10 characters): Lease No. 0219800

ORIGINAL FINANCING STATEMENT BEING CHANGED

This Financing Statement Change relates to an original Financing Statement No. 145666 filed with the:

- Secretary of the Commonwealth on (date) _____
- Prothonotary of New York County on (date) 7-9-90
- Real Estate Records of _____ County on (date) _____

DESCRIPTION OF FINANCING STATEMENT CHANGE

- Continuation - The original Financing Statement identified above is still effective.
- Termination - The Secured Party of Record no longer claims a security interest under the original Financing Statement identified above.
- Release - The Secured Party of Record has released the collateral described in block 11 from the collateral covered by the original Financing Statement identified above.
- Assignment - The Secured Party of Record has assigned to the Assignee, whose name and address are contained in block 11, rights in the collateral described in block 11 under the original Financing Statement identified above.
- Amendment - The original Financing Statement identified above is amended as set forth in block 11 (signatures of Debtor and Secured Party of Record are required).

Description of collateral released, rights assigned, Assignee (name and address), or amendment (as indicated in block 10):

Original debtor's name and address is amended to:

French American Surgery Center, Inc. and
Fifth Avenue Surgery Center, Inc. as Co-Lessees
1049 Fifth Avenue
New York, NY 10028

Equipment location: 1049 Fifth Avenue
New York, New York 10028

RETURN RECEIPT TO:

Copelco Leasing Corporation
1700 Suckle Plaza
Pennsauken, NJ 08110

<p>1 Debtor name (last name first if individual) and mailing address: PARSED 12-17-91 Jean P. Simon, M.D. D/B/A Fifth Avenue Surgery Center 1049 Fifth Ave. New York, NY 10028</p>	<p>FINANCING STATEMENT Uniform Commercial Code Form UCC-1 IMPORTANT - Please read instructions on reverse side of page 4 before completing</p> <p>Filing No. (stamped by filing office): DEC 26 91 266372 Date, Time, Filing Office (stamped by filing office): 9:00 A.M. D.O.S.</p>
<p>2 Debtor name (last name first if individual) and mailing address:</p>	<p>3 This Financing Statement is presented for filing pursuant to the Uniform Commercial Code, and is to be filed with the (check applicable box): <input checked="" type="checkbox"/> Secretary of the COMMONWEALTH STATE <input type="checkbox"/> Proficiency of _____ County <input type="checkbox"/> real estate Records of _____ County</p> <p>4 Number of Additional Sheets (if any): _____</p> <p>5 Collateral Special Identification (Max. 10 characters): LEASE No. 0-39827-0</p> <p>6 COLLATERAL</p> <p>7 Identify collateral by item and/or type: Vendor</p> <p>8 SEE SCHEDULE "A" ATTACHED</p>
<p>9 Secured Party name(s) (last name first if individual) and address for security interest information: COPELCO LEASING CORPORATION ONE MERRI PLAZA PENNINGTON, NEW JERSEY 08110</p>	<p>9 <input checked="" type="checkbox"/> (check only if desired) Products of the collateral are also covered.</p> <p>10 Identify related real estate, if applicable. The collateral is, or includes (check appropriate box(es)) - a. <input type="checkbox"/> crops growing or to be given on - b. <input type="checkbox"/> goods which are or are to become fixtures on - c. <input type="checkbox"/> minerals or the like (including oil and gas) as extracted on - d. <input type="checkbox"/> interests resulting from the sale of minerals or the like (including oil and gas) at the wellhead or minehead on -</p> <p>11 Describe the following real estate: Street Address: Describe as Book _____ of (check one) <input type="checkbox"/> Deeds <input type="checkbox"/> Mortgages, at Page(s) _____ for _____ County. Uniform Parcel Identifier _____ <input type="checkbox"/> Described on Additional Sheet.</p> <p>12 <input type="checkbox"/> Items of special interest (specified only if no Debtor has an interest in record):</p>
<p>10 Special Types of Parties (check if applicable): <input checked="" type="checkbox"/> The terms "Debtor" and "Secured Party" mean "Lessor" and "Lessee," respectively. <input type="checkbox"/> The terms "Debtor" and "Secured Party" mean "Consignee" and "Consignor," respectively. <input type="checkbox"/> Debtor is a Transacting Utility.</p>	<p>10 SECURED PARTY SIGNATURE(S)</p> <p>This statement is filed with only the Secured Party's signature to perfect a security interest in collateral (check applicable box(es)): a. <input type="checkbox"/> acquired after a change of name, identity or corporate structure of the Debtor. b. <input type="checkbox"/> as to which the filing has lapsed. c. already subject to a security interest in another county in Pennsylvania - <input type="checkbox"/> when the collateral was moved to this county. <input type="checkbox"/> when the Debtor's residence or place of business was moved to this county. d. already subject to a security interest in another jurisdiction - <input type="checkbox"/> when the collateral was moved to Pennsylvania. <input type="checkbox"/> when the Debtor's location was moved to Pennsylvania. e. <input type="checkbox"/> which is proceeds of the collateral described in block 9, in which a security interest was previously perfected (also describe proceeds in block 9, if purchased with cash proceeds and not subsequently described on the original financing statement).</p> <p>Secured Party Signature(s): (required only if box(es) is checked above):</p>
<p>11 DEBTOR SIGNATURE(S)</p> <p>Debtor Signature(s): JEAN P. SIMON, M.D. D/B/A FIFTH AVENUE SURGERY CENTER</p> <p>12 RETURN RECEIPT TO:</p> <p>COPELCO LEASING CORPORATION ONE MERRI PLAZA PENNINGTON, NEW JERSEY 08110</p>	<p>11 DEBTOR SIGNATURE(S)</p> <p>12 RETURN RECEIPT TO:</p> <p>COPELCO LEASING CORPORATION ONE MERRI PLAZA PENNINGTON, NEW JERSEY 08110</p> <p>13 RETURN RECEIPT TO:</p> <p>COPELCO LEASING CORPORATION ONE MERRI PLAZA PENNINGTON, NEW JERSEY 08110</p> <p>14 RETURN RECEIPT TO:</p> <p>COPELCO LEASING CORPORATION ONE MERRI PLAZA PENNINGTON, NEW JERSEY 08110</p>

STANDARD FORM NO. 1
Approved by Secretary of Commonwealth of Pennsylvania

FILING OFFICE ORIGINAL
NOTE - This page will not be returned by the Department of State.

SCHEDULE A TO UCC-1 FINANCING STATEMENT

DEBTOR

Jean P. Simon, M.D.
 D/B/A Fifth Avenue Surgery Center
 1049 Fifth Ave.
 New York, NY 10028

SECURED PARTY

Copelco Leasing Corporation
 One Mediq Plaza
 Pennsauken, NJ 08110

Vendor: Smith & Nephew

Vendor: L. W. Sleepwell, Inc.

- 1 PS3500 SYS 120V
- 1 CONTROL UNIT 120V
- 1 FOOT SWITCH-ENGLISH PS3100
- 1 POWER CORD PS3500 MDU
- 1 STERILIZATION-TRAY PS3500
- 1 MOKIJON 20" SONY
- 1 VAS 30056 25MM
- 1 OPERATIVE INSTRUMENT SET 4.5
- 1 IRRIGATION EXTENDER 4.5MM
- 1 CANNULA OPER F.P OPP 4.5
- 1 TROCAR 4.5MM
- 1 OTTURATOR 4.5MM
- 1 ADAPTOR INFUSION
- 1 LIGHT CABLE GEMINI 4 HR X 8FT
- 1 DYDACH 750 N/I C-RT HEAD
- 1 CAMERA HD DYDACH 750 C-RT
- 1 CONTROL UNIT DYDACH 750
- 1 CABLE COAX ENC. 6FT
- 1 CABLE COAX ENC. 3FT
- 1 CABLE R-O-O-MALE-MALE-FT
- 1 CABLE Y-C (S-VIDE) N/R 6FT
- 1 MONITOR 20" SONY-RGB-Y/C
- 1 HISSINGER ROD SET 4.5MM
- 1 HISSINGER ROD 4.5MM
- 1 CANNULA 4.5MM H/O HOLES
- 1 AUTOBRITE (7N)II ILLNTR 120V
- 1 LAMP 250. W. METAL-HAL-IDE
- 1 CANNULA FINGER POSED 4.5MM
- 1 OTTURATOR 4.5MM
- 1 TROCAR 5.5MM
- 1 ELECTROSURGICAL PROBE /HANDLE
- 1 PROBE HOOK 3 0 HR
- 1 INCISOR BLD 5.5MM DISP
- 1 SYNOVATOR BLD 5.5MM DISP
- 1 FULL RADIUS BLD 5.5ISP PS3500
- 1 FULL RADIUS BLD 4.50 ISP PS3500
- 1 CUTTER 3.5 DISP PS3500
- 1 ABRADER 5.5 DISP
- 1 DYDACH R SUCTION PUNCH 4.2MM
- 1 DYDACH R SUCTION PUNCH 3.4MM
- 1 SCISSORS STRAIGHT 3.4MM
- 1 KNIFE ROSETTE DISP
- 1 KNIFE BANANA DISP
- 1 KNIFE RETROGRADED DISP
- 1 SCREWS BLADE RETENTION 3.45 S/P
- 1 KIT BLADE LOCKING SCREW 5.2MM
- 1 JAWB JOHNSON
- 1 JAWB JOHNSON JR
- 1 GRASPER W/LOCK 4.0 STRAIGHT

- 1 LUXOR VIDED CONSOLE ASSEMBLED
- Vendor: RC Sales
- 1 2000 MANUAL OR TABLE
- 1 PR KNEE CRUTCHES
- 1 PR KNEE CRUTCH SOCKETS
- 1 PR LITHOTOMY HOLDERS
- 1 LITHOTOMY STRAPS
- 1 ETHER SCREEN
- 1 PR ETHER SCREEN CLAMPS
- 1 SET TABLE PADS
- 1 HMMWARDS H/PADS
- 1 SET RESTRAINT STRAPS

Vendor: American Internal Medical

- 1 STRYKER RECOVERY ROOM STRETCHER

Vendor: Acuflex Microsurgical, Inc.

- 1 DUCKBILL UPBITER
- 1 POSTERIOR PUNCH STRAIGHT
- 1 POSTERIOR PUNCH-UPBITER
- 1 POSTERIOR PUNCH LEFT SHEP
- 1 DUCKBILL
- 1 LEFT UPBITER DUCKBILL
- 1 RIGHT UPBITER DUCKBILL
- 1 ROSETTE KNIFE 5MM STRAIGH
- 1 POSTERIOR PUNCH UP SHEPT
- 1 POSTERIOR PUNCH RIGHT SHE
- 1 LEG HOLDER

EXHIBIT 9

MINUTES AND BY-LAWS
FRENCH AMERICAN SURGERY CENTER INC.

A New York Corporation

COMMENCING June 6th, 19 88

ENDING 19

Law Offices

BY-LAWS

ARTICLE I

The Corporation

Section 1. Name . The legal name of this corporation (hereinafter called the "Corporation") is

Section 2. Offices . The Corporation shall have its principal office in the State of New York. The Corporation may also have offices at such other places within and without the United States as the Board of Directors may from time to time appoint or the business of the Corporation may require.

Section 3. Seal . The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, New York". One or more duplicate dies for impressing such seal may be kept and used.

ARTICLE II

Meetings of Shareholders

Section 1. Place of Meetings . All meetings of the shareholders shall be held at the principal office of the Corporation in the State of New York or at such other place, within or without the State of New York, as is fixed in the notice of the meeting.

Section 2. Annual Meeting . An annual meeting of the shareholders of the Corporation for the election of directors and the transaction of such other business as may properly come before the meeting shall be held on the first Monday of

in each year if not a legal holiday, and if a legal holiday, then on the next secular day following, at ten o'clock A.M., Eastern Standard Time, or at such other time as is fixed in the notice of the meeting. If for any reason any annual meeting shall not be held at the time herein specified, the same may be held at any time thereafter

upon notice, as herein provided, or the business thereof may be transacted at any special meeting called for the purpose.

Section 3. Special Meetings. Special meetings of shareholders may be called by the President whenever he deems it necessary or advisable. A special meeting of the shareholders shall be called by the President whenever so directed in writing by a majority of the entire Board of Directors or whenever the holders of one-third (1/3) of the number of shares of the capital stock of the Corporation entitled to vote at such meeting shall, in writing, request the same.

Section 4. Notice of Meetings. Notice of the time and place of the annual and of each special meeting of the shareholders shall be given to each of the shareholders entitled to vote at such meeting by mailing the same in a postage prepaid wrapper addressed to each such shareholders at his address as it appears on the books of the Corporation, or by delivering the same personally to any such shareholder in lieu of such mailing, at least ten (10) and not more than fifty (50) days prior to each meeting. Meetings may be held without notice if all of the shareholders entitled to vote thereat are present in person or by proxy, or if notice thereof is waived by all such shareholders not present in person or by proxy, before or after the meeting. Notice by mail shall be deemed to be given when deposited, with postage thereon prepaid, in the United States mail. If a meeting is adjourned to another time, not more than thirty (30) days hence, or to another place, and if an announcement of the adjourned time or place is made at the meeting, it shall not be necessary to give notice of the adjourned meeting unless the Board of Directors, after adjournment fix a new record date for the adjourned meeting. Notice of the annual and each special meeting of the shareholders shall indicate that it is being issued by or at the direction of the person or persons calling the meeting, and shall state the name and capacity of each such person. Notice of each special meeting shall also state the purpose or purposes for which it has been called. Neither the business to be transacted at nor the purpose of the annual or any special meeting of the shareholders need be specified in any written waiver of notice.

Section 5. Record Date for Shareholders. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or for the purpose of determining shareholders entitled to receive payment of any

dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than fifty (50) days nor less than ten (10) days before the date of such meeting, nor more than fifty (50) days prior to any other action. If no record date is fixed, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day on which the meeting is held; the record date for determining shareholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is expressed; and the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Proxy Representation. Every shareholder may authorize another person or persons to act for him by proxy in all matters in which a shareholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the shareholder or by his attorney-in-fact. No proxy shall be voted or acted upon after eleven months from its date unless such proxy provides for a longer period. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided in Section 608 of the New York Business Corporation Law.

Section 7. Voting at Shareholders' Meetings. Each share of stock shall entitle the holder thereof to one vote. In the election of directors, a plurality of the votes cast shall elect. Any other action shall be authorized by a majority of the votes cast except where the New York Business Corporation Law prescribes a different percentage of votes or a different exercise of voting power. In the election of directors, and for any other action, voting need not be by ballot.

Section 8. Quorum and Adjournment. Except for a special election of directors pursuant to Section 603 of the New York Business Corporation Law, the presence, in person or by proxy, of the holders of

a majority of the shares of the stock of the Corporation outstanding and entitled to vote thereat shall be requisite and shall constitute a quorum at any meeting of the shareholders. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any shareholders. If at any meeting of shareholders there shall be less than a quorum so present, the shareholders present in person or by proxy and entitled to vote thereat, may adjourn the meeting from time to time until a quorum shall be present, but no business shall be transacted at any such adjourned meeting except such as might have been lawfully transacted had the meeting not adjourned.

Section 9. List of Shareholders. The officer who has charge of the stock ledger of the Corporation shall prepare, make and certify, at least ten (10) days before every meeting of shareholders, a complete list of the shareholders, as of the record date fixed for such meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city or other municipality or community where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present. If the right to vote at any meeting is challenged, the inspectors of election, if any, or the person presiding thereat, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

Section 10. Inspectors of Election. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more inspectors of election to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the person presiding at the meeting may, and at the request of any shareholder entitled to vote thereat shall, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock

represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by him or them and execute a certificate of any fact found by him or them. Any report or certificate made by the inspector or inspectors shall be prima facie evidence of the facts stated and of the vote as certified by them.

Section 11. Action of the Shareholders Without Meetings. Any action which may be taken at any annual or special meeting of the shareholders may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all outstanding shares entitled to vote thereon. Written consent thus given by the holders of all outstanding shares entitled to vote shall have the same effect as a unanimous vote of the shareholders.

ARTICLE III

Directors

Section 1. Number of Directors. The number of directors which shall constitute the entire Board of Directors shall be at least three, except that where all outstanding shares of the stock of the Corporation are owned beneficially and of record by less than three shareholders, the number of directors may be less than three but not less than the number of shareholders. Subject to the foregoing limitation, such number may be fixed from time to time by action of a majority of the entire Board of Directors or of the shareholders at an annual or special meeting, or, if the number of directors is not so fixed, the number shall be three or shall be equal to the number of shareholders (determined as aforesaid), whichever is less. Until such time as the corporation shall issue shares of its stock, the Board of Directors shall consist of two persons. No decrease in the number of directors shall shorten the term of any incumbent director.

Section 2. Election and Term. The initial Board of Directors shall be elected by the incorporator and each initial director so elected shall hold office until the first annual meeting of shareholders and until

his successor has been elected and qualified. Thereafter, each director who is elected at an annual meeting of shareholders, and each director who is elected in the interim to fill a vacancy or a newly created directorship, shall hold office until the next annual meeting of shareholders and until his successor has been elected and qualified.

Section 3. Filling Vacancies, Resignation and Removal. Any director may tender his resignation at any time. Any director or the entire Board of Directors may be removed, with or without cause, by vote of the shareholders. In the interim between annual meetings of shareholders or special meetings of shareholders called for the election of directors or for the removal of one or more directors and for the filling of any vacancy in that connection, newly created directorships and any vacancies in the Board of Directors, including unfilled vacancies resulting from the resignation or removal of directors for cause or without cause, may be filled by the vote of a majority of the remaining directors then in office, although less than a quorum, or by the sole remaining director.

Section 4. Qualifications and Powers. Each director shall be at least eighteen years of age. A director need not be a shareholder, a citizen of the United States or a resident of the State of New York. The business of the Corporation shall be managed by the Board of Directors, subject to the provisions of the Certificate of Incorporation. In addition to the powers and authorities by these By-Laws expressly conferred upon it, the Board may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done exclusively by the shareholders.

Section 5. Regular and Special Meetings of the Board. The Board of Directors may hold its meetings, whether regular or special, either within or without the State of New York. The newly elected Board may meet at such place and time as shall be fixed by the vote of the shareholders at the annual meeting, for the purpose of organization or otherwise, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a majority of the entire Board shall be present; or they may meet at such place and time as shall be fixed by the consent in writing of all directors. Regular meetings of the Board may be held with or without notice at such time and place as shall from time to time be determined by resolution of the Board. Whenever the time or place of regular meetings of the Board shall have been determined by resolution of the Board, no regular meetings shall be held pursuant to any resolution of the Board.

altering or modifying its previous resolution relating to the time or place of the holding of regular meetings, without first giving at least three days written notice to each director, either personally or by telegram, or at least five days written notice to each director by mail, of the substance and effect of such new resolution relating to the time and place at which regular meetings of the Board may thereafter be held without notice. Special meetings of the Board shall be held whenever called by the President, Vice-President, the Secretary or any director in writing. Notice of each special meeting of the Board shall be delivered personally to each director or sent by telegraph to his residence or usual place of business at least three days before the meeting, or mailed to him to his residence or usual place of business at least five days before the meeting. Meetings of the Board, whether regular or special, may be held at any time and place, and for any purpose, without notice, when all the directors are present or when all directors not present shall, in writing, waive notice of and consent to the holding of such meeting, which waiver and consent may be given after the holding of such meeting. All or any of the directors may waive notice of any meeting and the presence of a director at any meeting of the Board shall be deemed a waiver of notice thereof by him. A notice, or waiver of notice, need not specify the purpose or purposes of any regular or special meeting of the Board.

Section 6. Quorum and Action. A majority of the entire Board of Directors shall constitute a quorum except that when the entire Board consists of one director, then one director shall constitute a quorum, and except that when a vacancy or vacancies prevents such majority, a majority of the directors in office shall constitute a quorum, provided that such majority shall constitute at least one-third of the entire Board. A majority of the directors present, whether or not they constitute a quorum, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the New York Business Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 7. Telephonic Meetings. Any member or members of the Board of Directors, or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting.

Section 8. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 9. Compensation of Directors. By resolution of the Board of Directors, the directors may be paid their expenses, if any, for attendance at each regular or special meeting of the Board or of any committee designated by the Board and may be paid a fixed sum for attendance at such meeting, or a stated salary as director, or both. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; provided however that directors who are also salaried officers shall not receive fees or salaries as directors.

ARTICLE IV

Committees

Section 1. In General. The Board of Directors may, by resolution or resolutions passed by the affirmative vote therefore of a majority of the entire Board, designate an Executive Committee and such other committees as the Board may from time to time determine, each to consist of three or more directors, and each of which, to the extent provided in the resolution or in the certificate of incorporation or in the By-Laws, shall have all the powers of the Board, except that no such Committee shall have power to fill vacancies in the Board, or to change the membership of or to fill vacancies in any Committee, or to make, amend, repeal or adopt By-Laws of the Corporation, or to submit to the shareholders any action that needs shareholder approval under these By-Laws or the New York Business Corporation Law, or to fix the compensation of the directors for serving on the Board or any committee thereof, or to amend or repeal any resolution of the Board which by its terms shall not be so amendable or repealable. Each committee shall serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

Section 2. Executive Committee. Except as otherwise limited by the Board of Directors or by these By-Laws, the Executive Committee, if so designated by the Board of Directors, shall have and may exercise, when the Board is not in session, all the powers of the Board of Directors in the management of the business and affairs of the Corporation, and shall have power to authorize the seal of the Corporation to be affixed to all papers which may require it. The Board shall have the power at any time to change the membership of the Executive Committee, to fill vacancies in it, or to dissolve it. The Executive Committee may make rules for the conduct of its business and may appoint such assistance as it shall from time to time deem necessary. A majority of the members of the Executive Committee, if more than a single member, shall constitute a quorum.

ARTICLE V

Officers

Section 1. Designation, Term and Vacancies. The officers of the Corporation shall be a President, one or more Vice-Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may from time to time deem necessary. Such officers may have and perform the powers and duties usually pertaining to their respective offices, the powers and duties respectively prescribed by law and by these By-Laws, and such additional powers and duties as may from time to time be prescribed by the Board. The same person may hold any two or more offices, except that the offices of President and Secretary may not be held by the same person unless all the issued and outstanding stock of the Corporation is owned by one person, in which instance such person may hold all or any combination of offices.

The initial officers of the Corporation shall be appointed by the initial Board of Directors, each to hold office until the meeting of the Board of Directors following the first annual meeting of shareholders and until his successor has been appointed and qualified. Thereafter, the officers of the Corporation shall be appointed by the Board as soon as practicable after the election of the Board at the annual meeting of shareholders, and each officer so appointed shall hold office until the first meeting of the Board of Directors following the next annual meeting of shareholders and until his successor has been appointed and qualified. Any officer may be removed at any time, with or without cause, by the affirmative vote therefor of a majority of the entire Board of Directors. All other agents and employees of the Corporation shall hold office during the pleasure of the Board of Directors. Vacancies occurring

among the officers of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 2. President. The President shall preside at all meetings of the shareholders and at all meetings of the Board of Directors at which he may be present. Subject to the direction of the Board of Directors, he shall be the chief executive officer of the Corporation, and shall have general charge of the entire business of the Corporation. He may sign certificates of stock and sign and seal bonds, debentures, contracts or other obligations authorized by the Board, and may, without previous authority of the Board, make such contracts as the ordinary conduct of the Corporation's business requires. He shall have the usual powers and duties vested in the President of a corporation. He shall have power to select and appoint all necessary officers and employees of the Corporation, except those selected by the Board of Directors, and to remove all such officers and employees except those selected by the Board of Directors, and make new appointments to fill vacancies. He may delegate any of his powers to a Vice-President of the Corporation.

Section 3. Vice-President. A Vice-President shall have such of the President's powers and duties as the President may from time to time delegate to him, and shall have such other powers and perform such other duties as may be assigned to him by the Board of Directors. During the absence or incapacity of the President, the Vice-President, or, if there be more than one, the Vice-President having the greatest seniority in office, shall perform the duties of the President, and when so acting shall have all the powers and be subject to all the responsibilities of the office of President.

Section 4. Treasurer. The Treasurer shall have custody of such funds and securities of the Corporation as may come to his hands or be committed to his care by the Board of Directors. Whenever necessary or proper, he shall endorse on behalf of the Corporation, for collection, checks, notes, or other obligations, and shall deposit the same to the credit of the Corporation in such bank or banks or depositaries, approved by the Board of Directors as the Board of Directors or President may designate. He may sign receipts or vouchers for payments made to the Corporation, and the Board of Directors may require that such receipts or vouchers shall also be signed by some other officer to be designated by them. Whenever required by the Board of Directors, he shall render a statement of his cash accounts and such other statements respecting the affairs of the Corporation as may be required. He shall keep proper and accurate books of account. He shall perform all

acts incident to the office of Treasurer, subject to the control of the Board.

Section 5. Secretary. The Secretary shall have custody of the seal of the Corporation and when required by the Board of Directors, or when any instrument shall have been signed by the President duly authorized to sign the same, or when necessary to attest any proceedings of the shareholders or directors, shall affix it to any instrument requiring the same and shall attest the same with his signature, provided that the seal may be affixed by the President or Vice-President or other officer of the Corporation to any document executed by either of them respectively on behalf of the Corporation which does not require the attestation of the Secretary. He shall attend to the giving and serving of notices of meetings. He shall have charge of such books and papers as properly belong to his office or as may be committed to his care by the Board of Directors. He shall perform such other duties as appertain to his office or as may be required by the Board of Directors.

Section 6. Delegation. In case of the absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board may temporarily delegate the powers or duties, or any of them, of such officer to any other officer or to any director.

ARTICLE VI

Stock

Section 1. Certificates Representing Shares. All certificates representing shares of the capital stock of the Corporation shall be in such form not inconsistent with the Certificate of Incorporation, these By-Laws or the laws of the State of New York and shall set forth thereon the statements prescribed by Section 508, and where applicable, by Sections 505, 616, 620, 709 and 1002 of the Business Corporation Law. Such shares shall be approved by the Board of Directors, and shall be signed by the President or a Vice-President and by the Secretary or the Treasurer and shall bear the seal of the Corporation and shall not be valid unless so signed and sealed. Certificates countersigned by a duly appointed transfer agent and/or registered by a duly appointed registrar shall be deemed to be so signed and sealed whether the signatures be manual or facsimile signatures and whether the seal be a facsimile seal or any other form of seal. All certificates shall be consecutively numbered and the name of the person owning the shares represented thereby, his

residence, with the number of such shares and the date of issue, shall be entered on the Corporation's books. All certificates surrendered shall be cancelled and no new certificates issued until the former certificates for the same number of shares shall have been surrendered and cancelled, except as provided for herein.

In case any officer or officers who shall have signed or whose facsimile signature or signatures shall have been affixed to any such certificate or certificates, shall cease to be such officer or officers of the Corporation before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation, and may be issued and delivered as though the person or persons who signed such certificates, or whose facsimile signature or signatures shall have been affixed thereto, had not ceased to be such officer or officers of the Corporation.

Any restriction on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

Section 2. Fractional Share Interests. The Corporation, may, but shall not be required to, issue certificates for fractions of a share. If the Corporation does not issue fractions of a share, it shall (1) arrange for the disposition of fractional interests by those entitled thereto, (2) pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or (3) issue scrip or warrants in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or warrants aggregating a full share. A certificate for a fractional share shall, but scrip or warrants shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any distribution of the assets of the Corporation in the event of liquidation. The Board of Directors may cause scrip or warrants to be issued subject to the conditions that they shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip or warrants are exchangeable may be sold by the Corporation and the proceeds thereof distributed to the holders of scrip or warrants, or subject to any other conditions which the Board of Directors may impose.

Section 3. Addresses of Shareholders. Every shareholder shall furnish the Corporation with an address to which notices of meetings and all other notices may be served upon or mailed to him, and in

default thereof notices may be addressed to him at his last known post office address.

Section 4. Stolen, Lost or Destroyed Certificates. The Board of Directors may in its sole discretion direct that a new certificate or certificates of stock be issued in place of any certificate or certificates of stock theretofore issued by the Corporation, alleged to have been stolen, lost or destroyed, and the Board of Directors when authorizing the issuance of such new certificate or certificates, may, in its discretion, and as a condition precedent thereto, require the owner of such stolen, lost or destroyed certificate or certificates or his legal representatives to give to the Corporation and to such registrar or registrars and/or transfer agent or transfer agents as may be authorized or required to countersign such new certificate or certificates, a bond in such sum as the Corporation may direct not exceeding double the value of the stock represented by the certificate alleged to have been stolen, lost or destroyed, as indemnity against any claim that may be made against them or any of them for or in respect of the shares of stock represented by the certificate alleged to have been stolen, lost or destroyed.

Section 5. Transfers of Shares. Upon compliance with all provisions restricting the transferability of shares, if any, transfers of stock shall be made only upon the books of the Corporation by the holder in person or by his attorney thereunto authorized by power of attorney duly filed with the Secretary of the Corporation or with a transfer agent or registrar, if any, upon the surrender and cancellation of the certificate or certificates for such shares properly endorsed and the payment of all taxes due thereon. The Board of Directors may appoint one or more suitable banks and/or trust companies as transfer agents and/or registrars of transfers, for facilitating transfers of any class or series of stock of the Corporation by the holders thereof under such regulations as the Board of Directors may from time to time prescribe. Upon such appointment being made all certificates of stock of such class or series thereafter issued shall be countersigned by one of such transfer agents and/or one of such registrars of transfers, and shall not be valid unless so countersigned.

ARTICLE VII

Dividends and Finance

Section 1. Dividends. The Board of Directors shall have power to fix and determine and to vary, from time to time, the amount

of the working capital of the Corporation before declaring any dividends among its shareholders, and to direct and determine the use and disposition of any net profits or surplus, and to determine the date or dates for the declaration and payment of dividends and to determine the amount of any dividend, and the amount of any reserves necessary in their judgment before declaring any dividends among its shareholder, and to determine the amount of the net profits of the Corporation from time to time available for dividends.

Section 2. Fiscal Year. The fiscal year of the Corporation shall end on the last day of June in each year and shall begin on the next succeeding day, or shall be for such other period as the Board of Directors may from time to time designate with the consent of the Department of Taxation and Finance, where applicable.

ARTICLE VIII

Miscellaneous Provisions

Section 1. Stock of Other Corporations. The Board of Directors shall have the right to authorize any director, officer or other person on behalf of the Corporation to attend, act and vote at meetings of the Shareholders of any corporation in which the Corporation shall hold stock, and to exercise thereat any and all rights and powers incident to the ownership of such stock, and to execute waivers of notice of such meetings and calls therefor; and authority may be given to exercise the same either on one or more designated occasions, or generally on all occasions until revoked by the Board. In the event that the Board shall fail to give such authority, such authority may be exercised by the President in person or by proxy appointed by him on behalf of the Corporation.

Any stocks or securities owned by this Corporation may, if so determined by the Board of Directors, be registered either in the name of this Corporation or in the name of any nominee or nominees appointed for that purpose by the Board of Directors.

Section 2. Books and Records. Subject to the New York Business Corporation Law, the Corporation may keep its books and accounts outside the State of New York.

Section 3. Notices. Whenever any notice is required by these By-Laws to be given, personal notice is not meant unless expressly so

stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper, addressed to the person entitled thereto at his last known post office address, and such notice shall be deemed to have been given on the day of such mailing.

Whenever any notice whatsoever is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation or these By-Laws a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 4. Amendments. Except as otherwise provided herein, these By-Laws may be altered, amended or repealed and By-Laws may be made at any annual meeting of the shareholders or at any special meeting thereof if notice of the proposed alteration, amendment or repeal, or By-Law or By-Laws to be made be contained in the notice of such special meeting, by the holders of a majority of the shares of stock of the Corporation outstanding and entitled to vote thereat; or by a majority of the Board of Directors at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors, if notice of the proposed alteration, amendment or repeal, or By-Law or By-Laws to be made, be contained in the Notice of such Special Meeting.

The first order of business was the election or designation of officers at this corporation. There being no contest, the following were elected by proclamation to serve as officers until the next annual meeting of the Board or until their successors are elected and qualified:

<u>Office</u>	<u>Name</u>
President	DR. JEAN JACQUES SIMON
Vice President	DR. JEAN PASCAL SIMON
Secretary	GEORGE H. KESSLER
Treasurer	JEAN FRANCOIS SIMON

The president and secretary assumed their respective offices, in the places of those who had temporarily acted as such for this meeting.

The minutes of the organizational meeting of the incorporator (s) held on 19 , were read and it was thereupon unanimously

RESOLVED, that the actions and business transacted by the incorporator (s) at the organizational meeting held on 19 , and entered on the minutes of that meeting, be and they are hereby ratified and adopted by this Board.

The annexed resolutions, deemed necessary to complete the organizational procedures, were introduced, discussed and adopted.

NUMBER

0

SHARES



INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

FRENCH-AMERICAN SURGERY CENTER, INC.

200 SHARES WITHOUT PAR VALUE

(1) No person shall own ten percent (10%) or more of the stock of the Corporation unless he has been approved for such ownership by the Public Health Council;

(see over)

This Certifies that _____ SPECIMEN _____ is the owner of _____ fully paid and non-assessable Shares of the Capital Stock of the above named Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this _____ day of _____ 19 _____

SECRETARY

PRESIDENT



THOUSANDS		
0	1	2
3	4	5
HUNDREDS		
1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
0	0	0
SHARES		

**ORGANIZATIONAL RESOLUTIONS
ADOPTED BY THE BOARD OF DIRECTORS
OF**



1. The seal, an impressions of which is affixed to the left hereof, is adopted as the seal of the corporation.
2. The form of stock certificate annexed hereto is adopted as the form of stock certificate for the corporation.

3. (a) The corporation accepts the offer of the following persons to purchase the number of shares of stock of the corporation shown in exchange for the consideration set opposite their names:

Name of Subscriber	Number and Classes of Shares	Consideration Per Share	Aggregate Consideration
-----------------------	---------------------------------	----------------------------	----------------------------

(b) The president, and secretary or treasurer of the corporation are hereby authorized and empowered to issue to the foregoing named persons certificates evidencing the number of shares of the stock of the corporation set opposite each name upon receipt by the corporation of the aggregate consideration specified.

4. The corporation shall open a banking account or accounts with

and execute the annexed banking resolution for that purpose.

5. (a) The president and treasurer of the corporation are authorized and empowered to pay all expenses incurred in connection with the organization of the corporation, including filing, license, attorneys' and accountants' fees.

(b) The corporation elects to deduct on its first federal income tax return the foregoing expenses ratably over a sixty month period, starting with the month in which the corporation begins business, pursuant to Section 248 of the Internal Revenue Code of 1954.

6. The president and all other officers of the corporation are authorized and directed to take all steps necessary to cause the corporation to engage in the business of

7. (a) The president is authorized on behalf of the corporation to negotiate for and to _____ in the name of the corporation the premises commonly described as _____ upon the terms and conditions specified in Schedule _____ annexed hereto, and upon such further terms and conditions as the president shall deem necessary, proper and in the best interests of the corporation.

(b) The president and secretary, or an assistant secretary, are authorized to execute in the name of the corporation all documents necessary in the judgement of the president to effectuate this resolution.

8. The following plan is adopted in order to issue stock pursuant to Section 1244 of the Internal Revenue Code of 1954:

WHEREAS, the corporation wants to attract investment in the corporation. And Compliance with Section 1244 of the Internal Revenue Code will enable shareholders who suffer a loss on the sale or exchange of their shares to treat that loss as an "ordinary loss" on their personal income tax returns;

NOW THEREFORE, BE IT RESOLVED, that the proper officers of the corporation are hereby authorized to sell and issue common shares provided that the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed \$1,000,000.00; and RESOLVED, that the sale and issuance of such shares be conducted in accordance with IRC Sec. 1244; and

RESOLVED, that the corporation keep proper accounting records so that any shareholder who experiences a loss on the transfer of common shares may properly determine if they qualify for "ordinary loss" treatment on their personal income tax returns.

9. (a) The corporation elects to be taxed for federal income tax purposes in accordance with the provisions of Subchapter S of the Internal Revenue Code of 1954.

(b) The officers of the corporation shall take all actions necessary and proper to effectuate the foregoing resolution, including obtaining the requisite consents from shareholders and executing and filing appropriate forms on behalf of the corporation within the time limits specified by law.

No further business being presented, the meeting was duly adjourned.

Dated: *JUNE 23, 1988*

George H. Kessler
GEORGE H. KESSLER Secretary

EXHIBIT 10

EXHIBIT 26

KENNETH HARFENIST

ATTORNEY AT LAW
55 OLD TURNPIKE ROAD
SUITE 105
MANHATTAN, NEW YORK 10954
1014 697-2153

June 16, 1986

Jean Pascal Simon, M.D.
French American Clinic, Inc.
2 East 86th Street
New York, New York 10028

Frank T. Cicero, M.D.
Cicero & Pastore Associates, Inc.
46 Waller Avenue
White Plains, New York 10605

George H. Kessler, Esq.
25 Court Street
Brooklyn, New York 11242

Re: Application for Establishment
of French-American Surgery
Center, Inc.

Dear Doctor Simon, Doctor Cicero and Mr. Kessler:

I am enclosing herewith draft of (1) revised Certificate of Incorporation of French-American Surgery Center, Inc., (2) Affidavit Required Pursuant to Section 620.1(b) of the Rules and Regulations of the Commissioner of Health of the State of New York, (3) Statement with Respect to Shareholders, Directors and Officers of Proposed Corporation to be known as French-American Surgery Center, Inc. (4) Statement with Respect to Relationship between Shareholders, Directors and Officers of Adams Hotel Associates, 2 East 86th Street Associates, French-American Clinic, Inc., French-American Surgery Center, Inc. and Jean-Jacques Simon (5) Proposed Sub-Lease Agreement Between French-American Clinic, Inc. and French-American Surgery Center, Inc. and (6) Stock Specimen for French-American Surgery Center, Inc.

Please review these documents and advise with respect to your recommendations for revision on or before June 19, 1986. In addition, please furnish me with the names and addresses of the partners of 2 East 86th Street Associates.

If you have any questions concerning these documents, please do not hesitate to contact me.

Very truly yours,


Kenneth Harfenist

KH/bh
Encl.

KENNETH HARPENIST

ATTORNEY AT LAW
35 GLETTINGHURST ROAD
SUITE 100
MANHATTAN, NEW YORK 10954
914-627-2133

June 16, 1986

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French American Clinic, Inc.
2 East 86th Street
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Kenneth Harpenist

KH/bh
Encl.

ninth claim for fraud, and otherwise affirmed, without costs.

The court properly dismissed the third, sixth, and seventh causes of action alleging rescission, fraud, and aiding and abetting fraud, respectively, against defendant Jean-Francois Simon (Francois), which are based on the sale of FASC, an ambulatory surgery center, allegedly at less than market value, because plaintiff failed to plead sufficient facts to show he had any ownership or investment interest in FASC. He conceded that he does not own shares in FASC, and he cites no evidence of any agreement to issue him shares or make him a shareholder or owner in exchange for his loans to FASC or the salary he waived as FASC's Medical Director; thus, these contributions were not agreed upon as "consideration for the issue of shares"

(see Business Corporation Law § 504[a]; *Kun v Fulop*, 71 AD3d 832, 834 [2d Dept 2010], *lv denied* 15 NY3d 701 [2010]). Thus, he lacks standing to bring a derivative suit against Francois on FASC's behalf (*Silverstein v Exciting Fashions, Inc.*, 281 AD 854, 854 [2d Dept 1953]).

As the trial court found, plaintiff also cannot bring a direct claim against Francois for fraud based on the sale of FASC at below market value because any alleged damage is to FASC (*Gordon v Credno*, 102 AD3d 584, 585 [1st Dept 2013]).

Absent a valid underlying fraud claim, the court also

properly dismissed the seventh cause of action for aiding and abetting fraud against defendants Fifth Avenue Surgery Center, LLC (Fifth LLC), which acquired the surgery center in the sale, and defendant VCC, Inc. d/b/a Cicero Consulting Associates (CCA), which obtained the relevant medical licenses to transfer the surgery center to Fifth LLC (*Oster v Kirschner*, 77 AD3d 51, 55-56 [1st Dept 2010]; see also *Little Rest Twelve, Inc. v Zajic*, 137 AD3d 540, 541 [1st Dept 2016]).

In addition, the motion court properly dismissed the rescission claim for lack of standing, as plaintiff was not a shareholder in FASC or a party to the sale agreement at issue (see *Romanoff v Superior Career Inst.*, 69 AD2d 856, 856 [2d Dept 1979]). In any case, rescission would not be an appropriate remedy in light of the expenditures defendant Fifth Avenue Surgery Center, LLC (Fifth LLC) made to the premises since it acquired the surgery center in 2009 (*Sokolow, Dunaud, Mercadier & Carreras v Lacher*, 299 AD2d 64, 71 [1st Dept 2002] [citations and quotation marks omitted]; *Tarleton Bldg. Corp. v Spider Staging Sales Co.*, 26 AD2d 809 [1st Dept 1966]).

The court properly dismissed the fifth cause of action seeking a constructive trust against Fifth LLC because there is no evidence of any fiduciary relationship between plaintiff and Fifth LLC (*Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 473-474 [1st

Dept 2010]).

The court should not have granted the motion to dismiss the ninth cause of action, a double derivative claim alleging fraud against Francois on behalf of defendant JJS Group, Inc. (JJS), which owned the condominium out of which the surgery center operated, and which leased the premises, first to FASC and then to Fifth LLC. JJS is 80% owned by nominal defendant FrancInvest, S.A. (FrancInvest), in which plaintiff is a shareholder. The complaint alleged that Francois mismanaged JJS funds, including by refinancing the mortgage and keeping the cash-outs for himself, and receiving "kickbacks" for negotiating a below market rate lease for the property. The court concluded that plaintiff failed to plead with particularity how Francois had a duty to reveal his conduct, taken on behalf of JJS, to FrancInvest shareholders. However, as the court recognized, plaintiff, as a shareholder in JJS's parent corporation, had standing to bring a double derivative claim on behalf of JJS. Thus, plaintiff, standing in the shoes of JJS shareholders, was required to plead with particularity that Francois concealed material facts from JJS shareholders, not FrancInvest shareholders, which he did (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014]; see *Euryclieia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]; *Kaufman v Cohen*,

307 AD2d 113, 119-120 [1st Dept 2003]; *Dembeck v 220 Cent. Park S., LLC*, 33 AD3d 491, 492 [1st Dept 2006]; see CPLR 3016[b]; *Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491-493 [2008]). The complaint alleges that Francois was Vice President of JJS, and thus had a fiduciary duty to reveal his conduct to JJS shareholders. The allegations in the complaint also allow a reasonable inference that Francois concealed his alleged conduct from JJS shareholders. The court properly dismissed the eleventh claim for fraud against Francois based on the same conduct on behalf of JJS, brought derivatively on behalf of FrancInvest shareholders, for failure to plead with particularity Francois's duty to reveal his conduct on behalf of JJS to FrancInvest shareholders.

The court properly dismissed the claim seeking a permanent injunction which sought, inter alia, to restore FASC as the tenant of the property and owner of the surgery center because it failed to plead facts showing that defendants are presently causing or threatening to cause harm to plaintiff, as the conduct at issue occurred well before 2014, when plaintiff commenced the instant action (*Matter of Long Is. Power Auth. Hurricane Sandy Litig.*, 134 AD3d 1119, 1120 [2d Dept 2015] [citations omitted]; see also *Lemle v Lemle*, 92 AD3d 494, 500 [1st Dept 2012]) Plaintiff also failed to allege how monetary damages would be

inadequate (*Mini Mint Inc. v Citigroup, Inc.*, 83 AD3d 596, 597 [1st Dept 2011]). Regarding CCA, since the cause of action for aiding and abetting fraud was the only other claim against it, the court properly dismissed this claim on the additional ground that no substantive causes of action remained against CCA (*Weinreb v 37 Apts. Corp.*, 97 AD3d 54, 59 [1st Dept 2012]).

The court properly denied leave to replead the dismissed claims, including the second cause of action for unjust enrichment based on the failure to repay plaintiff the funds he loaned to FASC in 1991, which the court dismissed as untimely. Plaintiff failed to submit arguments showing that he would be able to state any viable causes of action upon repleading (*Genger v Genger*, 135 AD3d 454, 455 [1st Dept 2016], *lv denied* 27 NY3d 912 [2016]).

The remaining dismissed claims have been abandoned (*Gad v Almod Diamonds Ltd.*, 147 AD3d 417, 418 [1st Dept 2017]), and we find plaintiff's remaining arguments unavailing or improperly before this Court.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 3, 2019


CLERK

[81529]

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS: **AFFIDAVIT OF SERVICE**

Daniel Vinci, being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on the 3rd day of January 2020 deponent served 1 copy of the within

MOTION FOR REARGUMENT

upon the attorneys at the addresses below, and by the following method:

Contact	Firm	Address + Email Address	Delivery Method
Mark Lebow	LeBow & Sokolow LLP <i>Attorneys for Defendants-Respondents French-American Surgery Center, Inc., French-American Clinic, JJS Group, Inc., and Jean-Francois Simon</i>	770 Lexington Avenue, 6th Floor New York, New York 10022 (212) 868-3311 mark@lebow.net	Hand
Donald A. Pitofsky	Schwartzman Garelik Walker & Troy, P.C. <i>Attorneys for Defendants-Respondents Fifth Avenue Surgery Center, LLC and Charles Raab</i>	355 Lexington Avenue, 8th Floor New York, New York 10017 (212) 557-2900 dpitofsky@sgwkt.com	Hand
Mario Castellitto	Traub Lieberman Straus & Shrewsberry LLP <i>Attorneys for Defendant-Respondent VCC, Inc. d/b/a Cicero Consulting Associates</i>	Mid-Westchester Executive Park, Seven Skyline Drive Hawthorne, New York 10532 (914) 347-2600 jkuebler@traublieberman.com	FedEx Next Business Day

Alessandra Kane

Daniel Vinci

Sworn to me this:
January 3, 2020

Alessandra Kane
Notary Public, State of New York
No. 01KA6340521
Qualified in Richmond County
Commission Expires April 18, 2020

Case Name: Jean-Pascal Simon v. Francinvest, S.A.
Index Number: 162867/14 FB2
Docket No: 2019-3054