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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

KINGSBRIDGE HOLDINGS, LLC and KBH  
SPV 2, LLC,

Plaintiffs,

vs.

ALLIED HEALTH CARE SERVICES, INC. and  
CHARLES K. SCHWARTZ,

Defendants.

Civil Action No:

**COMPLAINT**

Plaintiffs Kingsbridge Holdings, LLC and KBH SPV 2, LLC (together, "Plaintiffs"), having an address at 150 N. Field Drive, Suite 193, Lake Forrest, Illinois, by and through their attorneys, Sills Cummis & Gross P.C., for their Complaint against the Defendants, state:

**Nature Of Action, Jurisdiction, Venue, And Parties**

1. Through this action, Plaintiffs seek to enforce their rights as lessor arising out of breaches of an equipment lease by Defendant Allied Health Care Services, Inc. ("Allied"), as lessee, and for breach of a guaranty of the lease by Defendant Charles K. Schwartz ("Schwartz"), the President of Allied.

2. This court has original jurisdiction over this action pursuant to 28 U.S.C. §1332(a) because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) because all defendants reside in New Jersey, because a substantial part of the events or omissions giving rise

to the claims occurred here, and because a substantial part of property that is the subject of this action is situated here.

4. Plaintiff Kingsbridge Holdings, LLC (“Kingsbridge”) is a Nevada limited liability company with a principal place of business at 150 N. Field Drive, Suite 193, Lake Forrest, Illinois.

5. Plaintiff KBH SPV 2, LLC (“KBH”), is a Delaware limited liability company and is a wholly owned subsidiary of Kingsbridge Holdings, LLC.

6. Defendant Allied is a New Jersey corporation with a principal place of business at 89 Main Street, Orange, New Jersey 07051.

7. Defendant Schwartz is an individual citizen of the State of New Jersey residing at 37 Timberline Drive, Sparta, New Jersey 07871.

#### **First Count**

##### **(Against Defendant Allied Health Care Services, Inc. For Breach Of The Lease)**

8. Plaintiffs repeat the foregoing paragraphs.

9. On or about April 2, 2007, Defendant Allied, as lessee, entered into a Master Lease Agreement with ACC Capital Corporation (“ACC”), as lessor. A copy of the Master Lease Agreement is annexed hereto as Exhibit “A.”

10. The Master Lease Agreement sets forth terms and conditions pursuant to which Allied would lease certain equipment from time to time pursuant to equipment schedules.

11. On or about April 5, 2007, Defendant Schwartz entered into a personal Guaranty of the obligations of Allied under the Master Lease Agreement. A copy of the Guaranty is annexed hereto as Exhibit “B.”

12. Thereafter, ACC and Allied from time to time entered into equipment schedules in connection with the Master Lease Agreement.

13. Pursuant to Equipment Schedule No. 9 dated February 6, 2009, Allied leased 200 LifeCare Products PLV 102 Home Care Ventilators (the "Equipment") from ACC as lessor. A copy of Equipment Schedule No. 9 is annexed hereto as Exhibit "C."

14. On or about February 19, 2009, Kingsbridge Holdings, LLC purchased all of ACC's right, title, and interest: (i) in the Equipment, (i) in Equipment Schedule No. 9, and (iii) in the Master Lease Agreement, Guaranty, and related instruments with respect to Equipment Schedule No. 9. Together, Equipment Schedule No. 9 and the Master Lease Agreement as purchased by Kingsbridge Holdings, LLC are hereinafter referred to as the "Lease."

15. The assignment of the Lease and related rights to Kingsbridge as lessor was acknowledged by Allied and Schwartz by Notice And Acknowledgment Of Assignment dated February 13, 2009. A copy of the Notice And Acknowledgment Of Assignment is annexed hereto as Exhibit "D."

16. Kingsbridge subsequently assigned its rights as lessor under the Lease to KBH.

17. Kingsbridge Healthcare Finance, a division of Kingsbridge, services the Lease for KBH.

18. Allied has defaulted under the lease by making late payments of the payments due on December 1, 2009, January 1, 2010, and February 1, 2010, and by a complete failure to make the payments due on March 1, 2010, April 1, 2010, and May 1, 2010.

19. Pursuant to paragraph 15(a) of the Master Lease Agreement, failure of the lessee "to pay any Interim Rental or Monthly Rental when same becomes due or any other amount when it becomes due" constitutes an event of default.

20. Upon any such default, the lessor is entitled, among other things, to terminate the Lease (paragraph 16(d)), to recover damages (paragraph 16(e)), and to repossess the Equipment (paragraph 16(f)).

21. Pursuant to paragraph 16(e), the damages to which the lessor is entitled include:

(i) all sums due and payable to date; (ii) all costs and expenses incurred by lessor on account of the default, including all court costs and reasonable attorney fees; and (iii) all reasonable damages as provided by law, including the liquidated damages specified in paragraph 16(h) of the Lease; with all of the aforesaid damages to bear interest at 18 percent per annum.

22. Paragraph 16(h) of the Lease provides:

Liquidated Damages: Lessor may recover from Lessee, as liquidated damages (“Liquidated Damages”) for loss of a bargain and not as a penalty to secure performance, an amount equal to the present value (discounted at the rate of four percent per annum) of all future Monthly Rentals plus an amount equal to the present value (discounted at the rate of four percent per annum) of any fixed price purchase option or, if none, the fair market value of the Equipment as of the end of the Initial Period (or any Renewal Period in effect), provided that in the absence of proof of such value, the value as of the end of the Initial Period (for purposes of calculation of Liquidated Damages only and not for any other purpose) shall be presumed to be 25% of the Equipment’s original cost, and the value as of the end of any Renewal Period shall be presumed to be 30% less than it was at the end of the next previous Period. Lessor and Lessee acknowledge that actual damages which Lessor would sustain as the result of an Event of Default are extremely difficult to estimate at the time of execution of this Agreement, that the formula for Liquidated Damages set forth herein is reasonable in light of the anticipated harm to Lessor which would be caused by an Event of Default, and that the application of said formula is reasonably likely to place Lessor in a position equivalent to the position Lessor would occupy if no Event of Default had occurred.

23. Pursuant to paragraphs 16(e) and 16(h) of the Lease as of the date hereof, Allied is indebted to Plaintiffs in the amount of not less than \$1,051,207.74, consisting of the sum of: (i) the monthly rentals outstanding plus late charges and (ii) the discounted value of all future monthly rentals for the remaining months of the Lease term and the discounted fair market value of the Equipment at the end of such term .

24. Plaintiffs provided numerous written and verbal notices to Allied and Schwartz of the defaults and demanded payment. Nevertheless, the obligation remains unsatisfied.

25. In addition, paragraph 19(k) of the Lease obligates Allied to pay “all charges, costs and expenses and reasonable attorney fees incurred,” by Lessor, among other things, in “the enforcement of the Lease or the collection of any rent or other payments due under the Lease.”

26. By reason of the foregoing, Allied has breached the Lease and is liable to Plaintiffs for the damages caused thereby including the damages specified in paragraphs 16(f) and (h) of the Lease, as well as all costs and expenses incurred on account of such default, including attorneys’ fees pursuant to paragraphs 16(e) and 19(k).

**Second Count**

**(Against Defendant Charles K. Schwartz For Breach Of The Guaranty)**

27. Plaintiffs reallege the foregoing paragraphs.

28. Pursuant to the Guaranty, Schwartz personally and unconditionally guaranteed the payment of all obligations of Allied under the Lease.

29. The Guaranty provides, among other things, that Schwartz, “as a primary obligor” shall pay to the lessor on demand “all sums due and to become due...[from Allied] and all losses, costs, attorneys’ fees and other expenses” by reason of any default by Allied under the Lease or by Schwartz under the Guaranty.

30. As described above, Allied is in default under the Lease.

31. Schwartz is in default under the Guaranty by failing to satisfy Allied’s obligations under the Lease despite demand.

32. By reason of the foregoing, Schwartz is liable to Plaintiffs for, among other things, all of the amounts due under the Lease and all costs and attorneys’ fees incurred in enforcing the Lease and the Guaranty.

**Third Count**

**(Against Defendant Allied Health Care Services, Inc. For Replevin)**

33. Plaintiffs repeats the foregoing paragraphs.

34. Pursuant to paragraph 16(f) of the Master Lease Agreement:

Possession Of Equipment: Whether or not this Agreement is terminated as to any or all Equipment Schedules, Lessor may (i) take possession of any or all of the Equipment listed on any or all Equipment Schedules, wherever situated and for such purpose, Lessor may enter upon any Lessee's premises without any court order and without liability for doing so (Lease hereby waives any action for trespass or damages by reason of such entry or taking possession); and/or (ii) cause Lessee (and Lessee hereby agrees) to assemble the Equipment and either make it available to Lessor at a place designated by Lessor or return it to Lessor as provides in this Agreement.

35. Similarly, N.J.S.A. §2A:525(2) provides that after a default by the lessee, the lessor has the right to take possession of the goods leased.

36. By reason of the foregoing, Plaintiffs are entitled to possession of the Equipment.

**WHEREFORE**, Plaintiffs demand judgment against Defendants as follows:

A. On the First Count, awarding in favor of Plaintiffs and against Defendant Allied:

(i) Compensatory damages including all sums due and payable under the Lease, including under paragraphs 16(f) and 16(h) of the Lease, and all costs and expenses incurred on account of the defaults;

(ii) Attorney fees and expenses as provided for in paragraphs 16(e)(ii) and 19(k) of the Master Lease Agreement;

(ii) Interest and costs of suit; and

(iii) Such other relief as the Court deems just and proper.

B. On the Second Count, awarding in favor of Plaintiffs and against Defendant Schwartz:

- (i) All amounts due to Plaintiffs from Defendant Allied;
- (ii) Attorney fees and expenses in connection with enforcing the Lease and/or the Guaranty;
- (iii) Interest and costs of suit; and
- (iv) Such other relief as the Court deems just and proper.

C. On the Third Count, awarding in favor of Plaintiffs and against Defendant Allied:

- (i) A directive that Allied immediately turn over the Equipment to Plaintiffs;
- (ii) A writ of replevin for possession of the Equipment;
- (iii) Compensatory damages;
- (iv) Attorney fees and expenses; and
- (v) Such other relief as the Court deems just and proper.

Dated: May 3, 2010

SILLS CUMMIS & GROSS P.C.  
Attorneys for Plaintiffs

By: \_\_\_\_\_

George R. Hirsch, Esq.

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# **EXHIBIT A**



LEASE NO. 21331MASTER LEASE AGREEMENT

This agreement (this "Agreement") is made this 2<sup>nd</sup> day of April, 2007, between ACC Capital Corporation (the "Lessor"), with its principal office at 1787 E. Fort Union Blvd, Suite 200, Salt Lake City, UT 84121, and Allied Health Care Services, Inc. (the "Lessee"), with its principal office located at 89 Main Street, Orange, NJ 07051. A word with an initial letter capitalized shall have the meaning set forth in this Agreement.

## 1. LEASE:

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment ("Equipment") described in any "Equipment Schedule" executed and delivered by Lessor and Lessee in connection with the Agreement. The terms and conditions contained herein and in each Equipment Schedule shall govern the leasing and use of the Equipment. In the event of conflict between the provisions of this Agreement and any Equipment Schedule, the provisions of the Equipment Schedule shall govern. Each Equipment Schedule, together with this Agreement as applied to that Equipment Schedule, shall constitute a separate lease (a "Lease") and shall be a "finance lease" as that term is defined in Article 2A of the Uniform Commercial Code as adopted in the prevailing jurisdiction ("UCC").

## 2. ADDITIONAL DEFINITIONS:

a. "Acceptance Date" means, as to the Equipment designated on any Equipment Schedule, the date as of which (i) Lessor has received all documents, duly completed and executed, which Lessor reasonably deems necessary to ensure enforceability of Lessor's interests in the transaction represented by the Equipment Schedule (including but not limited to invoices, the Equipment Schedule, guaranties, evidence of title sufficient to establish Lessor's unencumbered ownership of the Equipment, insurance certificates, UCC financing statements, landlord/mortgagee waivers, property and sales tax information (including exemptions if applicable), inspection reports, vendor certifications if required, and applicable riders and addenda), and (ii) Lessor has received, at Lessor's option, either (A) a certificate of acceptance of delivery signed by the Lessee (the "Acceptance Certificate") or (B) confirmation from the manufacturer or vendor of the Equipment that such Equipment has been installed. The listing of certain documents in this section shall not preclude Lessor from requesting additional documents at any time to ensure enforceability of Lessor's interests hereunder, and Lessee shall promptly comply with any such commercially reasonable request. Lessor may waive, in writing, any of the requirements of Subsection (ii) of this Section 2a.

b. "Commencement Date" means, as to the Equipment designated on any Equipment Schedule, the first day of the calendar month following the Acceptance Date (unless the Acceptance Date falls on the first day of the calendar month, in which case the Commencement Date shall be the same date as the Acceptance Date).

c. "Schedule Date" means, as to any Equipment Schedule, the date of such Equipment Schedule as stated therein.

d. "Assignment Date" means, as to the Equipment designated on any particular Equipment Schedule, the date upon which Lessor shall assign its interests in such Equipment Schedule, or in any Monthly Rental payable thereunder or in any Equipment described therein, to any third party, either outright or as security for Lessor's performance of an obligation.

## 3. TERMS OF LEASE:

The "Initial Period" and the "Monthly Rental" payable with respect to each item of Equipment shall be as stated in the applicable Equipment Schedule. Lessee may exercise an "Early Purchase Option" (if provided by, and as described in, the applicable Equipment Schedule) only by giving Lessor prior written notice of intent to exercise said option at least 180 days, but not more than 240 days, before the option date stated in the applicable Equipment Schedule. If said written notice is not received by Lessor within the specified period, then the Early Purchase Option referred to above shall expire. No notice of intent to exercise an Early Purchase Option may be revoked without Lessor's prior written consent.

## 4. RENT AND PAYMENT:

a. Monthly Rental: As to any Equipment leased hereunder, the "Monthly Rental" payable by Lessee to Lessor shall be as set forth in the applicable Equipment Schedule. The Monthly Rental shall begin on the Commencement Date and shall be due and payable by Lessee in advance on the first day of each month throughout the Initial Period and any "Renewal Period," as defined in Section 19m of this Agreement. If the Acceptance Date does not fall on the first day of the calendar month, then in addition to Monthly Rental, Lessee shall pay "Interim Rental" for the period from and including the Acceptance Date until the Commencement Date. Interim Rental shall be due and payable on the Acceptance Date and shall be calculated according to the following formula: Interim Rental equals Monthly Rental divided by 30, with that quotient multiplied by the number of days between the Acceptance Date and the Commencement Date (for example, if the Monthly Rental were \$100 and the Acceptance Date occurred 12 days before

the Commencement Date, Lessee would be obligated to pay \$40 in Interim Rental on the Acceptance Date. Lessee shall pay all Interim Rental and Monthly Rental to Lessor, its successors or assigns, at Lessor's address set forth above (or as otherwise directed in writing by Lessor, its successors or assigns), whether or not Lessee has received any notice that such payment is due. As of the Commencement Date (or the Assignment Date, if earlier), Monthly Rental shall be increased proportionately to the increase in yields of U.S. Treasury Notes (as designated in the applicable Equipment Schedule) occurring between the Schedule Date and the Commencement Date (or the Assignment Date, if earlier); and in addition, if the Assignment Date occurs after the Commencement Date, Monthly Rental shall be increased as of the Assignment Date proportionately to the increase in yields of designated U.S. Treasury Notes occurring between the Commencement Date and the Assignment Date, all as provided in the applicable Equipment Schedule. In the event an Equipment Schedule fails to commence for any reason, then at Lessor's sole election, any advance payments (including but not limited to deposits and advanced Monthly Rentals) collected by Lessor shall be deemed earned by Lessor and shall be retained by Lessor as liquidated damages for failure of commencement, the parties acknowledging that actual damages sustained by failure of commencement are difficult or impossible to ascertain and that the advance payments retained are a reasonable estimate of such damages. Retention of advance payments shall not release Lessee from any of Lessee's obligations hereunder. LESSEE SHALL NOT ABATE, SET OFF, OR DEDUCT ANY AMOUNT OR DAMAGES FROM OR REDUCE ANY MONTHLY RENTAL FOR ANY REASON WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, ITS SUCCESSORS OR ASSIGNS.

b. Late Charges: Late charges on any payments, taxes, or other charges due hereunder shall accrue at the rate of 10% of the payment amount due per month (or if such rate shall exceed the maximum rate allowed by law, then at the highest rate that is permitted to be charged on liquidated amounts after judgment or at the statutory forbearance rate, whichever is greater) beginning ten days after the date that such amount was due and continuing until the amount is paid. For example, if Monthly Rental were \$100 and the Lessee failed to pay Monthly Rental due in January and February until April of that year, late charges would be payable in the sum of \$70 (\$100 times 10% per month times four months, as to the January Monthly Rental, plus \$100 times 10% per month times three months, as to the February Monthly Rental). Lessee shall pay any late charges promptly upon Lessor's demand.

## 5. TAXES

Lessee shall pay to Lessor an amount equal to all taxes paid, payable or required to be collected by Lessor and service fees assessed, however designated, which are levied or based on the Monthly Rental or on the possession, use, operation, lease, rental, sale, purchase, control or value of the Equipment, including, without limitation, registration and license fees and assessments, state and local privilege or excise taxes, sales and use taxes, personal and other property taxes, and taxes or charges based on gross lease revenue, but excluding taxes based on Lessor's net income. Lessor may (but shall not be obligated to) invoice Lessee for all such taxes and fees in advance of their payment due date, and Lessee shall promptly remit to Lessor all such taxes and fees (together with a service charge not to exceed \$50, payable to Lessor) upon receipt of such invoice from Lessor. Lessee shall pay all penalties and interest resulting from its failure timely to remit such taxes to Lessor when invoiced by Lessor. Lessor (or at Lessor's option, Lessee) shall file all required sales and use tax and personal property tax returns and reports concerning the Equipment with all applicable governmental agencies. The provisions of this section shall survive the expiration or earlier termination of this Agreement with respect to events occurring before such expiration or termination.

## 6. USE; ALTERATIONS AND ATTACHMENTS:

a. Acceptance Certificate: After Lessee receives and inspects any Equipment and is satisfied that the Equipment is satisfactory, Lessee shall execute and deliver to Lessor an Acceptance Certificate in a form provided by Lessor; provided, however, that Lessee's failure to execute and deliver an Acceptance Certificate for any Equipment shall not affect Lessee's obligations under this Agreement and the applicable Equipment Schedule.

b. Unlimited Usage: Lessee shall be entitled to unlimited usage of the Equipment during the Initial Period, any Renewal Periods and any extension or renewal periods approved by Lessor in writing.

c. Control and Location: Lessee shall at all times keep the Equipment in its sole possession and control. The Equipment shall not be moved from the location stated in the Equipment Schedule without the prior written consent of Lessor.

d. Nature of Use: Lessee shall cause the Equipment to be installed, used, operated and, at the termination of the Agreement as to each Equipment Schedule, removed (i) in accordance with any applicable manufacturer's manuals or instructions; (ii) by competent and duly qualified personnel only; and (iii) in accordance with applicable governmental regulations, if any.

e. Alterations: Lessee shall not alter, or add attachments to, the Equipment without first obtaining the written consent of Lessor. Any such alterations or attachments shall be made at Lessee's expense and shall not interfere with the normal and satisfactory operation or maintenance of the Equipment. The manufacturer may incorporate engineering changes or make temporary alterations to the Equipment upon request of Lessee. Unless Lessor shall otherwise agree in writing, all such alterations and attachments shall be and become the property of Lessor or, at the option of Lessor, shall be removed by Lessee at the termination of this Agreement as to such Equipment and the Equipment restored at Lessee's expense to its original condition, reasonable wear and tear only excepted.

f. Personal Property Character: Lessee acknowledges that the Equipment is and shall remain personal property throughout the term of this Agreement. Lessee shall not permit the Equipment to become an accession to other goods or a fixture to, or part of, any real property.

g. Compliance with Laws: Lessee shall comply with all applicable laws, regulations and orders relating to the Equipment and this Agreement. Lessee shall pay all fines and penalties for late registration, moving violations or other infractions or violations of law with respect to the Equipment or Lessee's use of the Equipment.

h. Commercial Use: The Equipment is leased solely for commercial or business purposes.

i. Software: In the event the Equipment includes software (including all documentation, later versions, updates, and modifications) (herein "Software"), the following shall apply: (i) Lessee shall possess and use the Software in accordance with the terms and conditions of any license agreement ("License") entered into with the owner/vendor of such Software (at Lessor's request, Lessee shall provide a complete copy of the License to Lessor); (ii) as due consideration for Lessor's payment of the Software price and for providing the Software to Lessee at a lease rate (as opposed to a debt rate), Lessee agrees that Lessor is leasing (and not financing) the Software to Lessee; and (iii) except as otherwise specifically provided herein, the Software shall be deemed Equipment for all purposes under the Lease.

## 7. MAINTENANCE AND REPAIRS; RETURN OF EQUIPMENT:

a. General Maintenance: Subject to the following provisions of this Section 7, during the continuance of this Agreement and at its expense, Lessee (i) shall keep the Equipment in good repair, working order and condition; (ii) shall make all necessary adjustments, repairs and replacements, in accordance with Manufacturer specifications; (iii) shall furnish all required parts, mechanisms, devices and servicing; and (iv) shall not use or permit the Equipment to be used for any purpose for which, in the opinion of the manufacturer or service company, the Equipment is not designed or suitable. Such parts, mechanisms and devices shall immediately become part of the Equipment for all purposes hereunder.

b. Service Company: During the continuance of this Agreement and at its own expense, Lessee shall enter into and maintain in force a contract with the manufacturer or other qualified maintenance organization for maintenance of each item of Equipment. Such contract as to each item shall commence upon expiration of the manufacturer's warranty period, if any, relating to such item. Lessee shall furnish Lessor with a copy of such contract upon demand.

c. Return of Equipment: At the end of the Initial Period or ultimate Renewal Period, as applicable, and provided that Lessee has timely elected the "Return Option" described in Section 19m of this Agreement, then at Lessee's expense, Lessee shall return the Equipment to Lessor within the time, and at the location within the Continental United States, designated in writing by Lessor. Upon such return, the Equipment shall be in the same operating order, repair, condition and appearance as on the Acceptance Date, excepting reasonable wear and tear from proper use thereof, but including all engineering changes theretofore prescribed by the manufacturer. If the Equipment or its component parts were packed or crated for shipping when new, Lessee shall pack or crate the same carefully and in accordance with any recommendations of the Supplier or manufacturer before redelivering the item(s) to Lessor. Lessee shall also deliver to Lessor all plans, specifications, operating manuals, software documentation, discs, warranties and other documents furnished by the manufacturer or supplier of the Equipment and all other documents in Lessee's possession relating to the maintenance and method of operation of such Equipment. Lessee shall return and convey to Lessor at no cost to Lessor all upgrades and/or enhancements made to the Equipment that are inherent to the functioning of the Equipment. Lessee shall provide maintenance qualification letters and/or arrange for and pay the cost of repairs which are necessary for the manufacturer or qualified maintenance organization to accept the Equipment under contract maintenance at its then standard rates. With regard to Software, at the time of return of the Equipment, Lessee shall (i) return to Lessor the Software (including all upgrades and modifications and all Licenses) and all copies, in whole or part, made by Lessee, (ii) at Lessor's written request, delete from its systems all Software then installed, destroy all copies or duplicates thereof, and certify in writing that such copies and duplicates have been destroyed, that all installed Software has been deleted, and that Lessee has returned the Software, with all upgrades, modifications, Licenses, copies and duplicates, to Lessor; and (iii) cease using the Software altogether. Upon receipt of Software from Lessee, Lessor shall be responsible to return the Software to the owner/vendor so that Lessee shall not be in breach of any software license. At Lessor's written request, Lessee shall provide free storage for any item of Equipment for a period not to exceed sixty (60) days after the expiration of the Agreement before returning such item to Lessor and shall permit Lessor access to the Equipment for inspection and/or resale. If Lessee shall fail to return each item of Equipment in the manner and condition provided herein, Lessee shall be obligated, upon Lessor's demand, to reimburse Lessor for all expenses incurred by Lessor in restoring the Equipment to such required condition and shall be liable for any reduction in value as a result of Lessee's failure to return the Equipment in the condition and manner provided herein. If Lessee shall fail timely to return an item of Equipment to Lessor's designated location, such item shall be deemed lost within the meaning, and subject to the provisions of, Section 12c of this Agreement.



8. OWNERSHIP AND INSPECTION:

a. Ownership: The Equipment shall at all times remain the property of Lessor or its assigns. By this Agreement, Lessee acquires no ownership rights in the Equipment. Lessor may affix (or require Lessee to affix) tags, decals or plates to the Equipment indicating Lessor's ownership, and Lessee shall not permit their removal or concealment. Lessor shall be shown as the owner of the Equipment on all vehicle titles and licenses, as applicable.

b. No Liens: LESSEE SHALL KEEP THE EQUIPMENT AND LESSEE'S INTEREST UNDER THIS AGREEMENT FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES, EXCEPT THOSE PERMITTED BY LESSOR OR ITS ASSIGNS.

c. Access: Lessor, its assigns and their respective agents shall have free access to the Equipment at all reasonable times during normal business hours for the purpose of inspecting the Equipment and for any other purpose contemplated by this Agreement.

d. Notification of Loss: Lessee shall immediately notify Lessor in writing of all details concerning any damage or loss to the Equipment arising from any cause, including but not limited to the alleged or apparent improper manufacture, functioning, or operation of the Equipment.

9. WARRANTIES:

a. Limitation on Warranties: LESSEE ACKNOWLEDGES THAT LESSOR HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATING TO ANY OF THE FOLLOWING: (i) THE DESCRIPTION, CONDITION, DESIGN, QUALITY OR PERFORMANCE OF THE EQUIPMENT; (ii) ITS MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE WHETHER OR NOT DISCLOSED TO LESSOR; AND (iii) DELIVERY OF THE EQUIPMENT FREE OF THE RIGHTFUL CLAIM OF ANY PERSON BY WAY OF INFRINGEMENT OR THE LIKE. LESSOR EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES. LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY CLAIM, LOSS, OR DAMAGE OF ANY KIND OR NATURE WHATSOEVER, INCLUDING SPECIAL OR CONSEQUENTIAL DAMAGES. LESSEE EXPRESSLY WAIVES ALL RIGHTS AND REMEDIES UNDER SECTIONS 508 THROUGH 522 OF UCC2A (AS DEFINED HEREIN) AND ELECTS INSTEAD THE REMEDIES PROVIDED BY THIS AGREEMENT TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW.

b. Assignment of Warranties: Lessor hereby assigns to Lessee all assignable warranties on the Equipment, as described in Lessor's purchase contract, which assignment shall be effective only (i) during the Initial Period and any Renewal Period, as defined hereinafter, and (ii) so long as no uncured Event of Default exists.

10. NET LEASE; LESSEE'S OBLIGATIONS ABSOLUTE AND UNCONDITIONAL:

a. Net Lease: This Agreement is a "net lease" and, as between Lessor and Lessee, Lessee shall be responsible for all costs, expenses and claims of every nature whatsoever arising out of or in connection with or related to this Agreement or the Equipment (including, but not limited to, transportation in and out, packing, installation, deinstallation and shipping).

b. Absolute Payment Obligation: LESSEE AGREES THAT ITS MONTHLY RENTAL AND OTHER OBLIGATIONS HEREUNDER SHALL BE IRREVOCABLE, INDEPENDENT, ABSOLUTE, AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, RECOUPMENT, DEFENSE, OFFSET OR COUNTERCLAIM OTHERWISE AVAILABLE TO LESSEE AGAINST LESSOR; NOR, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN OR AS AGREED TO BY LESSOR IN WRITING, SHALL THIS AGREEMENT TERMINATE FOR ANY REASON WHATSOEVER BEFORE THE END OF THE INITIAL PERIOD OR ANY RENEWAL PERIOD THEN IN EFFECT.

11. ASSIGNMENT:

a. No Assignment by Lessee: LESSEE MAY NOT ASSIGN THIS AGREEMENT OR ANY OF ITS RIGHTS HEREUNDER OR SUBLEASE THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. NO PERMITTED ASSIGNMENT OR SUBLEASE SHALL RELIEVE LESSEE OF ANY OF ITS OBLIGATIONS HEREUNDER.

b. Lessor Assignments: Lessor may sell and assign its rights and interests in any Equipment, and in any Equipment Schedule hereunder, to another party ("Lessor's Assignee"), either outright or as collateral security for loans. Upon notice of any such assignment and as provided by instructions from Lessor, Lessee shall pay its Monthly Rental and perform its other obligations

hereunder to Lessor's Assignee (or to another party designated by Lessor's Assignee). Upon any such sale or assignment, LESSEE'S OBLIGATIONS TO LESSOR'S ASSIGNEE UNDER THE ASSIGNED EQUIPMENT SCHEDULE SHALL BE ABSOLUTE AND UNCONDITIONAL, AND LESSEE WILL NOT ASSERT AGAINST LESSOR'S ASSIGNEE ANY CLAIM, DEFENSE OR COUNTERCLAIM WHICH LESSEE MIGHT HAVE AGAINST LESSOR. Lessor's Assignee shall have all of the rights but none of the obligations of Lessor under this Agreement. Notwithstanding any assignment by Lessor, Lessor's Assignee shall not be deemed to have assumed or to be obligated to perform any of the obligations of Lessor, and after such assignment Lessor shall continue to be responsible for all of Lessor's obligations under the Lease.

c. UCC2A Rights: In connection with any assignment by Lessor of its interest in the Equipment or in this Agreement, Lessee acknowledges that the assignment will not materially change the duty of, or materially increase the burden or risk imposed on, Lessee; and Lessee waives its right, if any, to demand Lessor's Assignee to comply with the provisions of Utah Uniform Commercial Code—Leases, Utah Code Annotated, Title 70A, Chapter 2a (as it now exists or is hereafter modified) ("UCC2A"), dealing with adequate assurance and assumption requirements, among other things.

d. Confirming Documents: Upon any such assignment, Lessee agrees to execute any document reasonably requested by Lessor acknowledging such assignment and affirming to Lessor's Assignee basic provisions of this Agreement and the Equipment Schedule, and Lessee shall authenticate (and hereby authorizes the filing of) any UCC financing statements and amendments reasonably requested by Lessor or the assignee.

e. Counterparts: Only one executed counterpart of any Equipment Schedule shall be marked "Original"; any other executed counterparts shall be marked "Duplicate Original" or "Counterpart." No security interest in any Equipment Schedule may be created through the transfer and possession of any counterpart other than the "Original."

## 12. RISK OF LOSS ON LESSEE:

From and after the date the Equipment is delivered to Lessee and until the Equipment is returned to Lessor as provided in the Agreement, Lessee shall bear all risk of loss, damage, theft, or destruction to the Equipment, however caused. If any item of Equipment is rendered unusable as a result of any physical damage to or destruction of the Equipment or if any item of Equipment is lost or stolen, then:

a. Notice: Lessee shall give Lessor immediate notice thereof, and this Agreement as to such item shall continue in full force and effect without any abatement of any Monthly Rental. Lessee shall determine and notify Lessor, within fifteen (15) days after the date of occurrence of such damage or destruction, whether such item of Equipment can be repaired.

b. Repair: If Lessee determines that such item of Equipment can be repaired, Lessee shall cause such item of Equipment to be repaired promptly at Lessee's expense and shall promptly provide Lessor with a copy of each repair receipt.

c. Replacement or Payment: If Lessee determines that the item of Equipment cannot be repaired or if the item of Equipment is lost or stolen, then at Lessor's sole option, Lessee shall either (i) at its expense promptly replace such item of Equipment with like equipment having a comparable or greater value and convey title to such replacement to Lessor free and clear of all liens and encumbrances, whereupon this Agreement shall continue in full force and effect as though such loss, damage, theft, or destruction had not occurred, or (ii) pay Lessor an amount equal to all rents and other amounts, if any, due from Lessee at the time of such payment plus the "Casualty Loss Value" of the item of Equipment determined under any casualty loss schedule attached to the Equipment Schedule, or if none is attached, then an amount equal to the replacement cost of such item of Equipment.

d. Insurance Proceeds: All proceeds of insurance received by Lessor or Lessee under any insurance policy shall be applied toward the cost of any such repair or replacement.

## 13. INSURANCE:

During the continuance of this Agreement as to each Equipment Schedule, Lessee, at its expense, shall keep in effect (i) an all risk casualty insurance policy covering the Equipment designated in such Equipment Schedule that includes, without limitation, coverage against extended coverage risks, vandalism, theft, and malicious mischief, for amounts not less than the Casualty Loss Value of the Equipment determined under any casualty loss schedule attached to the Equipment Schedule, or if none is attached, then for amounts not less than the replacement cost of each item of Equipment, with Lessor and its assigns designated as insured and loss payees under such policy; and (ii) a commercial general liability policy in amounts acceptable to Lessor and that designates Lessor and its assigns as co-insured. All such insurance policies shall be with licensed insurance companies acceptable to Lessor; shall prohibit cancellation or modification thereof without at least thirty (30) days prior written notice to Lessor; shall be evidenced by certificates of insurance or other written evidence acceptable to Lessor; and shall provide that as to Lessor, its successors and assigns, the insurance shall not be invalidated by any act, omission or neglect of Lessee. Lessee shall pay any deductibles on such policies.

Lessee hereby appoints Lessor as Lessee's attorney-in-fact (coupled with an interest) with full power and authority to make claims, receive payments and endorse documents, checks or drafts as necessary or advisable to secure payments due under any policy contemplated hereby on account of a casualty loss. If Lessee shall at any time fail to obtain and maintain in full force and effect each of the insurance policies required by this section or shall fail to provide evidence of the existence of such policies immediately upon Lessor's request, Lessor shall be entitled (but not required) to obtain insurance containing coverages comparable to the coverages required of Lessee by this section and shall be entitled (but not required) to maintain such insurance until Lessee shall provide evidence of insurance coverage complying with this section; and Lessee shall promptly upon demand reimburse Lessor for all insurance premiums paid by Lessor, plus a reasonable administrative fee.

14. **INDEMNIFICATION:**

Except for the gross negligence or willful misconduct of Lessor or as otherwise provided herein, Lessee shall indemnify Lessor against, and hold Lessor harmless of and from, any and all claims (including without limitation, claims involving strict or absolute liability and any claim alleging latent and other defects, whether or not discoverable by Lessor or Lessee and any claim for patent, trademark or copyright infringement), actions, suits, proceedings, costs, expenses (including reasonable attorney fees incurred by Lessor either in enforcing this indemnity or in defending against such claims), damages and liabilities at law or in equity, arising out of, connected with or resulting from this Agreement or the Equipment (including without limitation the delivery, possession, use, operation, condition, lease, return, storage or disposition thereof). For purposes of this section, the term "Lessor" shall include Lessor, its successors and assigns, and their respective shareholders, directors, officers, representatives and agents, and the provisions of this section shall survive expiration or earlier termination of this Agreement with respect to events occurring before such expiration or termination.

15. **EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events (each an "Event of Default") shall constitute a default under this Agreement:

- a. **Monthly Rental:** Lessee fails to pay any Interim Rental or Monthly Rental when the same becomes due or any other amount when it becomes due hereunder.
- b. **Transfers:** Except as expressly provided herein, Lessee attempts to, or does, remove, sell, assign, transfer, encumber, sublet, or part with possession of any one or more items of the Equipment, or any interest under this Agreement, except as expressly permitted herein.
- c. **Attachment, Abandonment:** Through the act or omission of Lessee, any item of Equipment becomes subject to any levy, seizure, attachment, assignment or execution; or Lessee abandons any item of Equipment.
- d. **Other Obligations:** (i) Lessee shall be in default under any other Equipment Schedule or agreement executed with Lessor, (ii) Lessee fails to sign and deliver to Lessor any document requested by Lessor in connection with the Lease or shall fail to do any thing determined by Lessor to be necessary or desirable to effectuate the transaction contemplated by the Lease or to protect Lessor's rights and interests in the Lease and Equipment, (iii) Lessee or any Guarantor shall fail to provide financial statements to Lessor as provided in Section 19i hereof, or (iv) Lessee shall fail to observe or perform any of the other obligations required to be observed or performed by Lessee hereunder and such failure to observe or perform shall continue uncured for ten (10) days after written notice thereof is given to Lessee.
- e. **Misrepresentation:** Any of Lessee's representations and warranties made in this Agreement or in connection herewith shall be false or misleading in any material respect.
- f. **Change in Financial Condition:** There occurs any material adverse change in the Lessee's financial condition; Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, is insolvent, admits in writing its inability to pay its financial obligations as they become due, files a voluntary petition in bankruptcy, becomes the debtor pursuant to an order for relief entered in any bankruptcy case, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any such case or proceeding, or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of it or of all or any substantial part of its assets or properties; or Lessee or any of its shareholders, general partners, limited partners, members, trustees or other interest holders shall take any action seeking its dissolution or liquidation.
- g. **Involuntary Proceedings:** Within thirty (30) days after the commencement of any proceeding against Lessee seeking an order for bankruptcy relief or any reorganization, arrangement, readjustment, liquidation, dissolution, or similar relief under any



present or future statute, law or regulation, such proceeding shall not have been dismissed, or if within thirty (30) days after the appointment, without Lessee's consent or acquiescence, of any trustee, receiver, or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated.

16. REMEDIES:

Upon the occurrence of any Event of Default by Lessee, Lessor shall have the option, with or without giving notice to Lessee, to do any one or more of the following:

- a. Enforcement: Lessor may enforce this Agreement according to its terms;
- b. Cure: Lessor may advance funds on Lessee's behalf to cure the Event of Default, whereupon Lessee shall immediately reimburse Lessor therefor, together with late charges accrued thereon.
- c. No Delivery: Lessor may refuse to deliver the Equipment to Lessee;
- d. Termination: By notice to Lessee, Lessor may terminate this Agreement as to any or all Equipment Schedules;
- e. Lessor's Damages: Lessor shall be entitled to the aggregate of following damages ("Lessor's Damages"), and Lessee shall be liable for and shall pay to Lessor all such Lessor's Damages (i) all sums due and payable under the Equipment Schedule for all periods up to and including the later of (A) the date an Event of Default has occurred or (B) the date on which Lessor commences an action to enforce its rights under this Agreement; (ii) all costs and expenses incurred by Lessor on account of such default, including, but not limited to, all court costs and reasonable attorney fees; and (iii) all reasonable damages as provided by law, including but not limited to "Liquidated Damages" as defined and set forth below. The aggregate of Lessor's Damages payable per this subsection 16e shall bear interest at the rate of 18 percent per annum (provided, however, that the interest rate shall not exceed the highest rate allowed by prevailing law) until paid in full, both before and after judgment.
- f. Possession of Equipment: Whether or not this Agreement is terminated as to any or all Equipment Schedules, Lessor may (i) take possession of any or all of the Equipment listed on any or all Equipment Schedules, wherever situated and for such purpose, Lessor may enter upon any Lessee's premises without any court order and without liability for so doing (Lessee hereby waives any action for trespass or damages by reason of such entry or taking possession); and/or (ii) cause Lessee (and Lessee hereby agrees) to assemble the Equipment and either make it available to Lessor at a place designated by Lessor or return it to Lessor as provided in this Agreement.
- g. Recovery of Monthly Rental: Lessor may sue for and recover all Monthly Rental and other payments (including but not limited to late charges) that accrue after the occurrence of the Event of Default, as the same become due.
- h. Liquidated Damages: Lessor may recover from Lessee, as liquidated damages ("Liquidated Damages") for loss of a bargain and not as a penalty to secure performance, an amount equal to the present value (discounted at the rate of four percent per annum) of all future Monthly Rentals plus an amount equal to the present value (discounted at the rate of four percent per annum) of any fixed price purchase option or, if none, the fair market value of the Equipment as of the end of the Initial Period (or any Renewal Period then in effect), provided that in the absence of proof of such value, the value as of the end of the Initial Period (for purposes of calculation of Liquidated Damages only and not for any other purpose) shall be presumed to be 25% of the Equipment's original cost, and the value as of the end of any Renewal Period shall be presumed to be 30% less than it was at the end of the next previous Period. Lessor and Lessee acknowledge that actual damages which Lessor would sustain as the result of an Event of Default are extremely difficult to estimate at the time of execution of this Agreement, that the formula for Liquidated Damages set forth herein is reasonable in light of the anticipated harm to Lessor which would be caused by an Event of Default, and that the application of said formula is reasonably likely to place Lessor in a position equivalent to the position Lessor would occupy if no Event of Default had occurred.
- i. Sell or Lease: Lessor may sell, dispose of, hold, use, or lease any Equipment as Lessor in its sole discretion may determine without any duty, except as provided below, to account to Lessee. Lessor may purchase at any such sale, and Lessor shall not be obligated to give preference to the sale, lease, or other disposition of the Equipment over the sale, lease, or other disposition of similar equipment owned or leased by or through Lessor. The following Subsection j shall apply to any sale or lease:
- j. Payment to Lessee: If Lessor has recovered all of Lessor's Damages, then Lessor shall pay to Lessee, promptly after receipt thereof, all rentals or proceeds (after deducting all of Lessor's expenses incurred in connection with reletting or selling the Equipment), in excess of Lessor's damages, received from the reletting or sale of the Equipment.
- k. Nonexclusive Remedies: Lessor may exercise any and all rights and remedies available at law or in equity, including those available under the Uniform Commercial Code (including sections thereof dealing with leases) as enacted in Utah or

in any state in which the Equipment is located, and including those available under any other applicable law. The rights and remedies afforded Lessor hereunder shall not be deemed to be exclusive, but shall be cumulative and shall be in addition to any rights or remedies provided by law. Lessor's failure to enforce promptly any right hereunder shall not operate as waiver of such right, and Lessor's waiver of any default shall not constitute a waiver of any subsequent or other default. Lessor may accept late payments or partial payments of amounts due under this Agreement and may delay enforcing any of Lessor's rights hereunder without losing or waiving any of Lessor's rights under this Agreement. In addition to all of the foregoing remedies, at Lessor's sole option upon the occurrence of an Event of Default, the Lessee's Purchase Option (as defined in Section 19m) shall automatically be extinguished and shall be replaced by the Lessee's obligation (the "Purchase Obligation") to purchase the Equipment for a sum equal to the greater of (i) ten percent of the Equipment's original cost or (ii) the Equipment's in-place fair market value, as defined in Section 19m.

1. Protection of Equipment: In the event Lessor in good faith believes the Equipment to be in danger of misuse, abuse or confiscation or to be in any other way threatened; or believes in good faith that the Equipment is no longer sufficient or has declined or may decline in value; or believes in good faith for any other reason that the prospect of payment or performance has become impaired, Lessor shall have the right, in its sole discretion, to either require additional collateral or declare the entire indebtedness under any Lease immediately due and payable.

#### 17. TAX INDEMNITY:

This Agreement is entered into on the basis that Lessor shall be the owner of the Equipment for federal and state income tax purposes and entitled to such deductions, credits, and other benefits as are provided an owner of personal property, including but not limited to the maximum Modified Accelerated Cost Recovery System deductions ("depreciation") for the MACRS Property Class life under the Internal Revenue Code of 1986 ("Code") and deductions for interest paid or accrued with respect to any loan made to or assumed by Lessor or its assigns to finance the purchase of the Equipment (collectively referred to herein as the "Tax Benefits"). If, with respect to any item of Equipment, Lessor or its assigns shall not have or shall lose the right to claim all or any portion of the Tax Benefits or if all or any portion of the Tax Benefits shall be disallowed or recaptured (hereinafter referred to as "Tax Benefit Loss") due to the acts or omission of Lessee, then the following provisions shall be applicable:

a. Payment by Lessee: Subject to the exceptions set forth below, Lessee shall, within thirty (30) days after written notice from Lessor that a Tax Benefit Loss has occurred, pay to Lessor, at Lessor's option, either a lump-sum payment or an increase to the remaining monthly payments due under the Equipment Schedule in an amount which, after taking into account the effects of interest, penalties, and additional taxes payable by Lessor as a result of the Tax Benefit Loss and the receipt of payment hereunder, will cause Lessor's net effective after-tax return over the term of the Equipment Schedule to equal the net effective after-tax return which would have been available if Lessor had been entitled to the utilization of all Tax Benefits.

b. Date of Loss: For purposes hereof a Tax Benefit Loss shall occur upon the earliest of (i) the payment by Lessor to the Internal Revenue Service or the applicable state revenue office of the tax increase resulting from such Tax Benefit Loss, or (ii) the adjustment of the tax return of Lessor to reflect such Tax Benefit Loss.

c. Limitation on Loss: Notwithstanding the foregoing, Lessor shall not be entitled to a payment hereunder on account of any Tax Benefit Loss directly attributable to any of the following: (i) any act on the part of Lessor which causes a Tax Benefit Loss; (ii) the failure of Lessor to have sufficient taxable income or tax liability to utilize such Tax Benefits; or (iii) the happening of any other event with respect to Lessor (such as disqualifying change in Lessor's business or characterization of Lessor as a personal holding company) which causes a Tax Benefit Loss.

d. Owner: This section is expressly made for the benefit of, and shall be enforceable by, Lessor, any person, firm corporation, or other entity to which Lessor transfers title to all or a portion of the Equipment, and their respective successors and assigns (collectively, the "Owner"). For the purpose hereof, the term "Owner" shall include an affiliated group (within the meaning of the Code) of which a person or entity is a member for any year in which a consolidated income tax return is filed for such affiliated group. Lessee shall indemnify and hold harmless any such Owner from any Tax Benefit Loss on the same terms and to the same extent as it would have indemnified Lessor and held Lessor harmless if said Owner were the Lessor hereunder. All of Lessor's rights and privileges arising from the indemnities contained herein shall survive the expiration or other termination of this Agreement.

#### 18. COVENANT OF QUIET POSSESSION:

So long as no Event of Default has occurred and is continuing, Lessor shall not interfere with Lessee's right to quiet possession of the Equipment, subject to and in accordance with the terms and conditions of this Agreement.



## 19. GENERAL:

- a. Integration: All schedules or riders to this Agreement, Equipment Schedules executed hereunder, schedules or riders attached to Equipment Schedules, other documents referred to in Equipment Schedules, and Acceptance Certificates, whether they are signed before, on, or after the date of this Agreement, are incorporated into this Agreement by this reference. Each Equipment Schedule, together with such related documents and this Agreement, shall constitute the entire agreement between the parties with respect such Equipment Schedule and the lease represented thereby.
- b. Modification: This Agreement may not be amended or modified except by writing, signed by a duly authorized representative of each party, but no such amendment or modification needs further consideration to be binding. Notwithstanding the foregoing, Lessee authorizes Lessor to amend any Equipment Schedule to identify more accurately the Equipment (including, without limitation, supplying serial numbers or other identifying data), and such amendment shall be binding on Lessor and Lessee unless Lessee objects thereto within fifteen (15) days after receiving notice of the amendment from Lessor.
- c. Interpretation: The provisions of this Agreement shall be deemed to be independent and severable. The invalidity or partial invalidity of any one provision or portion of this Agreement under the laws of any jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement. The captions and headings set forth herein are for convenience of reference only and shall not define or limit any of the terms hereof.
- d. Notices: Notices hereunder shall be in writing and addressed to the other party at that party's address stated herein or such other address as provided by notice hereunder and shall be effective: (i) upon the next business day, if sent by guaranteed overnight express service (such as Federal Express); (ii) on the same day, if personally delivered; or (iii) three (3) days after mailing if sent by certified or registered U.S. mail, postage prepaid and addressed to the other party.
- e. Legal Matters:
- i. Governing Law: This Lease shall be governed by, and shall be interpreted pursuant to the substantive laws of, the State of Utah without regard to choice of law rules.
- ii. Waiver of Jury Trial: LESSEE HEREBY UNCONDITIONALLY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, OR ARISING OUT OF, OR RELATING, DIRECTLY OR INDIRECTLY, IN ANY WAY TO THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS BETWEEN LESSEE AND LESSOR (OR ANY ASSIGNEE OF LESSOR) RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN LESSEE AND LESSOR (OR ITS ASSIGNEE). THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, TO ANY RELATED DOCUMENTS, AND TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTION WHICH IS THE SUBJECT OF THIS AGREEMENT OR ANY RELATED TRANSACTION. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.
- iii. Jurisdiction; Venue; Self-Authentication: Each party to this Agreement irrevocably submits itself to the personal jurisdiction of state and federal courts located in Salt Lake County, Utah. The jurisdiction and venue of any action for enforcement or interpretation of this Agreement shall lie solely with those courts, and each party waives any objection that it might have to jurisdiction or venue. Each party acknowledges that minimum contacts exist between that party and the state of Utah relating to this Agreement. This Agreement and every Schedule and other document or instrument relating to it is self-authenticating within the scope and meaning of Rule 902(9), Utah Rules of Evidence, dealing with commercial paper, signatures thereon, and documents relating thereto.
- f. Binding Effect: Lessee hereby represents and warrants that the Agreement was duly authorized, executed and delivered by Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee. The provisions of this Agreement shall inure to the benefit of and shall bind Lessor and Lessee and their respective permitted successors and assigns.
- g. Financing Statements and Fees: Lessee authorizes Lessor to file one or more initial financing statements and amendments describing the Equipment and appoints Lessor as Lessee's attorney-in-fact (coupled with an interest) to execute any such financing statements if Lessee's signature is required in any relevant jurisdiction. Lessee will cooperate with Lessor in protecting Lessor's interests in the Equipment, the Lease and the amounts due under the Lease, including, without limitation, the authentication

and delivery of Uniform Commercial Code statements and filings and other documents reasonably requested by Lessor. Lessee shall pay all costs of filing any initial financing statements, continuation or termination statements or amendments with respect to the Equipment and/or the Lease, including without limitation any intangibles tax, documentary stamp tax or other similar tax or charge relating thereto; and Lessee shall pay all costs of all UCC or other lien searches deemed necessary or advisable by Lessor. Lessee will do whatever may be necessary or advisable to have a statement of the interest of Lessor in the Equipment noted on any certificate of title relating to the Equipment and will deposit said certificate with Lessor. Lessee will execute and deliver to Lessor such other documents and written assurances and take such further action as Lessor may request to more fully carry out the implementation, effectuation, confirmation and perfection of the Lease and any rights of Lessor thereunder. Lessee grants to Lessor a security interest in all deposits and other property transferred or pledged to Lessor to secure the payment and performance of all Lessee's obligations under the Lease. Further to protect Lessor's interest in the Equipment, Lessee shall make the Equipment available for a pre-funding inspection. Lessee shall pay all costs associated with such inspection. If Lessee defaults hereunder, then Lessor shall automatically be constituted as Lessee's attorney-in-fact (coupled with an interest) for the purpose of carrying out the provisions of this section.

h. Opinion of Counsel: Upon request, Lessee shall provide to Lessor an opinion of its counsel as to Lessee's legal standing, the authorization and execution of this Agreement and other documents, the enforceability of this Agreement against Lessee, and other matters reasonably requested.

i. Financial Statements: Within 15 days after Lessor's request, Lessee, and each guarantor shall provide to Lessor a copy of its annual audited financial statements (or, at Lessor's option, unaudited financial statements with corresponding tax returns if no audit is performed) and any quarterly or interim financial statements whether audited or unaudited. Lessee certifies and warrants that the financial data and the information which Lessee submits to Lessor in connection with this Agreement is, or will be, as appropriate, a true and complete statement of the matters therein contained. Furthermore, in view of the importance of timely submission of financial statements, the parties agree that if Lessee or any guarantor shall fail timely to comply with the requirements of this Section 19i, then whether or not Lessor shall elect to exercise its remedies upon default as allowed by Section 16, the Lessee's Purchase Option (as defined in Section 19m) shall automatically be extinguished and shall be replaced by the Lessee's obligation (the "Purchase Obligation") to purchase the Equipment for a sum equal to the greater of (i) ten percent of the Equipment's original cost or (ii) the Equipment's in-place fair market value, as defined in Section 19m. Said Purchase Obligation shall nonetheless be subject to the notification requirements of Section 19m; and all references in Section 19m to the "Purchase Option" shall mean the "Purchase Obligation."

j. Provisional Security Interest: In the event a court of competent jurisdiction or other governing authority shall determine that this Agreement is not a "true lease" or that Lessor (or its assigns) does not hold legal title to or is not the Owner of the Equipment, then this Agreement shall be deemed to be a security agreement with Lessee, as debtor, having granted to Lessor, as secured party, a security interest in the Equipment effective upon the earlier of the date of this Agreement or the filing of a financing statement, pursuant to Utah Code Ann. § 70A-9a-502(4), as amended, containing a collateral description sufficiently broad to include the Equipment within its coverage; and Lessor shall have all of the rights, privileges, and remedies of a secured party under the Utah Uniform Commercial Code.

k. Attorney Fees. Lessee shall reimburse Lessor for all charges, costs, expenses and reasonable attorney fees incurred by Lessor (a) in defending or protecting its interest in the Equipment; (b) in the execution, delivery, administration, amendment or enforcement of the Lease or the collection of any rent or other payments due under the Lease; (c) in any lawsuit or other legal or arbitration/mediation proceeding to which the Lease gives rise, including, without limitation, actions in tort; and (d) in connection with any bankruptcy case, stay relief measure or adversary proceeding in connection with any bankruptcy case.

l. UCC2A Matters: As to new Equipment, Lessee acknowledges that Lessor did not select, manufacture or supply the Equipment, that Lessor acquired the Equipment in connection with this Agreement (i.e., in connection with this lease), and that either (i) Lessee has received a copy of the contract by which Lessor acquired the Equipment, or (ii) Lessor has informed Lessee in writing (A) of the identity of the supplier, (B) that Lessee may have rights under said contract and may be entitled, under UCC2A, to the benefit of promises and warranties, including those of any third party, provided to Lessor by said supplier in connection with or as a part of the contract by which Lessor acquired the Equipment, and (C) that Lessee may and should contact the supplier to receive an accurate and complete description of such rights including any disclaimers or limitations on them or of the remedies thereunder. Lessee acknowledges that each Equipment Schedule executed pursuant to this Agreement shall qualify as and be a finance lease within the meaning of UCC2A.

m. Lessee's Options at End of Initial Period. At the end of the Initial Period of any Lease, but subject to notification requirements stated hereinafter, Lessee shall exercise one of the following options:

i. In-Place Fair Market Value Purchase. Lessee shall purchase the Equipment (the "Purchase Option") for its "In-Place Fair Market Value" as of the end of the Initial Period, upon the following terms: "In-Place Fair Market Value" ("In-Place Value") is defined as the price which a willing buyer (under no compulsion to buy) would pay and a willing seller (under no compulsion to sell) would accept for the Equipment as installed and in place as of the end of the Initial Period

(i.e., costs of de-installing and removing the Equipment from its location of use at the end of the Initial Period, and costs of moving the Equipment to a new location and installing it there, shall not be deducted from value). If Lessor and Lessee are unable, at least 120 days before the end of the Initial Period, to agree upon the Equipment's In-Place Value, the In-Place Value shall be determined by appraisal to be conducted by an appraiser mutually acceptable to the parties (and if the parties cannot agree upon an appraiser, each party shall select an appraiser, and the appraisers shall designate a third appraiser who shall perform the appraisal). Lessee shall cooperate reasonably with Lessor and the appraiser in facilitating the appraisal and shall reimburse Lessor for all expenses associated with the appraisal. Lessee shall pay for the Equipment, and concurrently therewith shall reimburse Lessor for all appraisal expenses, upon the later of the following dates: (a) the end of the Initial Period; or (b) ten days after Lessor shall deliver to Lessee an invoice for the In-Place Value as determined above and for the appraisal expenses. Upon completion of Lessee's purchase of the Equipment, Lessor shall deliver to Lessee a bill of sale transferring to Lessee all of Lessor's right, title and interest in and to the Equipment, **said transfer to be "as is, where is," without warranty express or implied, all implied warranties being expressly disclaimed; or**

ii. Extension. Lessee shall extend the Lease (the "Extension Option") for twelve months (the "Renewal Period") beyond the Initial Period upon the same terms governing the Initial Period (which terms shall include, but not be limited to, payment of Monthly Rental at the same rate provided in the Equipment Schedule and provision of notification of exercise of an end-of-period option); or

iii. Return of Equipment. At Lessee's sole expense, Lessee shall return the Equipment to Lessor (the "Return Option") at a location within the continental United States specified by Lessor; provided that this option shall be available only if all of the following conditions shall have been met before the end of the Initial Period: (a) all Monthly Rental, late charges, taxes, interest, penalties and all other sums owing under the subject Equipment Schedule shall have been paid; (b) all requirements of Sections 6(d), 6(e) and 7(c) of this Agreement shall have been met; and (c) Lessor and Lessee shall have entered into a new Equipment Schedule for the lease of new equipment having an original cost of not less than the Equipment which is the subject of the existing Equipment Schedule, such lease to be on terms which (i) shall be no less favorable (from a commercially reasonable standpoint) to Lessor than the terms of the existing Equipment Schedule and (ii) shall provide a rate of return to Lessor which shall be reasonably consistent with the rates of return negotiated by Lessor on reasonably similar transactions with other lessees commencing during the 60-day period immediately before the end of the Initial Period.

Exercise of the foregoing options shall be subject strictly to the following procedures: At least 180 days, but not more than 240 days, before the expiration of the Initial Period, Lessee shall provide notice to Lessor (by certified U.S. mail, postage prepaid and return receipt requested) specifying the option which Lessee elects. Notwithstanding any assignment which Lessor may have made of some or all of its interest in the Equipment Schedule, Lessee shall provide the notice to ACC Capital Corporation in addition to providing notice to any assignee of ACC Capital Corporation. If Lessee shall fail to provide timely notice of election of the Purchase Option or the Return Option, such failure shall constitute Lessee's irrevocable election of the Extension Option. At the end of the Renewal Period arising out of election of the Extension Option, and subject to the same notification requirements applicable to the Initial Period, Lessee shall exercise one of the options applicable to the end of the Initial Period, and all references to "Initial Period" shall in that context mean "Renewal Period." Lessee's failure to provide timely notice of election of the Purchase Option or the Return Option at the end of such Renewal Period shall constitute election of the Extension Option for another Renewal Period of 12 months. The effect of this provision is that unless and until Lessee shall provide timely notice of exercise of the Purchase Option or the Return Option, the Extension Option shall automatically be in effect from 12-month period to 12-month period.

n. Multiple Lessees: Lessee and all parties comprising Lessee are jointly and severally responsible and liable to Lessor under this Agreement. Lessor may, with the consent of any one of the Lessees hereunder, modify, extend or change any of the terms hereof without consent or knowledge of the others, without in any way releasing, waiving or impairing any right granted to Lessor against the others.

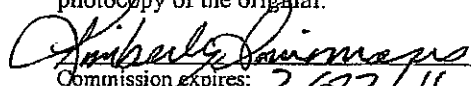
IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement effective as of the day and year first above written. **LESSEE ACKNOWLEDGES THAT EVERY PROVISION OF THIS AGREEMENT HAS BEEN DULY NEGOTIATED, READ, AND ACCEPTED BY LESSEE AND THAT EACH PROVISION IS OF BARGAINED-FOR SIGNIFICANCE.**

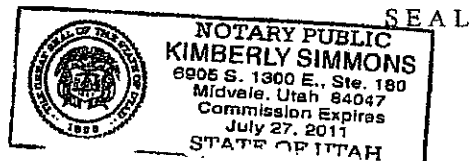
LESSOR: ACC Capital Corporation  
By: Will B. Sutton  
Title: CFO

LESEEE: Allied Health Services, Inc.  
FEIN or SS No.: 22-2278835  
By: Charles K. Aronoff  
Title: Pres.

State of Utah )  
 )ss  
County of Salt Lake )

On this 13<sup>th</sup> day of February, 2009, I certify that the preceding document is a true, exact, complete and unaltered photocopy of the original.

 Notary Public  
Commission expires: 7/27/11





SECRETARY'S CERTIFICATE

I, Sherrill Mulligan, do hereby certify that I am the  Secretary  Assistant Secretary of Allied Health Care Services, Inc., a corporation duly organized and existing under the laws of the State of New Jersey ("Corporation"); that I am the keeper of the seal of the Corporation and Corporation records, including, without limitation, the Charter, By-Laws and the minutes of the Board of Directors of the Corporation; that the following is an accurate and compared transcript of the resolutions contained in the minute book of the Corporation, which resolutions were duly adopted and ratified at a meeting of the Board of Directors of the Corporation duly convened and held in accordance with the By-Laws and Charter of the Corporation on 4/05/2007, at which time a quorum was present and acted throughout; and that said resolutions have not in any way been modified, repealed or rescinded, but are in full force and effect:

"RESOLVED, that any officer of the Corporation be and is hereby authorized and empowered in the name of and on behalf of this Corporation to enter into one or more lease agreements with ACC Capital Corporation concerning personal property leased to the Corporation; from time to time to modify, supplement or amend any such agreements; and to do and perform all other acts and things deemed by such officer to be necessary, convenient or proper to carry out any of the foregoing; and be it

FURTHER RESOLVED, that any of the aforesaid officers, or his or her duly elected or appointed successor in office, be and is hereby authorized and empowered to do any acts, including but not limited to the mortgage, pledge, grant of security interest or hypothecation from time to time to ACC Capital Corporation of or in any or all assets of this Corporation to secure such leases; and to execute, in the name and on behalf of this Corporation, any instruments or agreements deemed necessary or proper by ACC Capital Corporation in respect of the collateral securing any obligations of this Corporation; and to affix the seal of this Corporation to any mortgage, pledge security agreement or other such instrument if so required or requested by ACC Capital Corporation; and be it

FURTHER RESOLVED, that all that any officer shall have done or may do in connection with the matters outlined above is hereby ratified and approved; and be it

FURTHER RESOLVED, that the foregoing resolutions shall remain in full force and effect until written notice of their amendment or rescission shall have been received by ACC Capital Corporation and that receipt of such notice shall not affect any action taken or advances made by ACC Capital Corporation prior thereto, and ACC Capital Corporation is authorized to rely upon said resolutions until receipt by it of written notice of any change; and be it

FURTHER RESOLVED, that the Secretary be and is hereby authorized and directed to certify to ACC Capital Corporation that the foregoing resolutions and the provisions thereof are in conformity with the Charter and By-Laws of this Corporation."

I do further certify that the Master Lease Agreement entered into by the Corporation and ACC Capital Corporation is an agreement referred to in said resolutions and was duly executed pursuant thereto and there are no restrictions imposed by the Charter or By-Laws of the Corporation restricting the power or authority of the Board of Directors of the Corporation to adopt the foregoing resolutions or upon the Corporation or its officers to act in accordance therewith.

I do further certify that the following are names and specimen signatures of officers of the Corporation empowered and authorized by the above resolutions, each of whom has been duly elected to hold and currently holds the office of the corporation set opposite his or her name:

Name	Office	Signature
<u>Charles K. Schwartz</u>	<u>President</u>	<u>[Signature]</u>
_____	_____	_____
_____	_____	_____

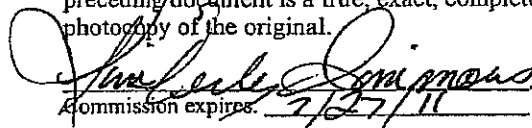
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Corporation on 4/05  
2007

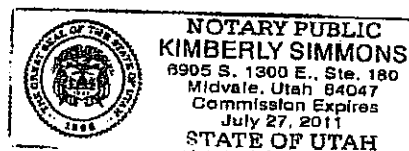
CORPORATE SEAL

Sherrill Mulligan  
(Assistant) Secretary

State of Utah )  
 )ss  
County of Salt Lake )

On this 13<sup>th</sup> day of February, 2009, I certify that the preceding document is a true, exact, complete and unaltered photocopy of the original.

 Notary Public  
Commission expires: 7/27/11



SEAL

# **EXHIBIT B**

**Guaranty**

To: ACC Capital Corporation  
1787 E. Fort Union Blvd. Suite 200  
Salt Lake City, UT 84121

Each of us (sometimes referred to as a "Guarantor") severally requests you (sometimes referred to as "Lessor") to extend credit to or to lease property to or to purchase security agreements, leases, notes, accounts and or other obligations (herein generally termed "paper") of or from or otherwise to do business with the following named individual, individuals or entity:

Allied Health Services, Inc.	Orange	New Jersey
Company	City	State

hereinafter called the "Company," regardless of whether the "Company" is one or more individuals or an entity; and to induce you so to do and in consideration thereof and of acknowledged benefits to each of us therefrom, each of us, as a primary obligor and jointly and severally with any other guarantor or guarantors, unconditionally guarantees to you that the Company will fully and promptly pay and perform all its present and future obligations to you, whether direct or indirect, joint or several, absolute or contingent, secured or unsecured, matured or unmatured and whether originally contracted with you or otherwise acquired by you, irrespective of any invalidity or unenforceability of any such obligation or the insufficiency, invalidity or unenforceability of any security therefor; and agrees, without your first having to proceed against the Company or to liquidate paper or any security for any such obligation (including but not limited to any leased property), to pay on demand all sums due and to become due to you from the Company and all losses, costs, attorneys' fees and other expenses (whether incurred with or without suit and regardless of the forum, including recourse in connection with any bankruptcy case or adversary proceeding) which may be suffered by you by reason of the Company's default or default of any of the undersigned hereunder; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper and/or security or leased property held, with or without notice to us. This guaranty is an unconditional guarantee of payment, performance and discharge of all obligations of the Company to you, including but not limited to obligations represented or evidenced by any master lease agreement, any equipment schedule, any security agreement, any interim or progress funding agreement, or any document or instrument executed in connection with any of the foregoing. No guarantor shall be released or discharged, either in whole or in part, by your failure or delay to perfect or continue the perfection of any security interest in any property which secures the obligations of the Company or any of us to you, or to protect the property covered by such security interest.

No termination hereof shall be effected by the death of any or all of us. No termination shall be effective except by notice sent to you by certified mail (return receipt requested) naming a termination date effective not less than 90 days after the receipt of such notice by you; or effective as to any of us who has not given such notice; or affect any transaction entered into prior to the effective date of termination.

Each of us waives: notice of acceptance hereof; presentment, demand, protest and notice of nonpayment or protest as to any note or lease or obligation signed, accepted, endorsed or assigned to you by the Company; any and all rights of subrogation; reimbursement, indemnity, exoneration, contribution or any other claim which any of us may now or hereafter have against the Company or any other person directly or contingently liable for the obligations guaranteed hereunder, or against or with respect to the Company's property (including, without limitation, property collateralizing its obligations to you), arising from the existence or performance of this guaranty; all exemptions and homestead laws; any and all demands and notices required by law; all setoffs and counterclaims; and any and all defenses based on suretyship or any other applicable law, including without limitation all rights and defenses arising out of (i) an election of



remedies by you even though that election of remedies may have destroyed rights of subrogation and reimbursement against the Company by operation of law or otherwise, (ii) protections afforded to the Company pursuant to anti-deficiency or similar laws limiting or discharging the Company's obligations to you, (iii) the invalidity or unenforceability of this guaranty, (iv) the failure to notify any of us of the disposition of any property securing the obligations of the Company, (v) the commercial reasonableness of such disposition or the impairment, however caused, of the value of such property, and (vi) any duty on your part (should such duty exist) to disclose to any of us any matter, fact or thing related to the business operations or condition (financial or otherwise) of the Company or its affiliates or property, whether now or hereafter known by you.

You may at any time and from time to time, without our consent, without notice to us and without affecting or impairing the obligations of any of us hereunder, take any one or more of the following actions, your rights being cumulative:

- (a) renew, extend (including extensions beyond the original term of the respective item of paper), modify, release or discharge any obligations of the Company, of its customers, of co-guarantors (whether hereunder or under a separate instrument) or of any other party at any time directly or contingently liable for the payment of any of said obligations;
- (b) accept partial payments of said obligations;
- (c) accept new or additional documents, instruments or agreements relating to or in substitution of said obligations;
- (d) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of said obligations and the security therefor in any manner;
- (e) consent to the transfer or return of the security and/or take and hold additional security or guaranties for said obligations;
- (f) amend, exchange, release or waive any security or guaranty; or
- (g) bid and purchase at any sale of paper or security and apply any proceeds or security, and direct the order and manner of sale. If a claim is made upon you at any time for repayment or recovery of any amount(s) or other value received by you, from any source, in payment of or on account of any of the obligations of the Company guaranteed hereunder and you repay or otherwise become liable for all or any part of such claim by reason of:
  - (a) any judgment, decree or order of any court or administrative body having competent jurisdiction; or
  - (b) any settlement or compromise of any such claim,

we shall remain jointly and severally liable to you hereunder for the amount so repaid or for which you are otherwise liable to the same extent as if such amount(s) had never been received by you, notwithstanding any termination hereof or the cancellation of any note or lease or other agreement evidencing any of the obligations of the Company. This guaranty shall bind our respective heirs, administrators, representatives, successors, and assigns, and shall inure to your successors and assigns, including, but not limited to, any party to whom you may assign any item or items of paper, we hereby waiving notice of any such assignment. All of your rights are cumulative and not alternative.

Within 15 days after Lessor's request, each Guarantor shall provide to Lessor a copy of its

most recent annual audited financial statements with corresponding tax returns (or, at Lessor's option, unaudited financial statements with corresponding tax returns if no audit is performed) and any quarterly or interim financial statements whether audited or unaudited. Each Guarantor certifies and warrants that the financial data and the information which Guarantor submits to Lessor in connection with this Guaranty is, or will be, as appropriate, a true and complete statement of the matters therein contained.

BY EXECUTION OF THIS GUARANTY, EACH GUARANTOR WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ON ANY MATTER WHATSOEVER ARISING OUT OF, IN CONNECTION WITH, OR RELATED TO THIS GUARANTY .

In the event of any lawsuit concerning this Guaranty or its enforcement, each Guarantor submits to the exclusive jurisdiction of the District Court of the Third Judicial District in and for Salt Lake County, Utah, and each Guarantor acknowledges that minimum contacts exist with that jurisdiction. This Guaranty shall be interpreted and enforced in accordance with the laws of the State of Utah without regard to conflicts laws. This Guaranty is self-authenticating within the scope and meaning of Rule 902(9), Utah Rules of Evidence, relating to commercial paper, signatures thereon, and documents relating thereto.

Executed this 5th day of APRIL, 2007

Guarantor: Charles K. Schwartz

Charles K. Schwartz  
Signature of Guarantor

CHARLES K SCHWARTZ  
[Full name of Guarantor]

37 TIMBERLINE DR SPARTA NJ 0787  
Residence Address of Guarantor (street address, city, state and zip code)

158-48-3334  
Social Security Number

State of New Jersey )  
County of ESSEX )ss

On April 5th, 2007 before me, Sherrie L. Mulligan  
(Notary's Name)  
Notary Public in and for said county, personally appeared Charles K. Schwartz,  
(Signer)

who, has satisfactorily identified him/her as the signer of the above-referenced Guaranty.

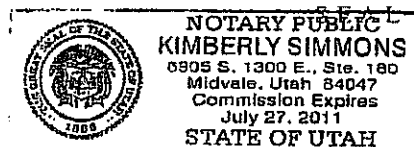
Sherrie L. Mulligan  
(Notary Signature)

(Affix Notary Stamp Here)

State of Utah )  
 )ss  
County of Salt Lake )

On this 13<sup>th</sup> day of February, 2009, I certify that the preceding document is a true, exact, complete and unaltered photocopy of the original.

*Kimberly Simmons* Notary Public  
Commission expires: 7/27/11



# **EXHIBIT C**

EQUIPMENT SCHEDULE

MASTER LEASE AGREEMENT NO. 21331  
EQUIPMENT SCHEDULE NO. 9

SCHEDULE DATE: February 6, 2009

To Master Lease Agreement ("Master Lease") dated April 2, 2007, between ACC Capital Corporation, as Lessor, and Allied Health Care Services, Inc., as Lessee.

1. Equipment:  

All Equipment described on Exhibit A attached hereto, together with all parts, accessories, attachments, substitutions, repairs, improvements and replacements and any and all proceeds thereof, including without limitation, insurance proceeds.
2. Equipment Cost: \$1,000,000.50
3. Equipment Location: 89 Main Street, Orange, NJ 07051
4. Acceptance Date: 2/09/09
5. Commencement Date: The Commencement Date shall be as defined in Section 2b of the Master Lease.
6. Initial Period: forty-eight (48) months from Commencement Date.
7. Monthly Rental: Lessee shall pay Monthly Rental in the sum of \$24,520.00 (plus applicable sales/use tax, if any), payable first and last payments in advance, to Lessor. Lessee shall pay interim rent as provided in Section 4a of the Master Lease. Effective as of the Commencement Date (or as of the Assignment Date, if earlier), the Monthly Rental shall be increased proportionately to any increase occurring between the Schedule Date and the Commencement Date in the yields of the four (4) year U.S. Treasury Notes or Interest Rate SWAPS, whichever is greater, at a rate of 2.34% as quoted in the editions of the Wall Street Journal published on the Schedule Date and the Commencement Date, respectively (if more than one yield is quoted, the highest quote shall be used). As of the Commencement Date, the Monthly Rental shall be fixed for the Initial Period and any extension; provided, however, that if the Assignment Date occurs after the Commencement Date, then effective as of the Assignment Date, the Monthly Rental shall again be increased proportionately to any increase occurring between the Commencement Date and the Assignment Date in the yields of four (4) year U.S. Treasury Notes or Interest Rate SWAPS, whichever is greater, at a rate of 2.34%, as quoted in the editions of the Wall Street Journal published on the Commencement Date and the Assignment Date, respectively (if more than one yield is quoted, the highest quote shall be used). As soon as practicable after the effective date of each adjustment made in accordance with this paragraph, Lessor shall provide Lessee with written notice of the increase; Lessor's calculations shall be conclusive absent manifest error.
8. Finance Lease; True Lease: Lessor and Lessee acknowledge that this Schedule, and the Master Lease as applied to this Schedule, together constitute a "finance lease" under the

Utah Uniform Commercial Code – Leases, for all of the reasons set forth in Section 191 of the Master Lease. Lessor and Lessee further acknowledge that the transaction represented by this Schedule, and by the Master Lease as applied to this Schedule, constitutes a lease within the meaning and contemplation of Utah Code Ann. § 70A-1-201(37).

9. Additional Provisions: Notwithstanding anything to the contrary in Section 19m., at the end of the Initial Period, Section 19m(iii) shall not apply to the terms of Schedule No. 9 to Master Lease Agreement No. 21331.

10. Master Lease: This Schedule is issued pursuant to the Master Lease. All of the terms and conditions of the Master Lease are incorporated herein by reference. By their execution and delivery of this Schedule, the parties hereby reaffirm all of the terms and conditions of the Master Lease, except to the extent, if any, modified hereby. Terms used in this Schedule shall have the meanings given them in the Master Lease unless the context clearly suggests a different meaning.



This is Counterpart No. 1 of 1 serially numbered, manually executed counterparts. To the extent that this document constitutes chattel paper under the Uniform Commercial Code, no security interest in this document may be created through the transfer and possession of any counterpart other than Counterpart No. 1.

LESSOR: ACC Capital Corporation

LESSEE: Allied Health Care Services, Inc.

BY:

[Signature]  
(signature)

BY:

[Signature]  
(signature)

TITLE:

VP

TITLE:

Pres

**EXHIBIT A**

**Lease No. 21331**  
**Schedule No. 9**

**Equipment Location:** 89 Main Street  
Orange, NJ 07051

**Equipment Description:** All Equipment described herein together with all parts, accessories, attachments, substitutions, repairs, improvements and replacements and any and all proceeds thereof, including without limitation, insurance proceeds.

**Two Hundred (200)** LifeCare Products PLV 102 Home Care Ventilators with the following serial numbers:

153859 thru 153865; 153868 thru 153876; 153880 thru 153884; 153887 thru 153899; 153902 thru 153917; 153919 thru 153929; 153931 thru 153940; 153943 thru 153952; 153955 thru 153967; 153969 thru 153974; 154067 thru 154083; 154087 thru 154104; 154109 thru 154125; 154127 thru 154137; 154139; 154141 thru 154150; 154152 thru 154153; 154155 thru 154156; 154158 thru 154160; 154162 thru 154163; 154165 thru 154179; 154182; 154184

*Lessee hereby authorizes Lessor to amend the documents and any applicable Uniform Commercial Code Financing Statement to include serial numbers for the Equipment as they become available.*

Initials: 

TERMINATION VALUE  
----- SCHEDULE -----  
( in lieu of rent )

Template filename ..... Direct - Lease Template - 01-14-03  
 Template path ..... F:\corporate\ivory\items\direct - lease template - 01-14-03.tem  
 Comment ..... Allied Health, Schedule #2

date	termination value	termination value % of basis
Mar-01-09	1,150,000.00	115.00000000
Apr-01-09	1,113,703.18	111.37031814
May-01-09	1,101,790.05	110.17900508
Jun-01-09	1,089,739.03	108.97390303
Jul-01-09	1,077,548.52	107.75485239
Aug-01-09	1,065,216.92	106.52169173
Sep-01-09	1,052,742.58	105.27425770
Oct-01-09	1,040,123.85	104.01238512
Nov-01-09	1,027,359.07	102.73590686
Dec-01-09	1,014,446.54	101.44465386
Jan-01-10	1,001,384.55	100.13845511
Feb-01-10	988,171.38	98.81713763
Mar-01-10	974,805.26	97.48052641
Apr-01-10	961,284.44	96.12844443
May-01-10	947,607.13	94.76071264
Jun-01-10	933,771.50	93.37714989
Jul-01-10	919,775.73	91.97757293
Aug-01-10	905,617.96	90.56179643
Sep-01-10	891,296.33	89.12963286
Oct-01-10	876,808.93	87.68089256
Nov-01-10	862,153.84	86.21538366
Dec-01-10	847,329.12	84.73291207
Jan-01-11	832,332.81	83.23328144
Feb-01-11	817,162.93	81.71629318
Mar-01-11	801,817.46	80.18174637
Apr-01-11	786,294.38	78.62943779
May-01-11	770,591.62	77.05916184
Jun-01-11	754,707.11	75.47071056
Jul-01-11	738,638.74	73.86387357
Aug-01-11	722,384.38	72.23843808
Sep-01-11	705,941.89	70.59418881
Oct-01-11	689,309.08	68.93090799
Nov-01-11	672,483.75	67.24837535
Dec-01-11	655,463.68	65.54636806
Jan-01-12	638,246.61	63.82466069
Feb-01-12	620,830.25	62.08302523
Mar-01-12	603,212.31	60.32123103
Apr-01-12	585,390.45	58.53904474
May-01-12	567,362.30	56.73623033
Jun-01-12	549,125.49	54.91254909
Jul-01-12	530,677.59	53.06775943
Aug-01-12	512,016.17	51.20161704
Sep-01-12	493,138.75	49.31387480
Oct-01-12	474,042.83	47.40428267
Nov-01-12	454,725.88	45.47258776
Dec-01-12	435,185.34	43.51853424
Jan-01-13	415,418.63	41.54186331
Feb-01-13	395,423.13	39.54231319
Mar-01-13	400,000.00	40.00000000

Termination values are due in lieu of any  
advance or arrears rent due on the same date.



### Certification and Acknowledgment of Signatures

Lease No. 21331 - 9

I, Charles K. Schwartz, hereby certify and acknowledge that in connection with the above referenced lease agreement between ACC Capital Corporation and Allied Health Care Services, Inc. I have executed the following documents (and if executed in a representative capacity, I acknowledge that I signed in behalf of the entity represented, by proper authority, and in the position or title stated), and I certify that each of these documents carries my true signature:

Initials

- Equipment Schedule
- Exhibit A
- Certificate of Acceptance
- Hold Harmless Agreement
- Insurance Information
- ACH
- Certification and Acknowledgment of Signatures
- Tax Exemption Certificate

Signature Charles K. Schwartz

Printed Name: Charles K. Schwartz

SSN: 158-48-3334

State of New Jersey )

County of: ESSEX ) ss.

The foregoing instrument was acknowledged before me this 14th day of FEB, 2009, by Charles K. Schwartz, the President of Allied Health Care Services, Inc.

Sherrie L. Mulligan  
(Notary Signature)

[Seal]

Residing at: 391 Woodside Terrace No.  
My Commission Expires: 2/2010



# **EXHIBIT D**

**NOTICE AND ACKNOWLEDGMENT OF ASSIGNMENT**

February 13, 2009

Lessee: **Allied Health Care Services, Inc.**

Re: Equipment Schedule No. 9 dated February 6, 2009 to Master Equipment Lease Agreement No. 21331 dated April 2, 2007 by and between ACC Capital Corporation, as Lessor (the "Lessor"), and Allied Health Care Services, Inc., as Lessee (the "Lessee") (the "Lease")

Gentlemen:

Notice is hereby given that Lessor has sold and assigned the Lease, the equipment leased thereunder ("Equipment") and all rents and other sums due and to become due thereunder to **Kingsbridge Holdings, LLC** ("Owner").

Lessee is hereby directed, and by signature below, consents to such assignments, and commencing **April 1, 2009** (the "Rent Assignment Date") agrees to pay directly to Owner at its address shown below, until Owner instructs Lessee otherwise in writing, all rents and other payments required to be paid by Lessee under the terms of the Leases, including, without limitation, all rents, stipulated loss value payments, accelerated payments upon default, casualty and insurance loss payments, termination payments, applicable late charges, attorneys' fees and expenses of collection and enforcement of the Lease, and all other sums due and to become due under the Lease (collectively, the "Payments"). Lessee agrees to remit all Payments to:

**Kingsbridge Holdings, LLC,  
150 N. Field Dr, Suite 193,  
Lake Forest, IL 60045**

Lessee, by signature below, certifies and confirms to Owner, and agrees as follows:

1. As of the Rent Assignment Date, the following rents remain due under the Lease and Lessee agrees to pay all such rents directly to Owner on their respective due dates: forty-six (46) equal monthly rent payments of **\$24,520.00** each, commencing on April 1, 2009 and continuing on the first day of each month thereafter, ending with the payment due on January 1, 2013.
2. That the aforesaid rentals are the firm, fixed rentals due under the Lease are not subject to any adjustment.
3. That Lessee's obligation to make the Payments to Owner is absolute and unconditional, and Lessee will pay directly to Owner all Payments without regard to, and shall not assert against Owner, any claim, defense, counterclaim, recoupment, setoff or right to cancel or terminate the Lease which Lessee may have against Lessor, or any other party. Nothing herein shall be deemed to relieve Lessor or Owner of any of their obligations to Lessee under the Lease.
4. That the Equipment is in Lessee's possession at the address specified in the Lease, and that the Equipment has been fully and finally accepted by duly authorized representatives of Lessee as the Equipment under the Lease.

5. Lessee warrants and represents to the Owner that the Lease and Agreement represent the sole agreements between Lessor and Lessee respecting the Equipment, the rentals and all other payments due and to become due under the Lease.

6. That the Lease is in full force and effect, that Lessee will not modify or consent to any modification of the terms of the Lease without the prior written consent of Owner, and that any such modification shall be ineffective without Owner's prior written consent, which shall not be unreasonably withheld.

7. That neither Lessee nor, to Lessee's knowledge, Lessor or Owner, has breached the Lease in any respect and that all Payments due under the Lease have been and will continue to be paid in strict accordance with the terms of the Lease.

8. That all representations and duties of Lessor or Owner intended to induce Lessee to enter into the Lease whether required by the Lease or otherwise have been fulfilled.

9. That Lessee has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease, the Payments, or the Equipment.

10. Lessee covenants to Owner and agrees that no sublease, assignment or transfer by Lessee shall in any manner impair, diminish or relieve the Lessee of its primary obligations under the Lease, including its obligation to make all Payments directly to Owner, the terms of the Lease notwithstanding.

11. Lessee agrees that Owner is entitled to the benefits of each and every right accorded Lessor in the Lease, including, without limitation, remedies, inspection rights, indemnity rights, right to give consent, right to receive casualty payments and payment of costs and expenses incurred in exercising rights and remedies under the Lease, and the right to receive notices and other documents required to be furnished under the Lease.

12. Lessee acknowledges that the Lease was executed in counterparts, and Lessee further acknowledges notice from Lessor that the Owner has received the only executed counterpart of the Lease marked "Secured Party's Original", and that said original is the only counterpart of the Lease constituting "chattel paper" under the Uniform Commercial Code and sufficient to transfer the lessor's rights in the Lease and Payments.

13. To the extent permitted by applicable law, Lessee hereby waives any and all rights and remedies conferred upon a lessee by sections 2A-508 through 2A-522 of the Uniform Commercial Code as adopted in Illinois, including, but not limited to, Lessee's rights to: (i) cancel or repudiate this Lease; (ii) reject the Equipment or revoke acceptance of the Equipment; (iii) recover damages from Lessor for any breaches of warranty or for any other reason; (iv) a security interest in the Equipment in Lessor's possession or control for any reason; (v) deduct all or part of any claimed damages resulting from Lessor's default, if any, under this Lease; (vi) accept partial delivery of the Equipment; (vii) "cover" by making any purchase or lease or contract to purchase or lease Equipment in substitution for those due from Lessor; (viii) recover any general, special, incidental, or consequential damages, for any reason whatsoever; and (ix) specific performance, replevin, detinue, sequestration, claim, and delivery of the like for any Equipment identified to this Lease. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor's damages hereunder or which may otherwise limit or modify any of Lessor's rights or remedies hereunder.

Except as specifically amended and modified hereby, all of the terms and conditions of the Lease shall stand and remain unchanged and in full force and effect.

**ACC CAPITAL CORPORATION, Lessor**

**KINGSBRIDGE HOLDINGS, LLC, Owner**

By: [Signature]

By: [Signature]

Title: VP

Title: Co. Chief Executive Officer

Date: 2/17/09

Date: 2/23/09

Lessee hereby acknowledges and certifies that the above-described terms, conditions and representations are accurate and true, that Lessee will make the Payments herein stipulated directly to Owner, and that it is duly authorized and empowered to execute and deliver this Notice of Assignment ("Notice"). Lessee further acknowledges that the Owner is relying on Lessee's statements, certifications, covenants, representations and warranties contained herein.

**Allied Health Care Services, Inc., Lessee**

By: [Signature]

Title: Pres.

Date: 2/14/09