

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>IN RE:</b>	§	
	§	<b>Case No. 18-33836</b>
<b>NEIGHBORS LEGACY HOLDINGS, INC., et al.,<sup>1</sup></b>	§	
	§	<b>Chapter 11</b>
	§	
<b>Debtors.</b>	§	<b>Jointly Administered</b>

**AMENDED OBJECTION TO DEBTORS' PROPOSED CURE AMOUNTS**  
**[Related to Docket No. 236, 255 and 265]**

Wells Fargo Equipment Finance, Inc. (“Wells Fargo”) files its amended objection to the proposed cure amounts for its contracts with Neighbors Legacy Holdings f/k/a Neighbors Health System, Inc. set forth in the *Debtors’ Amended Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts* [Docket No. 255]. In support of its objection, Wells Fargo respectfully states as follows:

1. On August 15, 2018, the Debtors filed their Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts (“Cure Notice”) [Docket No. 236] setting forth the executory contracts and unexpired leases that are subject to potential assumption and/or assignment to the successful bidder(s) to be identified at the conclusion of the auction of the Debtors’ assets. The Cure Notice also included the amounts the Debtors believe to be sufficient to cure any defaults under each potentially assumed executory contract.

2. On August 17, 2018, the Debtors filed an Amended Notice of Executory Contracts and Unexpired Leases Subject to Possible Assumption and Assignment and Proposed Cure Amounts (“Amended Cure Notice”) [Docket No. 255].

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/neighbors](http://www.kccllc.net/neighbors). The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue, Houston, Texas 77042.



2. The following Wells Fargo contracts were listed among the executory contracts and unexpired leases that may be included as part of the sale of the Debtors' assets:

EX #	Contract	Date	NEC Entity	Description	Debtors' Proposed Cure Amount
1	#459248-101	9/21/2015	Neighbors Legacy Holdings, Inc. f/k/a Neighbors Health System, Inc.	Siemens Medical Equipment: (1) New Somatom Scope CT s/n 91108; (1) Acuson P300 Ultrasound System s/n 2035; and (1) Multix Fusion - Digital X-Ray s/n 40146 (Midland, TX)	\$7,712.08
2	#459248-102	12/2/2015	Neighbors Legacy Holdings, Inc.	Siemens Medical Equipment: (1) New Somatom Scope Scanner s/n 91179; (1) Acuson P300 Ultra Sound System s/n 2130; and (1) Multix Fusion - Digital X-Ray s/n 40220 (Port Arthur, TX)	\$7,721.68
3	#459248-103	12/2/2015	Neighbors Legacy Holdings, Inc.	Siemens Medical Equipment: (1) New Somatom Scope Scanner s/n 91178; (1) Acuson P300 Ultrasound System s/n 2129; and (1) Multix Fusion - Digital X-Ray s/n 40240 (Odessa, TX)	\$7,721.67
4	#459248-104	12/2/2015	Neighbors Legacy Holdings, Inc.	Siemens Medical Equipment: (1) New Somatom Scope Scanner s/n 91191; (1) Acuson P300 Ultrasound System s/n 2114; and (1) Multix Fusion - Digital X-Ray s/n 40228 (El Paso, TX)	\$2,739.95
5	#459248-106	1/13/2016	Neighbors Legacy Holdings, Inc.	Siemens Medical Equipment: (1) Somatom Scope CT s/n 91263; (1) Acuson P300 Ultrasound System s/n 2170; and (1) Multix Fusion - Digital X-Ray 40275 (Amarillo, TX)	\$9,329.92
					<b>\$35,225.30</b>

3. The Debtors' list reflects a total cure amount of \$35,225.30 for the Wells Fargo contracts. This amount is incorrect. Wells Fargo's records reflect that a minimum of \$67,520.21 is due and owing to Wells Fargo under the lease agreements, broken down as follows:

Contract	Last Paid	Next Due	Rent	Tax	Late Fees	Total Due	Debtors' Proposed Cure Amount	Difference (objection amount)
#459248-101	5/19/2018	6/28/2018	\$21,422.46	\$1,713.78	\$714.08	\$23,850.32	\$7,712.08	\$16,138.24
#459248-102	8/13/2018	8/15/2018	\$7,133.19	\$588.49	-	\$7,721.68	\$7,721.68	\$0.00
#459248-103	6/11/2018	7/15/2018	\$14,266.38	\$1,176.96	\$356.66	\$15,800.00	\$7,721.67	\$8,078.33
#459248-104	8/13/2018	7/15/2018	\$9,664.32	\$797.31	\$356.66	\$10,818.29	\$2,739.95	\$8,078.34
#459248-106	8/13/2018	8/15/2018	\$8,289.03	\$683.85	\$357.04	\$9,329.92	\$9,329.92	\$0.00
						<b>\$67,520.21</b>	<b>\$35,225.30</b>	<b>\$32,294.91</b>

4. The Master Lease related to the Wells Fargo leases described in paragraphs 2 and 3 above expressly provides for the recovery of attorneys' fees, and that amount is properly included as part of Wells Fargo's cure claim. A copy of the Master Lease is attached hereto as **Exhibit "A"** and incorporated herein for all purposes.

5. Wells Fargo does not object to the assumption of the lease agreements provided that all defaults under the leases are fully cured as required by Section 365 of the Bankruptcy Code, and any successful bidder provides adequate assurance of future performance.

6. Wells Fargo continues to investigate this issue and reserves the right to modify, supplement and/or amend this objection as further information becomes available, as well as object to the assumption and/or assignment of the lease agreements and the sale of assets, including any objections to any assignee and any proposed adequate assurance.

WHEREFORE, Wells Fargo respectfully requests that this Court approve the Debtors' request to assume the lease agreements only with the correct cure amounts paid, including attorneys' fee; and grant it such other relief as is just and proper.

LEYH PAYNE & MALLIA, PLLC

By: /s/ Steven A. Leyh  
Steven A. Leyh  
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**Attorneys for Wells Fargo Equipment  
Finance, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this Objection was served electronically upon each of the parties listed on the Court's ECF Service List for this case on August 23, 2018.

/s/ Steven A. Leyh  
Steven A. Leyh

# EXHIBIT "A"



## Master Lease

Wells Fargo Equipment Finance, Inc. | 733 Marquette Avenue, Suite 700 | MAC N9306-070 | Minneapolis, MN 55402

Master Lease Number 248 dated as of May 8, 2015

Name and Address of Lessee:  
**Neighbors Health System, Inc.**  
11200 Broadway Street  
Suite 2320  
Pearland, TX 77584

### Master Lease Provisions

**1. LEASE.** Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the personal property described in a Supplement or Supplements to this Master Lease from time to time signed by Lessor and Lessee upon the terms and conditions set forth in this Master Lease and in the related Supplement (such property together with all replacements, substitutions, parts, improvements, repairs, and accessories, and all additions incorporated therein or affixed thereto being referred to herein as the "Equipment"). Each Supplement shall constitute a separate lease incorporating the terms of this Master Lease. References in this Master Lease to "this Lease", "hereunder" and "herein" shall be construed to mean a Supplement which incorporates this Master Lease. Lessee's execution of a Supplement shall obligate Lessee to lease the Equipment described therein from Lessor. No Supplement shall be binding on Lessor unless and until executed by Lessor. Anything to the contrary notwithstanding, Lessor shall have no obligation to accept, execute or enter into any Supplement or to acquire or lease to Lessee any equipment. Title to all Equipment shall at all times remain in Lessor.

**2. TERM.** The term of this Lease shall begin on the rent commencement date shown in the applicable Supplement and shall continue for the number of consecutive months from the rent commencement date shown in such Supplement (the "initial term") unless earlier terminated by Lessor as provided herein. The rent commencement date is the 15th day of the month in which all of the items of Equipment described in the related Supplement have been delivered and accepted by Lessee if such delivery and acceptance is completed on or before the 15th of such month, and the rent commencement date is the last day of such month if such delivery and acceptance is completed during the balance of such month. In the event Lessee executes the related Supplement prior to delivery and acceptance of all items of Equipment described therein, Lessee agrees that the rent commencement date may be left blank when Lessee executes the related Supplement and hereby authorizes Lessor to insert the rent commencement date based upon the date appearing on the delivery and acceptance certificate signed by Lessee.

At the expiration of the initial term, unless Lessee shall have renewed the Lease or purchased the Equipment from Lessor, as provided for in each Supplement, if Lessee does not return to Lessor all of the Equipment that is the subject of a Supplement in accordance with paragraph 14 below, Lessee shall pay to Lessor an amount equal to the monthly basic rental payment that was in effect during the last month of the initial term for each month (or part of any month) as "Holdover Rent", and shall comply with all other provisions of this Lease, from the first day after the expiration of the initial term until all such Equipment has been returned to Lessor in accordance with paragraph 14, provided however, that nothing contained herein and no payment of Holdover Rent shall relieve Lessee of its obligation to return the Equipment upon the expiration or earlier termination of the Lease. In addition, Lessee shall pay any applicable sales, use, and/or property taxes arising from this Lease.

**3. RENT.** Lessee shall pay as basic rent for the initial term of this Lease the amount shown in the related Supplement as Total Basic Rent. The Total Basic Rent shall be payable in installments each in the amount of the basic rental payment set forth in the related Supplement plus sales and use tax thereon. Lessee shall pay advance installments and any security deposit, each as shown in the related Supplement, on the date it is executed by Lessee. Subsequent installments shall be payable on the first day of each rental payment period shown in the related Supplement beginning after the first rental payment period; provided, however, that Lessor and Lessee may agree to any other payment schedule, including irregular payments or balloon payments, in which event they shall be set forth in the Supplement. If the actual cost of the Equipment is more or less than the Total Cost as shown in the Supplement, the amount of each installment of rent will be adjusted up or down to provide the same yield to Lessor as would have been obtained if the actual cost had been the same as the Total Cost. Adjustments of 10% or less may be made by written notice from Lessor to Lessee. Adjustments of more than 10% shall be made by execution of an amendment to the Supplement reflecting the change in Total Cost and basic rental payment.

In addition to basic rent, which is payable beginning on the rent commencement date, Lessee agrees to pay interim rent for the period beginning on the date the Equipment is delivered and accepted by Lessee to the rent commencement date at a daily rate equal to the percentage of Lessor's cost of the Equipment set forth in such Supplement. Interim rent shall be payable one month after the rent commencement date. Lessee agrees that if all of the items of Equipment covered by such Supplement have not been delivered and accepted thereunder before the date specified as the Cutoff Date in such Supplement, Lessor shall have no obligation to lease the Equipment to Lessee and Lessee shall purchase from Lessor the items of Equipment then subject to this Lease within five days after Lessor's request to do so for a price equal to Lessor's cost of such items plus all accrued but unpaid interim rent thereon. Lessee shall also pay any applicable sales and use tax on such sale.

**THIS AGREEMENT INCLUDES THE TERMS ON THE ATTACHED PAGE(S).**

Lessor: Wells Fargo Equipment Finance, Inc. Lessee: Neighbors Health System, Inc.

By LaNita Pollard By CED  
Sr. Contract Admin Title

**4. SECURITY DEPOSIT.** Lessor may apply any security deposit toward any obligation of Lessee under any Supplement and shall return any unapplied balance to Lessee without interest upon full satisfaction of all of Lessee's obligations.

**5. NO WARRANTIES.** Lessee agrees that it has selected each item of Equipment based upon its own judgment and disclaims any reliance upon any statements or representations made by Lessor. LESSEE ACKNOWLEDGES THAT: LESSOR IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN; THE EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY, DESCRIPTION AND MANUFACTURE SELECTED BY THE LESSEE; LESSEE IS SATISFIED THAT THE EQUIPMENT IS SUITABLE AND FIT FOR ITS PURPOSES; AND LESSOR HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY WITH RESPECT TO THE EQUIPMENT, EXPRESS OR IMPLIED, AND LESSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE QUALITY, CONDITION OR CAPACITY OF THE EQUIPMENT OR THE MATERIALS IN THE EQUIPMENT OR WORKMANSHIP OF THE EQUIPMENT, LESSOR'S TITLE TO THE EQUIPMENT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER. LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY EQUIPMENT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. LESSOR SHALL NOT BE LIABLE FOR DAMAGES OF ANY KIND, INCLUDING ANY LIABILITY FOR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE EQUIPMENT. No defect or unfitness of the Equipment and no failure on the part of the manufacturer or the shipper of the Equipment to deliver the Equipment or any part thereof to Lessee shall relieve Lessee of the obligation to pay rent or any other obligation hereunder. Lessor shall have no obligation in respect of the Equipment and shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall look only to persons other than Lessor such as the manufacturer, vendor or carrier thereof should any item of Equipment for any reason and in any way be defective. To the extent permitted by the manufacturer and/or vendor and provided Lessee is not in default under the Lease, Lessor shall make available to Lessee all manufacturer and/or vendor warranties with respect to the Equipment.

**6. LESSEE COVENANTS, REPRESENTATIONS AND WARRANTIES.** (a) Affirmative Covenants. Lessee shall: (i) pay all shipping and delivery charges and other expenses incurred in connection with the Equipment and pay all lawful claims, whether for labor, materials, supplies, rent or services, which might or could if unpaid become a lien on the Equipment; (ii) comply with all laws and regulations and rules, all manufacturer's instructions and warranty requirements, and with the conditions and requirements of all policies of insurance relating to the Equipment and its use; (iii) mark and identify the Equipment with all information and in such manner as Lessor or its assigns may request from time to time and replace promptly any such markings or identification which are removed, defaced or destroyed; (iv) at any and all times during business hours, grant Lessor free access to enter upon the premises wherein the Equipment shall be located or used and permit Lessor to inspect the Equipment and all applicable maintenance records; provided, however, that Lessor shall have no obligation to inspect any Equipment or records; (v) maintain a system of accounts established and administered in accordance with generally accepted accounting principles and practices consistently applied; (vi) within forty-five (45) days after the end of each fiscal quarter other than the final fiscal quarter of each fiscal year, deliver to Lessor a balance sheet and statement of income as at the end of such quarter, each setting forth in comparative form the corresponding figures for the comparable period in the preceding fiscal year; (vii) within one hundred and twenty (120) days after the end of each fiscal year, deliver to Lessor a balance sheet as at the end of such year and statements of income and cash flows for such year, with accompanying notes to financial statements, each setting forth in comparative form the corresponding figures for the preceding year, in each case prepared in accordance with generally accepted accounting principles and practices consistently applied and certified by Lessee's chief financial officer as fairly presenting the financial position and results of operations of Lessee, and, in the case of year-end financial statements, certified by an independent accounting firm acceptable to Lessor; and (viii) with reasonable promptness, furnish Lessor with such other information, financial or otherwise, relating to Lessee or the Equipment as Lessor shall reasonably request.

(b) Negative Covenants. Lessee shall not (i) voluntarily or involuntarily create, incur, assume or suffer to exist any mortgage, lien, security interest, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Equipment or this Lease or any of Lessee's interest thereunder; (ii) permit the name of any person, association or corporation other than the Lessor or Lessee to be placed on the Equipment; (iii) part with possession or control of or suffer or allow to pass out of its possession or control any item of the Equipment or change the location of the Equipment or any part thereof from the address shown in the applicable Supplement; (iv) ASSIGN OR IN ANY WAY TRANSFER OR DISPOSE OF ALL OR ANY PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY SUBLEASE OF ALL OR ANY PART OF THE EQUIPMENT; (v) change (a) its name or address from that set forth above, (b) the state under whose laws it is organized as of the date hereof, or (c) the type of organization under which it exists as of the date hereof unless it shall have given Lessor or its assigns no less than thirty (30) days' prior written notice of any such proposed change; (vi) permit the sale or transfer of any shares of its capital stock or of any ownership interest in the Lessee to any person, persons, entity or entities (whether in one transaction or in multiple transactions) which results in a transfer of a majority interest in the ownership and/or the control of the Lessee from the person, persons, entity or entities who hold ownership and/or control of the Lessee as of the date of this Master Lease; (vii) consolidate with or merge into or with any other entity, or purchase or otherwise acquire all or substantially all of the assets or stock or other ownership interest of any person or entity or sell, transfer, lease or otherwise dispose of all or substantially all of Lessee's assets to any person or entity; or (viii) allow a Blocked Person to have an ownership interest in or control of Lessee. "Blocked Person" means any person or entity that is now or at any time (A) on a list of Specially Designated Nationals issued by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury or any sectoral sanctions identification list, or (B) whose property or interests in property are blocked by OFAC or who is subject to sanctions imposed by law, including any executive order of any branch or department of the United States government or (C) otherwise designated by the United States or any regulator having jurisdiction or regulatory oversight over Lessor, to be a person with whom Lessor is not permitted to extend credit to or with regard to whom, a lessee relationship may result in penalties against Lessor or limitations on a lessor's ability to enforce a transaction.

(c) Representations and Warranties. Lessee represents and warrants to Lessor, that effective on the date on which Lessee executes this Master Lease and each Supplement: (i) if Lessee is a partnership, corporation, limited liability company or other legal entity, the execution and delivery of this Master Lease and each Supplement and the performance of Lessee's obligations hereunder and thereunder have been duly authorized by all necessary action on the part of the Lessee and are not in contravention of, and will not result in a breach of, any of the terms of Lessee's charter, by-laws, articles of incorporation or other organic documents or any loan agreements or indentures of Lessee, or any other contract, agreement or instrument to which Lessee is a party or by which it is bound; (ii) the person signing the Master Lease and each Supplement on behalf of Lessee is duly authorized; (iii) Lessee's exact legal name as it appears on its charter or other organic documents, including as to punctuation and capitalization, and its principal place of business or chief executive office are as set forth in the heading of this Master Lease; (iv) Lessee is duly organized, validly existing



and in good standing under the laws of the state of its incorporation or formation and is duly qualified and authorized to transact business in, and is in good standing under the laws of, each other state in which the Equipment is or will be located; (v) there has been no change in the name of the Lessee, or the name under which Lessee conducts business within the one year preceding the date hereof except as previously reported in writing to Lessor; (vi) Lessee has not moved its principal place of business or chief executive office, or has not changed the jurisdiction of its organization within the one year preceding the date hereof except as previously reported to Lessor in writing; (vii) this Master Lease and each Supplement constitute a legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms; (viii) all information provided by Lessee to Lessor in connection with this Lease is true and correct; (ix) the Equipment will be used primarily for business purposes as opposed to personal, family or household purposes; and (x) there are no suits pending or threatened against Lessee or any guarantor of the Lessee's obligations (each, a "Guarantor") which, if decided adversely, might materially adversely affect Lessee's or such guarantor's financial condition, the value, utility or remaining useful life of the Equipment, the rights intended to be afforded to Lessor hereunder or under any guarantee or the ability of Lessee or any guarantor to perform its obligations under the Lease or any document delivered in connection with the Lease.

**7. TAXES.** Lessee shall promptly pay when due, and indemnify and hold Lessor harmless, on an after-tax basis, from, all sales, use, property, excise and other taxes and all license and registration fees now or hereafter imposed by any governmental body or agency upon the Equipment or its use, purchase, ownership, delivery, leasing, possession, storage, operation, maintenance, repair, return or other disposition of the Equipment, or for titling or registering the Equipment, or upon the income or other proceeds received with respect to the Equipment or this Lease or the rentals hereunder; provided, however, that Lessee shall not be required to pay taxes on or measured by the net income of Lessor. Lessee shall prepare and file all tax returns relating to taxes for which Lessee is responsible hereunder which Lessee is permitted to file under the laws of the applicable taxing jurisdiction. Upon the expiration or earlier termination of the Lease, Lessee shall pay to Lessor any such taxes accrued or assessed but not yet due and payable.

**8. INDEMNITY.** Lessee hereby agrees to indemnify and hold Lessor harmless (on an after-tax basis) from and against any and all claims, losses, liabilities (including negligence, tort and strict liability), damages, judgments, obligations, actions, suits, and all legal proceedings, and any and all costs and expenses in connection therewith (including attorneys' fees) arising out of, or in any manner connected with, or resulting directly or indirectly from, the Equipment, including, without limitation, the manufacture, purchase, lease, financing, selection, ownership, delivery, rejection, non-delivery, transportation, possession, use, storage, operation, condition, maintenance, repair, return or other disposition of the Equipment or with this Lease, including without limitation, claims for injury to or death of persons and for damage to property, whether arising under the doctrine of strict liability, by operation of law or otherwise, and to give Lessor prompt notice of any such claim or liability.

**9. ASSIGNMENT.** Lessor may sell or assign any or all of its interest in this Lease or sell or grant a security interest in all or any part of the Equipment, without notice to or the consent of Lessee. Lessee agrees not to assert against any assignee of Lessor any setoff, recoupment, claim, counterclaim or defense Lessee may have against Lessor or any person other than such assignee. Lessee agrees that if it receives written notice of an assignment from Lessor, it will pay all Rent and other payments payable under each Supplement to such assignee or as instructed by Lessor or the assignee identified in the notice received from Lessor. An assignee of Lessor shall have all rights of Lessor under the applicable Lease, to the extent assigned, separately exercisable by such assignee independently of Lessor or any assignee with respect to other leases. Upon any such assignment and except as may otherwise be provided therein all references in this Master Lease to Lessor shall include such assignee.

**10. EQUIPMENT PERSONALTY.** The Equipment shall remain personal property regardless of its attachment to realty, and Lessee agrees to take such action at its expense as may be necessary to prevent any third party from acquiring any interest in the Equipment as a result of its attachment to realty. If requested by Lessor with respect to any item of the Equipment, Lessee will obtain and deliver to Lessor waivers of interest or liens in recordable form, satisfactory to Lessor, from all persons claiming any interest in the real property on or in which such item of the Equipment is installed or located.

**11. USE AND MAINTENANCE.** Lessee will use the Equipment with due care and only for the purpose for which it is intended. Lessee will, by qualified personnel, use, maintain, repair, modify (to the extent permitted or required herein) in accordance with prudent practices (but in no event less than the same extent to which Lessee maintains other similar equipment owned or leased by it) and for the purpose for which such Equipment was designed, in compliance with insurance policies, manufacturer's specified maintenance programs, warranties and applicable laws, and shall keep the Equipment in as good repair, condition and working order as when originally received by Lessee, ordinary wear and tear excepted, and will furnish and replace all parts of the Equipment as may from time to time become worn out, lost, stolen, destroyed or damaged or unfit for use, all at its expense. Lessee shall, at its expense, make all modifications and improvements to the Equipment required by law. Lessee may, at its sole cost and expense, make any modifications to the Equipment, provided that such modifications (a) are readily removable without causing damage to the Equipment, (b) do not reduce the value, utility, marketability or remaining useful life of the Equipment, and (c) are of a kind that customarily are made by lessees or purchasers of equipment similar to the Equipment. All parts, modifications and improvements to the Equipment shall, when installed or made, immediately become the property of Lessor and part of the Equipment for all purposes; provided, that any modification not required by law shall if requested by Lessor be removed by Lessee and any damage to the Equipment resulting from such removal shall be repaired prior to the return of the Equipment to the Lessor. The Equipment shall not be used outside of the United States without Lessor's prior written consent.

**12. LOSS OR DAMAGE.** No loss or damage to the Equipment or any part thereof shall affect any obligation of Lessee under this Lease, which shall continue in full force and effect. Lessee shall advise Lessor in writing within five (5) days of any item of Equipment becoming lost, stolen or damaged and of the circumstances and extent of such damage. In the event any item of Equipment shall become lost, stolen, destroyed, damaged beyond repair or rendered permanently unfit for use for any reason, or in the event of condemnation or seizure of any item of Equipment, Lessee shall promptly pay Lessor, within ten (10) days after demand by Lessor, an amount equal to the greater of the fair market value of such items or the Lessor's Loss as defined in paragraph 18 below. Upon payment of such amount to Lessor, such item shall become the property of Lessee, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest therein, the rent with respect to such item shall terminate, and the basic rental payments on the remaining items shall be reduced accordingly. Lessee shall pay any sales and use taxes due on such transfer. Any insurance or condemnation proceeds received shall be paid to Lessor and credited to Lessee's obligation under this paragraph and Lessor shall be entitled to any surplus. Whenever the Equipment is damaged and such damage can be repaired, Lessee shall, at its expense, promptly effect such repairs as Lessor shall deem necessary for compliance with paragraph 11 above. Proceeds of insurance shall be paid to Lessor with respect to such reparable damage to the Equipment and shall, at the election of Lessor, be applied either to

the repair of the Equipment by payment by Lessor directly to the party completing the repairs, or to the reimbursement of Lessee for the cost of such repairs; provided, however, that Lessor shall have no obligation to make such payment or any part thereof until receipt of such evidence as Lessor shall deem satisfactory that such repairs have been completed and further provided that Lessor may apply such proceeds to the payment of any rent or other sum due or to become due hereunder if at the time such proceeds are received by Lessor there shall have occurred any Event of Default or any event which with lapse of time or notice, or both, would become an Event of Default.

**13. INSURANCE.** Lessee shall obtain and maintain on or with respect to the Equipment at its own expense (a) liability insurance (including bodily injury and property damage) with a minimum \$1 million combined single limit per occurrence and (b) all-risk physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement cost of the Equipment. Lessee shall furnish Lessor with a certificate of insurance evidencing the issuance of a policy or policies to Lessee in at least the minimum amounts required herein naming Lessor as an additional insured thereunder for the liability coverage and as (i) loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder is \$1 million or less, or (ii) lender loss payee for the property damage coverage if the aggregate original cost of the Equipment leased hereunder exceeds \$1 million. Each such policy shall be in such form and with such insurers as may be satisfactory to Lessor, and shall contain a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy and a clause requiring the insurer to give to Lessor at least thirty (30) days' prior written notice of (i) the cancellation or non-renewal of such policy or (ii) any amendment to the terms of such policy if such amendment would cause the policy no longer to conform to the policy requirements stated in this paragraph; and ten (10) days prior notice of cancellation for non-payment of premium. Lessee shall deliver to Lessor, annually and upon renewal or replacement of any insurance required herein, evidence satisfactory to Lessor of the required insurance coverage. Lessee hereby assigns to Lessor the proceeds of all such insurance and directs any insurer to make payments directly to Lessor. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof.

**14. RETURN OF THE EQUIPMENT.** Upon the expiration or earlier termination of this Lease by Lessor, Lessee will immediately deliver the Equipment to and in the manner designated by the Lessor in the same condition as when delivered to Lessee fully capable of performing all functions for which it was originally designed (or as upgraded during the Lease Term), ordinary wear and tear excepted, and in compliance with any additional return conditions set forth in the applicable Supplement, at such location within the continental United States as Lessor shall designate. Lessee shall pay all transportation and other expenses relating to such delivery. Lessee shall arrange for the disassembly and packing of the Equipment, together with all parts and pieces and then reassembly (including, if necessary, repair and overhaul) by an authorized representative of the manufacturer. Without limiting the generality of the foregoing, returned Equipment shall be in such condition to immediately qualify for (i) the manufacturer's (or other authorized service representative's) then available service contract or warranty, and (ii) all applicable licenses or permits necessary for its operation for its intended purposes and to comply with all specifications and requirements of applicable federal, state and local laws. The Equipment shall be returned with all related maintenance logs, operating manuals and other related materials and all such materials will be undamaged and contain all pages. Upon Lessor's request, Lessee shall, at Lessee's sole expense, provide storage acceptable to Lessor for a period of up to 90 days from the date of return and will assist Lessor in attempting to remarket the Equipment, including display and demonstration of the Equipment to prospective purchasers or lessees, and allowing Lessor to conduct any public or private sale or auction on Lessee's premises.

**15. ADDITIONAL ACTION; EXPENSES.** Lessee will promptly execute and deliver to Lessor such further documents, take such further action, and provide such information as Lessor may request in order to carry out more effectively the intent and purpose of this Lease, including the execution and delivery of appropriate financing statements to protect fully Lessor's interest hereunder in accordance with the Uniform Commercial Code or other applicable law, and/or comply with laws or regulations applicable to Lessor, Lessee, and/or the transaction evidenced by this Lease, including information identifying the owners of Lessee and its affiliates and their respective ownership interest. Lessor and any assignee of Lessor is authorized to file one or more Uniform Commercial Code financing statements without the signature of Lessee or signed by Lessor or any assignee of Lessor as attorney-in-fact for Lessee. Lessee hereby grants to Lessor a power of attorney in Lessee's name, to apply for a certificate of title for any item of Equipment that is required to be titled under the laws of any jurisdiction where the Equipment is or may be used and/or to transfer title thereto upon the exercise by Lessor of its remedies upon an Event of Default by Lessee under this Lease. Lessee acknowledges that Lessor may incur out-of-pocket costs and expenses in connection with the transactions contemplated by this Lease, and accordingly agrees to pay (or reimburse Lessor for) the reasonable costs and expenses related to (a) filing any financing, continuation or termination statements, (b) any title and lien searches with respect to this Lease and the Equipment, (c) documentary stamp taxes relating to the Lease, and (d) procuring certified charter documents and good standing certificates of Lessee and any Guarantor of Lessee's obligations hereunder. Lessee will do whatever may be necessary to have a statement of the interest of Lessor and any assignee of Lessor in the Equipment noted on any certificate of title relating to the Equipment and will deliver said certificate to Lessor. If Lessee fails to perform or comply with any of its agreements, Lessor may perform or comply with such agreements in its own name or in Lessee's name as attorney-in-fact and the amount of any payments and expenses of Lessor incurred in connection with such performance or compliance, together with interest thereon at the rate provided below, shall be deemed rent payable by Lessee upon demand.

**16. LATE CHARGES.** If any payment, whether for rent or otherwise, is not paid within ten (10) days of when due, Lessor may impose a late charge of 5% of the amount past due (or the maximum amount permitted by applicable law if less). Payments thereafter received shall be applied first to delinquent installments and then to current installments.

**17. DEFAULT.** Each of the following events shall constitute an "Event of Default" hereunder: (a) Lessee shall fail to pay within ten (10) days of when due any installment of interim rent, basic rent or any other amount due hereunder; (b) any certificate, statement, representation, warranty or financial or credit information heretofore or hereafter made or furnished by or on behalf of Lessee or any Guarantor proves to have been false or misleading in any material respect or omitted any material fact, contingent or unliquidated liability or claim against Lessee or any such Guarantor; (c) Lessee shall fail to observe or perform any other agreement to be observed or performed by Lessee hereunder and the continuance thereof for ten (10) days following written notice thereof by Lessor to Lessee; (d) Lessee or any Guarantor or any partner of Lessee if Lessee is a partnership shall cease doing business as a going concern, make an assignment for the benefit of creditors, become insolvent, or engage in any dissolution or liquidation proceedings; (e) Lessee or any Guarantor or any partner of Lessee if Lessee is a partnership shall voluntarily file, or have filed against it involuntarily, a petition for liquidation, reorganization, adjustment of debt, or similar relief under the federal Bankruptcy Code or any other present or future federal or state bankruptcy or insolvency law, or a trustee, receiver, or liquidator shall be appointed of it or of all or a substantial part of its assets; (f) Lessee or any Guarantor shall be in breach of or in default in the payment or performance of any material obligation under



any credit agreement, conditional sales contract, lease, guaranty, or other contract with Lessor, an affiliate of Lessor or any other person or entity, howsoever arising; (g) any individual Lessee, Guarantor, or partner of Lessee if Lessee is a partnership shall die; (h) Lessee, or any Guarantor of this Lease shall suffer a material adverse change in its financial condition from the date hereof, and as a result thereof Lessor deems itself or any of the Equipment to be insecure; or (i) any Guarantor fails to pay or perform any obligation owing to Lessor, or breaches or fails to observe or perform any term, condition, covenant, representation or warranty contained in any agreement made by such Guarantor in favor of Lessor and such failure or breach continues beyond the applicable grace or cure period set forth in such agreement, if any.

**18. REMEDIES.** Lessor and Lessee agree that Lessor's damages suffered by reason of an Event of Default are uncertain and not capable of exact measurement at the time this Lease is executed because the value of the Equipment at the expiration of this Lease is uncertain, and therefore they agree that for purposes of this paragraph 18 "Lessor's Loss" as of any date shall be the sum of the following: (1) the amount of all rent and other amounts payable by Lessee hereunder due but unpaid as of such date plus (2) the amount of all unpaid rent for the balance of the term of this Lease not yet due as of such date discounted from the respective dates installment payments would be due at the Discount Rate as defined below plus (3) 10% of the cost of the Equipment that is subject to this Lease as of such date (provided however, that with regard to any Supplement that expressly sets forth a "Final Purchase Payment" other than 10% of the cost of the Equipment, then the amount of such Final Purchase Payment shall be substituted in place of the 10% in this clause "(3)" for the purpose of calculating Lessor's Loss with regard to such Supplement.) "Discount Rate" means (i) the rate set forth for the Treasury Constant Maturities having the closest term to (but not longer than) the original term of the applicable Supplement, as set forth in the Federal Reserve Board H.15 Release (Selected Interest Rates) as of the Rent Commencement Date applicable to such Supplement, (ii) the rate set forth for the Treasury Constant Maturities having the closest term to (but not longer than) the remaining term of the applicable Supplement, as set forth in the Federal Reserve Board H.15 Release (Selected Interest Rates) as of the date of calculation of Lessor's Loss applicable to such Supplement, or (iii) 3%, whichever is lowest. If a rate referred to in the preceding clauses "(i)" or "(ii)" is not published in such publication referenced hereinabove, such rate shall be taken from a reputable source selected by Lessor.

Upon the occurrence of an Event of Default and at any time thereafter, Lessor may exercise any one or more of the remedies listed below as Lessor in its sole discretion may lawfully elect; provided, however, that upon the occurrence of an Event of Default specified in paragraph 17(e), an amount equal to Lessor's Loss as of the date of such occurrence shall automatically become and be immediately due and payable without notice or demand of any kind. The exercise of any one remedy shall not be deemed an election of such remedy or preclude the exercise of any other remedy, and such remedies may be exercised concurrently or separately but only to the extent necessary to permit Lessor to recover amounts for which Lessee is liable hereunder.

- a) Lessor may, by written notice to Lessee, terminate this Lease as to any or all of the Equipment subject hereto and declare an amount equal to Lessor's Loss as of the date of such notice to be immediately due and payable, as liquidated damages and not as a penalty, and the same shall thereupon be and become immediately due and payable without further notice or demand, and all rights of Lessee to use the Equipment shall terminate but Lessee shall be and remain liable as provided in this paragraph 18. Lessee shall at its expense promptly deliver the Equipment to Lessor at a location or locations within the continental United States designated by Lessor. Lessor may also enter upon the premises where the Equipment is located and take immediate possession of and remove the same with or without instituting legal proceedings. Lessee shall not be obligated to deliver the Equipment to Lessor as provided in this paragraph so long as Lessee's healthcare patients are undergoing examinations utilizing the Equipment; provided however, Lessee shall, upon written receipt of Lessor's election to exercise its rights pursuant to this paragraph, promptly cease further examinations utilizing the Equipment and promptly comply with the return of the Equipment provisions provided herein.
- b) Lessor may proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease or to recover, for breach of this Lease, Lessor's Loss as of the date Lessor's Loss is declared due and payable hereunder; provided, however, that upon recovery of Lessor's Loss from Lessee in any such action without having to repossess and dispose of the Equipment, Lessor shall transfer the Equipment to Lessee at its then location upon payment of any additional amount due under clauses (d), (e) and (f) below.
- c) In the event Lessor repossesses the Equipment, Lessor shall either retain the Equipment in full satisfaction of Lessee's obligation hereunder or sell or lease each item of Equipment in such manner and upon such terms as Lessor may in its sole discretion determine. The proceeds of any such sale or lease shall be applied to reimburse Lessor for Lessor's Loss and any additional amount due under clauses (d) (e) and (f) below. Lessor shall be entitled to any surplus and Lessee shall remain liable for any deficiency. For purposes of this subparagraph, the proceeds of any lease of all or any part of the Equipment by Lessor shall be the amount reasonably assigned by Lessor as the cost of such Equipment in determining the rent under such lease.
- d) Lessor may recover interest on the unpaid balance of Lessor's Loss plus any amounts recoverable under clauses (e) and (f) of this paragraph 18 from the date it becomes payable until fully paid at the rate of the lesser of 12% per annum or the highest rate permitted by law.
- e) In addition to any other recovery permitted hereunder or under applicable law, Lessor may recover from Lessee an amount that will fully compensate Lessor for any loss of or damage to Lessor's residual interest in the Equipment.
- f) Lessor may exercise any other right or remedy available to it by law or by agreement, and may in any event recover legal fees and other costs and expenses incurred by reason of an Event of Default or the exercise of any remedy hereunder, including expenses of repossession, repair, storage, transportation, and disposition of the Equipment. Any payment received by Lessor may be applied to unpaid obligations as Lessor in its sole discretion determines.

If any Supplement is deemed at any time to be a lease intended as security, Lessee grants Lessor a security interest in the Equipment to secure its obligations under such Supplement, all other Supplements and all other indebtedness at any time owing by Lessee to Lessor. Lessee agrees that upon the occurrence of an Event of Default, in addition to all of the other rights and remedies available to Lessor hereunder, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code.

No express or implied waiver by Lessor of any breach of Lessee's obligations hereunder shall constitute a waiver of any other breach of Lessee's obligations hereunder.

**19. NOTICES.** Any notice hereunder to Lessee or Lessor shall be in writing and shall be deemed to have been given when delivered personally or deposited with a nationally-recognized overnight courier service or in the United States mails, postage prepaid, addressed to recipient at its address set forth above or at such other address as may be last known to the sender.

**20. NET LEASE AND UNCONDITIONAL OBLIGATION.** This Lease is a completely net lease and Lessee's obligation to pay rent and all other amounts payable by Lessee hereunder is absolute, unconditional and irrevocable, and shall be paid without any abatement, reduction, setoff or defense of any kind.

**21. NON-CANCELABLE LEASE.** This Lease cannot be canceled, prepaid or terminated except as expressly provided herein or in the applicable Supplement.

**22. SURVIVAL OF INDEMNITIES.** Lessee's obligations under paragraphs 7, 8, and 18 shall survive termination or expiration of this Lease.

**23. TAX INDEMNITY.** Lessor's loss of, or loss of the rights to claim, or recapture of, all or any part of the federal or state income tax benefits Lessor anticipated as a result of entering into this Lease and owning the Equipment is referred to herein as a "Loss". If for any reason this Lease is not a true lease for federal or state income tax purposes, or if for any reason (even though this Lease may be a true lease) Lessor is not entitled to depreciate the Equipment for federal or state income tax purposes in the manner that Lessor anticipated when entering into this Lease, and as a result Lessor suffers a Loss, then Lessee agrees to pay Lessor, as additional basic rent, a lump-sum amount which, after the payment of all federal, state and local income taxes on the receipt of such amount, and using the same assumptions as to tax benefits and other matters Lessor used in originally evaluating and pricing this Lease, will in the reasonable opinion of Lessor maintain Lessor's net after-tax rate of return with respect to this Lease at the same level it would have been if such Loss had not occurred. The Lessor makes no representation with respect to the income tax consequences of this Lease or the Equipment. Lessor will notify Lessee of any claim that may give rise to indemnity hereunder. Lessor shall make a reasonable effort to contest any such claim but shall have no obligation to contest such claim beyond the administrative level of the Internal Revenue Service or other taxing authority. In any event, Lessor shall control all aspects of any settlement and contest. Lessee agrees to pay the legal fees and other out-of-pocket expenses incurred by Lessor in defending any such claim even if Lessor's defense is successful. Notwithstanding the foregoing, Lessee shall have no obligations to indemnify Lessor for any Loss caused solely by (a) a casualty to the Equipment if Lessee pays the amount Lessee is required to pay as a result of such casualty, (b) Lessor's sale of the Equipment other than on account of an Event of Default hereunder, (c) failure of Lessor to have sufficient income to utilize its anticipated tax benefits or to timely claim such tax benefits, and (d) a change in tax law (including tax rates) effective after the Lease begins. For purposes of this paragraph 23, the term "Lessor" shall include any member of an affiliated group of which Lessor is (or may become) a member if consolidated tax returns are filed for such affiliated group for federal income tax purposes. Lessee's indemnity obligations under this paragraph 23 shall survive termination of this Lease.

**24. COUNTERPARTS.** There shall be one original of the Master Lease and of each Supplement and it shall be marked "Original." To the extent that any Supplement constitutes chattel paper (as that term is defined by the Uniform Commercial Code), a security interest may only be created in the Supplement marked "Original."

**25. NON-WAIVER.** No course of dealing between Lessor and Lessee or any delay or omission on the part of Lessor in exercising any rights hereunder shall operate as a waiver of any rights of Lessor. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding upon Lessor unless it is in writing and signed by Lessor. To the extent permitted by applicable law, Lessee hereby waives the benefit and advantage of, and covenants not to assert against Lessor, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or re-leasing made under the judgment, order or decree of any court or under the powers of sale and re-leasing conferred by this Lease or otherwise. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon a Lessee by Article 2A-508 through 2A-522 of the Uniform Commercial Code, including but not limited to Lessee's rights to: (i) cancel this Lease; (ii) repudiate this Lease; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breaches of warranty or for any other reason; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under this Lease; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease Equipment in substitution of Equipment identified to this Lease; (x) recover any general, special, incidental, or consequential damages, for any reason whatsoever; and (xi) specific performance, replevin, detinue, sequestration, claim, delivery or the like for any Equipment identified to this Lease. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages as set forth in paragraph 18 or which may otherwise limit or modify any of Lessor's rights or remedies under paragraph 18.

**26. PATIENT HEALTHCARE INFORMATION.** Lessor shall not disclose any patient healthcare information obtained by Lessor through the exercise of its rights under this Master Lease.

**27. MISCELLANEOUS.** This Master Lease and related Supplement(s) constitute the entire agreement between Lessor and Lessee and may be modified only by a written instrument signed by Lessor and Lessee. Any provision of this Lease which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any jurisdiction shall not render unenforceable such provision in any other jurisdiction. Paragraph headings are for convenience only, are not part of this Lease and shall not be deemed to effect the meaning or construction of any of the provisions hereof. In the event there is more than one Lessee named in this Master Lease or in any Supplement, the obligations of each shall be joint and several. Lessor may in its sole discretion, accept a photocopy, electronically transmitted facsimile or other reproduction of this Master Lease and/or a Supplement (a "Counterpart") as the binding and effective record of this Master Lease and/or a Supplement whether or not an ink signed copy hereof or thereof is also received by Lessor from Lessee, provided, however, that if Lessor accepts a Counterpart as the binding and effective record of this Master Lease or a Supplement, the Counterpart acknowledged in writing by Lessor shall constitute the record hereof or thereof. Lessee represents to Lessor that the signature that appears on the Counterpart that is transmitted by Lessee to Lessor in any manner described above is intended by Lessee to authenticate the Counterpart notwithstanding that such signature is electronic, facsimile or a reproduction and Lessee further agrees that a Counterpart of this Master Lease or a Supplement received by Lessor, shall, when acknowledged in writing by Lessor, constitute an original document for the purposes of establishing the provisions hereof and thereof and shall be legally admissible under the best evidence rule and binding on and enforceable against Lessee. If Lessor accepts a Counterpart of a

Supplement as the binding and effective record thereof only such Counterpart acknowledged in writing by Lessor shall be marked "Original" and to the extent that a Supplement constitutes chattel paper, perfection of a security interest by possession may only be accomplished by possession of the Counterpart that bears Lessor's ink signed acknowledgement and is marked "Original." This Lease shall in all respects be governed by, and construed in accordance with, the substantive laws of the state of Minnesota. LESSEE HEREBY WAIVES ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR IN CONNECTION WITH THIS LEASE. TIME IS OF THE ESSENCE WITH RESPECT TO THE OBLIGATIONS OF LESSEE UNDER THIS LEASE.