

PENDING APPROVAL

OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM REQUEST SHEET

FOR THE WEDNESDAY, JUNE 30th, 2010 AGENDA

DEPARTMENT: SHERIFF

REQUESTED BY: Major John Waldenville x-1010

REQUISITION NO.: N/A

REQUISITION SHEET ATTACHED: N/A

NAME OF FUNDS: N/A

FUND NUMBERS: N/A

DOES THE AGENDA ITEM CONTAIN PRIVACY-PROTECTED OR SECURITY INFORMATION? _____ YES X NO

AGENDA ITEMS CONTAINING PRIVACY-PROTECTED OR SECURITY INFORMATION WILL NOT BE HYPERLINKED TO THE AGENDA.

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: One.

AGENDA ITEM READS AS FOLLOWS: Discussion and possible action to approve the CorEMR Facility agreement for the implementation of the CorEMR Electronic Inmate Medical Records system by Armor Correctional Health Services, the contracted inmate health services provider for the Oklahoma County Detention Center. There is no cost to the County for this agreement.

APPROVED BY DA
(If Applicable)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)

[Signature]
ASSISTANT DISTRICT ATTORNEY

COUNTY ENGINEER

PURCHASING AGENT

Please initial that document has been reviewed for privacy-protected or security information

DISTRICT ATTORNEY: _____ YES _____ N/A

COUNTY CLERK: [Initials] YES _____ N/A

Indicate any privacy-protected information that exists _____

(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)

DATE OF REQUEST: _____

APPROVED BY: _____

CHAIRMAN

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REQUEST FOR DISTRICT ATTORNEY LEGAL SERVICES

587

THIS FORM IS TO BE USED TO REQUEST ADVICE AND/OR REPRESENTATION FROM THE DISTRICT ATTORNEY'S OFFICE REGARDING THE COUNTY OF OKLAHOMA, COUNTY OFFICIALS AND EMPLOYEES AS REQUIRED BY SECTIONS 215.4, 215.5, 215.25 AND 215.26 OF TITLE 19 OF THE OKLAHOMA STATUTES.

IF ADVICE IS SOUGHT, THE REQUEST MUST BE SIGNED BY AN ELECTED COUNTY OFFICER. THIS FORM MUST BE FILLED OUT AND SUBMITTED TO THE CIVIL DIVISION OF THE OKLAHOMA COUNTY DISTRICT ATTORNEY'S OFFICE IN A TIMELY MANNER. ALL RESPONSES TO REQUESTS FOR ADVICE WILL BE IN WRITING.

IF THE REQUEST IS FOR LEGAL REPRESENTATION UNDER 19 O. S. SECTION 215.25, THE REQUEST MUST BE SUBMITTED IN WRITING EARLY ENOUGH TO PERMIT THE DISTRICT ATTORNEY'S OFFICE ADEQUATE TIME TO COMPLETE A THOROUGH "GOOD-FAITH-AND-COURSE-OF-EMPLOYMENT" INVESTIGATION AS CONTEMPLATED BY 19 O.S. SECTION 215.26.

DATE OF REQUEST: 6/22/2010

COUNTY DEPARTMENT MAKING REQUEST: Sheriff

STATE WITH SPECIFICITY, WHAT THE REQUEST IS AND WHY THE ASSISTANCE OF THE DISTRICT ATTORNEY'S OFFICE IS NEEDED: Review and approval of the CorEMR Facility Agreement for the implementation of the CorEMR Electronic Inmate Medical Records system by Armor Correctional Health Services, the contracted inmate health services provider for the Oklahoma County Detention Center. There is no cost to the County for this agreement.

ATTACH ADDITIONAL DOCUMENTS AS APPROPRIATE. (NOTE: Advice, reviews and approvals as to "form and legality" are based on the documentation and information provided to the District Attorney's Office. Please provide all relevant information when requesting an opinion or review from the District Attorney's Office).

[Signature]
COUNTY OFFICER

.....
DATE RECEIVED BY DISTRICT ATTORNEY: 6/23/10

REPLY BY DISTRICT ATTORNEY: Reviewed

STATE OF OKLAHOMA
OKLAHOMA COUNTY
RECORDED OR FILED
2010 JUN 23 A 11:07
STATE OF OKLAHOMA
COUNTY CLERK
CIVIL DIVISION

DAVID PRATER
DISTRICT ATTORNEY

By: [Signature]

RECEIVED
JUN 23 2010
CIVIL DIVISION
DISTRICT ATTORNEY

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COREMR, L.C. FACILITY AGREEMENT

This Facility Agreement "**Facility Agreement**") is made and entered into effective as of the ~~20th~~ day of April, 2010 ("Effective Date") between CorEMR, L.C., a Utah limited liability company with its principal office at 430 West 200 North, P.O. Box 702, Midway, Utah 84049 ("**CorEMR**"), and the Board of County Commissioners of Oklahoma County for the Oklahoma County Sheriff's Department, and John Whetsel in his capacity as the Sheriff of Oklahoma County, Oklahoma, a county constitutional officer and a county charter officer ("**You**," and/or "**Your**").

RECITALS:

A. CorEMR, has developed and owns electronic medical records software and all intellectual property pertaining thereto to enable the creation, maintenance, storage and access to electronic medical records for correctional facilities.

B. CorEMR and Armor Correction Health Services, Inc., a Florida corporation ("**Armor**") have determined it is mutually beneficial to do business together as independent contractors and have entered into an agreement whereby CorEMR is making available to ARMOR, for use at certain correctional facilities with which Armor is doing business, CorEMR's electronic medical records software in accordance with the terms of that agreement and the accompanying License Agreement. CorEMR and ARMOR are not partners or joint venturers in such business arrangement, but are independent contractors, and are not sharing profits or losses.

C. In the event of (i) Your default under Your agreement with ARMOR; (ii) Your agreement with ARMOR expiring or terminating for any reason; (iii) ARMOR becoming in default under its Agreement with CorEMR; or (iv) the agreement between ARMOR and CorEMR expiring or terminating for any reason, then in any of such events the right and license granted to ARMOR to use the CorEMR Medical Records Software (as hereinafter defined) at your Facility shall immediately terminate; however, CorEMR shall provide a read only version of the medical data for your use. If You are not the cause of a default, CorEMR will make its Medical Records Software available to you at the same price as it charged Armor prior to termination for the remainder of the contract term in existence prior to termination. Thereafter, CorEMR will make its Medical Records Software available to you on terms mutually agreeable to You and CorEMR. Under your contract with ARMOR, you have certain rights to terminate your relationship with ARMOR. Should you exercise your right to terminate your Agreement with Armor, You may immediately terminate this Agreement, or you may elect to continue use of CorEMR software upon the then current terms or other terms mutually agreeable to You and CorEMR.

1. Other Definitions

a. "**ARMOR**" means Armor Correctional Health Services, Inc. a Florida corporation with its principal office located at 4960 S.W. 72nd Ave., Suite 400 Miami, FL 33155.

b. "**Facility**" means exclusively the correctional facility managed by the Oklahoma County Sheriff, also referred to as the Oklahoma County Detention Center .

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c. **"Medical Records Software"** means the software package developed and distributed by CorEMR which runs on computer servers and includes the software, programs, modules and documentation developed by CorEMR to enable the creation, maintenance, storage and access of electronic medical records and related electronic procedures and services, and includes all enhancements, upgrades, modifications and additions.

d. **"Server"** means the single computer server at the Facility operated and maintained by ARMOR.

e. **"Use"** or **"Using"** means to access, install, download and/or benefit from using the functionality of the Medical Records Software.

2. Software Use at the Facility.

2.1 In General. As long as (a) You are not in default under Your agreement with ARMOR; (b) Your agreement with ARMOR has not expired or terminated for any reason; (c) ARMOR is not in default under its agreement with CorEMR; (d) the agreement between ARMOR and CorEMR has not expired or terminated for any reason including, without limitation, payment of fees to CorEMR for the license and Use of the Medical Records Software, CorEMR has granted ARMOR a non-exclusive license to Use the Medical Records Software in conjunction with their services at Your Facility. The license granted ARMOR is on a non-exclusive, non-transferable basis.

2.2 Use. Subject to the terms of this Agreement, ARMOR and its staff may install and Use one production copy and one training/testing copy of the Medical Records Software on its server(s) at Your Facility. You may use the Medical Records Software under the terms and conditions of this Facility Agreement. CorEMR is not responsible for any issues, support, or loss of functionality that may result from installing and using third-party software (including ARMOR's software) on or with the Medical Records Software. Neither You nor ARMOR may electronically transmit the Medical Records Software from one computer to another, over a network or operate the Medical Records Software via the internet except over a secured connection.

2.3 No Modification. Neither You nor ARMOR may customize, modify, translate or extend the functionality of the Medical Records Software.

2.4 Term/Termination. The Term of this Agreement and the license granted ARMOR to use the CorEMR Medical Records Software at Your Facility shall commence as of the Effective Date and shall automatically and without further notice terminate upon the earlier of: (a) the mutual agreement of the Parties to terminate the same; (b) Your default under Your agreement with ARMOR; (c) Your agreement with ARMOR expiring or terminating for any reason; (d) ARMOR becoming in default under its Agreement with CorEMR; (e) the Agreement between ARMOR and CorEMR expiring or terminating for any reason. Upon termination of Your agreement with ARMOR, you may elect to continue use of CorEMR software upon the then current terms or other terms mutually agreeable to You and CorEMR

2.5 Read Only Agreement on Termination. Upon termination of this Facility Agreement and/or the license granted ARMOR to use the Medical Records Software at Your Facility for any reason or no reason, CorEMR shall promptly provide You and ARMOR a stand alone, read only program (and license to use the same) which will allow You and ARMOR to

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search for, view and print medical records pertaining to inmates at Your Facility in the same format in which the data was stored immediately preceding termination of this Agreement, along with a data schema describing how data is stored.

3. Intellectual Property Ownership, Copyright Protection. The Medical Records Software and all copies thereof are the intellectual property of and are owned exclusively by CorEMR. The structure, organization and code of the Medical Records Software are the valuable trade secrets and confidential and proprietary information of CorEMR to which they retain title. This Agreement does not grant either ARMOR or You any intellectual property rights in the Medical Records Software and all such rights are reserved by CorEMR. The Medical Records Software is licensed to ARMOR, not sold, and neither ARMOR nor You have any ownership of any kind in or to the Medical Records Software. Likewise, CorEMR has no ownership, or claim of ownership, of any medical data (or intellectual property rights therein) that may be stored on the databases stored on the Server(s) or accessed via the Medical Records Software for Your Facility.

4. Additional Restrictions. CorEMR reserves all rights not expressly granted to either ARMOR or You. Without limiting the generality of the foregoing, you shall not, nor shall you permit, any other party to: (i) use the Software except pursuant to the terms of this License Agreement; (ii) disassemble, decompile, unbundle, reverse engineer, or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; or (iii) modify or create derivative works based on the Software; or (iv) externally distribute, sublicense, resell, encumber, or otherwise transfer the Software; or (v) rent, lease, lend, or use the Software for timesharing or bureau use; or (vi) allow a third party to inspect (excepting NCCHC, ACA, DOJ and other similar situations on a need-to-know basis), copy, access, or use the Software; or (vii) disclose the results of any benchmark test of the Software to a third party without the prior written approval of CorEMR; or (viii) take any actions that would cause the Software to become subject to any open source or quasi-open source license agreement. The Software contains trade secrets and confidential information, and You shall exercise reasonable and customary efforts for Your industry to protect the same against transfer or disclosure to, or discovery by, other persons not authorized by CorEMR. In the event you create, or cause to be created, any derivative work or modification to the Software, in violation of this Agreement or otherwise, all such derivative works and/or modifications (including all related intellectual property) created by or for you is hereby assigned to CorEMR in their entirety.

5. Limitation on CorEMR's Obligations. CorEMR shall have no responsibility, obligation, or liability of any kind or nature to ARMOR, You, any inmates at the Facility, or to any third persons or legal entities, for, or arising out of, any aspects of any of the following:

A. Any and all aspects of the Server(s); the location, maintenance, repair, replacement and security of the Server(s); the control of or responsibility for the Server(s); and all other aspects of the Servers, including, without limitation, electrical power availability, backup, environmental controls including humidity and temperature, and/or all other physical aspects of the Server(s);

B. The input, form, content, completeness and/or accuracy of any medical records, coding or billing;

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C. Security, access to and privacy of the applicable computer hardware, electronic medical records, including user names, passwords, credentials, keys, encryptions (except for security measures built in by CorEMR), etc. ;

D. Remote access for anyone to medical records stored on-site and/or off-site;

E. Medical and billing pertaining to medical services at the Facility and the form, content, completeness and accuracy of all medical records, coding and billing (except to the extent such inaccuracies are exclusively due to the software or failure thereof);

F. Privacy pertaining to on-site and off-site medical records, whether stored electronically or otherwise, including compliance with state and federal privacy laws and including HIPAA and HIPAA Security Rule, if applicable; and

G. The medical care including diagnosis, treatment and medication dispensing for any and all inmates at the Facility.

6. Updates. Except as otherwise expressly provided herein, the License Agreement between CorEMR and ARMOR will govern any Software updates, modifications, enhancements, upgrades, patches, pre-releases (BETA), tryout, evaluation or product sampler that may be provided for use at Your Facility in accordance with CorEMR's then-current maintenance and support policies, unless such updates, modifications, enhancements and/or upgrades are provided under separate license agreement. ARMOR may use such updates, modifications, enhancements and/or upgrades, etc. for Your Facility only in conjunction with the license granted to it and such updates, modifications, enhancements and/or upgrades, etc. are covered thereby.

7. Limited Warranty. CorEMR has warranted to ARMOR that the Medical Records Software will enable its properly trained users thereof at Your Facility to create, maintain, access, and make additions to electronic medical records, and medical data and will enable ARMOR's properly trained personnel at the Facility to backup the electronic medical records created thereby on site and/or at a remote location if proper equipment and backup software is used on the Servers at the Facility. Non-substantial variations of performance do not establish a warranty right. To make a warranty claim, ARMOR must notify CorEMR in writing of the specific defect or failure claimed within 90 days of the time it new or should have known of any defect or failure. If the Software does not perform substantially in accordance with this Limited Warranty, this Facility Agreement may be terminated by ARMOR or you and the entire liability of CorEMR and the sole remedy of ARMOR and the Facility shall be limited to either, at CorEMR's option, the replacement of the Software or the refund of the Initial Set Up Fee and Monthly Service Fees actually paid to date pertaining to Your Facility; and in any such event, ARMOR shall be obligated to return to CorEMR the Software and You shall fully cooperate therein. THIS LIMITED WARRANTY SHALL NOT APPLY TO ANY SOFTWARE UPDATES, UPGRADES, MODIFICATIONS, ENHANCEMENTS, PATCHES, PRE-RELEASES (BETA), TRYOUTS, EVALUATIONS OR PRODUCT SAMPLERS, ALL OF WHICH ARE LICENSED "AS IS" WITHOUT WARRANTY OF ANY KIND. THIS LIMITED WARRANTY SET FORTH IN THIS SECTION GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE ADDITIONAL RIGHTS, WHICH MAY VARY FROM JURISDICTION TO JURISDICTION.

8. No Other Warranties. EXCEPT AS EXPRESSLY WARRANTED ABOVE IN SECTION 7, THE SOFTWARE IS PROVIDED "AS IS," WITHOUT WARRANTY OR

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REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR ARISING FROM COMMON LAW, CUSTOM, USAGE OR OTHERWISE, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, OR PERTAINING TO TITLE, INTEGRATION, ACCURACY, SECURITY OR AVAILABILITY. ANY EXPRESS WARRANTY MADE OUTSIDE OF THIS Facility AGREEMENT IS EXCLUDED AND SUPERSEDED BY THE TERMS OF THIS Facility AGREEMENT. COREMR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL SATISFY EITHER YOUR OR ARMOR'S REQUIREMENTS, THAT IT IS WITHOUT MATERIAL DEFECT OR ERROR, AND THAT THE OPERATION THEREOF WILL NOT BE UNINTERRUPTED OR ERROR FREE FOR ANY MATERIAL TIME. COREMR DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS YOU MAY OBTAIN BY USING THE SOFTWARE. Some jurisdictions do not allow certain disclaimers or limitations of warranties, so some of these may not apply to you.

9. Exclusion of Certain Damages. UNDER THIS FACILITY AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, NO PARTY IN ANY CASE SHALL BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY LOSS OF USE, LOST OR DAMAGED DATA, ANY INABILITY TO ACCESS OR RETRIEVE DATA, OTHER COMMERCIAL, MEDICAL OR ECONOMIC LOSS, OR FOR ANY INDIRECT, STATUTORY, LOSS OF PROFITS, LOSS OF REVNUENUE OR BUISINESS, COSTS OF COVERAGE, AND/OR EQUIPMENT DOWNTIME ARISING FROM OR RELATING TO THIS FACILITY AGREEMENT OR FROM THE USE OR INABILITY TO USE THE MEDICAL RECORDS SOFTWARE, REGARDLESS OF THE FORM OF ACTION AND EVEN IF COREMR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS DISCLAIMER OF LIABILITY/DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS IN ITS ESSENTIAL PURPOSE. Some jurisdictions do not allow certain exclusions or limitations of liability, so some of these may not apply to you.

10. Limitation of Liability. THE AGGREGATE LIABILITY OF COREMR ARISING FROM OR RELATING TO THIS FACILITY AGREEMENT OR YOUR FACILITY'S USE OR INABILITY TO USE THE MEDICAL RECORDS SOFTWARE (REGARDLESS OF THE FORM OF ACTION OR CLAIM, WHETHER CONTRACT, WARRANTY, TORT, EQUITABLE AND/OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT OF ALL INITIAL SET UP FEES AND MONTHLY SERVICE FEES PAID BY ARMOR FOR THE SOFTWARE LICENSE GRANTED FOR USE AT YOUR FACILITY..

11. Sole Remedy and Allocation of Risk. YOUR SOLE AND EXCLUSIVE REMEDY AND COREMR'S SOLE AND EXCLUSIVE LIABILITY UNDER THIS LICENSE AGREEMENT IS SET FORTH IN THIS FACILITY AGREEMENT. This Facility Agreement defines a mutually agreed-upon allocation of risk.

12. Public Records Law. The parties acknowledge that, notwithstanding any provision contained in this Agreement to the contrary, the law, including, but not limited to, the Oklahoma freedom of information laws, may require that You, CorEMR or ARMOR provide to the general public information and documentation You, CorEMR or ARMOR have or may receive from each other or from other sources. Neither You, CorEMR or ARMOR will have any liability to each other pursuant to this Agreement or otherwise when making such disclosures to the extent required by Oklahoma law.

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or (iv) on the next day after the date of dispatch, if sent by confirmed facsimile. All deliveries shall be made to the following addresses, as applicable:

CorEMR, L.C.
430 West 200 North
P.O. Box 702
Midway, Utah 84049
Attn: John Probst, Manager

Sheriff Whetsel
Oklahoma County Sheriff's Office
201 N. Shartel
Oklahoma City, OK 73102

Any party may change the address to which notice (or copies) to it shall be addressed by giving notice of that change to the other parties in accordance with this Paragraph 22.

23. Entire Agreement. This Facility Agreement and the Master Agreement and Master License Agreement between CorEMR and ARMOR set forth the entire understanding and agreement between the parties relating to the subject matter hereof. This Facility Agreement may be amended only by a writing signed by all parties. Any waiver of or promise not to enforce any right under this Facility Agreement shall not be enforceable unless evidenced by a writing signed by the party making such waiver or promise. ANY TERMS AND CONDITIONS OF ANY PROPOSAL, OR OTHER WRITING OR DOCUMENT SUBMITTED TO YOU, OR BY YOU, IN CONNECTION WITH THE MEDICAL RECORDS SOFTWARE THAT ARE IN ADDITION TO, DIFFERENT FROM, OR INCONSISTENT WITH THE TERMS AND CONDITIONS OF THIS FACILITY AGREEMENT ARE NOT BINDING ON COREMR AND ARE INEFFECTIVE. ONLY AUTHORIZED MANAGERS (NOT SALES PERSONS) OF COREMR HAVE AUTHORITY, ON BEHALF OF COREMR, TO MODIFY THIS FACILITY AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION, OR PROMISE THAT IS DIFFERENT THAN OR IN ADDITION TO THE WARRANTIES, REPRESENTATIONS, OR PROMISES EXPRESSLY SET FORTH IN THIS FACILITY AGREEMENT.

2010 IN WITNESS WHEREOF the Parties have executed this Facility Agreement effective the day of April, 2010.

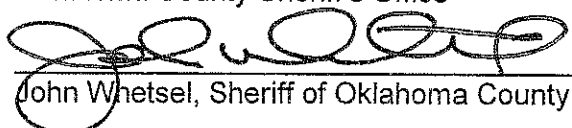
CorEMR, L.C.

By: 

(Authorized Signature)

FACILITY

Oklahoma County Sheriff's Office


John Whetsel, Sheriff of Oklahoma County, OK

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APPROVED this _____ day of _____, 2010.

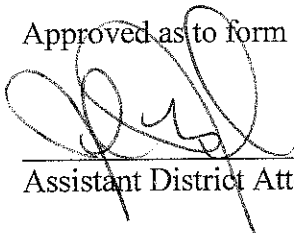
Board of County Commissioners
Oklahoma County, Oklahoma County

Chairman

Member

Member

Approved as to form and legality:

 6/23/2010

Assistant District Attorney

ATTEST: _____, Deputy
Carolynn Caudill, County Clerk

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SCHEDULE 1

LIST OF CORRECTIONAL FACILITIES

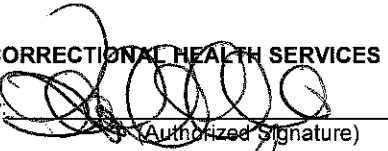
<u>Correctional Facility</u>	<u>No. of Inmates</u>	<u>Initial Set-up Fee</u>	<u>Monthly Service Fee</u>
Brevard County, FL	1450	\$25,000	\$1.50 per inmate
Oklahoma County, OK	2200	\$25,000	\$1.50 per inmate

Dated:

5/28/2010

ARMOR CORRECTIONAL HEALTH SERVICES INC.

By:

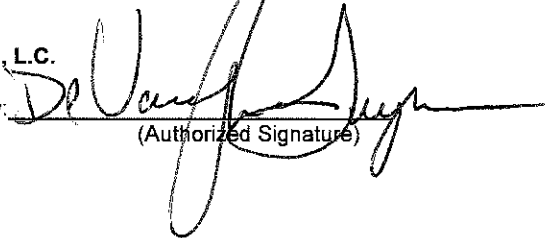

(Authorized Signature)

Dated:

5/11/2010

COREMR, L.C.

By:


(Authorized Signature)