

**PUBLIC NOTICE
CITY OF ALAMEDA HEALTH CARE DISTRICT
BOARD OF DIRECTORS**

Tuesday, May 18, 2010 – 7:30 a.m.

Location:
Alameda Hospital
(2 East Board Room)
2070 Clinton Avenue
Alameda, CA 94501

Office of the Clerk: (510) 814-4001

Regular Meeting Agenda

Members of the public who wish to comment on agenda items will be given an opportunity before or during the consideration of each agenda item. Those wishing to comment must complete a speaker card indicating the agenda item that they wish to address and present to the District Clerk. This will ensure your opportunity to speak. Please make your comments clear and concise, limiting your remarks to no more than three (3) minutes.

- I. **Call to Order (7:30 a.m. – 2 East Board Room)** Jordan Battani
- II. **Roll Call** Kristen Thorson
- III. **Adjourn into Executive Closed Session**
- IV. **Closed Session Agenda**
 - A. Instructions to Bargaining Representatives Regarding Salaries, Fringe Benefits and Working Conditions Gov't Code Sec. 54957.6
 - B. Discussion of Report Involving Trade Secrets H & S Code Sec. 32106
Discussion of Hospital Trade Secrets applicable to development of new hospital services, programs and facilities. No action will be taken.
 - C. Consideration of Performance Evaluation of District Chief Executive Officer Gov't Code Sec. 54957
- V. **Reconvene to Public Session (Approximately 8:45 a.m. - 2 East Board Room)**
 - A. Announcements from Closed Session Jordan Battani

VI. Regular Agenda

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|----|---|---------------------|
| A. | Approval of Financing with Bank of America for PACS and Diagnostic Imaging Equipment
ACTION ITEM [enclosure] (3-30) | David Neapolitan |
| B. | Status Update on Selection of Construction Management Firm | Kerry Easthope |
| C. | June District Board Meeting | Deborah E. Stebbins |

VII. General Public Comments

VIII. Board Comments

IX. Adjournment

Date: May 18, 2010

To: City of Alameda Health Care District Board of Directors

From: David A. Neapolitan, Chief Financial Officer

Subject: Approval of Financing with Bank of America for PACS and Diagnostic Imaging Equipment

Recommendation:

Management recommends that the City of Alameda Health Care District Board of Directors authorize the Chief Executive Officer and Chief Financial Officer to enter into and execute a Master Lease Agreement and correlating documents with Banc of America Leasing and Capital, LLC for PACS, diagnostic imaging equipment and other capital equipment not to exceed \$2.5 million. Upon approval by the Board of Directors, the CEO and CFO will execute the appropriate documents.

Background:

The operating lease option, which includes additional capital items, has a term of 60 months, monthly payments of approximately \$40,000 at an all in interest rate of 8.5% which factors in a fair market value purchase option at the end of the lease term which will not exceed 12.5% of the cost of the equipment.

Attached to the memorandum is the following lease documentation for your review.

1. Approval Letter dated May 11, 2010 from Banc of America Leasing & Capital, LLC (“Lessor”) to City of Alameda Health Care District (“Lessee” or the “District”);
2. Authorization and Incumbency Certificate for City of Alameda Health Care District;
3. Master Lease Agreement (DRAFT);
4. Progress Payment Agreement (DRAFT);
5. Schedule to Master Lease Agreement (DRAFT Operating Lease Schedule) with proposed “Exhibit ‘A’”(Description of Equipment), Annex I (Schedule of Termination Values) and Annex II (Supplemental Maintenance and Return Conditions) attached thereto;
6. Acceptance Notice/Pay Proceeds Authorization (DRAFT) – this document is generated upon documentation of a final lease schedule and details how lease proceeds are to be disbursed upon closing;

7. Personal Property Tax document (DRAFT) – this document is generated upon documentation of a final lease schedule and details the real property where the leased equipment will be located and advises Lessee of how property tax is paid and recovered under lease; and
8. Form of Waiver of Interest for Bank of Alameda’s two (2) blanket UCC-1 Financing Statement filings on record with the Secretary of State, California.

Discussion:

As has been discussed previously the hospital has identified the need for replacement and upgrade of its existing non digital radiology equipment and to add a Picture Archiving and Communications System (PACS). These items are considered an integral part of the organizations ability to meet the requirements of the American Recovery and Reinvestment Act of 2009 to achieve meaningful use and more importantly to ensure that the Hospital can deliver radiology services that meet today’s patient care standards.

May 14, 2010

Mr. David Neapolitan
City of Alameda Health Care District
2070 Clinton Avenue
Alameda, CA 94501

Re: Master Lease Agreement dated as of May 6, 2010

Dear Mr. Neapolitan,

Per instructions from Mr. Gary Hicks, I am forwarding the following lease documentation for presentation to and review by the Board of Directors of City of Alameda Health Care District:

1. Approval Letter dated May 11, 2010 from Banc of America Leasing & Capital, LLC (“Lessor”) to City of Alameda Health Care District (“Lessee” or the “District”);
2. Authorization and Incumbency Certificate for City of Alameda Health Care District;
3. Master Lease Agreement (DRAFT);
4. Progress Payment Agreement (DRAFT);
5. Schedule to Master Lease Agreement (DRAFT Operating Lease Schedule) with proposed “Exhibit ‘A’” (Description of Equipment), Annex I (Schedule of Termination Values) and Annex II (Supplemental Maintenance and Return Conditions) attached thereto;
6. Acceptance Notice/Pay Proceeds Authorization (DRAFT) – this document is generated upon documentation of a final lease schedule and details how lease proceeds are to be disbursed upon closing;
7. Personal Property Tax document (DRAFT) – this document is generated upon documentation of a final lease schedule and details the real property where the leased equipment will be located and advises Lessee of how property tax is paid and recovered under lease; and
8. Form of Waiver of Interest for Bank of Alameda’s two (2) blanket UCC-1 Financing Statement filings on record with the Secretary of State, California.

An Opinion of Counsel is not required as a part of the documentation package, so a sample of that document is not present in this package for review. The Waiver of Interest for Bank of Alameda will be updated as the equipment listing becomes more specific (by vendor/manufacture and any applicable serial numbers).

If you should have any questions regarding this material, please don’t hesitate to contact me at (770) 270-8438. You can also reach me via e-mail at jeannemarie.martell@baml.com. I look forward to working with you on this transaction.

Best Regards,

Jeanne Marie Martell

Jeanne Marie Martell
Assistant Vice President/Contracts Administration



May 11, 2010

Mr. David Neapolitan
City of Alameda Health Care District
2070 Clinton Avenue
Alameda, CA 94501

Re: The proposal letter issued by Banc of America Leasing & Capital, LLC to “City of Alameda Health Care District” dated April 19, 2010 (the “Proposal Letter”)

Dear Mr. Neapolitan:

Banc of America Leasing & Capital, LLC (“BALC”) is pleased to confirm its willingness to proceed with the transaction with City of Alameda Health Care District (the “Lessee”) as set forth in the Proposal Letter (a copy of which is attached hereto and made a part hereof) and subject to the following:

DOCUMENTATION: Co-Lessees shall execute and deliver all transaction documents, in form and substance satisfactory to BALC, and satisfy all terms and conditions required by BALC.

USA PATRIOT ACT COMPLIANCE: All financial institutions are required by Federal Law to obtain, verify and record information that identifies each customer who opens an account with us. When you open an account with us, we will ask you for your name, address and other information that will allow us to identify you, such as documents evidencing legal status and formation, taxpayer identification number and date of birth (if applicable).

APPROVAL AMOUNT/ LEASE TERMS: An amount not to exceed \$2,500,000.00 (“BALC’s Cost”) to be utilized for the acquisition of various medical and IT equipment including the equipment described generally on the attached Exhibit “A” (“Equipment”). **Any Equipment intended for lease shall be reviewed and approved by BALC’s collateral management and credit officers prior to the issuance of documentation for such lease.** Such Equipment may, with BALC’s prior consent, include soft costs such as freight, installation and taxes paid up-front by BALC not exceeding 25% of BALC’s Cost and may not exceed the fair market value of the Equipment. The term for the lease of any Equipment shall be sixty (60) months with equal monthly rental payments to be made in arrears. Upon expiration of the full lease term, Lessee may (a) purchase all, but not less than all of the Equipment on an “AS-IS”, ‘WHERE-IS’ basis for its then fair market value in an amount not to exceed 12.5% of BALC’s Cost for all Equipment, (b) renew the lease of all, but not less than all, of the Equipment for its then fair market rental value for a term of one (1) year, or (c) return, at Lessee’s expense, all, but not less than all, of the Equipment to Lessor in the condition required by the lease and to a site designated by Lessor. BALC’s Cost for any used Equipment (if applicable) may be subject to verification by an independent third party appraiser at Lessee’s expense.

PROGRESS PAYMENTS: Approved for this transaction at such rate disclosed in the Proposal Letter and to be identified in the Progress Payment Agreement.

DOCUMENTATION FEE: An amount not to exceed \$500.00 which will be included on Lessee’s initial invoice provided with the final executable lease documentation.

UTILIZATION PERIOD EXPIRATION DATE: The latest date for any funding under the Lease Agreement shall be December 31, 2010.

PREVAILING
CONDITIONS:

The terms and conditions of the Proposal Letter, by reference, are incorporated herein. If there is a conflict between any terms or conditions of the Proposal Letter and this approval, the terms and conditions of this approval shall govern.

The commitment of BALC to enter into this transaction is based on the current business, management, and financial condition of Lessee and Guarantors, if any. Accordingly, this approval is further subject to the condition that there does not occur any material adverse change in the business, current management, or financial condition of Lessee or any Guarantor, in BALC's sole determination.

This letter is subject to the internal laws of the State of Rhode Island, is intended solely for the benefit of Lessee, and may be amended only in a writing signed by BALC.

Please acknowledge your acceptance of the terms and conditions of this approval and return it to my attention no later than ten (10) business days after the date hereof. If BALC is not in receipt of your acceptance by that date, the approval set forth herein will terminate. My address is:

Banc of America Leasing & Capital, LLC
2059 Northlake Parkway, 4th Floor
Tucker, GA 30084

Thank you for allowing Banc of America Leasing & Capital, LLC to make this transaction available to you. If you have any questions, please do not hesitate to call me at (770) 270-8511.

Sincerely,

P. Wesley Yount, III

P. Wesley Yount, III / jmm
Senior Vice President

cc: T. Kappel
A. Ortega

City of Alameda Health Care District hereby agrees to the terms and conditions set forth herein.

By: _____

Printed Name: _____

Title: _____

Date: _____



**AUTHORIZATION AND
INCUMBENCY CERTIFICATE**

Banc of America Leasing & Capital, LLC

The undersigned, _____, the duly elected or appointed _____ of **The City of Alameda Health Care District** (the "**Company**"), in order to induce Banc of America Leasing & Capital, LLC ("**BALC**") to enter into one or more loans, leases or otherwise extend financial accommodations to or for the benefit of the Company or any other party, hereby certifies to and agrees with BALC as follows:

- (i) the Company is duly organized, validly existing and in good standing under the laws of the State of California, and the Company shall promptly provide upon BALC's request certified copies of the Company's organizational documents (e.g., articles of incorporation or organization, by-laws, partnership agreement, operating agreement, etc.) and any votes, consents, minutes or resolutions of any of the Company's authorizing actions describe in clause (v) below, together with any requested certificates of existence or good standing of recent date issued by the Company's state of organization;
- (ii) the Company has full power and authority to enter into one or more transactions, at any time and in any amount or form, with BALC: (a) to sell to and/or lease or purchase from BALC any personal property or fixtures; (b) to borrow and otherwise effect loans and advances or extensions of credit; (c) to guaranty or otherwise provide financial accommodations or additional security for the payment and performance of any obligations or indebtedness owing to BALC by the Company or any other party; and (d) to sell, assign, transfer, mortgage, pledge, hypothecate, grant security interests in, endorse and deliver to BALC, any and all real or personal property of the Company, tangible or intangible, of every name and description, as security for the payment and performance of any obligations or indebtedness owing to BALC by the Company or any other party, or otherwise in connection with any of the foregoing (the "**Authorized Transactions**");
- (iii) each of the representatives of the Company designated below (an "**Authorized Representative**"), is a duly qualified and acting representative of the Company serving in the capacity indicated below, and the signature appearing opposite his or her name below is his or her genuine signature:

<u>Name</u>	<u>Title</u>	<u>Specimen Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(iv) each Authorized Representative has full power and authority to act alone on behalf of the Company with respect to the Authorized Transactions and to do and perform all acts and things, and to execute and deliver all instruments and documents of every kind and nature he or she may deem necessary, proper or incidental to, or which are otherwise required by BALC in connection with, the completion of the Authorized Transactions, including but not limited to one or more leases, loan agreements, promissory notes, security agreements, schedules, riders, certificates, guaranties, pledge agreements, subordination agreements, purchase orders or agreements, disbursement authorizations, invoices, bills of sale, intercreditor agreements, consents, disclaimers of interests and UCC financing statements and any future modification(s) or amendments thereof ("**Authorized Documentation**"), with such execution and delivery to be conclusive evidence that such Authorized Transactions have been duly and specifically authorized and approved by the governing body and appropriate officials of the Company as being for the benefit of the Company in consideration of reasonably equivalent value to the Company, and that such Authorized Documentation is intended to constitute the valid and legally binding obligations of the Company, enforceable by BALC in accordance with their terms;

(v) all votes, meetings, consents or other actions necessary or appropriate to duly and properly authorize the Company to enter into the Authorized Transactions and for the Authorized Representative to execute and deliver the Authorized Documentation has been taken, and remain in full force and effect as of the date hereof and have not been modified or rescinded in any respect;

(vi) all previous acts of, and all documents and papers heretofore executed and delivered by, any Authorized Representative in connection with the Authorized Transactions or any Authorized Documentation are ratified, confirmed and approved as the act or acts of the Company; and

(vii) the Company shall furnish written notice to BALC of any revocation, modification or amendment of any votes, meetings, consents or other actions affecting any of the foregoing certifications, and BALC shall be entitled to rely on these certifications until such notice is received by BALC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company, this _____ day of May, 2010.

Title: _____*

Confirmed**

By: _____

Title: _____

**If the Company is a corporation, this certificate should be signed by the Secretary or Assistant Secretary of the Company; if the Company is a general or limited partnership, this certificate should be signed by a general partner of the Company; if the Company is a limited liability company, this certificate should be signed by a member of the LLC or other officer required by the LLC's Operating Agreement or Articles of Organization.*

***If the signer of this certificate is also authorized to act on behalf of the Company in connection with Authorized Transactions and Documentation, this Certificate should also be confirmed in the space provided by another Authorized Representative.*

This Master Lease Agreement, dated as of May 6, 2010 (this "Agreement"), is by and between **Banc of America Leasing & Capital, LLC**, a Delaware limited liability company having an office at 2059 Northlake Parkway, 3 North, Tucker, GA 30084 (together with its successors and assigns, "**Lessor**"), and **City of Alameda Health Care District** as "**Lessee**", a political subdivision of the State of California, having its chief executive office and any organizational identification number as specified with its execution of this Agreement below. **Certain defined terms used herein are identified in bold face and quotation marks throughout this Agreement and in Section 15 below.** This Agreement sets forth the terms and conditions for the lease of Equipment between Lessor and Lessee pursuant to one or more "**Schedules**" incorporating by reference the terms of this Agreement, together with all exhibits, addenda, schedules, certificates, riders and other documents and instruments executed and delivered in connection with such Schedule (as amended from time to time, a "**Lease**"). Each Lease constitutes a separate, distinct and independent lease of Equipment and contractual obligation of Lessee. This Agreement is not an agreement or commitment by Lessor or Lessee to enter into any future Leases or other agreements, or for Lessor to provide any financial accommodations to Lessee. Lessor shall not be obligated under any circumstances to advance any progress payments or other funds for any Equipment or to enter into any Lease if there shall have occurred a material adverse change in the operations, business, properties or condition, financial or otherwise, of Lessee or any Guarantor. This Agreement and each Lease shall become effective only upon Lessor's acceptance and execution thereof at its corporate offices set forth above.

1. Lease; Term; Non-Interference. Lessor and Lessee agree to lease Equipment described in Schedules entered into from time to time, together with all other documentation from Lessee required by Lessor with respect to such Lease. Upon receipt of any item or group of Equipment intended for Lease hereunder, Lessee shall execute a Schedule, with all information fully completed and irrevocably accepting such Equipment for Lease, and deliver such Schedule to Lessor for its review and acceptance. Provided no Event of Default has occurred, Lessee shall be entitled to use and possess the Equipment during the original Lease Term provided in the Schedule (together with any extensions or renewals thereof in accordance with terms of the Lease, the "**Lease Term**") free from interference by any person claiming by, through or under Lessor.

2. Rent. "**Rent**" shall be payable to Lessor during the Lease Term in the amounts and at the times provided in the Schedule. If any Rent or other amount payable hereunder is not paid within 10 days of its due date, Lessee shall pay an administrative late charge of 5% of the amount not timely paid. All Rent and other amounts payable under a Lease shall be made in immediately available funds at Lessor's address above or such other place as Lessor shall specify in writing. Unless otherwise provided herein, payments received under any Lease will be applied to all interest, fees and amounts owing thereunder (other than Rent), and then to Rent payable thereunder.

3. Net Lease; Disclaimer Of Warranties. Each Lease is a net lease and a "finance lease" under Article 2A of the UCC, and Lessee waives all rights and remedies Lessee may have under sections 2A-508 – 2A-522 thereof, including any right to cancel or repudiate any Lease or to reject or revoke acceptance of any Equipment. Upon the "**Acceptance Date**" provided in the Schedule for each Lease, Lessee's Obligations thereunder (i) shall be non-cancelable, absolute and unconditional under all circumstances for the entire Lease Term, (ii) shall be unaffected by the loss or destruction of any Equipment, and (iii) shall not be subject to any abatement, deferment, reduction, set-off, counterclaim, recoupment or defense for any reason whatsoever. LESSOR IS NOT A VENDOR OR AGENT OF THE EQUIPMENT VENDOR, AND HAS NOT ENGAGED IN THE SALE OR DISTRIBUTION OF ANY EQUIPMENT. LESSOR MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO TITLE, MERCHANTABILITY, PERFORMANCE, CONDITION, EXISTENCE, FITNESS OR SUITABILITY FOR LESSEE'S PURPOSES OF ANY EQUIPMENT, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENTS, THE CONFORMITY OF THE EQUIPMENT TO THE DESCRIPTION THEREOF IN ANY LEASE, OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE EQUIPMENT. If Equipment is not delivered or properly installed, does not operate as warranted, becomes obsolete, or is unsatisfactory for any reason, Lessee shall make all claims on account thereof solely against Vendor and not against Lessor. Lessee is solely responsible for the selection, shipment, delivery and installation of the Equipment and its Vendors, expressly disclaims any reliance upon any statements or representations made by Lessor in connection therewith, and has received and approved the terms of any purchase orders, warranties, licenses or agreements with respect to the Equipment. During the Lease Term, Lessee shall be entitled, on a non-exclusive basis, to enforce any applicable Vendor warranties, to the extent permitted thereby and by applicable law. Lessor assigns such warranties to Lessee, to the extent permitted thereby, and agrees to cooperate with Lessee, at Lessee's sole cost and expense, in making any reasonable claim against such Vendor arising from any defect in the Equipment.

4. Use; Maintenance; Location; Inspection. Lessee shall: (i) use, operate, protect and maintain the Equipment (a) in good operating order, repair, condition and appearance, in the same condition as when received, ordinary wear and tear excepted, (b) consistent with prudent industry practice (but in no event less than the extent to which Lessee maintains other similar equipment in the prudent management of its assets and properties), and (c) in compliance with all applicable insurance policies, laws, ordinances, rules, regulations and manufacturer's recommended maintenance and repair procedures, and (ii) maintain comprehensive books and records regarding the use, operation, maintenance and repair of the Equipment. The Equipment shall be used only within the 48 contiguous United States, solely for business purposes (and not for any consumer, personal, home, or family purpose), and shall not be abandoned or used for any unlawful purpose. Lessee shall not discontinue use of any Equipment except for normal maintenance nor, through modifications, alterations or otherwise, impair the current or residual value, useful life, utility or originally intended function of any Equipment without Lessor's prior consent. Any replacement or substitution of parts, improvements, upgrades, or additions to the Equipment during the Lease Term shall be the property of Lessor and subject to the Lease, except that if no Event of Default exists, Lessee may at its expense remove improvements or additions provided by Lessee that can be readily removed without impairing the value, function or remaining useful life of the Equipment. If requested by Lessor, Lessee shall cause Equipment to be plainly marked to disclose Lessor's ownership, as specified by Lessor. Lessee shall not change the location or, in the case of over-the-road vehicles, the base of any Equipment specified in its Schedule without Lessor's prior written consent. Lessor shall have the right to enter any premises where Equipment is located and inspect it (together with related books and records) at any reasonable time.

5. Loss and Damage. Lessee assumes all risk of (and shall promptly notify Lessor in writing of any occurrence of) any damage to or loss, theft, confiscation or destruction of any Equipment from any cause whatsoever (a “**Casualty**”) from the date shipped or otherwise made available to Lessee and continuing until it is returned to and accepted by Lessor in the condition required by the Lease, including Section 8 of this Agreement. If any Equipment suffers a Casualty which Lessor determines is repairable, Lessee shall at its expense promptly place the same in good repair, condition or working order. If any Equipment suffers a Casualty which Lessor determines is beyond repair or materially impairs its residual value (a “**Total Loss**”), Lessee shall at Lessor’s option either (a) promptly replace such Equipment with a similar item reasonably acceptable to Lessor having an equivalent value, utility and remaining useful life of such Equipment, whereupon such replacement items shall constitute Equipment for all purposes the Lease, or (b) on the Rent payment date following such Casualty (or, if none, within 30 days) pay Lessor the Stipulated Loss Value for such Equipment, together with all Rent scheduled for payment on such date, and all accrued interest, late charges and other amounts then due and owing under the Lease. Upon such payment following a Total Loss, the Lease with respect to the Equipment suffering a Total Loss shall terminate, and Lessor shall transfer all of its right, title and interest in such Equipment, free from all liens and encumbrances created by Lessor, but otherwise on an “AS-IS, WHERE-IS,” quitclaim basis. If less than all Equipment under a Schedule suffers a Total Loss, (i) the Stipulated Loss Value with respect to any such item of Equipment shall be calculated by reference to the allocable portion of “**Lessor’s Cost**” provided in the applicable Schedule, Rent or other amount related to such item, as reasonably determined by Lessor, and (ii) the remaining Rent under the Schedule shall be proportionately reduced as reasonably calculated by Lessor upon Lessor’s receipt of the payments described above.

6. Insurance. Lessee, at its own expense, shall keep each item of Equipment insured against all risks for its replacement value, and in no event less than its Stipulated Loss Value, and shall maintain public liability and, with respect to Equipment that is over-the-road vehicles, automotive liability insurance against such risks and for such amounts as Lessor may require. All such insurance shall (a) be with companies rated “A-” or better by A.M. Best Company, in such form as Lessor shall approve, (b) specify Lessor and Lessee as insureds and provide that it may not be canceled or altered in any way that would affect the interest of Lessor without at least 30 days’ prior written notice to Lessor (10 days’ in the case of nonpayment of premium), (c) be primary, without right of contribution from any other insurance carried by Lessor and contain waiver of subrogation and “breach of warranty” provisions satisfactory to Lessor, (d) provide that all amounts payable by reason of loss or damage to Equipment shall be payable solely to Lessor, unless Lessor otherwise agrees, and (e) contain such other endorsements as Lessor may reasonably require. Lessee shall provide Lessor with evidence satisfactory to Lessor of the required insurance upon the execution of any Schedule and promptly upon any renewal of any required policy.

7. Indemnities; Taxes. Lessee’s indemnity and reimbursement obligations set forth below shall survive the cancellation, termination or expiration of any Lease or this Agreement.

(a) **General Indemnity.** Lessee shall indemnify, on an after-tax basis, defend and hold harmless Lessor and its respective officers, directors, employees, agents and Affiliates (“**Indemnified Persons**”) against all claims, liabilities, losses and expenses whatsoever (except those determined by final decision of a court of competent jurisdiction to have been directly and primarily caused by the Indemnified Person’s gross negligence or willful misconduct), including court costs and reasonable attorneys’ fees and expenses (together, “**Attorneys’ Fees**”), in any way relating to or arising out of the Equipment or any Lease at any time, or the ordering, acquisition, rejection, installation, possession, maintenance, use, ownership, condition, destruction or return of the Equipment, including any claims based in negligence, strict liability in tort, environmental liability or infringement.

(b) **General Tax Indemnity.** Lessee shall pay or reimburse Lessor, and indemnify, defend and hold Lessor harmless from, on an after-tax basis, all taxes, assessments, fees and other governmental charges paid or required to be paid by Lessor or Lessee in any way arising out of or related to the Equipment or any Lease before or during the Lease Term or after the Lease Term following an Event of Default, including foreign, Federal, state, county and municipal fees, taxes and assessments, and property, value-added, sales, use, gross receipts, excise, stamp and documentary taxes, and all related penalties, fines, additions to tax and interest charges (“**Impositions**”), excluding only Federal and state taxes based on Lessor’s net income unless such taxes are in lieu of any Imposition Lessee would otherwise be required to pay hereunder. Lessee shall timely pay any Imposition for which Lessee is primarily responsible under law and any other Imposition not payable or not paid by Lessor, but Lessee shall have no obligation to pay any Imposition being contested in good faith and by appropriate legal proceedings, the nonpayment of which does not, in the opinion of Lessor, result in a material risk of adverse effect on the title, property, use, disposition or other rights of Lessor with respect to the Equipment. Upon Lessor’s request, Lessee shall furnish proof of its payment of any Imposition.

(c) **Income Tax Indemnity.** Lessor shall be treated for federal and state income tax purposes as the owner of the Equipment and shall be entitled to take into account certain Tax Benefits in computing its income tax liabilities in connection with any Lease. If Lessor suffers a Tax Loss by reason of any act or failure to act by Lessee, or Lessee’s breach of any representation, warranty or agreement in any Lease then, upon Lessor’s demand and at Lessor’s option, either: (i) all further Rent under the Lease, if any, shall be increased by an amount, or (ii) Lessee shall pay Lessor a lump sum amount, which in either case shall maintain the net economic after-tax yield, cash-flow and rate of return Lessor originally anticipated, based on Lessor’s federal and state corporate income tax rate in effect on the Acceptance Date of the applicable Schedule and other assumptions originally used by Lessor in evaluating the transaction and setting the Rent therefor and other terms thereof. Lessee shall also pay Lessor on demand all interest, costs (including Attorneys’ Fees), penalties and additions to tax associated with the Tax Loss. Lessor shall have no obligation to contest any Tax Loss. All references to “**Lessor**” in this Section 7(c) shall include (A) Lessor’s successors and Assignees, and (B) each member of the affiliated group of corporations, as defined in Section 1504(a) of the Code, of which Lessor or such successor or Assignee is at any time a member. As used herein: “**Tax Benefits**” means all items of income, deduction (including depreciation consistent with Lessee’s representation in the applicable Schedule), credit, gain or loss relating to ownership of the Equipment as are provided to owners of similar equipment under the Code and applicable state tax laws in effect on the Acceptance Date of such Schedule; and “**Tax Loss**” means and will be deemed to be suffered if Lessor loses, is delayed in claiming, is required to recapture, is not allowed or may not claim all or any portion of any Tax Benefits, provided, however, that Lessee shall be under no obligation to make any payments with respect to a Tax Loss to the extent that it (1) is caused by Lessor’s failure to have sufficient taxable income to benefit from any Tax Benefits, or (2) results from any disposition of Equipment by Lessor other than a disposition of Equipment following an Event of Default.

8. Return. Upon any cancellation, termination or expiration of any Lease (after the occurrence of an Event of Default or otherwise), Lessee shall, at its expense, cause the Equipment to be prepared and adequately protected for shipment by an authorized manufacturer’s representative and either surrender it to Lessor in place or, if instructed by Lessor, ship the Equipment to Lessor, freight and insurance pre-paid, to a place designated by Lessor within the 48 contiguous United States, in the condition required under Section 4 hereof and under the applicable Schedule, able to be put into immediate service and to

perform at manufacturer's rated levels (if any), together with all related manuals, documents and records, and, if applicable, reassembled by an authorized manufacturer's representative and immediately qualified for the manufacturer's (or its authorized servicing representative's) then available service contract or warranty. If requested by Lessor, Lessee shall, at its expense: (i) cause the Equipment to qualify for all applicable licenses or permits necessary for its operation and for its intended purpose, and to comply with all specifications and requirements of applicable federal, state and local laws, regulations and ordinances; and (ii) cooperate with Lessor in attempting to remarket the Equipment, including display and demonstration to prospective parties, and allowing Lessor to conduct a private sale on Lessee's premises. If Lessee does not surrender or return any item of Equipment to Lessor on the date or in the condition required under a Lease, in addition to all other available rights and remedies, at Lessor's election, such Equipment shall continue to be subject to all the terms and conditions of the Lease, with Rent and other charges continuing to accrue and be payable under the Lease with respect to such Equipment until it is so surrendered or returned to Lessor, except that Rent shall accrue at 125% of the last Rent allocable to such item of Equipment (as reasonably calculated by Lessor) during the Lease Term, payable on demand.

9. Lessee Representations and Agreements. Lessee represents, warrants and agrees that: (a) Lessee has had for the previous 5 years (except as previously disclosed to Lessor in writing) the legal name and form of business organization in the state described above; (b) Lessee's chief executive office and notice address, taxpayer identification number and any organizational identification number is as described with its execution of this Agreement below; (c) Lessee shall notify Lessor in writing at least 30 days before changing its legal name, state of organization, chief executive office location or organizational identification number; (d) Lessee is duly organized and existing in good standing under the laws of the state described above and all other jurisdictions where legally required in order to carry on its business, shall maintain its good standing in all such jurisdictions, and shall conduct its businesses and manage its properties in compliance with all applicable laws, rules or regulations binding on Lessee; (e) the execution, delivery and performance of this Agreement, each Lease and Related Agreement to which it is a party has been duly authorized by Lessee, each of which are and will be binding on and enforceable against Lessee in accordance with their terms, and do not and will not contravene any other instrument or agreement binding on Lessee; and (f) there is no pending litigation, tax or environmental claim, proceeding, dispute or regulatory or enforcement action (and Lessee shall promptly notify Lessor of any of the same that may hereafter arise) that may adversely affect any Equipment or Lessee's financial condition or impair its ability to perform its Obligations.

10. Title; Property; Additional Security. (a) Title; Personal Property. Each Lease is and is intended to be a lease of personal property for all purposes. Lessee does not acquire any right, title or interest in or to any Equipment, except the right to use and possess the same under the terms of the applicable Lease. Except as specifically provided in the applicable Schedule, Lessee has no right or option to extend the Lease Term of a Lease or purchase any Equipment. Lessee assigns all of its rights (but none of its obligations) to Lessor under any purchase orders, invoices or other contracts of sale with respect to the Equipment, and conveys whatever right, title and interest it may now or hereafter have in any Equipment to Lessor. Lessor shall be the sole owner of Equipment free and clear of all liens or encumbrances, other than Lessee's rights under the Lease. Lessee will not create or permit to exist any lien, security interest, charge or encumbrance on any Equipment except those created by Lessor. The Equipment shall remain personal property at all times, notwithstanding the manner in which it may be affixed to realty. Lessee shall obtain and record such instruments and take such steps as may be necessary to (i) prevent any creditor, landlord, mortgagee or other entity (other than Lessor) from having any lien, charge, security interest or encumbrance on any Equipment, and (ii) ensure Lessor's right of access to and removal of Equipment in accordance with the Lease.

(b) Additional Security. To secure the punctual payment and performance of Lessee's Obligations under each Lease and, as a separate grant of security, to secure the payment and performance of all other Obligations owing to Lessor, Lessee grants to Lessor a continuing security interest in the Collateral, provided, however, that if there then exists no Event of Default, Lessor's security interest in Collateral subject to a Lease shall terminate upon the payment and performance of all Obligations of Lessee under the applicable Lease. Notwithstanding the grant of a security interest in any Collateral, Lessee shall have no right to sell, lease, rent, dispose or surrender possession, use or operation of any Equipment to any third parties without the prior written consent of Lessor. The foregoing grant of a security interest shall not of itself be a factor in determining whether any Lease creates a lease or security interest in the Equipment under applicable provisions of the UCC.

11. Default. Each of the following (a "Default") shall, with the giving of any notice or passage of any time period specified, constitute an "Event of Default" hereunder and under all Leases: (1) Lessee fails to pay any Rent or other amount owing under any Lease within 10 days of its due date; (2) Lessee fails to maintain insurance as required herein, or sells, leases, subleases, assigns, conveys, or suffers to exist any lien, charge, security interest or encumbrance on, any Equipment without Lessor's prior consent, or any Equipment is subjected to levy, seizure or attachment; (3) Lessee fails to perform or comply with any other covenant or obligation under any Lease or Related Agreement and, if curable, such failure continues for 30 days after written notice thereof by Lessor to Lessee; (4) any representation, warranty or other written statement made to Lessor by Lessee in connection with this Agreement, any Lease, Related Agreement or other Obligation, or by any Guarantor pursuant to any Guaranty (including financial statements) proves to have been incorrect in any material respect when made; (5) Lessee (w) enters into any merger or consolidation with, or sells or transfers all or any substantial portion of its assets to, or enters into any partnership or joint venture other than in the ordinary course of business with, any entity, (x) dies (if a natural person), dissolves, liquidates or ceases or suspends the conduct of business, or ceases to maintain its existence, (y) if Lessee is a privately held entity, enters into or suffers any transaction or series of transactions as a result of which Lessee is directly or indirectly controlled by persons or entities not directly or indirectly controlling Lessee as of the date hereof, or (z) if Lessee is a publicly held entity, there shall be a change in the ownership of Lessee's stock or other equivalent ownership interest such that Lessee is no longer subject to the reporting requirements of, or no longer has a class of equity securities registered under, the Securities Act of 1933 or the Securities Exchange Act of 1934; (6) Lessee undertakes any general assignment for the benefit of creditors or commences any voluntary case or proceeding for relief under the federal bankruptcy code, or any other law for the relief of debtors, or takes any action to authorize or implement any of the foregoing; (7) the filing of any petition or application against Lessee under any law for the relief of debtors, including proceedings under the federal bankruptcy code, or for the subjection of property of Lessee to the control of any court, receiver or agency for the benefit of creditors if such petition or application is consented to by Lessee or is otherwise not dismissed within 60 days from the date of filing; (8) any default occurs under any other lease, credit or other agreement or instrument to which Lessee and Lessor or any Affiliate of Lessor are now or hereafter party; (9) any default occurs under any other agreement or instrument to which Lessee is a party and under which there is outstanding, owing or committed an aggregate amount greater than \$100,000; (10) any attempted repudiation, breach or default of any Guaranty; or (11) the occurrence of any event described in clauses (4) through (9) above with reference to any Guarantor or any controlling shareholder, general partner or member of Lessee. Lessee shall promptly notify Lessor in writing of any Default or Event of Default.

12. Remedies. (a) Upon the occurrence of an Event of Default, Lessor may, in its discretion, exercise any one or more of the following remedies with respect to any or all Leases or Equipment: (1) cause Lessee to promptly discontinue use of or disable any Equipment, or to assemble and return any Equipment or other Collateral in accordance with the terms of the applicable Lease; (2) remedy such Event of Default or proceed by court action, either at law or in equity, to enforce performance of the applicable provisions of any Lease; (3) with or without court order, enter upon the premises where Equipment is located and repossess and remove the same, all without liability for damage to such premises or by reason such entry or repossession, except for Lessor's gross negligence or willful misconduct; (4) dispose of any Equipment in a public or private transaction, or hold, use, operate or keep idle the Equipment, free and clear of any rights or interests of Lessee therein; (5) recover direct, incidental, consequential and other damages for the breach of any Lease, including the payment of all Rent and other amounts payable thereunder (discounted at the Discount Rate with respect to any accelerated future amounts), and all costs and expenses incurred by Lessor in exercising its remedies or enforcing its rights thereunder (including all Attorneys' Fees); (6) by written notice to Lessee, cancel any Lease and, as liquidated damages for the loss of Lessor's bargain and not as a penalty, declare immediately due and payable an amount equal to the Stipulated Loss Value applicable to such Leases which Lessee acknowledges to be reasonable liquidated damages in light of the anticipated harm to Lessor that might be caused by an Event of Default and the facts and circumstances existing as of the Acceptance Date of each Lease; (7) without notice to Lessee, apply or set-off against any Obligations all security deposits, advance payments, proceeds of letters of credit, certificates of deposit (whether or not matured), securities or other additional collateral held by Lessor or otherwise credited by or due from Lessor to Lessee; or (8) pursue all other remedies provided under the UCC or other applicable law. Upon the commencement of any voluntary case under the federal bankruptcy code concerning the Lessee, the remedy provided in clause (6) above shall be automatically exercised without the requirement of prior written notice to Lessee or of any other act or declaration by Lessor, and the liquidated damages described therein shall be immediately due and payable. Lessee shall pay interest equal to the lesser of (a) 12% per annum, or (b) the highest rate permitted by applicable law ("**Default Rate**") on (i) any amount other than Rent owing under any Lease and not paid when due, (ii) Rent not paid within 30 days of its due date, and (iii) any amount required to be paid upon cancellation of any Lease under this Section 12. Any payments received by Lessor after an Event of Default, including proceeds of any disposition of Equipment, shall be applied in the following order: (A) to all of Lessor's costs (including Attorneys' Fees), charges and expenses incurred in taking, removing, holding, repairing and selling or leasing the Equipment or other Collateral or enforcing the provisions hereof; (B) to the extent not previously paid by Lessee, to pay Lessor for any damages then remaining unpaid hereunder; (C) to reimburse Lessee for any sums previously paid by Lessee as damages hereunder; and (D) the balance, if any, shall be retained by Lessor.

(b) No remedy referred to in this Section 12 shall be exclusive, each shall be cumulative (but not duplicative of recovery of any Obligation) and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity, and all such remedies shall survive the cancellation of any Lease. Lessor's exercise or partial exercise of, or failure to exercise, any remedy shall not restrict Lessor from further exercise of that remedy or any other available remedy. No extension of time for payment or performance of any Obligation shall operate to release, discharge, modify, change or affect the original liability of Lessee for any Obligations, either in whole or in part. Lessor may proceed against any Collateral or Guarantor, or may proceed contemporaneously or in the first instance against Lessee, in such order and at such times following an Event of Default as Lessor determines in its sole discretion. In any action to repossess any Equipment or other Collateral, Lessee waives any bonds and any surety or security required by any applicable laws as an incident to such repossession. Notices of Lessor's intention to accelerate, acceleration, nonpayment, presentment, protest, dishonor, or any other notice whatsoever (other than notices of Default specifically required of Lessor pursuant to Section 11 above) are waived by Lessee and any Guarantor. Any notice given by Lessor of any disposition of Collateral or other intended action of Lessor which is given in accordance with this Agreement at least 5 business days prior to such action, shall constitute fair and reasonable notice of such action.

13. Assignment. Lessor and any Assignee may assign or transfer any of Lessor's interests in any Lease or Equipment without notice to Lessee, subject, however, to the rights of Lessee to use and possess the Equipment under such Lease for so long as no Event of Default has occurred and is continuing. Lessee agrees that: (i) the rights of any Assignee shall not be affected by any breach or default of Lessor or any prior Assignee, and Lessee shall not assert any defense, rights of set-off or counterclaim against any Assignee, nor hold or attempt to hold such Assignee liable for any such breach or default; (ii) no Assignee shall be required to assume any obligations of Lessor under any Lease except the obligation of non-interference in Section 1 above, (iii) any Assignee expressly assuming the obligations of Lessor shall thereupon be responsible for Lessor's duties under the applicable Lease accruing after assignment and Lessor shall be released from such duties, and (iv) Lessee shall execute and deliver upon request such additional documents, instruments and assurances as Lessor deems necessary in order to (y) acknowledge and confirm all of the terms and conditions of any Lease and Lessor's or such Assignee's rights with respect thereto, and Lessee's compliance with all of the terms and provisions thereof, and (z) preserve, protect and perfect Lessor's or Assignee's right, title or interest hereunder and in any Equipment, including, without limitation, such UCC financing statements or amendments, control agreements, corporate or member resolutions, votes, notices of assignment of interests, and confirmations of Lessee's obligations and representations and warranties with respect thereto as of the dates requested. Lessor may disclose to any potential Assignee any information regarding Lessee, any Guarantor and their Affiliates. **Lessee shall not assign, pledge, hypothecate or in any way dispose of any of its rights or obligations under any Lease, or enter into any sublease of any Equipment, without Lessor's prior written consent. Any purported assignment, pledge, hypothecation, disposal or sublease by Lessee made without Lessor's prior written consent shall be null and void.**

14. Financial and Other Data. (a) During any Lease Term, Lessee shall (i) maintain books and records in accordance with generally accepted accounting principles consistently applied ("**GAAP**") and prudent business practice; (ii) promptly provide Lessor, within 150 days after the close of each fiscal year, and, upon Lessor's request, within 90 days of the end of each quarter of Lessee's and any Guarantor's fiscal year, a copy of financial statements for Lessee and each Guarantor requested by Lessor, in each case prepared in accordance with GAAP and (in the case of annual statements) audited by independent certified public accountants and (in the case of quarterly statements) certified by the chief financial officer of Lessee or Guarantor, as applicable; provided, however, that for so long as Lessee or any such Guarantor is legally and timely filing annual and quarterly financial reports on Forms 10-K and 10-Q with the Securities and Exchange Commission which are readily available to the public, the filing of such reports shall satisfy the foregoing financial statement reporting requirements for such entity; and (iii) furnish Lessor all other financial information and reports and such other information as Lessor may reasonably request concerning Lessee, any Guarantor and their respective affairs, or the Equipment or its condition, location, use or operation.

(b) Lessee represents and warrants that all information and financial statements at any time furnished by or on behalf of Lessee or any Guarantor are accurate and reasonably reflect as of their respective dates, results of operations and the financial condition of Lessee, such Guarantor or other entity they purport to cover. Credit and other information regarding Lessee, any Guarantor or their Affiliates, any Lease or Equipment may be disclosed by Lessor to its Affiliates, agents and potential Assignees, notwithstanding anything contained in any agreement that may purport to limit or prohibit such disclosure.

15. Definitions

As used herein, the following terms shall have the meanings assigned or referred to them below:

“**Affiliate**” means any entity controlling, controlled by or under common control with the referent entity; “**control**” includes (i) the ownership of 25% or more of the voting stock or other ownership interest of any entity and (ii) the status of a general partner of a partnership or managing member of a limited liability company.

“**Assignee**” means any assignee or transferee of all or any of Lessor’s right, title and interest in any Lease or any Equipment.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means and includes all of Lessee’s right, title and interest in and to all Equipment, together with: (i) all parts, attachments, accessories and accessions to, substitutions and replacements for, each item of Equipment; (ii) all accounts, chattel paper, and general intangibles arising from or related to any sale, lease, rental or other disposition of any Equipment to third parties, or otherwise resulting from the possession, use or operation of any Equipment by third parties, including instruments, investment property, deposit accounts, letter of credit rights, and supporting obligations arising thereunder or in connection therewith; (iii) all insurance, warranty and other claims against third parties with respect to any Equipment; (iv) all software and other intellectual property rights used in connection therewith; (v) proceeds of all of the foregoing, including insurance proceeds and any proceeds in the form of goods, accounts, chattel paper, documents, instruments, general intangibles, investment property, deposit accounts, letter of credit rights and supporting obligations; and (vi) all books and records regarding the foregoing, in each case, now existing or hereafter arising.

“**Discount Rate**” means the 1-year Treasury Constant Maturity rate as published in the Selected Interest Rates table of the Federal Reserve statistical release H.15(519) for the week ending immediately prior to the original Acceptance Date of a Lease (or if such rate is no longer determined or published, a successor or alternate rate selected by Lessor).

“**Equipment**” means the items, units and groups of personal property, licensed materials and fixtures described in each Schedule, together with all replacements, parts, additions, accessories and substitutions therefor; and “**item of Equipment**” means a “commercial unit” as defined and described in Article 2A of the UCC, and includes each functionally integrated and separately marketable group or unit of Equipment.

“**Guarantor**” means any guarantor, surety, endorser, general partner or co-lessee of Lessee, or other party liable in any capacity, or providing additional collateral security for, the payment or performance of any Obligations of Lessee.

“**Guaranty**” means any guaranty, surety instrument, security, indemnity, “keep-well” agreement or other instrument or arrangement from or with any Guarantor.

“**Obligations**” means and includes all obligations of Lessee owing to Lessor under this Agreement, any Lease or Related Agreement, or of any Guarantor owing to Lessor under any Guaranty, together with all other obligations, indebtedness and liabilities of Lessee to Lessor under any other financings, leases, loans, notes, progress payment agreements, guaranties or other agreements, of every kind and description, now existing or hereafter arising, direct or indirect, joint or several, absolute or contingent, whether for payment or performance, regardless of how the same may arise or by what instrument, agreement or book account they may be evidenced, including without limitation, any such obligations, indebtedness and liabilities of Lessee to others which may be obtained by Lessor through purchase, negotiation, discount, transfer, assignment or otherwise.

“**Related Agreement**” means and includes any Guaranty and any approval letter or progress payment, assignment, security or other agreement or addendum related to this Agreement, any Lease or any Collateral to which Lessee or any Guarantor is a party.

“**Stipulated Loss Value**” means, as of any particular date, the product obtained by multiplying the “**Lessor’s Cost**” specified in the Schedule by the percentage set forth in the “**Schedule of Stipulated Loss Values**” attached to the Schedule, specified opposite the Rent installment number (or date) becoming due immediately after the Casualty, Event of Default or other event requiring the calculation of Stipulated Loss Value. If there is no Schedule of Stipulated Loss Values attached to a Schedule, or if the Schedule of Stipulated Loss Values does not otherwise cover a Rent installment number (or date), Stipulated Loss Value on any Rent payment date shall equal the net present value of: (a) all unpaid Rent for the remainder of the Lease Term, plus (b) the amount of any purchase obligation, fixed price purchase option, or TRAC amount payment or, if there is no such obligation, option or payment, then the fair market value of the Equipment as of the end of the Lease Term, as estimated by Lessor in its sole discretion, all discounted to present value at the Discount Rate.

“**UCC**” means the Uniform Commercial Code in effect in the state specified in Section 16(f) of this Agreement.

“**Vendor**” means the manufacturer, distributor, supplier or other seller (whether or not a merchant or dealer) of the Equipment and any sales representative or agent thereof.

16. Miscellaneous. (a) At Lessor’s request, Lessee shall execute, deliver, file and record such financing statements and other documents as Lessor deems necessary to protect Lessor’s interest in the Equipment and to effectuate the purposes of any Lease or Related Agreement, and Lessee authorizes, and irrevocably appoints Lessor as its agent and attorney-in-fact, with right of substitution and coupled with an interest, to (i) execute, deliver, file, and record any such item, and to take such action for Lessee and in Lessee’s name, place and stead, (ii) make minor corrections to manifest errors in factual data in any Schedule and any addenda, attachments, exhibits and riders thereto, and (iii) after the occurrence of an Event of Default, enforce claims relating to the Equipment against insurers, Vendors or other persons, and to make, adjust, compromise, settle and receive payment under such claims; but without any obligation to do so.

(b) Federal law requires all financial institutions to obtain, verify and record information that identifies each entity that obtains a loan or other financial accommodation. The first time Lessee requests a financial accommodation from Lessor, the Lessor may ask for Lessee’s (or any Guarantor’s) legal name, address, tax ID number and other identifying information. Lessee shall promptly provide copies of business licenses or other documents evidencing the existence and good standing of Lessee or any Guarantor requested by Lessor.

(c) Time is of the essence in the payment and performance of all of Lessee’s Obligations under any Lease or Related Agreement. This Agreement, and each Lease or Related Agreement may be executed in one or more counterparts, each of which shall constitute one and the same agreement. All demands, notices, requests, consents, waivers and other communications concerning this Agreement and any Lease or Related Agreement shall be in

writing and shall be deemed to have been duly given when received, personally delivered or three business days after being deposited in the mail, first class postage prepaid, or the business day after delivery to an express carrier, charges prepaid, addressed to each party at the address provided herein, or at such other address as may hereafter be furnished in writing by such party to the other.

(d) Except as otherwise agreed between Lessee and Lessor in writing, Lessee shall reimburse Lessor upon demand for costs and expenses incurred by Lessor in connection with the execution and delivery of this Agreement, any Lease or Related Agreement. Lessee shall reimburse Lessor on demand for all costs (including Attorneys' Fees) incurred by Lessor in connection with Lessee's exercise of any purchase or extension option under any Lease, or any amendment or waiver of the terms of this Agreement or any Lease or Related Agreement requested by Lessee.

(e) Any provisions of this Agreement or any Lease or Related Agreement which are unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions thereof, and any such unenforceability shall not render unenforceable such provisions in any other jurisdiction. Any requirement for the execution and delivery of any document, instrument or notice may be satisfied, in Lessor's discretion, by authentication as a record within the meaning of, and to the extent permitted by, Article 9 of the UCC.

(f) THIS AGREEMENT AND ANY LEASE OR RELATED AGREEMENT, AND THE LEGAL RELATIONS OF THE PARTIES THERETO, SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF RHODE ISLAND, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES; THE PARTIES CONSENT AND SUBMIT TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS OF SUCH STATE FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING THEREFROM, AND EXPRESSLY WAIVE ANY OBJECTIONS THAT IT MAY HAVE TO THE VENUE OF SUCH COURTS. THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION BROUGHT ON OR WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR HAVE ANY LIABILITY TO LESSEE FOR INCIDENTAL, GENERAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES. Any cause of action by Lessee against Lessor relating to this Agreement or any Lease or Related Agreement shall be brought within one year after any such cause of action first arises, and Lessee hereby waives the benefit of any longer period provided by statute.

(g) EACH LEASE, TOGETHER WITH THIS AGREEMENT AND ANY RELATED AGREEMENTS, (i) CONSTITUTES THE FINAL AND ENTIRE AGREEMENT BETWEEN THE PARTIES SUPERSEDING ALL CONFLICTING TERMS OR PROVISIONS OF ANY PRIOR PROPOSALS, APPROVAL LETTERS, TERM SHEETS OR OTHER AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES, (ii) MAY NOT BE CONTRADICTED BY EVIDENCE OF (y) ANY PRIOR WRITTEN OR ORAL AGREEMENTS OR UNDERSTANDINGS, OR (z) ANY CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES; and (iii) MAY NOT BE AMENDED, NOR MAY ANY RIGHTS THEREUNDER BE WAIVED, EXCEPT BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTY CHARGED WITH SUCH AMENDMENT OR WAIVER.

In Witness Whereof, Lessor and Lessee have executed this Agreement as of the date first above written.

BANC OF AMERICA LEASING & CAPITAL, LLC (Lessor)

CITY OF ALAMEDA HEALTH CARE DISTRICT (Lessee)

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

Taxpayer ID #: 73-0992978
Org. ID # (if any): _____
Chief Executive Office:
2070 Clinton Avenue
Alameda, California 94501

PROGRESS PAYMENT AGREEMENT
Dated May 6, 2010

Reference is made to Master Lease Agreement Number 21189-90000 dated May 6, 2010 (the "**Agreement**"), between **Banc of America Leasing & Capital, LLC ("BALC")** and **City of Alameda Health Care District ("Customer")**. Terms not otherwise defined herein have the meanings specified in the Agreement.

Pursuant to the provisions hereof and one or more proposal or approval letters between Customer and BALC (each, an "**Approval Letter**"), Customer may request from time to time that BALC lease or finance to or for the benefit of Customer under the Agreement the items of Equipment described in letters, schedules, invoices, purchase orders or purchase agreement assignments executed and/or delivered to BALC by Customer, and that BALC purchase or fund or finance Customer's purchase of such items of Equipment from Vendors selected and designated by Customer. Such Vendors may require advance payments, progress payments or full payment, which Customer may request BALC to fund pursuant to a "**Request for Advance**" substantially in the form attached hereto as Annex A (collectively, "**Advances**") for such Equipment on or before the delivery and acceptance thereof by Customer, pursuant to invoices, purchase orders or related documents, warranties or agreements with Vendors ("**Purchase Agreements**"). To induce BALC to make such Advances for such items of Equipment, and in consideration of Customer's commitment to enter into the transactions contemplated by the Approval Letter, BALC and Customer agree as follows:

1. Customer shall execute and deliver to BALC a Request for Advance, in form and substance satisfactory to BALC, describing the amount of the Advance and the applicable items of Equipment. All Requests for Advances shall be submitted to BALC for review and approval on or before the expiration of any funding or utilization period specified in the Approval Letter (the "**Utilization Expiration Date**") and shall not exceed in the aggregate the total amount provided in the Approval Letter for the purchase price or financing of the applicable Equipment (the "**Maximum Amount**") unless otherwise agreed to in writing by BALC. BALC shall be under no obligation to fund any Advance unless: (a) the items of Equipment are of the type and value described in the Approval Letter and acceptable to BALC in its sole discretion; (b) there has occurred no Default or Event of Default under the Agreement; (c) no material adverse change has occurred in the operations, business, properties or condition, financial or otherwise, of the Customer or any Guarantor identified in the Approval Letter; (d) Customer has delivered to BALC, duly executed and in form and substance satisfactory to BALC, all documentation contemplated in this Progress Payment Agreement, the Approval Letter and the Agreement, together with all Related Agreements and such other documentation as may be reasonably required by BALC in its sole discretion (which may include, but not be limited to, the Purchase Agreements and assignments and Vendor acknowledgements thereof, disclaimers of interest or intercreditor agreements from Vendors or other creditors of Customer, and other documentation deemed necessary to confirm unencumbered ownership of the Equipment as contemplated in the Agreement) ("**Required Documentation**"); and (e) all other applicable conditions precedent specified in the Approval Letter and the Agreement have been satisfied.

2. Interest on all Advances shall accrue from the date of the Advance until the earlier of the date repaid in full following BALC's demand as described below or the commencement ("**Term Commencement**") of the applicable Lease Term pursuant to the Agreement relating to the item of Equipment that is the subject of such Advance. Interest on all Advances shall accrue at a fluctuating rate per annum equal to the Indicative Rate plus 0.00%, such interest to be paid within ten (10) days of the date BALC's invoice therefor is sent to the Customer in accordance with the notice provisions in the Agreement (the "**Adjustment Date**"). The "**Indicative Rate**" is the rate publicly announced from time to time by Bank of America, N.A. as its "prime rate", with any change in such rate to take effect on the first business day of the month preceding the month in which the Adjustment Date occurs.

3. All Equipment purchased or financed by BALC with Advances shall for all purposes be deemed to be "Equipment" and part of the "Collateral," as defined in and subject to all of the terms and provisions of the Agreement, including but not limited to terms and provisions concerning Customer's use and maintenance thereof and any loss or damage to any Equipment. Customer's obligations to repay Advances and interest thereon in accordance with the terms and provisions of this Progress Payment Agreement shall for all purposes be deemed to be additional "Rent" and "Obligations" secured by the "Collateral," all as defined in and subject to all of the terms and provisions of the Agreement, including but not limited to terms and provisions concerning the absolute and unconditional nature of Customer's Obligations to repay such amounts, that such Obligations shall not be subject to any abatement, deferment, reduction, setoff, defense, counterclaim or recoupment for any reason whatsoever, and that failure to pay such Obligations in accordance with the terms hereof shall constitute an immediate Event of Default under the Agreement.

4. Customer hereby further confirms the grant and conveyance provided in the Agreement, and hereby grants and conveys to BALC a continuing security interest in all of Customer's rights, title and interests in and to the Equipment and the Collateral related thereto to secure the payment and performance of all of Customer's Obligations owing to BALC, and acknowledges and agrees that BALC shall have all of the rights and remedies provided for in the Agreement with respect to such Equipment and Collateral upon the occurrence of an Event of Default.

5. BALC may demand immediate repayment of any outstanding Advance, together with accrued interest if the item of Equipment subject to such Advance suffers a Casualty prior to Term Commencement. BALC may also demand immediate repayment of all outstanding Advances, together with accrued interest and shall have no further obligation of any kind to make any Advances or enter into any Schedule under the Agreement if (a) for any reason, all of the Equipment described in the applicable Approval Letter has not been delivered to and accepted by Customer and made subject to a Schedule under the Agreement and all other Required Documentation upon the earlier of the applicable Utilization Expiration Date or ten (10) days after delivery to and acceptance by Customer of the final item of Equipment contemplated for leasing or financing under the Approval Letter; (b) any other condition precedent contemplated in the Agreement, the applicable Approval Letter or other agreement relating to the Equipment is not met or satisfied to BALC's sole satisfaction by the Utilization Expiration Date; (c) Customer cancels its order or terminates any Purchase Agreement for any such Equipment; (d) Vendor fails or is unable to deliver any such Equipment pursuant to any Purchase Agreement, or to convey good and marketable title to the Equipment, free and clear of all liens, claims, security interests and encumbrances as required by the Agreement; (e) there occurs an Event of Default or any event or condition which, with notice or the passage of time or both would constitute an Event of Default under the Agreement; or (f) BALC shall determine, in its sole discretion and in good faith, that there has been a material adverse change in the operations, business, properties or condition, financial or otherwise of Customer or any Guarantor. Except upon any such demand by BALC or otherwise as may be specifically set forth herein, Advances may not be prepaid by Customer for any reason.

6. This Progress Payment Agreement shall be deemed a "Related Agreement" as defined in the Agreement, and is subject to all of the terms and provisions applicable to Related Agreements provided in the Agreement.

City of Alameda Health Care District (Customer)

By: _____

Printed Name: _____

Title: _____

Accepted at _____ as of the date first above written.

**BANC OF AMERICA LEASING & CAPITAL, LLC
(BALC)**

By: _____

Printed Name: _____

Title: _____

REQUEST FOR ADVANCE

Reference is made to the Master Lease Agreement No. 21189-90000 dated as of May 6, 2010 between Banc of America Leasing & Capital, LLC ("BALC") and City of Alameda Health Care District ("Customer") ("Agreement") and the Progress Payment Agreement dated May 6, 2010 between BALC and Customer ("Progress Payment Agreement"). Terms not otherwise defined herein have the meanings assigned or referred to them in the Progress Payment Agreement or the Agreement.

Customer hereby requests BALC to make Advances to the applicable Vendor(s) and in the amounts specified below, and hereby certifies that in accordance with the terms of the relevant Purchase Agreement(s) between Customer and each Vendor, the requisite items of Equipment have been or will be delivered or the requisite amount of work has been or will be completed, and that each Vendor is lawfully entitled to progress payments in the amounts of the Advances requested below, and that such amounts are net of any applicable rebates, discounts or refunds available to Customer. Customer agrees that all amounts so advanced by BALC shall be deemed "Advances" for purposes of the Progress Payment Agreement.

<u>Amount of Requested Advance</u>	<u>Date of Requested Advance</u>	<u>Customer Purchase Order Number and Date</u>	<u>Vendor's Name and Address</u>
------------------------------------	----------------------------------	--	----------------------------------

The Utilization Expiration Date applicable to the Advances requested under this Request for Advance is December 10, 2010 pursuant to the Approval Letter dated as of May 6, 2010.

Customer represents, warrants and agrees that (a) the amount of the Advances requested hereunder, when taken together with all other Advances under the applicable Approval Letter, do not exceed the Maximum Amount for the Equipment, (b) all representations and warranties of Customer contained in the Agreement are hereby restated and are true and correct as of the date hereof, (c) there has occurred no Default or Event of Default as of the date hereof, and (d) there has been no material adverse change in the operations, business, properties or condition, financial or otherwise, of Customer or any Guarantor.

IN WITNESS WHEREOF, Customer has duly executed this Request for Advance on _____, 2010.

City of Alameda Health Care District (Customer)

By: _____

Printed Name: _____

Title: _____

Schedule to
Banc of America Leasing & Capital, LLC Master Lease Agreement Schedule Number

This Schedule (“Schedule”), dated as of _____, between **Banc of America Leasing & Capital, LLC** (“Lessor”) and **City of Alameda Health Care District** (“Lessee”) is executed pursuant to Master Lease Agreement Number 21189-90000 dated May 6, 2010 (the “Master Lease”), which is incorporated into this Schedule by this reference. Unless otherwise defined in this Schedule, capitalized terms used in this Schedule have the respective meanings assigned to such terms in the Master Lease. If any provision of this Schedule conflicts with any provision of the Master Lease, the provisions contained in this Schedule shall prevail. Lessee hereby authorizes Lessor to insert the serial numbers and other identification data of the Equipment, dates, and other omitted factual matters or descriptions in this Schedule.

1. Description of Equipment; Location. The Equipment subject to this Schedule, which has a cost to Lessor in the aggregate of \$ _____, which may include taxes, shipping, installation and other related expenses, if any (collectively “Lessor’s Cost”), are as follows:

<u>Quantity</u>	<u>Description</u>	<u>Serial Number</u>	<u>Lessor’s Cost</u>
-----------------	--------------------	----------------------	----------------------

Location of Equipment. The Equipment will be located or (in the case of over-the-road vehicles) based at the following locations:

<u>Location</u>	<u>Address</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>ZIP</u>
-----------------	----------------	-------------	---------------	--------------	------------

2. Acceptance. Lessee acknowledges and represents that the Equipment (a) has been delivered to, received and inspected by Lessee, (b) is in good operating order, repair, condition and appearance, (c) is of the manufacture, design and capacity selected by Lessee and is suitable for the purposes for which the Equipment is leased, and is acceptable and satisfactory to Lessee, (d) do not require any additions or modifications to make them suitable for use, other than ancillary modifications or additions normally made by lessees of similar assets, and are available for use and lease by Lessee and Lessor, and (e) have been irrevocably accepted as “Equipment” leased by Lessee under this Schedule as of the date written below (the “Acceptance Date”). Lessee hereby authorizes and directs Lessor to reimburse Lessee or pay Vendors for the purchase price of the Equipment in accordance with Vendors’ invoices therefor, receipt and approval of which are hereby reaffirmed by Lessee.

3. Lease Term. The original Lease Term for the Lease of Equipment under this Schedule consists of a “Base Term” of sixty (60) months, beginning on the Acceptance Date (the “Base Date”).

4. Rent. Rent payable under this Schedule consists of “Base Rent” which shall be payable in arrears in sixty (60) consecutive monthly installments of \$_____ each, or as set forth in the Schedule of Base Rent installments attached hereto, with the first Base Rent installment being payable thirty (30) days following the Base Date and the remaining Base Rent installments being payable on the same day of each succeeding calendar month.

5. Tax Exemption. Lessor will invoice Lessee for all sales, use and/or personal property taxes as and when due and payable in accordance with applicable law, unless Lessee timely delivers to Lessor a valid exemption certificate with respect to such taxes. Delivery of such certificate shall constitute Lessee’s representation and warranty that no such taxes shall become due and payable with respect to the Equipment, and Lessee shall indemnify and hold harmless Lessor from and against any and all liability or damages, including late charges and interest which Lessor may incur by reason of the assessment of such taxes.

6. Tax Matters. Lessee represents, warrants and agrees that (i) Lessee will not claim that Lessee is the owner of the Equipment or that Lessee is otherwise entitled to all or any of the Tax Benefits; (ii) the Equipment will not require any improvements, modifications, or additions (other than ancillary or incidental items of removable equipment) in order to be rendered complete for its intended use by Lessee; (iii) the Equipment will not constitute "limited use property" within the meaning of Rev. Proc. 2001-28; (iv) during the Lease Term, Lessor shall not be required to include in its gross income for federal income tax purposes (1) any amount derived from the cost of any alteration, addition, improvement, modification, replacement, or substitution of the Equipment or from any refund or credit from the Vendor of the Equipment or (2) any foreign source income under Section 863 of the Code; and (v) the Equipment will not constitute "public utility property" or "tax-exempt use property" within the meaning of Sections 168(i)(10) or 168(h) of the Code.

7. Further Representations and Agreements. Lessee represents, warrants and agrees as follows: (a) all representations and warranties of Lessee contained in the Master Lease are restated as of the Acceptance Date and are true and correct as of such date; (b) there has been no material adverse change in the operations, business, properties or condition, financial or otherwise, of Lessee or any Guarantor since June 30, 2009; (c) there exists no Default or Event of Default as of the Acceptance Date; and (d) the operation and maintenance of any Equipment in the ordinary course by Lessee does not require the entry into any software or other intellectual property rights agreement with any licensor or other person, except as disclosed to Lessor in writing prior to the Acceptance Date.

8. Lease Options.

Extension; Purchase Options. Provided no Event of Default has occurred and remains uncured, and upon Lessee having provided Lessor with written notice not more than 360 days or less than 90 days prior to expiration of the Lease Term, Lessee may irrevocably elect to:

- (i) extend the Lease Term as to all and not less than all of the Equipment under this Schedule for a period of twelve (12) months for an amount equal to the then fair market rental value of the Equipment, as determined by Lessor, plus applicable taxes, payable monthly by Lessee to Lessor on the first day of each month during the extension term, or
- (ii) purchase all of Lessor’s right, title and interest in and to all, but not less than all, of the Equipment under this Schedule, free from all liens and encumbrances created by Lessor, but otherwise on an “AS-IS, WHERE-IS,” quitclaim basis, for a purchase price equal to: the then fair market value (defined below) of the Equipment, not to exceed twelve and 50/100 percent (12.5%) of Lessor’s Cost for all Equipment; *plus* all Base Rent installments, late charges and other amounts then due and owing under the Lease; *plus* all applicable taxes, assessments and other charges due or payable in connection with the sale of the Equipment (collectively, the “**Purchase Price**”). Lessee shall pay Lessor the Purchase Price on or before the expiration of the Base Term in immediately available funds.

As used herein, "**fair market value**" means the amount which would be obtained in an arm's-length transaction between an informed and willing buyer-user (other than a buyer-user currently in possession or a used equipment or scrap dealer) and an informed and willing seller, each under no compulsion to buy or sell, and "**fair market rental value**" means the amount which would be obtained in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor, each under no compulsion to lease; provided, however, that in each such determination (a) the costs of removal of any Equipment from the location of current use shall not be a deduction from such value, (b) it shall be assumed (whether or not the same be true) that the Equipment has been maintained and would have been returned to Lessor in compliance with the requirements of this Lease, and (c) if any Equipment has been attached to or installed on or in any other property leased or owned by Lessee, the value for such Equipment shall be determined on an installed basis, in place and in use.

BANC OF AMERICA LEASING & CAPITAL, LLC

CITY OF ALAMEDA HEALTH CARE DISTRICT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Acceptance Date: _____

Where multiple counterpart originals of this Schedule have been executed by Lessee and Lessor, only the counterpart marked “Lessor's Copy” shall be deemed chattel paper evidencing the Lease of Equipment subject to this Schedule, and a security interest in such chattel paper and Lease may be perfected through the transfer and possession of the “Lessor’s Copy” of such Schedule only, without the need to transfer possession of the Master Lease, any Related Agreement or any other document executed and delivered in connection with this Lease.

The terms applicable to the Lease of Equipment subject to this Schedule are supplemented by the following:

- Annex I: Schedule of Stipulated Loss Values
- Annex II: Supplemental Maintenance and Return Conditions

Annex I:
Schedule of Stipulated Loss Values
 Schedule to Master Lease Agreement No. _____
 21189-90000

Month:	*Termination Value: Percentage of Basis	Month:	*Termination Value: Percentage of Basis
0		31	
1		32	
2		33	
3		34	
4		35	
5		36	
6		37	
7		38	
8		39	
9		40	
10		41	
11		42	
12		43	
13		44	
14		45	
15		46	
16		47	
17		48	
18		49	
19		50	
20		51	
21		52	
22		53	
23		54	
24		55	
25		56	
26		57	
27		58	
28		59	
29		60	
30			

* Termination values are due in addition to any advance or arrears rent due on the same date.

Annex II:
Supplemental Maintenance and Return Conditions
Schedule to Master Lease Agreement No. ____
21189-90000

MEDICAL EQUIPMENT

In addition to the maintenance and return provisions applicable to all Equipment set forth in the Master Lease, the following shall apply to the Equipment subject to the Schedule:

1. Lessee warrants that the Equipment shall be installed, used and otherwise in compliance with all established operating procedures of the manufacturer. Lessee shall ensure that all Equipment shall at all times qualify for any applicable licenses or permits necessary for its operation for its intended purpose.

2. Lessee warrants that the Equipment will be operated only by qualified personnel in accordance with any applicable manufacturer's manuals or instruction within its normal capacity and without abuse. Lessee further warrants that all competent and duly qualified personnel operating any item of Equipment will be covered by professional liability insurance.

3. Lessee shall enter into and maintain in force a prime shift maintenance contract with the manufacturer of the Equipment or such other approved party as shall be acceptable to Lessor (including manufacturer's service organization, qualified third parties or Lessee's in house organization), and shall provide Lessor with a copy of such contract and supplements thereto which are applicable to the Equipment. Lessee's obligations regarding the maintenance of the Equipment shall include, without limitation, all maintenance and repair recommended or advised by the manufacturer and any applicable government agencies and regulatory bodies, and those commonly performed by prudent business and/or professional practice.

4. Any Equipment component with predictable or scheduled replacements or overhaul lives, including "glassware" (image intensifiers and x-ray tubes) and crystals, shall have not less than 50% useful life remaining before the next such scheduled replacement, overhaul, recalibration or rebuild.

5. Lessee and Lessor acknowledge that the Equipment may include certain operating, application and/or other software ("**Software**") in which Lessor and Lessee have no ownership or other proprietary rights. Where required by the Software owner or manufacturer, Lessee shall enter into a license or other agreement for the use of the Software. Any Software agreement shall be separate and distinct from the Lease, and Lessor shall not have any obligations thereunder unless otherwise agreed in writing by Lessor. In the event the Rental Payment includes an amount attributable to the financing by Lessor of Lessee's fee for the use of the Software, Lessee agrees that such amounts shall be deemed Rent hereunder. Lessee shall be responsible for the payment of, and shall indemnify Lessor against, any Software license or transfer fees and any certification or similar fees or charges imposed by the supplier of the Equipment, Software or any third party upon Lessor or Lessor's subsequent end-user of any Item of Equipment following the return of any such Item to Lessor. Lessee shall also be solely responsible for compliance with the terms of any Software licenses throughout the Lease Term and until the Equipment is returned to Lessor and shall indemnify, defend and hold Lessor harmless from any claims by the licensor or any person of breach or violation of such licenses.

6. The Equipment shall include any and all accessories and components listed on the original invoice(s) as well as: (i) Software, including the operating system software (e.g., Microsoft™ Windows™), which shall be the then current version available from the manufacturer or supplier; (ii) cards; (iii) memory (CPU) upgrades and related documentation; (iv) holograms; (v) codes; (vi) licenses; (viii) hard drives; (ix) connecting cables; (x) mice; (xi) keyboards; (xii) monitors (which may not exhibit "burn-in").

7. Lessee shall give Lessor not less than 180 days' irrevocable written notice of its intent to return the Equipment at the expiration of the Lease Term (rather than exercise any purchase or renewal option available to Lessee under the Schedule). Following such notification and until the Equipment is redelivered to Lessor, Lessee will make the Equipment available for inspection by the Lessor or any Lessor-designated representative under full power. Along with the return notice, Lessee will provide current digital pictures of the front, back and both sides of the Equipment as well as a picture of the complete serial number plate. Lessee will also provide a copy of the latest images taken by any imaging system (with patient identification details removed).

8. Upon expiration of the Lease Term, the Equipment will be functionally and aesthetically complete, including, but not limited to, slot covers, doors, panels, knobs, cables and coils. All lines, cells and containers will be properly cleaned and sanitized. There shall be no structural or mechanical damage. The Equipment must be able to perform all required tasks effectively without repair and be within manufacturer's design performance characteristics and tolerances. All parts, including accessories and attachments must be sound and without breaks.

9. Prior to shipment, Lessee shall furnish proof in writing from the manufacturer's service/maintenance representative that the Equipment has passed performance tests within the manufacturer's specifications and has been re-certified for continued maintenance contract. Lessee will also furnish all applicable and corresponding instructions and service manuals, service and repair records, and descriptive brochures.

10. Upon expiration of the Lease Term, each item of Equipment is to be de-installed and packaged by the manufacturer's technicians and/or licensed rigger/erector acceptable to Lessor specializing in medical equipment in accordance with manufacturer's recommended standards and procedures and will include the proper blueprinting, mapping, tagging and labeling of each individual part (including cables, electrical apparatus

and wires).

11. All reagents, fluids and/or any hazardous materials will be removed from the Equipment and disposed of in accordance with the then current local, state and federal waste disposal laws, rules and regulations (including, but not limited to, Environmental Protection Agency rules and regulations). Lessor shall be held harmless from any property damages to disassembly site and public liability arising there from. All fluids (lubricating and cooling fluids) required to properly operate the Equipment will be filled to the manufacturer's specified capacity levels.

12. Lessee shall be responsible for all of Lessor's out-of-pocket costs and expenses incurred for the inspection, de-installing, packing, rigging, insurance and freight to the return location designated by Lessor.

13. Lessee will remove all passwords and patient information in compliance with Health Insurance Portability and Accountability Act before any Equipment is removed from Lessee's location. Lessor will not be responsible for, and will be held harmless from, any proprietary information left on the Equipment's hard drive by Lessee.

DRAFT

Banc of America Leasing & Capital, LLC

**Acceptance Notice/
Pay Proceeds Authorization**

Master Lease Agreement Number: 21189-90000

Schedule to Master Lease Agreement Number _____

Dated: _____, 2010

To: Banc of America Leasing & Capital, LLC

The undersigned hereby certifies that all property described in the above-referenced Master Lease Agreement by and between Banc of America Leasing & Capital, LLC, Lessor, and the undersigned, Lessee, has been furnished, that delivery and installation has been fully completed as required, and that the equipment is accepted and satisfactory in all respects.

We hereby authorize you to disburse the proceeds of this Master Lease Agreement as follows:

Disburse to:

Amount:

[vendor]

\$

Total Disbursements:

\$

City of Alameda Health Care District
(Lessee)

By: _____

Print Name: _____

Title: _____



Master Lease Agreement No. 21189-90000

Schedule to Lease Agreement No. _____

Tax laws require Banc of America Leasing & Capital, LLC, as legal owner of your leased equipment, to be responsible for listing the equipment under this lease contract, and any supplements thereto, for any Federal, State, County, or Municipal taxes applicable to this leased property, and for timely payment of taxes assessed thereon.

Your lease agreement defines your responsibility for reimbursement of these taxes to Banc of America Leasing & Capital, LLC promptly as Lessee.

Please acknowledge your understanding and acceptance of these conditions by signing and dating below:

I (We) will declare when listing property to taxing authorities, the equipment covered by this and any subsequent leases as LEASED equipment only.

I (We) will immediately notify Banc of America Leasing & Capital, LLC of any change in location, or, in the case of over-the-road vehicles, the base, of this equipment.

I (We) will reimburse Banc of America Leasing & Capital, LLC promptly upon receipt of invoices for any taxes paid by Banc of America Leasing & Capital, LLC assessed on equipment we are leasing therefrom, excluding only federal and state taxes based on the net income of Banc of America Leasing & Capital, LLC.

Equipment Location:

<u>Location</u>	<u>Address</u>	<u>City</u>	<u>County</u>	<u>State</u>	<u>ZIP</u>
-----------------	----------------	-------------	---------------	--------------	------------

A

City of Alameda Health Care District
(Lessee)

By: _____

Print Name: _____

Title: _____

May 6, 2010

Bank of Alameda
1321 Harbor Bay Parkway, Ste 201
Alameda, CA 94502
Attn: Loan Documentation

RE: City of Alameda Health Care District (Loan #1409010); Disclaimer of Security Interest

To Whom It May Concern:

Banc of America Leasing & Capital, LLC (“BALC”) has entered or will enter into one or more equipment lease or secured financing arrangements with City of Alameda Health Care District (“Customer”), relating to certain equipment or other personal property more fully described on Annex A attached to this letter (together, the “Collateral”) and in connection with that lease or financing, has filed or will file one or more UCC-1 financing statements (together, “BALC UCC-1(s)”) covering the Collateral, together with (i) all parts, attachments, accessories and accessions to, substitutions and replacements for, the Collateral, (ii) all accounts, chattel paper and general intangibles arising from or related to any lease or rental of any of the Collateral to third parties, or otherwise resulting from the possession, use or operation of any Collateral by third parties, including instruments, investment property, deposit accounts, letter of credit rights, and supporting obligations arising thereunder or in connection therewith, (iii) all insurance, warranty and other claims against third parties with respect to the Collateral (including claims for rent upon any lease or financing of the Collateral), (iv) all software and other intellectual property rights used in connection with the Collateral, (v) proceeds of all of the foregoing, including insurance proceeds and any proceeds in the form of goods, accounts, chattel paper, documents, instruments, general intangibles, investment property, deposit accounts, letter of credit rights and supporting obligations, and (vi) books and records regarding the foregoing, in each case, whether now existing or hereafter arising (together with the Collateral, the “BALC Property”). Our UCC search results or inquiry of Customer indicate that Bank of Alameda (“Creditor”) has at least two (2) liens or security interests covering some or all of the BALC Property (copies attached for reference). We require, as a condition to extending the above-mentioned lease or secured financing Customer that Creditor provide this letter agreement.

Accordingly, by signing where indicated below and returning a copy of this letter agreement to us, Creditor hereby disclaims and releases any lien or security interest of Creditor in the BALC Property, and Creditor shall not, at any time, assert any security interest in any of the BALC Property. In furtherance thereof, Creditor agrees that: (i) it will not take any action to bar, restrain or otherwise prevent BALC from inspecting, removing or taking possession of all or any portion of the BALC Property; (ii) if Creditor obtains possession of any BALC Property, Creditor shall promptly notify BALC and turn over such BALC Property upon BALC's written request therefor; and (iii) BALC is irrevocably authorized to file a copy of this letter agreement with one or more UCC financing statements or amendments as appropriate to amend Creditor's existing UCC filings in order to reflect the disclaimer and release of Creditor's interest in the BALC Property described herein.

This letter agreement shall remain in full force and effect notwithstanding that BALC or Creditor modifies or amends, by agreement or otherwise, any of their respective agreements with Customer.

Feel free to contact the undersigned with any questions at 770-270-8438.

Sincerely,

Banc of America Leasing & Capital, LLC

By: Jeanne Marie Martell
Assistant Vice President

Acknowledged and Agreed to:

Bank of Alameda

By: _____

Title: _____

Date: _____

**Annex A:
Description of Collateral**

<u>Quantity</u>	<u>Description</u>	<u>Serial Number</u>	<u>Lessor's Cost</u>
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0332560567



UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

Bank of Alameda
 Attn: Loan Department
 P.O. Box F
 Alameda, CA 94501-0272

FILED
 SACRAMENTO, CA
 NOV 17, 2003 AT 1700
 KEVIN SHELLEY
 SECRETARY OF STATE

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
CITY OF ALAMEDA HEALTH CARE DISTRICT

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
2070 CLINTON AVENUE ALAMEDA CA 94501 USA

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any
 Government CA NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
Bank of Alameda

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY
1321 Harbor Bay Parkway Suite 201 Alameda CA 94502

4. This FINANCING STATEMENT covers the following collateral:
All Inventory, Chattel Paper, Accounts and General Intangibles; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds)

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) ADDITIONAL FEE

8. OPTIONAL FILER REFERENCE DATA
LOAN #1409010



08-71588834

05/20/2008 17:00

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

BANK OF ALAMEDA
1701 HARBOR BAY PARKWAY, SUITE 100
ALAMEDA, CA 94502

ATTN: NOTE DEPARTMENT



FILED
CALIFORNIA
SECRETARY OF STATE



17067890002 UCC 3 FILING

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
0332560567

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
CITY OF ALAMEDA HEALTH CARE DISTRICT

OR

6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

ADD'L INFO RE ORGANIZATION DEBTOR 7e. TYPE OF ORGANIZATION 7f. JURISDICTION OF ORGANIZATION 7g. ORGANIZATIONAL ID#, if any NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.
Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment) If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
BANK OF ALAMEDA

OR

9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA
UCC CONTINUATION; LOAN NO. 1409010 & 1410778

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

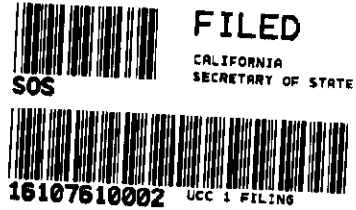
08-7149432735

02/29/2008 17:00

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Bank of Alameda
Administration
1701 Harbor Bay Parkway
Alameda, CA 94502**



THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME
CITY OF ALAMEDA HEALTH CARE DISTRICT

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY
2070 CLINTON AVENUE | ALAMEDA | CA | 94501 | USA

1d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any
Government | CA | NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any
 NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME
Bank of Alameda

OR

3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY
1701 Harbor Bay Parkway, Suite 100 | Alameda | CA | 94502 | USA

4. This FINANCING STATEMENT covers the following collateral:
All Accounts and Equipment; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum. 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) [optional] All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA
LOAN #1421338