

CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

Laser Spine Institute, LLC ¹	Case No. 2019-CA-2762
CLM Aviation, LLC	Case No. 2019-CA-2764
LSI HoldCo, LLC	Case No. 2019-CA-2765
LSI Management Company, LLC	Case No. 2019-CA-2766
Laser Spine Surgery Center of Arizona, LLC	Case No. 2019-CA-2767
Laser Spine Surgery Center of Cincinnati, LLC	Case No. 2019-CA-2768
Laser Spine Surgery Center of Cleveland, LLC	Case No. 2019-CA-2769
Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Consolidated Case No:
2019-CA-2762

To:

Soneet Kapila,

Division L

Assignee.

**ASSIGNEE'S MOTION FOR ORDER APPROVING STANDSTILL
AGREEMENT WITH HIGHWOODS REALTY LIMITED PARTNERSHIP**

Assignee, Soneet Kapila of KapilaMukamal, as assignee of LSI Management Company, LLC (“Assignee”), by and through his undersigned attorneys, hereby moves the Court for the entry

¹ At a hearing held on March 22, 2019, the Court administratively consolidated this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

of an order approving the Assignee's entry into a Standstill Agreement, attached to this motion (the "**Motion**") as **Exhibit A**, with Highwoods Realty Limited Partnership (the "**Tampa Landlord**"). The Standstill Agreement, *inter alia*, provide the parties with a breathing spell to work to sell the assets in place at the leased facility. In support of this motion, the Assignee states as follows:

Background

1. On March 14, 2019, LSI Management Company, LLC ("**LSI Management**") executed and delivered an assignment for the benefit of creditors to the Assignee. The Assignee filed a Petition with the Court on March 14, 2019, commencing an assignment for the benefit of creditors proceeding pursuant to Section 727 of the Florida Statutes. The Assignee also filed Petitions commencing fifteen other assignment for the benefit of creditors proceedings for fifteen affiliates of LSI Management (the "**Assignment Cases**").

2. The Tampa Landlord is the owner of the real property located at 5223 Avion Park Drive, Tampa, Florida 33607 (the "**Premises**"). On August 12, 2014, LSI Management and the Landlord entered into a Medical Office Lease dated August 12, 2014 (as amended, the "**Lease**") whereby the Tampa Landlord leased the Premises to LSI Management. From the Premises, LSI Management and its affiliated companies (collectively referred to "**Laser Spine Institute**") operated a state-of-the-art medical facility specializing in minimally invasive spinal surgeries until operations ceased shortly before the filing of the Assignment Cases. The Assignee now owns the many items of sophisticated medical equipment used by Laser Spine Institute to perform the surgeries and provide medical care to the patients, as well as many other items of tangible personal property.

3. The Assignee's duties include the disposition of these assets and the evaluation of unexpired leases of nonresidential real property to determine which of them are financially burdensome to the assignment estate. The Assignee has identified that, absent a Standstill Agreement with the Tampa Landlord, the Lease would be financially burdensome and require immediate rejection of the Lease and vacation of the Premises.

4. The Assignee and the Tampa Landlord are currently engaged in discussions towards cooperative effort to market both the space and the equipment to medical users. A party entering into a lease of the Premises with the Tampa Landlord and at the same time acquiring title to the personal property owned by the Assignee could re-start operations almost immediately, conferring value on both parties. In order to facilitate this collaborative effort, the parties have agreed to enter into the Standstill Agreement, a copy of which is attached hereto as Exhibit A. The material terms of the Standstill Agreement are summarized below:²

- a. The Tampa Landlord will abate and not charge or accrue rent or other fees to the Assignee or the assignment estate for the Term of the Standstill Agreement.
- b. The Assignee will leave the tangible personal property on the Premises while the Tampa Landlord and the Assignee work to pursue a collaborative sale-lease transaction with a third party.

² The summary provided below is controlled in all respects by the written agreement attached as Exhibit A to this Motion. Unless otherwise defined herein, capitalized terms shall have the same meaning ascribed to them in the Standstill Agreement.

- c. The Term of the Standstill Agreement extends until it is terminated by either the Tampa Landlord or the Assignee upon notice as provided in the Standstill Agreement. In the event of termination by the Tampa Landlord, the Assignee will have a period of time to vacate the Premises, during such period the estate will be charged storage rent based on then-prevailing fair market storage rate.

Relief Requested and Memorandum of Law

3. The Assignee seeks the Court's approval of the Standstill Agreement, which the Assignee believes is in the best interest of the assignment estates. The Standstill Agreement allows the Assignee to avoid incurring significant administrative expense claims related to the Premises, and also allows the Tampa Landlord and the Assignee to pursue a collaborative lease-sale process to maximize the value received by both parties.

4. Although Chapter 727 does not expressly require Court approval of the Assignee's entry into post-assignment agreements, Court approval is a negotiated condition of the Standstill Agreement. Section 727.110 of the Florida Statutes certainly permits the Court to approve the Standstill Agreement, as the statute allows the Court to "exercise any other powers that are necessary to enforce or carry out the provisions of this Chapter." Fla. Stat. § 727.110(15).

5. The Court's approval of the Standstill Agreement will conserve estate resources and allow the Assignee to maximize value for the tangible personal property located in at the Premises, which will benefit the creditors of the assignment estate.

WHEREFORE, the Assignee respectfully requests the Court enter an order in the form attached hereto as **Exhibit B** (a) granting this Motion; (b) approving the Standstill Agreement effective as of the date of execution, and (c) granting such other relief as is just and proper.

Certificate of Good Faith Conference

Pursuant to Business Court Procedure 3.7, the undersigned has conferred with counsel for the Tampa Landlord, and certifies that counsel has no objection to entry of an order granting the Motion.

Dated: April 3, 2019

/s/ Edward J. Peterson
Harley E. Riedel (FBN 183628)
Edward J. Peterson (FBN 0014612)
Matthew B. Hale (FBN 0110600)
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Suite 200
Tampa, Florida 33602
Telephone: (813) 229-0144
Facsimile: (813) 229-1811
Email: hriedel@srbp.com; epeterson@srbp.com
mhale@srbp.com
Counsel for Assignee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing *Motion for Order Approving Standstill Agreement with Highwoods Realty Limited Partnership* has been furnished on this 3rd day of April, 2019 by the Court's electronic system to all parties receiving electronic service.

/s/ Edward J. Peterson

Edward J. Peterson

EXHIBIT A

STANDSTILL AGREEMENT

This Standstill Agreement (the "Agreement") is made this ^{26th} day of March, 2019, by and between HIGHWOODS REALTY LIMITED PARTNERSHIP, a North Carolina limited partnership ("Landlord"), and SONEET KAPILA, as Assignee ("Kapila") of LSI Management Company, LLC (the "Assignor") and various related entities pursuant to Chapter 727 of the Florida Statutes.

WHEREAS, Landlord is the owner of the real property located at 5223 Avion Park Drive, Tampa, Florida 33607 (the "Premises"); and

WHEREAS, Assignor and Landlord entered into a Medical Office Lease dated August 12, 2014 (as amended, the "Lease") whereby Landlord leased the Premises to Assignor; and

WHEREAS, on March 14, 2019, the Assignor and fifteen related companies, executed and delivered assignments for the benefit of creditors to the Assignee; and

WHEREAS, Kapila filed Petitions with the Court for the Assignor and the related companies on March 14, 2019, commencing proceedings pursuant to Section 727 of the Florida Statutes (the "Assignment Cases"); and

WHEREAS, pursuant to the assignments, Kapila is the owner of tangible personal property located at 5223 Avion Park Drive, Tampa, Florida 33607; and

WHEREAS, Kapila also owns or controls certain intangible property related to the businesses of the Assignees, which generally operated under the name of "Laser Spine Institute;" and

WHEREAS, Kapila may also have, by virtue of the assignment, rights under various leases of tangible personal property located on the Premises; and

WHEREAS, one of Kapila's duties as Assignee is to reject unexpired leases of nonresidential real property that are financially burdensome to the assignment estate; and

WHEREAS, as a protective measure and not in derogation of this Agreement, Landlord has sent or intends to send a notice of termination of the Lease (the "Termination Notice"); and

WHEREAS, as a protective measure and not in derogation of this Agreement, Kapila has filed a motion in the Assignment Cases to reject the Lease (the "Rejection Motion"); and

WHEREAS, Landlord and Kapila have each been approached by parties (each a "Prospective Purchaser") expressing an interest in (1) acquiring title to the tangible and intangible property associated with the Laser Spine Institute business and now owned by Kapila, either in order to reestablish the business under new ownership or to commence a medical business of some other form, and (2) entering into a new lease with Landlord for the Premises that would allow the Prospective Purchaser to use the tangible personal property in its present location and

maximize the value of the intangible property acquired from Kapila (such process is referred to as a “Collaborative Sale-Lease Transaction”) ; and

WHEREAS, Landlord is or may also become engaged in discussions with potential tenants and purchasers who might use the Premises for purposes other than a medical business;

WHEREAS, Landlord and Kapila believe that it is in their best interest to maintain the status quo for their mutual benefit for a limited period of time to allow them to investigate a Collaborative Sale-Lease Transaction for a user of the space for medical and/or other lawful purposes, subject to termination by either party upon notice as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties agree:

1. During the term of this Agreement (the “Term”), which will commence on the date this Agreement has been executed and delivered by both parties (the “Effective Date”) and will continue through the date this Agreement is terminated by either party as provided below, Kapila agrees to leave the tangible personal property in its current location but reserves the right to dispose of the tangible personal property other than as part of a Collaborative Sale-Lease Transaction following notice as set forth below. Within three business days following the Effective Date, Kapila shall also obtain the written consent of Texas Capital Bank (the “Bank”), which holds a lien on such property, to forego during the pendency of this Agreement any rights it has to remove or repossess such property. If Kapila does not secure the Bank’s written consent within three business day following the Effective Date, then this Agreement will be voidable by Landlord, at its election, upon written notice to Kapila unless Kapila secures the Bank’s consent prior to Landlord’s delivery of such notice. During the Term, Kapila shall not prosecute the Rejection Motion.

2. During the Term, Landlord agrees to abate and not charge or accrue rent or other fees to Kapila, but it reserves the right to begin charging rent following notice as set forth in Section 5 below. During the Term and, if applicable, the Disposition Period (as defined below), Landlord shall not seek a Judgment of Eviction or Writ of Possession for the Premises.

3. Both parties shall reasonably cooperate to establish a process to implement a Collaborative Sale-Lease Transaction. Without limiting the foregoing, Landlord shall have complete access to the Premises to show the Premises to prospective lessees, purchasers and their respective representatives under supervision. During the Term and, if applicable, the Disposition Period, Kapila shall likewise have access to the Premises. Kapila shall maintain the Premises in good condition and repair and shall comply with the Assignor’s obligations under the Lease with respect to its use and occupancy of the Premises, including, without limitation, the indemnity and insurance obligations; however, Kapila shall not be obligated to pay rent other than as provided in Section 5 below. In addition, in recognition that Prospective Purchasers may require confidentiality and/or non-disclosure agreements, the parties agree that they shall endeavor to obtain consent from such Prospective Purchasers to include the other in the negotiations.

4. Should Kapila determine that the prospects of recovery from an in-place sale of the personal property do not justify the continued delay occasioned in the pursuit of a Collaborative Sale-Lease Transaction, or should Kapila receive notice from the Bank of its intent to exercise rights to its collateral, Kapila may give Landlord written notice of the termination of this Agreement, at which time the rent abatement shall immediately cease as to all future rent.

5. Should Landlord determine that the prospects of re-leasing the Premises as part of a Collaborative Sale-Lease Transaction do not justify continued rent abatement, Landlord may give Kapila written notice of the termination of this Agreement, and the rent abatement shall cease on the fifth business day following the giving of such notice. After the fifth business day has expired, Kapila shall have no more than 60 calendar days to remove the tangible personal property from the Premises, which removal may be accomplished in whole or in part by an on-site auction (the "Disposition Period"), during which Kapila shall pay Landlord storage rent based on then-prevailing fair market storage rates within a radius of twenty miles from the Premises, based upon at least three quotes. Kapila shall use his best efforts, consistent with his fiduciary duties, to accomplish the removal within forty (40) days and shall furnish Landlord with a written plan of removal within fifteen (15) days after receipt of the notice. Upon expiration of the Disposition Period, unless otherwise extended by mutual written agreement of the parties, Kapila shall vacate the Premises and deliver possession of the Premises to Landlord in the same condition required of Assignor under the Lease.

6. Except as set forth above, all parties shall retain their respective rights.

7. The Parties may execute this Agreement in counterparts. Each executed counterpart will be considered an original, and all of them together will constitute the same agreement.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue for the enforcement of this Agreement shall be the Circuit Court in for the Thirteenth Judicial Circuit of Florida.

9. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assignees, or transferees.

10. Any notice, or other document or demand, required or permitted under this Agreement shall be given as follows:

If to LANDLORD:

Highwoods Realty Limited Partnership
Attn: Lease Administrator
3111 W. Dr. MLK Blvd., #300
Tampa, FL 33607

With copy to:

Eric E. Ludin, Esquire
ENGLANDER FISCHER
721 1st Avenue North
St. Petersburg, Florida 33701
Email: ELudin@eflegal.com

If to KAPILA:

Soneet Kapila
KapilaMukamal
1000 South Federal Highway, Suite 200
Fort Lauderdale, FL 33316
Email: skapila@kapilaco.com

With copy to:

Harley E. Riedel
Edward J. Peterson
Stichter, Riedel, Blain & Postler, P.A.
110 E. Madison Street, Ste. 200
Tampa, Florida 33602
Email: hriedel@srbp.com
epeterson@srbp.com

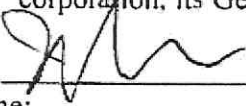
11. Although Kapila believes that this Agreement may be within the ordinary course of his duties and not require Court approval, he nonetheless agrees that this Agreement shall be subject to approval by the Court in this Assignment proceeding and that any order approving this Agreement shall direct the parties to comply with their obligations as set forth herein. Accordingly, Kapila shall promptly file a motion seeking such approval. Until such time as the Court has approved the Agreement and entered the order as described above, this Agreement shall be effective but shall be voidable by either party in the event that no Court order within thirty days of the Effective Date.

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first above written.

HIGHWOODS REALTY LIMITED
PARTNERSHIP, a North Carolina limited
partnership

By: Highwoods Properties, Inc., a Maryland
corporation, its General Partner

By: 
Name: _____
Its: **Jeffrey D. Miller**
Executive Vice President

SONEET KAPILA, as Assignee of LSI
Management Company, LLC


By: 
Name: **Soneet Kapila**
Its: **Assignee for Benefit of
Creditors**

EXHIBIT B

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION

In re:

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Laser Spine Surgical Center, LLC	Case No. 2019-CA-2770
Laser Spine Surgery Center of Pennsylvania, LLC	Case No. 2019-CA-2771
Laser Spine Surgery Center of St. Louis, LLC	Case No. 2019-CA-2772
Laser Spine Surgery Center of Warwick, LLC	Case No. 2019-CA-2773
Medical Care Management Services, LLC	Case No. 2019-CA-2774
Spine DME Solutions, LLC	Case No. 2019-CA-2775
Total Spine Care, LLC	Case No. 2019-CA-2776
Laser Spine Institute Consulting, LLC	Case No. 2019-CA-2777
Laser Spine Surgery Center of Oklahoma, LLC	Case No. 2019-CA-2780

Assignors,

Division L

to

Consolidated Case No: 2019-CA-2762

Soneet Kapila,

Assignee,

**ORDER GRANTING ASSIGNEE'S
MOTION FOR ORDER APPROVING STANDSTILL
AGREEMENT WITH HIGHWOODS REALTY LIMITED PARTNERSHIP**

THIS CASE came on for an hearing on _____, 2019 at _____ (the
“**Hearing**”) upon the *Assignee's Motion for Order Approving Standstill Agreement with*

¹ At a hearing held on March 22, 2019, the Court administratively consolidated this case with the assignment cases of the following entities: LSI Management Company, LLC; Laser Spine Institute Consulting, LLC; CLM Aviation, LLC; Medical Care Management Services, LLC; LSI HoldCo, LLC; Laser Spine Surgical Center, LLC; Laser Spine Surgery Center of Arizona, LLC; Laser Spine Surgery Center of Cincinnati, LLC; Laser Spine Surgery Center of St. Louis, LLC; Laser Spine Surgery Center of Pennsylvania, LLC; Laser Spine Surgery Center of Oklahoma, LLC; Laser Spine Surgery Center of Warwick, LLC; Laser Spine Surgery Center of Cleveland, LLC; Total Spine Care, LLC; and Spine DME Solutions, LLC.

Highwoods Realty Limited Partnership (the “**Motion**”). The Court, having considered the Motion and being fully advised of the record, finds that the Motion is well taken should be granted.

Accordingly, it is

ORDERED:

1. The Motion is granted.
2. The Standstill Agreement with Highwoods Realty Limited Partnership is approved effective as of the date of its execution.
3. The parties are directed to comply with their obligations as set forth in the Standstill Agreement.

DONE AND ORDERED in Hillsborough County, Florida this _____ day of March, 2019.

Steven Scott Stephens
Circuit Court Judge

Copy to:
Counsel of record