



INDEMNITY AND CONTRIBUTION AGREEMENT

This Indemnity and Contribution Agreement (this “Agreement”) is entered into as of this ___ day of _____, 20___, by and among [_____] (“[Physician 1]”), [_____] (“[Physician 2]”), [_____] (“[Physician 3]”), [_____] (“[Physician 4]”), [_____] (“[Physician 5]”), [_____] (“[Physician 6]”), [_____] (“[Physician 7]”), [_____] (“[Physician 8]”), [_____] (“[Physician 9]”), and [_____] (“[Physician 10]”) ([Physician 1], [Physician 2], [Physician 3], [Physician 4], [Physician 5], [Physician 6], [Physician 7], [Physician 8], [Physician 9], and [Physician 10] are referred to herein individually as a “Guarantor” and collectively as “Guarantors”).

WITNESSETH:

WHEREAS, each Guarantor owns an equity interest in [Entity Name] (“Borrower”).

WHEREAS, substantially concurrently with the execution and delivery of this Agreement, [Lender Name] (together with its successors and assigns as holders of the Loan described below, “Lender”) is making a loan (the “Loan”) to Borrower pursuant to the terms of that certain [Loan Agreement Title] dated on or about the date of this Agreement (the “Loan Agreement”). The Loan Agreement and all promissory notes, security documents and other instruments and agreements entered into in connection with the Loan, including the Guaranties described below, are referred to as the “Loan Documents”.

WHEREAS, as a condition to making the Loan, Lender requires that Guarantors execute and deliver one or more guaranties in connection with the Loan and Borrower’s obligations under the Loan Documents. The guaranty of the Loan made by each Guarantor is referred to in this Agreement as a “Guaranty”, whether embodied in one or more than one document, and such Guaranties are referred to, collectively, as the “Guaranties”, pursuant to which Guarantors have agreed to guarantee the obligations described in the Guaranties.

WHEREAS, Guarantors are unwilling to enter into the Guaranties absent an agreement among them that all obligations and liabilities associated with the Guaranties are to be borne as provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantors agree as follows:

1. Contribution and Reimbursement.

(a) To the extent that any Guarantor (a “Paying Guarantor”) makes a payment under its Guaranty and is not reimbursed in full by Borrower (such unreimbursed amount, a “Payment”), then Paying Guarantor shall be entitled to reimbursement from each other Guarantor (a “Reimbursing Guarantor”). Each Reimbursing Guarantor will have an unconditional obligation to pay to the Paying Guarantor an amount (if any) (the “Required Contribution Amount”) so that, after payment of the Required Contribution Amount by each Reimbursing Guarantor, all obligations and liabilities under the Guaranties will have been borne by Guarantors in the following percentages (taking into account any and all prior





Payments and Required Contribution Amounts and with the exceptions provided in Section 4 of this Agreement entitled “Non-Reimbursable Amounts”): [Physician 1] _____ percent; [Physician 2] _____ percent; [Physician 3] _____ percent; [Physician 4] _____ percent; [Physician 5] _____ percent; [Physician 6] _____ percent; [Physician 7] _____ percent; [Physician 8] _____ percent; [Physician 9] _____ percent; and [Physician 10] _____ percent. As to each Guarantor, the percentage specified for such Guarantor above is referred to as such Guarantor’s “Contributive Share.”

(b) Each Reimbursing Guarantor will pay each Required Contribution Amount to the Paying Guarantor within thirty (30) days after receipt of a written demand therefor (a “Contribution Demand Notice”) from the Paying Guarantor. At the written request of Reimbursing Guarantor, Paying Guarantor shall furnish appropriate evidence to Reimbursing Guarantor of the Payment. Alternatively, if the liability of the Reimbursing Guarantor to Lender under the Reimbursing Guarantor’s Guaranty has not been fully satisfied, the Reimbursing Guarantor may promptly pay any remaining amount of such liability to Lender and the Guarantors’ final Required Contribution Amounts will be determined taking such Payment into account.

(c) If any Guarantor is at any time reimbursed by Borrower in whole or in part for any Payment as to which such Guarantor has collected a Required Contribution Amount from any other Guarantor, such other Guarantor shall be entitled to recover from the payee Guarantor such amount as is necessary in order that each Guarantor has borne a share of the total net Payments in accordance with the percentages set forth in paragraph (a) above.

(d) In no event will any Guarantor’s aggregate Required Contribution Amounts exceed the maximum amount for which Guarantor could be held liable to Lender under Guarantor’s Guaranty. If a Guarantor’s aggregate Required Contribution Amounts ever total such maximum amount, then all remaining Required Contribution Amounts under the Guaranties by other Guarantors will be shared among the other Guarantors pro rata on the basis of the ratio that each Guarantor’s Contributive Share bears to the total Contributive Shares of all the Guarantors.

2. Indemnification. In addition to all such rights of indemnity and subrogation as the Guarantors may have under applicable law, each Guarantor agrees that, in the event a Payment shall be made by any other Guarantor under the Guaranty, or assets of any other Guarantor shall be sold to satisfy a claim of any secured party and such other Guarantor shall not have been fully indemnified by the Borrower, the Reimbursing Guarantor shall indemnify the Paying Guarantor in an amount equal to the amount of such Payment.

3. Insolvency. When, because of insolvency, lack of personal jurisdiction, or other reasonable circumstances, the contribution obtained from a Guarantor (the “Unavailable Guarantor”) under this Agreement after reasonable collection efforts is less than the Unavailable Guarantor’s full contribution required under the other provisions of this Agreement, the Contributive Shares of the other Guarantors as among themselves will be recalculated as though the Contributive Share of the Unavailable Guarantor were limited to the amount of contribution actually collected from the Unavailable Guarantor and the Contributive Shares of the other Guarantors will be adjusted upward pro rata in accordance with their original Contributive Shares as set forth in Section 1 of this Agreement. Notwithstanding the foregoing,





nothing contained in this section will relieve any Unavailable Guarantor from such Unavailable Guarantor's full obligations and liabilities under the other provisions of this Agreement.

4. Non-Reimbursable Amounts. Notwithstanding anything to the contrary, a Guarantor shall not be entitled to contribution with respect to, and shall bear the entire cost of, any Payment to the extent that such Payment arose out of any of the following: (a) the gross negligence, willful misconduct or bad faith of such Guarantor; (b) a breach by such Guarantor of any Loan Document provision specifically applicable to such Guarantor (such as, without limitation, a violation of any transfer restriction applicable to such Guarantor or such Guarantor's owners); or (c) any unreasonable defense to payment under such Guarantor's Guaranty asserted by such Guarantor, which defense is asserted without the consent or participation of the other Guarantors. To the extent that more than one Guarantor (each an "Involved Guarantor"), but less than all Guarantors, are responsible for any of the actions described in the foregoing clauses (a), (b) or (c), the Involved Guarantors shall be entitled to contribution only from one another with respect to Payments arising therefrom and the Contributive Shares of the Involved Guarantors with respect to such Payments only will be adjusted upward pro rata in accordance with their original Contributive Shares as set forth in Section 1 of this Agreement.

5. Interest. All amounts owing under this Agreement will bear interest from the date accrued (by Payment by a Guarantor in connection with such Guarantor's Guaranty) until paid (and without regard to the date any Contribution Demand Notice is given so long as the giving of such notice is not unreasonably delayed to the material prejudice of the recipient) at a rate equal to the lesser of ten (10) percent per annum or the highest rate permitted by applicable law.

6. No Limitation on Other Rights. Except to the extent inconsistent with the express terms of this Agreement, the right to contribution provided in this Agreement will be in addition to, and not in limitation of, any other claims, rights or remedies of reimbursement, subrogation, contribution, exoneration or indemnification or similar claims, rights or remedies, whether arising in equity, under contract, by statute, under common law or otherwise.

7. Absolute Obligation; Discounted Purchase of Loan by Guarantor. Each Guarantor specifically acknowledges that such Guarantor is obligated to pay such Guarantor's Required Contribution Amount with respect to each Payment, as an absolute, unconditional and irrevocable obligation, as primary obligor and not as a surety, and regardless of whether:

(a) such Guarantor's own Guaranty or any other Loan Document is unexecuted, undelivered, released, terminated, invalid, unenforceable or ineffective for any reason or payment thereunder is subject to any defense, setoff, recoupment, claim, counterclaim or similar limitation; or

(b) the Payment is paid (i) pursuant to order of a court or arbitration panel, (ii) in settlement of a disputed claim, (iii) under an agreement with Lender or any other Guarantor settling or establishing the amount thereof, or (iv) in any other manner in good faith; or

(c) any Guarantor has received an assignment of the Loan, the Loan Documents, or any interest in either thereof, from Lender, provided that, if any Guarantor (a "Purchasing Guarantor") receives an assignment of the Loan Documents in return for a payment (the "Purchase Price") of less than the full amount owing under the Loan Documents, the Purchasing Guarantor will not be entitled to recover





more by enforcing the Loan Documents than the Purchasing Guarantor would have been able to recover had the Purchasing Guarantor made a Payment under the applicable Guaranty in an amount equal to the Purchase Price in full settlement of the Loan and without receiving an assignment of the Loan Documents.

8. Payment, Settlement or Defense of Guaranties. While each Guarantor will from time to time in good faith attempt to inform the other Guarantors of the status of the Guaranties and any Payment or potential Payment thereon, each Guarantor will be free to litigate, settle or otherwise satisfy or discharge such Guarantor's Guaranty in good faith as such Guarantor may from time to time deem appropriate, and any failure by a Guarantor to advise, notify, or consult with any other Guarantor will not be a defense to, or in any way diminish, discharge or derogate from such other Guarantor's obligation to pay each Required Contribution Amount determined pursuant to this Agreement.

9. Revocation or Amendment of Guaranties. No Guarantor's obligations under this Agreement will be diminished or modified by revocation or amendment of such Guarantor's Guaranty unless this Agreement is amended in writing by all Guarantors, in their sole discretion, to take account of such revocation or amendment and to adjust the Contributive Shares. If, without the prior written consent of the other Guarantors, any Guarantor enters into any amendment of such Guarantor's Guaranty that increases the amount such Guarantor ultimately pays under the Guaranty, the nonconsenting Guarantors will not be required to pay their Contributive Shares of such increase. No amendment of a Guarantor's Guaranty reducing the amount for which such Guarantor could be held liable under such Guaranty will affect any Guarantor's Contributive Share, Required Contribution Amount or other obligations under this Agreement.

10. Effect of Waivers in Guaranties. All waivers contained in the Guaranties (whether of contribution rights, indemnification or exoneration rights, suretyship defenses or other rights of any Guarantor) shall be deemed to be waivers only in favor of Lender and shall in no event be enforceable by any Guarantor to defeat any claim by a Paying Guarantor for payment of another Guarantor's Required Contribution Amount pursuant to this Agreement. Without limiting the generality of the foregoing, no provision of a Guaranty providing that Lender may release less than all Guarantors, fail to pursue one or more Guarantors, or otherwise not seek recovery against any one or more Guarantors without impairing its rights against other Guarantors, shall in any way reduce the obligations of any Guarantor under this Agreement. Each Guarantor shall remain fully liable for such Guarantor's Required Contribution Amount notwithstanding any such provision.

11. Legal Expenses. If any party incurs attorneys' fees or other legal expenses to enforce this Agreement, the substantially prevailing party or parties will be entitled to recover from the party or parties that do not substantially prevail, all costs and expenses, including but not limited to attorneys' fees and disbursements, reasonably incurred by the substantially prevailing party or parties.

12. Governing Law; Jurisdiction and Venue. This Agreement will be governed by and construed in accordance with the laws of the State of [_____].

13. Binding Effect; No Third Party Beneficiaries. This Agreement is solely for the benefit of Guarantors and their successors and will be binding upon the same. Neither Lender nor any other person or entity will be a beneficiary of any of the provisions of this Agreement, and the parties specifically deny any intention to benefit any third party.





14. Entire Agreement; Amendment. This Agreement contains the final expression of the complete understanding of the parties with respect to the subject matter of this Agreement. There are no oral or other agreements that modify the terms of this Agreement. This Agreement may be amended only by a written instrument executed by the party sought to be charged with the amendment.

15. Notices. Guarantors will give all notices and demands under this Agreement in writing sent by United States mail, registered or certified postage prepaid, or by a reputable overnight courier service (such as Federal Express), with such notice addressed to the recipient at the recipient's address set forth below. Such notices will be effective three days after deposit in the United States mail as provided above or upon delivery by reputable overnight courier service as indicated in the records of such service.

16. Counterparts; Electronic Delivery of Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one document. To facilitate execution of this Agreement, the parties may execute and exchange, by telephone facsimile or electronic mail PDF, counterparts of the signature pages. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[Signature Pages Follow]

*** This document is a form agreement provided for informational purposes only. Please consult an attorney and/or other professional advisor regarding all legal, tax and other matters addressed herein to fully understand the effect of executing this, or any similar agreement and to ensure it complies with your local state laws.***





IN WITNESS WHEREFORE, the parties hereto have caused this Agreement to be executed as of the date first appearing above.

[PHYSICIAN 1]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 2]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 3]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 4]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 5]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 6]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 7]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 8]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 9]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

[PHYSICIAN 10]
By: _____
Name: _____
Title: _____

Notice Address 1:
Notice Address 2:
Attn:

