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**ATTORNEYS FOR WEST SUMMIT INVESTMENTS, LP,  
DAVID G. GENECOV, AND LISA W. GENECOV**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

	)	
<b>IN RE:</b>	)	<b>CHAPTER 11 CASE</b>
	)	
<b>FOREST PARK MEDICAL CENTER AT FRISCO, LLC, Debtor.</b>	)	<b>15-41684-BTR</b>
	)	
	)	

**AMENDED LIMITED OBJECTION<sup>1</sup> TO EMERGENCY MOTION OF DEBTOR FOR ORDERS  
(1) APPROVING BIDDING PROCEDURES IN ADVANCE OF AUCTION, (2) AUTHORIZING  
THE ASSUMPTION, ASSIGNMENT AND SALE OF CERTAIN EXECUTORY CONTRACTS  
AND UNEXPIRED LEASES, (3) APPROVING SALE OF ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (4) SETTING RELATED  
DEADLINES AND HEARING AND (5) GRANTING RELATED RELIEF**

West Summit Investments, LP, David G. Genecov, and Lisa W. Genecov (collectively,  
“West Summit”), file this their Amended Limited Objection (this “Limited Objection”)<sup>2</sup> to

<sup>1</sup> This Amended Limited Objection amends and supersedes that certain Limited Objection to Emergency Motion of Debtor for Orders (1) Approving Bidding Procedures in Advance of Auction, (2) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (4) Setting Related Deadlines and Hearing and (5) Granting Related Relief, filed with this Court on February 15, 2015 [Docket No.451].

<sup>2</sup> This Limited Objection is being filed in an abundance of caution inasmuch as West Summit has expressed all of these concerns with the Debtor’s counsel on February 9, 2016, who then expressed the view that he supported the requested changes of West Summit to the proposed Sale Order on the Sale Motion. However, as of the filing of this Limited Objection, the Debtor’s counsel has been unable to reach agreement with counsel for Sabra Texas Holdings, L.P. (the “DIP Lender”), which has provided debtor-in-possession financing to the Debtor and is also the lessor under a certain real estate lease between itself and the Debtor.

Emergency Motion of Debtor for Orders (1) Approving Bidding Procedures in Advance of Auction, (2) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, (3) Approving Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (4) Setting Related Deadlines and Hearing and (5) Granting Related Relief (the "Sale Motion") [Docket No. 260], objecting to the Sale Motion, filed by the Debtor on October 26, 2015. In support of this Limited Objection, West Summit respectfully states as follows:

### **I. BACKGROUND**

1. On September 22, 2015 (the "Petition Date"), Forest Park Medical Center at Frisco, LLC (the "Debtor") filed its voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. An Official Committee of Unsecured Creditors was thereafter appointed in this case.

2. One or more members of West Summit is the guarantor under various capitalized leases/true financings of certain equipment used by the Debtor in the operation of its business, consisting of the following: (i) Olympus America, Inc. ("Olympus"); (ii) Texas Capital Bank, National Association ("Texas Capital Bank"); (iii) De Lage Landen Financial Services, the successor-in-interest to Karl Storz Capital ("De Lage Landen"); (iv) Commerce Bank ("Commerce Bank"); and (v) General Electric Capital Corporation ("General Electric") (collectively, the "Equipment Lenders"). Each of these Equipment Lenders properly filed its UCC-1 with the Texas Secretary of State, thereby properly perfecting its security interest in its respective equipment collateral (collectively, the "Equipment Collateral").<sup>3</sup> To the extent that the Equipment Lenders are paid in full, West Summit suffers no deficiency and has no claim against

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<sup>3</sup> In addition, the Debtor filed its Schedule D - Creditors Holding Secured Claims [Docket No. 230], which reflects the financings of (i) Texas Capital Bank; (ii) De Lage Landen; (iii) General Electric; (iv) Olympus; and (v) Commerce Bank. A true and correct copy of Schedule D is attached hereto as Exhibit "A" and is incorporated herein for all purposes.

the Debtor's estate. Moreover, pursuant to subrogation principles, West Summit has a contingent secured claim in all of the Equipment Collateral of the Equipment Lenders.

3. On November 14, 2015, the Debtor filed with this Court the Sale Motion. The hearing on the Sale Motion has been continued several times since the original date and is now set for hearing on February 18, 2016, at 10:30 a.m. Central Time.

4. On February 11, 2016, the Debtor filed with this Court the Asset Purchase Agreement, dated February \_\_\_\_, 2016 (the "Asset Purchase Agreement") [Docket No. 441], by and between the Debtor and Columbia Medical Center of Plano Subsidiary, L.P. (the "Buyer"). Under Section 2.5(a) of the Asset Purchase Agreement, the Buyer is committed to purchase the Assets<sup>4</sup> for a purchase price of \$19 million. The Assets include the Equipment Collateral.

5. Further, Section 2.5(b) of the Asset Purchase Agreement contemplates that at Closing the Buyer will pay the "Capital Lease Payoff" [sic]. "Capital Lease Payoffs" is defined as "the amount necessary to satisfy all monetary obligations of the Seller, whether past due or in the future, pursuant to the capital leases of the Seller listed on Schedule 1.1." Schedule 1.1 of the Asset Purchase Agreement lists the capitalized leases of the following Equipment Lenders: (i) Commerce Bank; (ii) General Electric; (iii) Olympus; and (iv) Texas Capital Bank.

6. The Debtor's counsel has informed West Summit's counsel that Schedule 1.1 will be amended to reflect that additional capitalized leases of De Lage Landen will be included on such Schedule<sup>5</sup>.

7. Given that the Buyer has agreed in the Asset Purchase Agreement to pay the

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<sup>4</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Asset Purchase Agreement.

<sup>5</sup> Instead of the Debtor providing to West Summit a revised Schedule 1.1, on Friday, February 12, 2016, the Debtor served a certain Notice of Proposed Assumption, Assignment and Cure Amount with Respect to Executory Contracts and Unexpired Leases Related to the Sale of the Assets of the Debtor (the "Notice") [Docket No. 442], listing Commerce Bank, Olympus America, and De Lage Landen as having executory contracts subject to assumption and assignment, completely inconsistent with the Debtor's prior filings.

Capital Lease Payoffs at Closing, West Summit has requested the following insert to the Sale Order, to adequately protect West Summit's interests and the interests of the Equipment Lenders (as defined below):

**ORDERED** that, as adequate protection of the interests of the following secured creditors: (i) Olympus America, Inc. ("Olympus"); (ii) Texas Capital Bank, National Association ("Texas Capital Bank"); (iii) De Lage Landen Financial Services, the successor in interest to Karl Storz ("De Lage Landen"); (iv) Commerce Bank ("Commerce Bank"); and (v) General Electric Capital Corporation ("General Electric") (each individually, an "Equipment Lender," and collectively, the "Equipment Lenders") and to resolve the objection of David G. Genecov, West Summit Investments, LP, and Lisa W. Genecov (collectively, "West Summit"), notwithstanding anything to the contrary in the Asset Purchase Agreement or in this Sale Order, after the Debtor has first paid in full all ad valorem taxes owed to the ad valorem taxing authorities, the Debtor shall, at Closing, next pay the proceeds of the Purchase Price received from the Purchaser from the sale of the Debtor's assets to satisfy in full in cash all of the claims of the Equipment Lenders, consistent with the below provisions; and it is further

**ORDERED** that the Debtor, acting through its Chief Restructuring Officer, is hereby authorized and directed to pay in full in cash to the Equipment Lenders their respective Equipment Lender Debt (as defined below) and to execute and deliver the payoff and release letters to each of the Equipment Lenders. The Debtor is hereby further authorized and directed to perform all acts, and execute and comply with the terms of such other documents, instruments, and agreements as the Equipment Lenders may reasonably require in connection with the payment of their respective Equipment Lender Debt; and it is further

**ORDERED** that promptly following the entry of this Sale Order, each of the Equipment Lenders shall provide the Debtor with a payoff and release letter, which sets forth the following, each as of the date of such payoff and release letter:

(a) The principal balance of the Debtor's obligations to the Equipment Lender, in respect of obligations or indebtedness owing by the Debtor to the Equipment Lender (inclusive of items (b), (c), (d), and (e) below, the "Equipment Lender Debt");

(b) The aggregate amount of accrued and unpaid interest owed to the Equipment Lender, with respect to the Equipment Lender Debt;

(c) The aggregate amount of accrued and unpaid reasonable attorneys' fees, costs, and expenses owed to the Equipment Lender with respect to the Equipment Lender Debt for which the Debtor is responsible (which aggregate shall be broken down by category), together with sufficient detail supporting the same;

(d) A per diem interest amount, with respect to the Equipment Lender Debt; and

(e) The aggregate of credits in reduction of the Equipment Lender Debt to which the Debtor is entitled (which aggregate shall be broken down by category).

Upon the receipt by the Equipment Lender of the proceeds of the wire transfer of all amounts owed to the Equipment Lender, constituting the amount of Equipment Lender Debt, any lien of the Equipment Lender on any asset of the Debtor shall be deemed terminated and of no force or effect, except that such liens shall attach to the "Attorneys' Fee Reserve" (as defined below); and it is further

**ORDERED** that the automatic stay is modified to authorize and permit the Debtor to pay in full in cash to each of the respective Equipment Lenders such amounts due and owing to each of the Equipment Lenders constituting the respective Equipment Lender Debt; and it is further

**ORDERED** that notwithstanding the payments to the Equipment Lenders as provided above, nothing herein shall waive the rights of the Debtor as to the validity, priority, perfection, or allowance of the claims or liens asserted by the Equipment Lender; provided, however, to the extent that such payments to the Equipment Lenders are not indefeasibly paid by the Debtor, the Debtor shall set aside, subject to the liens of the Equipment Lenders, 10% of the asserted claim to provide an adequate protection cushion (the "Attorneys' Fee Reserve") to satisfy the attorneys' fees, costs, and expenses of the respective Equipment Lenders to litigate their entitlement to the payment of their Equipment Lender Debt; and it is further

8. It is West Summit's understanding that, based upon Debtor's counsel's understanding of the Buyer's requirements to closing the sale transaction, the Debtor's counsel was supportive of such protective language being inserted into the Sale Order. However, due to Debtor's counsel's further discussions with the DIP Lender's counsel and the lack of agreement with the DIP Lender, the Debtor's counsel cannot agree to such language without the agreement of the DIP Lender. Nonetheless, such protective language being inserted into the Sale Order is indeed warranted given the following: (i) the Asset Purchase Agreement contemplates the Buyer to pay the Capital Lease Payoffs at Closing; (ii) if the Equipment Lender Debt is not paid off in full at Closing, the liens of the Equipment Lenders attach to the sales proceeds until full payment of such claims, with interest and attorneys' fees accruing from and after the Closing, presumably with such proceeds sitting in the Debtor's counsel's trust account;

and (iii) the DIP Lender's financing orders and financing documents make clear that the DIP Lender has no priming lien under 364(d)(1), and all of the DIP Lender's liens are subject to "Permitted Encumbrances," which itself is defined to be liens and security interests of other perfected secured creditors in property of the Debtor that existed prior to the Petition Date and proceeds of such property. [Docket Nos. 38, 173, and 194].

9. By this Limited Objection, West Summit requests that this Court insert the additional protective language set forth above, as adequate protection of the interests of the Equipment Lenders and West Summit. To the extent that this Court will not order the Debtor to pay the Equipment Lenders their respective Equipment Lender Debt at Closing, West Summit requests that this Court set aside not only the "Capitalized Lease Payoffs" of each of the Equipment Lenders, but also an amount equal to (i) 90 days of accrued interest on such respective claims, *plus* (ii) 10% of their asserted claims to provide an adequate protection cushion to satisfy the attorneys' fees, costs, and expenses of the respective Equipment Lenders to litigate their entitlement to the payment of their Capitalized Lease Payoffs.

10. In addition, by this Limited Objection, West Summit requests that this Court include a specific provision in the Sale Order making clear that the Buyer is obligated to pay the Capitalized Lease Payoffs at Closing. This is presumed but not explicit in the Asset Purchase Agreement.

## **II. LIMITED OBJECTION**

11. West Summit and the Equipment Lenders, consistent with the terms and conditions of the Asset Purchase Agreement to be approved by this Court at the Sale Hearing, is entitled, at closing, to the Debtor's full payment in cash of the indebtedness owing to each of the Equipment Lenders, i.e., those with capitalized leases. The sales proceeds allocable to the Equipment Collateral sold under the Sale Motion to the Buyer are encumbered by the first-priority liens of the Equipment Lenders, and are more than sufficient to satisfy in full in cash the

Equipment Lender Debt at Closing.

12. Further, the Equipment Lenders, as the holders of a first-priority security interest and lien on the Equipment Collateral, are entitled to adequate protection of their interests pursuant to 11 U.S.C. § 363(e), which provides that "[n]otwithstanding any other provision of this section, at any time, and on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest" (emphasis added).

13. West Summit on behalf of itself and the Equipment Lenders requests adequate protection of their interests in the Equipment Collateral (to be sold under the Asset Purchase Agreement and the Sale Motion) under 11 U.S.C. § 363(e), as set forth below. West Summit has no objection to the sale of the Assets (which constitute substantially all of the Equipment Collateral of the Equipment Lenders), at the price to be paid by the Buyer for the Assets, provided that the following conditions are met:

- a. The first-priority liens of the Equipment Lenders attach to all of the sales proceeds from the sale of the Equipment Collateral;
- b. At Closing, the Buyer (or the Debtor) shall pay in full in cash at closing to the Equipment Lenders the Equipment Lender Debt;
- c. Until the Equipment Lender Debt is indefeasibly paid in full in cash to the Equipment Lenders, the Equipment Lenders shall be entitled to retain their first-priority liens on the sales proceeds sufficient to pay the Equipment Lender Debt, plus continuing accrued interest for 90 days and a 10% reserve fund for litigation attorneys' fees, costs, and expenses; and
- e. The form of the Sale Order approving the transactions set forth in the Sale Motion shall be in form and substance acceptable to West Summit (and the Equipment Lenders) consistent with the terms set forth above.

13. West Summit, on behalf of itself and the Equipment Lenders, reserves the right to make additional objections at the time of the hearing, but generally approves the sale of the Assets, subject to the interests of West Summit and the Equipment Lenders, so long as their

security interests and liens are adequately protected under 11 U.S.C. § 363(e), as provided above.

### **III. RELIEF REQUESTED**

**WHEREFORE**, West Summit, on behalf of itself and the Equipment Lenders, asks the Court to:

- a. Grant West Summit, on behalf of itself and the Equipment Lenders, the relief set forth in this Limited Objection, thereby providing adequate protection of the interests in the Equipment Collateral sought to be sold by the Debtor, as more fully set forth above;
- b. To the extent that the Debtor does not provide adequate protection of the interests of West Summit, on behalf of itself and the Equipment Lenders, as more fully set forth above, deny the relief requested by the Debtor in the Sale Motion; and
- c. Grant West Summit, on behalf of itself and the Equipment Lenders, such other and further relief as is just and proper.



Dated: February 17, 2016

Respectfully submitted,

**K&L GATES, LLP**

By: /s/ David Weitman

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**ATTORNEYS FOR WEST SUMMIT INVESTMENTS,  
LP, DAVID G. GENECOV,  
AND LISA W. GENECOV**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing pleading was sent by e-mail to all of the parties receiving ECF service in this case on this 17th day of February, 2016.

/s/ David Weitman

David Weitman

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the Debtor as of the date of filing of the petition. The complete account number of any account the Debtor has with the creditor is useful to the trustee and creditor and maybe provided if the Debtor choses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule D in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

Check this box if Debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN AND DESCRIPTION OF MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N T	D I S P U T E D	U N L I Q U I D A T E	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCT NO. -			SECURED DEBT					
0000004457-0000019913 COMMERCE BANK 2828 NORTH HARWOOD SUITE 1250 DALLAS, TX 75201			EQUIPMENT CAPITALIZED LEASE				\$1,651,068.14	UNKNOWN
ACCT NO. -			SECURED DEBT					
0000004458-0000019910 GENERAL ELECTRIC CAPITAL CORPORATION 20225 WATERTOWER BLVD. BROOKFIELD, WI 53045			EQUIPMENT PURCHASING DEBT				\$2,113,858.13	UNKNOWN

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	C O D E B T O R	H W J C	DATE CLAIM WAS INCURRED, NATURE OF LIEN AND DESCRIPTION OF MARKET VALUE OF PROPERTY SUBJECT TO LIEN	C O N T I N G E N	D I S P U T E D	U N L I Q U I D A T E	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCT NO. - 0000004459-0000019914 KARL STORZ 2151 E GRAND AVE EL SEGUNDO, CA 90245			SECURED DEBT EQUIPMENT CAPITALIZED LEASE				\$37,482.67	UNKNOWN
ACCT NO. - 0000004460-0000019912 OLYMPUS AMERICA, INC. 3500 CORPORATE PARKWAY CENTER VALLEY, PA 18034			SECURED DEBT EQUIPMENT CAPITALIZED LEASE				\$2,283,991.02	UNKNOWN
ACCT NO. - 0000004461-0000019916 SABRA TEXAS HOLDINGS, L.P. 3000 THANKSGIVING TOWER 1601 ELM STREET DALLAS, TX 75201			SECURED DEBT HOSPITAL REAL ESTATE LEASE				\$8,521,945.01	UNKNOWN
ACCT NO. - 0000004462-0000019911 TEXAS CAPITAL BANK 500 THROCKMORTON, SUITE 300 FORT WORTH, TX 76102			SECURED DEBT EQUIPMENT CAPITALIZED LEASE				\$2,809,365.03	UNKNOWN
ACCT NO. - 0000004462-0000019915 TEXAS CAPITAL BANK 500 THROCKMORTON, SUITE 300 FORT WORTH, TX 76102			SECURED DEBT REVOLVING LINE OF CREDIT (FUNDS FOR WORKING CAPITAL)				\$2,576,288.76	UNKNOWN
<b>Total:</b>							<b>\$19,993,998.76</b>	

*pay down by 107,100*