

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

In re:

Laser Spine Institute, LLC.<sup>1</sup>  
CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC

Case No. 2019-CA-2762  
Case No. 2019-CA-2764  
Case No. 2019-CA-2765  
Case No. 2019-CA-2766  
Case No. 2019-CA-2767  
Case No. 2019-CA-2768  
Case No. 2019-CA-2769  
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Case No. 2019-CA-2773  
Case No. 2019-CA-2774  
Case No. 2019-CA-2775  
Case No. 2019-CA-2776  
Case No. 2019-CA-2777  
Case No. 2019-CA-2780

Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

\_\_\_\_\_  
LSI Management Company, LLC

Case No. 2019-CA-2766

Applicable Assignor.

\_\_\_\_\_

**ASSIGNEE'S MOTION TO APPROVE SETTLEMENT  
AGREEMENT WITH HIGHWOODS REALTY LIMITED PARTNERSHIP**

<sup>1</sup> On April 8, 2019, the Court entered an order administratively consolidating 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 (the "Assignors").

**NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING**

**TO CREDITORS AND OTHER INTERESTED PARTIES:**

**PLEASE TAKE NOTICE** that, pursuant to Section 727.111(4) of the Florida Statutes, the Assignee may enter into and consummate the settlement described herein, and the Court may consider these actions without further notice or hearing unless a party in interest files an objection within 21 days from the date this paper is served. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 800 E. Twiggs Street, Tampa, Florida 33602, or electronically if electronic filing is required, and serve a copy on the Assignee's attorney, Edward J. Peterson, Esq., at 110 East Madison Street, Suite 200, Tampa, Florida 33602, and any other appropriate person.

**If you file an objection within the time permitted, the Court shall schedule a hearing and notify you of the scheduled hearing.**

**If you do not file an objection within the time permitted, the Assignee and the Court will presume that you do not oppose the granting of the relief requested in this paper.**

Soneet Kapila, as assignee ("**Assignee**") for the benefit of the creditors of the Assignors (defined below), by and through his undersigned attorneys, hereby files this motion pursuant to Florida Rule of Civil Procedure 1.100(b) and Section 727.109(7) of the Florida Statutes, for approval of a settlement reached between the Assignee and Highwoods Realty Limited Partnership ("**Highwoods**"), which resolves certain claims asserted by Highwoods against the LSI Assignment Estate. In support of this motion (the "**Motion**"), the Assignee states as follows:

**Background**

1. On August 12, 2014, Highwoods, as landlord, and LSI Management, LLC ("**LSI Management**") as tenant, entered into that certain Medical Office Lease, as amended (collectively, the "**Lease**"), with respect to the lease of the building located at 5332 Avion Park Drive, Tampa, Florida 33607 (the "**Premises**").

2. On March 14, 2019, 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.<sup>2</sup>

3. On March 26, 2019, the Assignee and Highwoods entered into that certain Standstill Agreement with respect to the Lease.

4. On November 15, 2019, the Assignee filed in the Assignment Case the *Assignee's Motion for Order Authorizing Rejection of Tampa, Florida Lease* (the “**Motion to Reject**”), seeking the Assignment Court’s authorization to reject the Lease.

5. On November 22, 2019, in response to the Motion to Reject, Highwoods filed in the Assignment Case the *Highwoods Realty Limited Partnership Response to Assignee's Motion for Order Authorizing Rejection of Tampa, Florida Lease* (the “**Highwoods Response**”), in which Highwoods asserted that the Assignee had failed to fulfill its obligations under the terms of the Lease, including the removal from the Premises of certain Non-Standard Improvements (as defined in the Lease).

6. Based on discussions between the Assignee and Highwoods, Highwoods indicated it would assert an administrative claim in the assignment case for payment of the costs it expected to incur to remove such Non-Standard Improvements, which could total in excess of \$1 million based on estimates provided by Highwoods (the “**Claim**”).

7. On December 20, 2019, in reply to the Highwoods Response and the Claim, the Assignee filed the *Assignee's Reply to Highwoods Realty Limited Partnership Response to Assignee's Motion for Order Authorizing Rejection of Tampa, Florida Lease, disputing the Claim*

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<sup>2</sup> Simultaneous with the filing of the assignment case for LSI Management Company, LLC, the Assignee filed fifteen other Petitions commencing assignment for the benefit of creditors proceedings for 15 affiliates of the Applicable Assignor.

(the “**Assignee’s Reply**”). The Assignee disputes the legal basis for the Claim, the amount of the Claim, and maintains that the Claim is not entitled to administrative expense priority.

### **Relief Requested**

8. To avoid the cost and uncertainty of litigation, the Assignee and Highwoods have agreed to settle their disputes in connection with the Claim. Under the settlement, the Assignee has agreed to pay to Highwoods, from funds on hand in the LSI Assignment Estates in an account titled in the name of Texas Capital Bank, National Association (“**TCB**”), the sum of \$150,000.00 (the “**Settlement Payment**”). Upon Highwoods’ receipt of the Settlement Payment, the parties will provide one another a mutual release of liability, all as more fully set forth in the Settlement Agreement (the “**Settlement Agreement**” or the “**Agreement**”) attached hereto as **Exhibit A** and incorporated herein.

9. The Settlement Payment is being paid from cash collateral of TCB. TCB, as Administrative Agent, on behalf of itself, its affiliates, and the lenders in connection with certain extensions of credit to the Assignors, has consented to the settlement.

10. The Settlement Agreement is subject to entry of a Court order approving its terms and conditions, which are summarized as follows:<sup>3</sup>

- a. Settlement Payment. Within ten (10) business days of the entry by the Assignment Court in the Assignment Case of the Approval Order, the Assignee shall cause to be paid to Highwoods, by check or wire transfer, from funds on hand in the LSI Assignment Estate in an account titled in the name of TCB, the Settlement Payment.
- b. Release by the Assignee of Highwoods. As a material inducement for Highwoods to enter into this Agreement and as consideration for the releases to be provided, effective

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<sup>3</sup> This summary is provided only for convenience. The express terms of the Settlement Agreement will control over this summary in all respects. Unless otherwise defined herein, capitalized terms shall have the same meanings ascribed to them in the Settlement Agreement.

upon the receipt by Highwoods of the Settlement Payment, the Assignee, on behalf of the LSI Assignment Estate, hereby remises, releases, acquits, satisfies, and forever discharges Highwoods (including Highwoods' attorneys, agents, successors and assigns), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, costs (including attorneys' fees, expert fees, and out-of-pocket expenses), pre and post-judgment interest, obligations, losses, loss of services, expenses, compensation, judgments, executions, claims and demands whatsoever, in law or in equity, which the Assignee ever had, now has, or which any personal representative, successor, heir or assign of the Assignee, hereafter can, shall or may have, against Highwoods, for matters related to, arising out of, or in connection with the Assignment Case.

- c. Release by Highwoods of the Assignee. As a material inducement for the Assignee to enter into this Agreement and as consideration for the releases to be provided, effective upon the receipt by Highwoods of the Settlement Payment, Highwoods hereby remises, releases, acquits, satisfies, and forever discharges the Assignee and the LSI Assignment Estate (including the Assignee's attorneys, professionals, agents, successors and assigns), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, costs (including attorneys' fees, expert fees, and out-of-pocket expenses), pre and post-judgment interest, obligations, losses, loss of services, expenses, compensation, judgments, executions, claims and demands whatsoever, in law or in equity, which Highwoods ever had, now has, or which any personal representative, affiliate, successor, heir or assign of Highwoods, hereafter can, shall or may have, against the Assignee or the LSI Assignment Estate, for matters related to, arising out of, or in connection with the Assignment Case.
- d. The Agreement shall become null, void and of no effect if either (i) the Approval Order is not entered by the Assignment Court in the Assignment Case within sixty (60)

days of the Effective Date, or (ii) the Assignee does not timely remit the Settlement Payment to Highwoods.

11. Section 727.109(7) of the Florida Statutes authorizes the Court to “hear and determine” a motion for the “settlement of a controversy.”

12. The Assignee, in an exercise of his business judgment, believes that the Settlement Agreement is in the best interest of the LSI Assignment Estate and its creditors. The compromise allows the Assignee to avoid the attendant cost and uncertainty of litigation. Although the Assignee disputes Highwoods’ entitlement to an administrative claim, the expense of litigation over the Claim coupled with the LSI Assignment Estate’s potential exposure to a large administrative expense claim weighs in favor of approving the Settlement Agreement. The settlement is fair and reasonable, and the Assignee submits that the Court should approve the Settlement Agreement.

13. This Motion seeking approval of the compromise or settlement of a controversy is properly served on negative notice pursuant to Section 717.111(4) of the Florida Statutes. Accordingly, absent any objection filed within the 21-day negative notice period, the Assignee seeks entry of an order approving this Motion without the need for a hearing.

WHEREFORE, the Assignee requests the Court enter an order granting this Motion, approving the Settlement Agreement, authorizing the Assignee to enter into the Settlement Agreement, and for such other and further relief as is just.

/s/ Matthew B. Hale

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: [epeterson@srbp.com](mailto:epeterson@srbp.com); [mhale@srbp.com](mailto:mhale@srbp.com)  
Counsel for Assignee

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Motion to Approve Settlement Agreement with Highwoods Realty Limited Partnership* has been furnished on this 20<sup>th</sup> day of March, 2020, by the Court's electronic system to all parties receiving electronic service, by either U.S. mail or electronic mail to the parties listed on the Limited Notice Parties list.

/s/ Matthew B. Hale

Matthew B. Hale

MASTER LIMITED NOTICE SERVICE LIST

July 16, 2019

**Assignors and Assignor's Counsel: (via the Court's electronic servicing system)**

CLM Aviation, LLC  
LSI HoldCo, LLC  
LSI Management Company, LLC  
Laser Spine Surgery Center of Arizona, LLC  
Laser Spine Surgery Center of Cincinnati, LLC  
Laser Spine Surgery Center of Cleveland, LLC  
Laser Spine Surgical Center, LLC  
Laser Spine Surgery Center of Pennsylvania, LLC  
Laser Spine Surgery Center of St. Louis, LLC  
Laser Spine Surgery Center of Warwick, LLC  
Laser Spine Institute, LLC  
Medical Care Management Services, LLC  
Spine DME Solutions, LLC  
Total Spine Care, LLC  
Laser Spine Institute Consulting, LLC  
Laser Spine Surgery Center of Oklahoma, LLC  
c/o Nicole Greensblatt, Esq.  
Kirkland & Ellis, LLP  
601 Lexington Avenue  
New York, NY 10022  
Email: [ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)

**Assignee and Assignee's Counsel (via the Court's electronic servicing system)**

Soneet Kapila  
c/o Stichter Riedel, Blain & Postler, P.A.  
Attn: Edward J. Peterson, Esq.  
110 E. Madison Street, Suite 200  
Tampa, Florida 33602

Soneet Kapila  
c/o Genovese Joblove & Battista, P.A.  
Attn: Greg Garno, Esq. and Paul Battista, Esq.  
100 Southeast Second Street, Suite 4400  
Miami, Florida 33131  
Email: [pbattista@gjb-law.com](mailto:pbattista@gjb-law.com), [ggarno@gjb-law.com](mailto:ggarno@gjb-law.com)



Soneet Kapila  
c/o Roche, McLean & Sbar, P.A.  
Attn: Robert Roche, Jonathan Sbar, Andrea Holder  
2309 S. MacDill Avenue  
Tampa, FL 33629  
Email: [roche@rmslegal.com](mailto:roche@rmslegal.com), [aholder@rmslegal.com](mailto:aholder@rmslegal.com), [jsbar@rmslegal.com](mailto:jsbar@rmslegal.com)

**Secured Creditors:**

CarePayment, LLC (MAIL RETURNED)  
5300 Meadow Rd., #400  
Lake Oswego, OR 97035

Steris Corporation  
5960 Heisley Rd.  
Mentor, OH 44060  
CIT Bank, N.A.  
10201 Centurion Pkwy., #400  
Jacksonville, FL 32256

Medport Billing, LLC (MAIL RETURNED)  
6352 S. Jones Blvd., #400  
Las Vegas, NV 89118

U.S. Bank Equipment Finance  
1310 Madrid St.  
Marshall, MN 56258

Maricopa County Treasurer  
c/o Peter Muthig, Esq.  
222 N. Central Ave., #1100  
Phoenix, AZ 85004  
Email: [muthigk@maco.maricopa.gov](mailto:muthigk@maco.maricopa.gov)

**Those Parties and Attorneys Formally Requesting Notice (via the Court's electronic servicing system unless otherwise noted)**

Highwoods Realty Limited Partnership  
c/o Eric E. Ludin, Esq.  
Tucker & Ludin, P.A.  
5235 16<sup>th</sup> Street North  
St. Petersburg, FL 33703-2611  
Email: [ludin@tuckerludin.com](mailto:ludin@tuckerludin.com); [erin@ludinlaw.com](mailto:erin@ludinlaw.com)

Terry and Sherry Legg  
c/o Colling Gilbert Wright & Carter, LLC  
801 N. Orange Avenue, Ste. 830  
Orlando, FL 32801  
Email: [JGilbert@TheFloridaFirm.com](mailto:JGilbert@TheFloridaFirm.com); [RGilbert@TheFloridaFirm.com](mailto:RGilbert@TheFloridaFirm.com);  
[CertificateofService@TheFloridaFirm.com](mailto:CertificateofService@TheFloridaFirm.com)

Joe Bailey; Mark Miller; Ted Suhl; Laserscopic Spinal Centers of America, Inc.; Laserscopic Medical Clinic, LLC; Laserscopic Surgery Center of Florida, LLC; Laserscopic Diagnostic Imaging; Laserscopic Spinal Center of Florida, LLC; and Tim Langford  
c/o Gunster, Yoakley & Stewart, P.A.  
401 E. Jackson Street, Ste 2500  
Tampa, FL 33602  
Email: [wschifino@gunster.com](mailto:wschifino@gunster.com) (primary)  
[kmather@gunster.com](mailto:kmather@gunster.com) (primary)  
[jbennett@gunster.com](mailto:jbennett@gunster.com) (primary)  
[cwarder@gunster.com](mailto:cwarder@gunster.com) (secondary)  
[tkennedy@gunster.com](mailto:tkennedy@gunster.com) (secondary)

Deanna Ali  
c/o Jessica Crane, Esq.  
Crane Law, P.A.  
13555 Automobile Blvd., Ste 560  
Clearwater, FL 33762  
Email: [Jessica@CraneLaw.com](mailto:Jessica@CraneLaw.com)

Heather Emby  
c/o Jessica Crane, Esq.  
Crane Law, P.A.  
13555 Automobile Blvd., Ste 560  
Clearwater, FL 33762  
Email: [Jessica@CraneLaw.com](mailto:Jessica@CraneLaw.com)

Deanna Ali  
c/o Kwall Barack Nadeau PLLC  
304 S. Belcher Rd. Ste C  
Clearwater, FL 33765  
Email: [rbarack@employeeerights.com](mailto:rbarack@employeeerights.com)  
[mnadeau@employeeerights.com](mailto:mnadeau@employeeerights.com)  
[Jackie@employeeerights.com](mailto:Jackie@employeeerights.com)

Heather Emby  
c/o Kwall Barack Nadeau PLLC  
304 S. Belcher Rd. Ste C  
Clearwater, FL 33765  
Email: [rbarack@employeeerights.com](mailto:rbarack@employeeerights.com)  
[mnadeau@employeeerights.com](mailto:mnadeau@employeeerights.com)  
[Jackie@employeeerights.com](mailto:Jackie@employeeerights.com)

Texas Capital Bank, N.A.  
c/o Trenam Kemker  
101 E. Kennedy Blvd., Ste 2700  
Tampa, FL 33602  
Primary Email: [slieb@trenam.com](mailto:slieb@trenam.com)  
Secondary Email: [mmosbach@trenam.com](mailto:mmosbach@trenam.com)  
Tertiary Email: [dmedina@trenam.com](mailto:dmedina@trenam.com)

DBF-LSI, LLC  
c/o Michael C. Markham, Esq.  
401 E. Jackson Street, Suite 3100  
Tampa, Florida 33602  
Email: [mikem@jpfirm.com](mailto:mikem@jpfirm.com); [minervag@jpfirm.com](mailto:minervag@jpfirm.com)

Shirley and John Langston  
c/o Donald J. Schutz, Esq.  
535 Central Avenue  
St. Petersburg, Florida 33701  
Email: [donschutz@netscape.net](mailto:donschutz@netscape.net); [don@lawus.com](mailto:don@lawus.com)

Jared W. Headley  
c/o Cameron M. Kennedy, Esq.  
Searcy Denney Scarola, et al  
517 North Calhoun Street  
Tallahassee, Florida 32301  
Email: [kennedyteam@searcylaw.com](mailto:kennedyteam@searcylaw.com); [cmk@searcylaw.com](mailto:cmk@searcylaw.com)

Deanna E. Ali  
c/o Brandon J. Hill, Esq.  
Wenzel Fenton Cabassa P.A.  
1110 N. Florida Avenue, Suite 300  
Tampa, Florida 33602  
Email: [bhill@wfclaw.com](mailto:bhill@wfclaw.com); [twells@wfclaw.com](mailto:twells@wfclaw.com)

MedPro Group  
c/o Jeffery Warren, Esq. and Adam Alpert, Esq.  
Bush Ross, P.A.  
P.O. Box 3913  
Tampa, FL 33601-3913  
Email: [jwarren@bushross.com](mailto:jwarren@bushross.com); [aalpert@bushross.com](mailto:aalpert@bushross.com);  
[mlinares@bushross.com](mailto:mlinares@bushross.com); [ksprehn@bushross.com](mailto:ksprehn@bushross.com)

Cosgrove Enterprises, Inc.  
c/o Walters Levine Lozano & Degrave  
601 Bayshore Blvd., Ste 720  
Tampa, Florida 33606  
Email: [hdegrave@walterslevine.com](mailto:hdegrave@walterslevine.com); [jduncan@walterslevine.com](mailto:jduncan@walterslevine.com)

Cherish Collins  
c/o Heather N. Barnes, Esq.  
The Yerrid Law Firm  
101 E. Kennedy Boulevard, Suite 3910  
Tampa, FL 33602  
Email: [hbarnes@yerridlaw.com](mailto:hbarnes@yerridlaw.com); [evento@yerridlaw.com](mailto:evento@yerridlaw.com)

Timothy Farley and Marilyn Farley  
c/o Heather N. Barnes, Esq.  
The Yerrid Law Firm  
101 E. Kennedy Boulevard, Suite 3910  
Tampa, FL 33602  
Email: [hbarnes@yerridlaw.com](mailto:hbarnes@yerridlaw.com); [evento@yerridlaw.com](mailto:evento@yerridlaw.com)

Holland & Knight, LLP  
c/o W. Keith Fendrick, Esq.  
Post Office Box 1288  
Tampa, Florida 33601-1288  
Email: [keith.fendrick@hkclaw.com](mailto:keith.fendrick@hkclaw.com); [andrea.olson@hkclaw.com](mailto:andrea.olson@hkclaw.com)

Kenneth Winkler  
c/o William E. Hahn, Esq.  
310 S. Fielding Ave.  
Tampa, FL 33606  
Email: [bill@whahn-law.com](mailto:bill@whahn-law.com); [Kelly@whahn-law.com](mailto:Kelly@whahn-law.com)

Ray Monteleone  
c/o Hill, Ward & Henderson, P.A.  
101 East Kennedy Boulevard  
Bank of America Plaza, Suite 3700  
Tampa, Florida 33601-2231  
[dennis.waggoner@hwhlaw.com](mailto:dennis.waggoner@hwhlaw.com); [julie.mcdaniel@hwhlaw.com](mailto:julie.mcdaniel@hwhlaw.com); [patrick.mosley@hwhlaw.com](mailto:patrick.mosley@hwhlaw.com);  
[tricia.elam@hwhlaw.com](mailto:tricia.elam@hwhlaw.com); [ghill@hwhlaw.com](mailto:ghill@hwhlaw.com); [jessica.simpson@hwhlaw.com](mailto:jessica.simpson@hwhlaw.com)

William Horne and WH, LLC  
c/o Hill, Ward & Henderson, P.A.  
101 East Kennedy Boulevard  
Bank of America Plaza, Suite 3700  
Tampa, Florida 33601-2231  
[dennis.waggoner@hwhlaw.com](mailto:dennis.waggoner@hwhlaw.com); [julie.mcdaniel@hwhlaw.com](mailto:julie.mcdaniel@hwhlaw.com); [patrick.mosley@hwhlaw.com](mailto:patrick.mosley@hwhlaw.com);  
[tricia.elam@hwhlaw.com](mailto:tricia.elam@hwhlaw.com); [ghill@hwhlaw.com](mailto:ghill@hwhlaw.com); [jessica.simpson@hwhlaw.com](mailto:jessica.simpson@hwhlaw.com)

Jonna Lemeiux  
Law Offices of Scott M. Miller  
Cambridge Square  
1920 Boothe Circle, Suite 100  
Longwood, Florida 32750  
[service@scottmillerlawoffice.com](mailto:service@scottmillerlawoffice.com); [amy@scottmillerlawoffice.com](mailto:amy@scottmillerlawoffice.com)

Robert Kimble, Administrator and Personal Rep of  
Estate of Sharon Kimble  
c/o Luis Martinez – Monfort  
400 North Ashely Drive, Suite 1100  
Tampa Florida 33602  
Primary Email: [lmmonfort@gbmmlaw.com](mailto:lmmonfort@gbmmlaw.com); [litigation@gbmmlaw.com](mailto:litigation@gbmmlaw.com)

Weiss Family Management, LLLP  
c/o V. Stephen Cohen, Esq.  
100 North Tampa Street, Suite 1900  
Tampa, FL 33602  
Primary: [scohen@bajocuva.com](mailto:scohen@bajocuva.com); [lheckman@bajocuva.com](mailto:lheckman@bajocuva.com)

Michael C. Weiss, D.O. **(via USPS mail)**  
Independent Orthopedics, P.A.,  
3225 South Macdill Avenue  
STE 129-348  
Tampa, FL 33629  
Cell: (954) 494-7995  
Cell: (954) 328-9441  
Email: [spinedoc@me.com](mailto:spinedoc@me.com); [partyplans2@aol.com](mailto:partyplans2@aol.com)

Robert P. Grammen  
William P. Esping  
James S. St. Louis, D.O.  
Michael W. Perry  
M.D., MMPerry Holdings, LLLC  
EFO Holdings, L.P.,  
EFO Genpar, Inc.  
EFO Laser Spine Institute, Ltd.  
BERGER SINGERMAN LLP  
350 East Las Olas Boulevard, Suite 1000  
Fort Lauderdale, Florida 33301  
Email: [drt@bergersingerman.com](mailto:drt@bergersingerman.com); [jwertman@bergersingerman.com](mailto:jwertman@bergersingerman.com);  
[guso@bergersingerman.com](mailto:guso@bergersingerman.com); [fsellers@bergersingerman.com](mailto:fsellers@bergersingerman.com)

Cystal and Leonard Tinelli  
c/o Donald J. Schutz, Esq.  
535 Central Avenue  
St. Petersburg, Florida 33701  
Email: [donschutz@netscape.net](mailto:donschutz@netscape.net); [don@lawus.com](mailto:don@lawus.com)

Dr. James St. Louis  
c/o Herbert Donica, Esq.  
Donica Law Firm, P.A.  
307 South Boulevard, Suite D  
Tampa, FL 33606  
Email: [herb@donicalaw.com](mailto:herb@donicalaw.com)

Jonathan Lewis  
c/o Peter A. Siddiqui, Esq.  
Katten Muchin Rosenman  
525 West Monroe Street  
Chicago, IL 60661-3693  
Email: [peter.siddiqui@kattenlaw.com](mailto:peter.siddiqui@kattenlaw.com)

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Assignors,

Consolidated Case No.  
2019-CA-2762

to

Soneet Kapila,

Division L

Assignee.

---

# EXHIBIT A

**ASSIGNEE'S MOTION TO APPROVE SETTLEMENT  
AGREEMENT WITH HIGHWOODS REALTY LIMITED PARTNERSHIP**

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (this “Agreement”) is made and entered into as of March 17, 2020 (the “Effective Date”), by and between (i) Soneet Kapila of KapilaMukamal, LLP, as assignee (the “Assignee”) for the benefit of creditors of LSI Management Company, LLC, a Florida limited liability company (“LSI”), on the one hand, and (ii) Highwood Realty Limited Partnership, a North Carolina limited partnership (“Highwoods”), on the other hand. The Assignee and Highwoods may be referred to herein each individually as a “Party” and collectively as the “Parties.”

### **Recitals**

WHEREAS, on August 12, 2014, Highwoods, as landlord, and LSI, as tenant, entered into that certain Medical Office Lease, as amended (collectively, the “Lease”), with respect to the lease of the building located at 5332 Avion Park Drive, Tampa, Florida 33607 (the “Premises”);

WHEREAS, on March 14, 2019, LSI and certain affiliated companies (collectively, the “Assignors”) assigned and conveyed all of their assets to the Assignee;

WHEREAS, on March 14, 2019, the Assignee filed a Petition Commencing Assignment for Benefit of Creditors in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida Civil Division (the “Assignment Court”), styled *In re: Laser Spine Institute, LLC, Assignor, to Soneet Kapila, Assignee*, Case No. 2019-CA-2762, Division L (the “Assignment Case”), resulting in the creation of assignment estates for each of the Assignors, including LSI (in the case of LSI, the “LSI Assignment Estate”);

WHEREAS, on March 26, 2019, the Assignee and Highwoods entered into that certain Standstill Agreement with respect to the Lease;

WHEREAS, on November 15, 2019, the Assignee filed in the Assignment Case the Assignee’s Motion for Order Authorizing Rejection of Tampa, Florida Lease (the “Motion to Reject”), seeking the Assignment Court’s authorization to reject the Lease;

WHEREAS, on November 22, 2019, in response to the Motion to Reject, Highwoods filed in the Assignment Case the Highwoods Realty Limited Partnership Response to Assignee’s Motion for Order Authorizing Rejection of Tampa, Florida Lease (the “Highwoods Response”), in which Highwoods asserted that the Assignee had failed to fulfill its obligations under the terms of the Lease, including the removal from the Premises of certain Non-Standard Improvements (as defined in the Lease) (the “Claim”);

WHEREAS, on December 20, 2019, in response to the Highwoods Response and the Claim, the Assignee filed the Assignee’s Reply to Highwoods Realty Limited Partnership Response to Assignee’s Motion for Order Authorizing Rejection of Tampa, Florida Lease, disputing the Claim;

WHEREAS, in an effort to avoid litigation in connection with the Claim, the Assignee has agreed to pay to Highwoods, from funds on hand in the LSI Assignment Estate in an account titled



in the name of Texas Capital Bank, National Association ("TCB"), the sum of \$150,000.00 (the "Settlement Payment");

WHEREAS, simultaneously with Highwood's receipt from the Assignee of the Settlement Payment, the Parties have agreed to provide to one another a mutual release of liability, all as more fully set forth herein (collectively, the "Settlement");

WHEREAS, TCB, as Administrative Agent, on behalf of itself, its affiliates and the lenders in connection with certain extensions of credit to the Assignors, has consented to the Settlement; and

WHEREAS, the Settlement is subject to the entry by the Assignment Court in the Assignment Case of an order approving the Settlement (the "Approval Order").

NOW THEREFORE, in consideration of the foregoing recitals and the respective covenants and agreements set forth in this Agreement, and for other good and valuable consideration, including the mutual promises, covenants and releases contained in this Agreement, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

#### Agreement

1. Recitals. The foregoing recitals are true and correct and are incorporated as material terms of this Agreement by this reference.

2. Motion to Approve. Within ten (10) business days of execution of this agreement, Assignee agrees to file a motion seeking approval of this Agreement and affirming rejection of the lease which motion will be promptly scheduled for hearing before the Assignment Court.

3. Settlement Payment. Within ten (10) business days of the entry by the Assignment Court in the Assignment Case of the Approval Order, the Assignee shall cause to be paid to Highwoods, by check or wire transfer, from funds on hand in the LSI Assignment Estate in an account titled in the name of TCB, the Settlement Payment.

4. Release by the Assignee of Highwoods. As a material inducement for Highwoods to enter into this Agreement and as consideration for the releases to be provided, effective upon the receipt by Highwoods of the Settlement Payment, the Assignee, on behalf of the LSI Assignment Estate, hereby remises, releases, acquits, satisfies, and forever discharges Highwoods (including Highwoods' attorneys, agents, successors and assigns), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, costs (including attorneys' fees, expert fees, and out-of-pocket expenses), pre and post-judgment interest, obligations, losses, loss of services, expenses, compensation, judgments, executions, claims and demands whatsoever, in law or in equity, which the Assignee ever had, now has, or which any personal representative, successor, heir or assign of the Assignee, hereafter can, shall or may have, against Highwoods, for matters related to, arising out of, or in connection with the Assignment Case.

5. Release by Highwoods of the Assignee. As a material inducement for the Assignee to enter into this Agreement and as consideration for the releases to be provided, effective upon the receipt by Highwoods of the Settlement Payment, Highwoods hereby remises, releases, acquits, satisfies, and forever discharges the Assignee and the LSI Assignment Estate (including the Assignee's attorneys, professionals, agents, successors and assigns), of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, costs (including attorneys' fees, expert fees, and out-of-pocket expenses), pre and post-judgment interest, obligations, losses, loss of services, expenses, compensation, judgments, executions, claims and demands whatsoever, in law or in equity, which Highwoods ever had, now has, or which any personal representative, affiliate, successor, heir or assign of Highwoods, hereafter can, shall or may have, against the Assignee or the LSI Assignment Estate, for matters related to, arising out of, or in connection with the Assignment Case.

2. Conditions to Effectiveness. This Agreement shall become null, void and of no effect if either (i) the Approval Order is not entered by the Assignment Court in the Assignment Case within sixty (60) days of the Effective Date, or (ii) the Assignee does not timely remit the Settlement Payment to Highwoods.

3. Admissibility of Agreement. The Parties agree that in the event of a breach of this Agreement by either of the Parties, this Agreement is admissible into evidence in any action to enforce this Agreement.

4. Authority; Binding Effect; Legality. Each of the Parties represents and warrants that:

(a) such Party has the requisite power and authority to execute and deliver this Agreement and the related documents to which such Party is a signatory;

(b) the execution and delivery of this Agreement by such Party has been duly authorized by all requisite action(s) and creates valid and binding obligations of such Party, enforceable in accordance with its terms;

(c) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, or other restriction of any governmental authority or conflict with, result in a breach of, or constitute a default under any contract, lease, license instrument, or other arrangement to which such Party is bound; and

(d) such Party is authorized to execute this agreement on behalf of its officers, directors, representatives, employees, agents, affiliates, subsidiaries, attorneys, insurers, successors, predecessors, and assigns.

5. Severability. If any provision, or the application of any provision, of this Agreement is held invalid, the invalidity shall not affect any other provision or application of the Agreement, which can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.



6. Sufficiency of Consideration. Each Party acknowledges that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release, obligation, agreement, and right contained in this Agreement.

7. Binding Agreement; Assignment. The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective executors, administrators, successors, assigns, officers, directors, shareholders, parents, subsidiaries, agents, servants, employees, related entities, and legal representatives.

8. No Transfer. Each Party represents and warrants that the entities signing this Agreement are the sole owners of the actual or alleged claims, demands, rights, causes of action, and other matters that are released under this Agreement; that such claims, demands, rights, causes of action, and other matters have not been assigned, transferred, or disposed of; and that such Party has the full right and power to grant, execute, and deliver the releases contained in this Agreement.

9. Complete Agreement. This Agreement is intended by the Parties as the final expression of their agreement concerning the subject matter of this Agreement and as a complete and exclusive statement of the terms and provisions of this Agreement. Nothing other than this Agreement shall be relevant or admissible to supplement, explain, or vary any of the terms and provisions as set forth in this Agreement. This Agreement cannot be amended, released, discharged, changed, modified, or terminated in any manner without the written consent of all the Parties.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts when taken together shall constitute one in the same Agreement. Photographic or scanned copies of such signed counterparts may be used in lieu of the originals for any purpose.

11. Litigation Expenses. If any Party seeks to enforce such Party's rights under this Agreement by legal proceedings or otherwise, the non-prevailing Party shall be responsible for the costs and expenses incurred by the prevailing party in connection with such proceedings, including without limitation attorneys' fees and witness fees.

12. Jurisdiction. The Parties hereby irrevocably consent that any legal action or proceeding solely with respect to this Agreement shall be brought in the Assignment Court, and, by execution and delivery of this Agreement, the Parties hereby irrevocably submit to and accept solely with regard to any such legal action or proceeding, generally and unconditionally, the exclusive jurisdiction of the Assignment Court. The Parties hereby irrevocably waive, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding solely with respect to this Agreement brought in such court, and hereby further irrevocably waive any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum.

13. Rules of Construction. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". Unless the context in which

used herein otherwise clearly requires, “or” has the inclusive meaning represented by the phrase “and/or”. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof, except where otherwise explicitly provided.

[Signature pages follow]

IN WITNESS WHEREOF, the Assignee has caused this Agreement to be executed as of the Effective Date.

Witnesses:

LSI Management Company, LLC,  
a Florida limited liability company

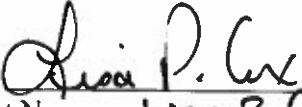

By: Christina Shwabery  
Print Name: Christina Shwabery

By: Jane Silva  
Print Name: Jane Silva

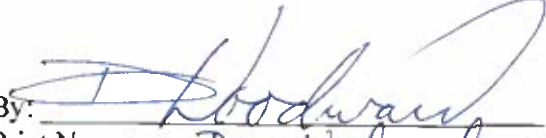
By: Soneet Kapila  
Soneet Kapila, as Assignee

IN WITNESS WHEREOF, Highwoods has caused this Agreement to be executed as of the Effective Date.

Witnesses:

By:   
Print Name: Lisa P. Cox  
By:   
Print Name: GEORGE SMITH

Highwood Realty Limited Partnership,  
a North Carolina limited partnership

By:   
Print Name: Dan Woodward  
As its: Vice President