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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE DISTRICT OF ARIZONA, PHOENIX DIVISION

In Re

WEST BELL MEDICAL L.L.C.,

Debtor.

CHAPTER 11
CASE NO. 2:16-bk-12173-DPC
**SECURED CREDITOR
RLS CAPITAL, INC.'S:**
**(1) NOTICE OF NON-CONSENT TO USE
OF CASH COLLATERAL
&
(2) DEMANDS FOR ACCOUNTINGS
AND TURN-OVER OF CASH
COLLATERAL**
(Assigned to the Honorable Chief Judge
Daniel P. Collins)
(Re: 4901 West Bell Road, Glendale, Arizona
85308)

On even date herewith, Secured Creditor RLS CAPITAL, INC. ("RLS"), is filing in the above-referenced Chapter 11, among other pleadings, RLS' Proof of Claim ("POC"), which so as to avoid needless redundancy, RLS hereby incorporates as though fully alleged herein.

Paragraph of Section 5 of the Deed of Trust and Assignment of Rents attached to the POC ("DOT"), which contains an assignment of rents clause, establishes that RLS holds a perfected security interest in the income and/or rents that Debtor WEST BELL MEDICAL L.L.C. ("DEBTOR"), is generating by leasing-out certain real property, specifically, the

1 believed approximate 6,667 sq. ft. medical office building located at 4901 West Bell Road,
2 Glendale, Arizona 85308, legally described as

3
4 PARCEL NO. 1:

5 THAT PORTION OF LOT FOUR (4), SECTION FOUR (4),
6 TOWNSHIP THREE (3), NORTH, RANGE TWO (2) EAST OF THE
7 GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA
8 COUNTY, ARIZONA DESCRIBED AS FOLLOWS:

9
10 BEGINNING AT THE NORTHEAST CORNER OF SAID LOT
11 FOUR;

12 THENCE SOUTH 06 DEGREES 20 MINUTES 54 SECONDS EAST
13 ALONG THE EAST LINE OF SAID LOT FOUR A DISTANCE OF
14 255.86 FEET;

15
16 THENCE SOUTH 88 DEGREES 20 MINUTES 54 SECONDS WEST
17 PARALLEL TO THE NORTH LINE OF SAID LOT FOUR A
18 DISTANCE OF 175.08 FEET;

19
20 THENCE NORTH 06 DEGREES 20 MINUTES 54 SECONDS WEST
21 PARALLEL TO THE EAST LINE OF SAID LOT FOUR A
22 DISTANCE OF 255.86 FEET;

23
24 THENCE NORTH 88 DEGREES, 20 MINUTES 48 SECONDS EAST
25 ALONG THE NORTH LINE OF SAID LOT FOUR A DISTANCE
26 OF 175.08 FEET TO THE POINT OF BEGINNING.

27
28 EXCEPT BEGINNING AT THE NORTHEAST CORNER OF SAID
29 LOT 4;

30
31 THENCE SOUTH 06 DEGREES 20 MINUTES 54 SECONDS EAST
32 ALONG THE EAST LINE OF SAID LOT 4, A DISTANCE OF 55.19
33 FEET TO THE SOUTH RIGHT OF WAY LINE OF BELL ROAD
34 AND THE TRUE POINT OF BEGINNING;

1 THENCE CONTINUING SOUTH 06 DEGREES 20 MINUTES 54
2 SECONDS EAST, ALONG SAID EAST LINE, A DISTANCE OF
3 200.67 FEET;

4 THENCE CONTINUING SOUTH 88 DEGREES 20 MINUTES 48
5 SECONDS WEST, PARALLEL TO THE NORTH LINE OF SAID
6 LOT 4, A DISTANCE OF 25.08 FEET;

7
8 THENCE NORTH 06 DEGREES 20 MINUTES 54 SECONDS WEST,
9 A DISTANCE OF 188.67 FEET;

10
11 THENCE NORTH 49 DEGREES 00 MINUTES 03 SECONDS WEST,
12 A DISTANCE OF 17.66 FEET TO THE SOUTH RIGHT OF WAY
13 LINE OF SAID BELL ROAD;

14 THENCE NORTH 88 DEGREES 20 MINUTES 48 SECONDS EAST,
15 ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF
16 37.08 FEET TO THE TRUE POINT OF BEGINNING.

17
18 PARCEL NO. 2:

19 A TEMPORARY NON-EXCLUSIVE EASEMENT FOR ACCESS,
20 INGRESS AND EGRESS ON AND OVER THE FOLLOWING
21 DESCRIBED PROPERTY:

22
23 THAT PORTION OF LOT 4, SECTION 4, TOWNSHIP 3 NORTH,
24 RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND
25 MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS
26 FOLLOWS:

27 BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4;

28
29 THENCE SOUTH 88 DEGREES 20 MINUTES 48 SECONDS WEST,
30 ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF
31 175.08 FEET TO THE POINT OF BEGINNING;

32
33 THENCE CONTINUING SOUTH 88 DEGREES 20 MINUTES 48
34 SECONDS WEST, ALONG SAID NORTH LINE, A DISTANCE OF
35 50 FEET;

1
2 THENCE SOUTHERLY AT RIGHT ANGLES TO SAID NORTH
3 LINE OF SAID LOT 4, A DISTANCE OF 195 FEET;

4 THENCE NORTH 88 DEGREES 20 MINUTES 48 SECONDS EAST,
5 ALONG A LINE PARALLEL TO SAID NORTH LINE OF LOT 4
6 TO A POINT ON A LINE WHICH BEARS SOUTH 06 DEGREES 20
7 MINUTES 54 SECONDS EAST FROM THE TRUE POINT OF
8 BEGINNING;

9
10 THENCE NORTH 06 DEGREES 20 MINUTES 54 SECONDS WEST,
11 ALONG SAID LINE TO THE TRUE POINT OF BEGINNING,

12 and also identified as Maricopa County, Arizona Tax Parcel No. 207-27-004W ("Property"),
13 which is encumbered by the DOT. Therefore, this income and/or these rents constitute RLS'
14 cash collateral.
15

16 No liens encumber the Property that are superior in priority to the DOT, except for real
17 estate taxes.

18 RLS is virtually certain the Property has since the inception of this Chapter 11 on
19 October 24, 2016 generated, and it shall continue generating, cash collateral because as recently
20 as September 27, 2016, DEBTOR turned-over \$3,336.00 to RLS that DEBTOR represented
21 constituted rents paid by one or more tenants at the Property.
22
23

24 Along these lines, RLS understands that the Property is currently occupied by three (3)
25 or four (4) different tenants, although perhaps not all of these tenants are current on their
26 rental payment obligations.
27

28 In any event, since October 24, 2016, 11 U.S.C. § 363(c)(2) has plainly required RLS'
29 consent, or alternatively, this Court's authorization granted after notice and a hearing, for
30 DEBTOR to utilize RLS' cash collateral. As one court noted:
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1 "The Bankruptcy Code could not be more explicit as to the duty
2 imposed upon a debtor-in-possession to account for a creditor's
3 cash collateral. A debtor-in-possession is absolutely prohibited
4 from using cash collateral unless it obtains the consent of the
5 affected secured creditor or an authorization from the bankruptcy
6 court. In the absence of such consent or authorization, a debtor-in-
7 possession is under an absolute obligation to segregate and to
8 account for all such cash collateral. These principles are not subject
9 to dispute."

10 *In re Four Seasons Marine & Cycle, Inc.*, 263 B.R. 764, 768 - 769 (Bkrtcy. E.D. Tex. 2001).¹

11 Accordingly, by filing this pleading, RLS hereby provides notice that it:

- 12 1. Objects to DEBTOR utilizing RLS' aforementioned cash collateral;
- 13 2. Demands that DEBTOR provide RLS with written proof, as required by
14 Paragraph or Section 2 of the DOT, that the Property is insured against hazards (note:
15 insurance RLS earlier force placed is scheduled to lapse on November 13, 2016), and with the
16 insurance policy explicitly stating that:
17

- 18 (a) RLS is a named additional insured and/or a co-insured/loss-
19 payee;
- 20 (b) the coverage limit is at least \$890,000.00,
21
22
23

24 ¹ The *Four Seasons Marine* court noted a number of remedies for violation of a creditor's cash collateral:

25 "[C]ourts have employed a number of devices designed to achieve restitution for the affected
26 creditor, as well as to create an effective incentive for a debtor-in-possession, as well as for
27 debtors-in-possession in future cases, to take affirmative action to insure compliance with the
28 cash collateral restrictions imposed by the Code. These have included the imposition of a
29 replacement lien upon other unencumbered property of the estate; the repayment of the
30 converted funds by the debtor or the debtor's principals; the grant of a superpriority
31 administrative expense; the entry of a judgment declaring the debt arising from the defalcation to
32 be non-dischargeable; the entry of a conversion judgment for money damages; the granting of
33 stay relief; the appointment of an examiner; the appointment of a Chapter 11 trustee; or the
34 conversion of the case to Chapter 7."

35 *Id.* at 769. The Ninth Circuit has supported granting the creditor in such circumstances a superpriority claim. *In re Rebel Rents, Inc.*, 307 B.R. 171, 181 (Bkrtcy. C.D. Cal. 2004).

1 and

2 (c) the deductible is not more than \$8,900.00.

3
4 3. Further demands that DEBTOR provide it:

5 (a) written proof of all the income and/or rents DEBTOR has
6 thus far collected post-Petition; thus, commencing October 24, 2016,
7 from the Property, and shall subsequently collect throughout the
8 duration of this Chapter 11,
9

10 and

11 (b) written proof of what has happened with all the income
12 and/or rents DEBTOR has thus far collected post-Petition;

13
14 4. Further demands that as a condition to DEBTOR securing RLS' and/or this
15 Court's required consent to utilize RLS' cash collateral, then DEBTOR provide monthly:

16 (a) income statements reflecting:

17 (i) the name of each occupant and/or tenant of the
18 Property;

19 (ii) the amount that is supposed to be paid by or
20 for each such occupant and/or tenant,
21

22 and

23 (iii) the amount actually paid by or for each said
24 occupant and/or tenant, and if applicable, the amount
25 for each occupant and/or tenant that is delinquent,
26
27

28 and

29 (b) expense budgets (which must be pre-approved by either RLS
30 or the Court) and reconciliations reflecting what it is anticipated it
31 will cost to keep the Property up-and-running, and then, what it
32 actually ended-up costing.
33
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1 5. Further demands that every penny of RLS' cash collateral in excess of budgeted
2 expenditures approved by RLS and/or this Court be physically delivered or mailed to RLS, so
3 that RLS has the assurance of knowing that all the aforementioned income and/or rents
4 generated by the Property will be applied against the indebtedness DEBTOR owes RLS, and by
5 the DOT, is secured by the Property.
6

7 6. Further demands that if an occupant is not going to pay DEBTOR for their
8 occupancy and use of the Property, and yet, these non-payers aren't willing to vacate the
9 Property, then DEBTOR immediately evict them from the Property (so that DEBTOR can then
10 lease-out the Property to good and paying tenants) or else, this Chapter 11 be converted to a
11 Chapter 7 or dismissed.
12

13 Along these lines, a conversion or dismissal of this case will be particularly warranted if
14 one of the unpaying occupants of the Property is DEBTOR's principal, Dr. John E. Maslak
15 ("Dr. Maslak"), who pursuant to a Commercial Lease bearing stated commencement and
16 termination dates of September 1, 2012 and August 31, 2019, respectively, is supposed to be
17 paying DEBTOR \$3,551.74 monthly. *See Exhibit "A" attached hereto.*
18
19

20 Significantly:
21

22 (a) what Dr. Maslak owes DEBTOR for unpaid rent constitutes
23 RLS' cash collateral,
24

25 and

26 (b) DEBTOR doesn't deserve to reorganize unless and until Dr.
27 Maslak pays DEBTOR every penny of rent that has accrued since, if
28 not later, October 24, 2016, plus every penny of rent that shall
29 hereafter continuing accruing, and then, with every penny of all
30 this rent turned-over to RLS.
31
32

33 **In short, RLS submits a rampant conflict of interest; akin to the fox guarding the hen**
34 **house, exists here between DEBTOR and Dr. Maslak that requires this Court's intervention.**
35

1 **PRAYER**

2 For good cause submitted shown, following a Hearing, RLS respectfully submits the
3 Court enter one or more appropriate Orders insisting that DEBTOR comply with and timely
4 and fully honor RLS' above-stated demands and/or that the Court enter one or more
5 appropriate Orders with respect to:
6

7 (a) the aforementioned cash collateral
8

9 and

10 (b) the aforementioned conflict of interest that RLS submits
11 exists between DEBTOR and Dr. Maslak, because again, it appears
12 that the fox is guarding the hen house,
13

14 as the Court deems warranted, which may include, without limitation, either the conversion of
15 this case or its dismissal.
16

17 RESPECTFULLY SUBMITTED this 7th day of November 2016, by:

18 LAW OFFICES OF DAVID L. KNAPPER

19 /s/David L. Knapper

20 David L. Knapper

21 Attorney for RLS
22

23 SUBMITTED this 7th day of November
24 2016, to:
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26 The Honorable Chief Judge Daniel P. Collins
27 United States Bankruptcy Court
28 230 North First Avenue
29 Phoenix, Arizona 85025
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COPIES of the foregoing e-mailed where noted in the pleading mentioned below, plus mailed this 7th day of November 2016, to:

Those parties as set forth in the pleading captioned: "Consolidated Certificate Of Service And Notice Of Lodging Order Scheduling An Accelerated Hearing On The Merits Of Secured Creditor Black RLS Capital, Inc.'s: (1) Notice Of Non-Consent To Use Of Cash Collateral & (2) Demands For Accountings And Turn-Over Of Cash Collateral" to be filed on this 7th day of November 2016

/s/ David L. Knapper

EXHIBIT "A"

COMMERCIAL LEASE

This lease is made between West Bell Medical, LLC, at 4901 W. Bell Road, Suite 4, Glendale Arizona 85308 herein called Lessor, and JOHN MASLAK, DDS at 4901 W. BELL RD SUITE #1, GLENDALE, AZ. 85308 herein called Lessee.

Lessee hereby offers to lease from Lessor the premises situated in the City of Glendale, County of Maricopa, State of Arizona, described as a certain mutually agreed upon approximately 3200 square feet office suite (herein known as Suite #1) located within the building found at 4901 W. Bell Road, Glendale, Arizona. 85308.

TERMS and CONDITIONS:

- 1. Term and Rent.** Lessor demises the above premises for a term of 84 months, commencing on 9-1 2012 and terminating on 8-31 2019, or sooner as provided herein at the monthly rental of \$3552.74 plus applicable taxes and \$ for electric payable in advance on the first day of each month for that month's rental, during the term of this lease. All rental payments shall be made to Lessor, at the address specified above. Or at such other place as may be designated by the Lessor from time to time.

Payments to begin on 9-1 2012 through 8-31 2019.

- 2. Use.** Lessee shall use and occupy the premises. Lessor makes no representation that the premises may lawfully be used for such purposes. Suite maybe sublet by tenant consistent with original purpose of dental services.
- 3. Care and Maintenance of Premises.** Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessor shall maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises. Lessee shall not in any way damage or harm the premises and shall surrender the same at termination hereof, in as good condition as received. Normal wear and tear is accepted. Lessee shall be responsible for the acts of its employees, agents, clients, invited guests and all other persons coming to the premises for the purpose of meeting with the Lessee.
- 4. Alterations & Signs.** Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises. Furthermore, Lessee shall not erect, install or maintain any sign without the Lessor's written approval, which may be withheld for any reason. If Lessor's approval is given, said sign must fully comply with the Lessor's sign design criteria for the building. All signs, as well as the advertising practices of the Lessee, shall comply with all applicable rules and regulations of the Lessor.

Initial JM

5. **Ordinances and Statutes.** Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.
6. **Assignment and Subletting.** Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease. Massage will not be considered subletting, but part of practice
7. **Utilities.** The rent shall include the costs of water, trash and landscaping.
8. **Entry and Inspection.** Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any - "To Let" or "For Lease" signs, and permit persons desiring to lease the same to inspect the premises thereafter.
9. **Possession.** If Lessor is unable to deliver possession of the premises at commencement hereof, Lessor shall not be liable for any damages caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within ninety (90) days of the commencement of the term hereof.
10. **Indemnification of Lessor.** Lessor shall not be liable for any damages or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused.
11. **Insurance.** Lessee, at his expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

\$ 1,000,000 per occurrence, \$ 3,000,000 in the aggregate.

Lessee shall provide Lessor with a Certificate of Insurance, showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of canceling or material change of coverage. To the maximum extent permitted by insurance policies, which may be owned by, Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation, which might otherwise exist.


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12. **Eminent Domain.** If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.
13. **Destruction of Premises.** In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulation, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.
14. **Lessor's Remedies on Default.** If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within three (3) days, after giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 3 days and thereafter proceed with reasonable diligence and in good faith to cure such default), the Lessor may immediately terminate this lease without any further notice to the Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.
15. **Security Deposit.** Lessee shall deposit with Lessor on the signing of this lease the sum of Nine Hundred and 00/100 Dollars (\$900.00) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

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16. **Tax Increase.** In the event there is any increase during any year of the term of this lease in the City, County or State rental or real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to the prorata share of the increase attributable to the premises but not more than ten percent of the then payable rent per year in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of the Lessee shall be proportionate to the portion of the lease term included in such year.
17. **Attorney's Fees and Costs.** If Lessor retains an attorney for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, the prevailing party shall be entitled to all attorney's fees and costs incurred in connection with such action whether or not a suit is being brought.
18. **Waiver.** No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.
19. **Notices.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address specified above, or at such other places as may be designated by the parties from time to time.
20. **Heirs, Assigns, Successors.** This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.
21. **Option to Renew.** Lessee has no option to renew the lease. Lessee may notify Lessor of its desire to renew the lease ninety (90) days prior to the expiration of this lease.
22. **Subordination.** This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.
23. **Radon Gas Disclosure.** As required by law, Lessor makes the following disclosure: "Radon Gas" is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in the building in which the premises is situated. Additional information regarding radon and radon testing may be obtained from you county public health unit.
24. **Lock and Alarm.** Lessee shall use their best efforts to ensure that the premises and Suite / is locked and the alarm is armed whenever they are the last person to leave suite at end of any day.

Initial 

25. **Severability.** If there is a conflict between any provision of this Lease and the applicable legislation of the State of Arizona (the "Act"), the Act will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Lease.

26. **Miscellaneous.** Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

This Agreement may be executed in counterpart.

Time will be of the essence of this Agreement.

26. **Entire Agreement.** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed this First day of September, 2012

LESSOR:

[Signature]
Signed

[Signature]
Signed

John A. Maglak
Print Name

BRIAN EASLEY
Print Name

OWNER
Title

owner
Title

LESSEE:

[Signature]
Signed

JOHN MAGLAK, DDS
Print Name

Tenant
Title