

January 22, 2021

**TO: Members of the Board of Directors**

Victor Rey, Jr. – President  
Regina M. Gage – Vice President  
Juan Cabrera – Secretary  
Richard Turner – Treasurer  
Joel Hernandez Laguna – Assistant Treasurer

**Legal Counsel**

Ottone Leach & Ray LLP

**News Media**

Salinas Californian  
Monterey County Herald  
El Sol  
Monterey County Weekly  
KION-TV  
KSBW-TV/ABC Central Coast  
KSMS/Entravision-TV

The Regular Meeting of the Board of Directors of the Salinas Valley Memorial Healthcare System will be held **THURSDAY, JANUARY 28, 2021, AT 4:00 P.M., IN THE CISLINI PLAZA BOARD ROOM IN SALINAS VALLEY MEMORIAL HOSPITAL, 450 E. ROMIE LANE, SALINAS, CALIFORNIA, OR BY PHONE OR VIDEO (Visit [svmh.com/virtualboardmeeting](http://svmh.com/virtualboardmeeting) for Access Information).**

Please note: Pursuant to Executive Order N-25-20 issued by the Governor of the State of California in response to concerns regarding COVID-19, Board Members of Salinas Valley Memorial Healthcare System, a local health care district, are permitted to participate in this duly noticed public meeting via teleconference and certain requirements of The Brown Act are suspended.



Pete Delgado  
President/Chief Executive Officer

**REGULAR MEETING OF THE BOARD OF DIRECTORS  
SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**

**THURSDAY, JANUARY 28, 2021  
4:00 P.M. – CISLINI PLAZA BOARD ROOM  
SALINAS VALLEY MEMORIAL HOSPITAL  
450 E. ROMIE LANE, SALINAS, CALIFORNIA  
OR BY PHONE OR VIDEO**

**(Visit [symh.com/virtualboardmeeting](http://symh.com/virtualboardmeeting) for Access Information)**

Please note: Pursuant to Executive Order N-25-20 issued by the Governor of the State of California in response to concerns regarding COVID-19, Board Members of Salinas Valley Memorial Healthcare System, a local health care district, are permitted to participate in this duly noticed public meeting via teleconference and certain requirements of The Brown Act are suspended.

**AGENDA**

- |  | <b><u>Presented By</u></b> |
|--|----------------------------|
| I. <b><u>Call to Order/Roll Call</u></b>   | Victor Rey, Jr.            |
| II. <b><u>Closed Session</u></b> (See Attached Closed Session Sheet Information)   | Victor Rey, Jr.            |
| III. <b><u>Reconvene Open Session/Closed Session Report</u></b> (Estimated time 5:00 pm)   | Victor Rey, Jr.            |
| IV. <b><u>Appointment of Board Members to Standing Committees of the Board and Medical Staff Committees</u></b>  | Victor Rey, Jr.            |
| V. <b><u>Report from the President/Chief Executive Officer</u></b>   | Pete Delgado               |
| VI. <b><u>Public Input</u></b>   | Victor Rey, Jr.            |
| <p>This opportunity is provided for members of the public to make a brief statement, not to exceed three (3) minutes, on issues or concerns within the jurisdiction of this District Board which are not otherwise covered under an item on this agenda.</p> |                            |
| VII. <b><u>Board Member Comments</u></b>   | Board Members              |
| VIII. <b><u>Consent Agenda—General Business</u></b>  | Victor Rey, Jr.            |
| <p>(A Board Member may pull an item from the Consent Agenda for discussion.)</p>   |                            |
| A. Minutes of the Annual Meeting of the Board of Directors, December 17, 2020  |                            |
| B. Minutes of the Special Meeting of the Board of Directors, December 11, 2020   |                            |
| C. Financial Report  |                            |
| D. Statistical Report  |                            |
| E. Policies Requiring Board Approval   |                            |
| 1. Group Beta Streptococcus Perinatal Screening and Management   |                            |
| 2. RC NICU Surfactant Administration Clinical Procedure  |                            |

3. Cardiac Wellness: Patient Arrival Requirements for Cardiac Rehabilitation Therapy
4. Abbreviations Use
5. Preceptor Policy
6. Scope of Service: Medical Staff Services

- Board President Report
- Board Questions to Board President/Staff
- Motion/Second
- Public Comment
- Board Discussion/Deliberation
- Action by Board/Roll Call Vote

**IX. Consent Agenda—Approved Projects**

Victor Rey, Jr.

(A Board Member may pull an item from the Consent Agenda for discussion.)

- A. Lease Assignment and Assumption with Liliart Publishing Company, LLC and The Fred and Margaret Goldsmith Living Trust for 451 Washington Street, Monterey, California

- Board President Report
- Board Questions to Board President/Staff
- Motion/Second
- Public Comment
- Board Discussion/Deliberation
- Action by Board/Roll Call Vote

**X. Reports on Standing and Special Committees**

- A. **Finance Committee** - Minutes from the January 25, 2021 Finance Committee meeting have been provided to the Board. Four proposed recommendations have been made to the Board.

Richard Turner

1. Recommend Board Approval of Change Order in Disaster Recovery Services from CloudWave as Sole Source Justification and Contract Award
  - Committee Chair Report
  - Board Questions to Committee Chair/Staff
  - Motion/Second
  - Public Comment
  - Board Discussion/Deliberation
  - Action by Board/Roll Call Vote
2. Recommend Board Approval of Project Budget and Lease Agreements for Development of 212 San Jose Street Suites 100 and 201
  - Committee Chair Report
  - Board Questions to Committee Chair/Staff
  - Motion/Second
  - Public Comment
  - Board Discussion/Deliberation
  - Action by Board/Roll Call Vote

3. Recommend Board Approval of Agreements Necessary for the Transition of Salinas Family Practice Medical Clinic, Inc. to Salinas Valley Medical Clinic
  - Committee Chair Report
  - Board Questions to Committee Chair/Staff
  - Motion/Second
  - Public Comment
  - Board Discussion/Deliberation
  - Action by Board/Roll Call Vote
4. Recommend Board Approval of Epic Community Connect Project and Program Budget
  - Committee Chair Report
  - Board Questions to Committee Chair/Staff
  - Motion/Second
  - Public Comment
  - Board Discussion/Deliberation
  - Action by Board/Roll Call Vote

- B. **Transformation, Strategic Planning and Governance Committee** – Minutes from the January 26, 2021 Transformation, Strategic Planning and Governance Committee have been provided to the Board. Additional Report from Committee Chair, if any.

Victor Rey, Jr.

XI. **Report on Behalf of the Medical Executive Committee (MEC) Meeting of January 14, 2021, and Recommendations for Board Approval of the following:**

Rachel McCarthy Beck, M.D.

- A. From the Credentials Committee:
  1. Credentials Committee Report
- B. From the Interdisciplinary Practice Committee:
  1. Interdisciplinary Practice Committee Report
    - Chief of Staff Report
    - Board Questions to Chief of Staff
    - Motion/Second
    - Public Comment
    - Board Discussion/Deliberation
    - Action by Board/Roll Call Vote

XII. **Extended Closed Session** (if necessary)  
(See Attached Closed Session Sheet Information)

Victor Rey, Jr.

XIII. **Adjournment** – The next Regular Meeting of the Board of Directors is scheduled for **Thursday, February 25, 2021**, at 4:00 p.m.

The complete Board packet including subsequently distributed materials and presentations is available at the Board Meeting and in the Human Resources Department of the District. All items appearing on the agenda are subject to action by the Board. Staff and Committee recommendations are subject to change by the Board.

**Notes:** Requests for a disability related modification or accommodation, including auxiliary aids or services, in order to attend or participate in a meeting should be made to the Executive Assistant during regular business hours at 831-755-0741. Notification received 48 hours before the meeting will enable the District to make reasonable accommodations.

**SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM BOARD OF DIRECTORS  
AGENDA FOR CLOSED SESSION**

Pursuant to California Government Code Section 54954.2 and 54954.5, the board agenda may describe closed session agenda items as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items are described in substantial compliance with Section 54954.5 of the Government Code.

**CLOSED SESSION AGENDA ITEMS**

[ ] **LICENSE/PERMIT DETERMINATION**  
(Government Code §54956.7)

**Applicant(s):** (Specify number of applicants) \_\_\_\_\_

[ ] **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
(Government Code §54956.8)

**Property:** (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation): \_\_\_\_\_

**Agency negotiator:** (Specify names of negotiators attending the closed session): \_\_\_\_\_

**Negotiating parties:** (Specify name of party (not agent): \_\_\_\_\_

**Under negotiation:** (Specify whether instruction to negotiator will concern price, terms of payment, or both): \_\_\_\_\_

[ ] **CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION**  
(Government Code §54956.9(d)(1))

**Name of case:** (Specify by reference to claimant's name, names of parties, case or claim numbers): \_\_\_\_\_, or

**Case name unspecified:** (Specify whether disclosure would jeopardize service of process or existing settlement negotiations): \_\_\_\_\_

[ ] **CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION**  
(Government Code §54956.9)

Significant exposure to litigation pursuant to Section 54956.9(d)(2) or (3) (Number of potential cases): \_\_\_\_\_

Additional information required pursuant to Section 54956.9(e): \_\_\_\_\_

Initiation of litigation pursuant to Section 54956.9(d)(4) (Number of potential cases): \_\_\_\_\_

[ ] **LIABILITY CLAIMS**  
(Government Code §54956.95)

**Claimant:** (Specify name unless unspecified pursuant to Section 54961): \_\_\_\_\_

**Agency claimed against:** (Specify name): \_\_\_\_\_

[ ] **THREAT TO PUBLIC SERVICES OR FACILITIES**  
(Government Code §54957)

**Consultation with:** (Specify name of law enforcement agency and title of officer): \_\_\_\_\_

[ ] **PUBLIC EMPLOYEE APPOINTMENT**  
(Government Code §54957)

**Title:** (Specify description of position to be filled): \_\_\_\_\_

[ ] **PUBLIC EMPLOYMENT**  
(Government Code §54957)

**Title:** (Specify description of position to be filled): \_\_\_\_\_

[ ] **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
(Government Code §54957)

**Title:** (Specify position title of employee being reviewed): \_\_\_\_\_

[ ] **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**  
(Government Code §54957)

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

[ ] **CONFERENCE WITH LABOR NEGOTIATOR**  
(Government Code §54957.6)

**Agency designated representative:** (Specify name of designated representatives attending the closed session): \_\_\_\_\_

**Employee organization:** (Specify name of organization representing employee or employees in question): \_\_\_\_\_, or

**Unrepresented employee:** (Specify position title of unrepresented employee who is the subject of the negotiations): \_\_\_\_\_

[ ] **CASE REVIEW/PLANNING**  
(Government Code §54957.8)

(No additional information is required to consider case review or planning.)

**REPORT INVOLVING TRADE SECRET**  
(Government Code §37606 & Health and Safety Code § 32106)

**Discussion will concern:** (Specify whether discussion will concern proposed new service, program, or facility):  
Strategic planning/proposed new programs and services

**Estimated date of public disclosure:** (Specify month and year): unknown

**HEARINGS/REPORTS**  
(Government Code §37624.3 & Health and Safety Code §§1461, 32155)

**Subject matter:** (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee):

1. Report of the Medical Staff Credentials Committee
2. Report of the Interdisciplinary Practice Committee

**CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW** (Government Code §54956.86)

(No additional information is required to discuss a charge or complaint pursuant to Section 54956.86.)

**ADJOURN TO OPEN SESSION**

*CALL TO ORDER/ROLL CALL*

*(VICTOR REY, JR.)*



*CLOSED SESSION*

*(Report on Items to be  
Discussed in Closed Session)*

*(VICTOR REY, JR.)*

*RECONVENE OPEN SESSION/  
CLOSED SESSION REPORT  
(ESTIMATED TIME: 5:00 P.M.)*

*(VICTOR REY, JR.)*

## **STANDING BOARD COMMITTEE APPOINTMENTS FOR 2021-2022**

### Personnel, Pension and Investment Committee (Monthly)

Chair: Regina M. Gage

Vice Chair: Richard Turner

### Quality and Efficient Practices Committee (Monthly)

Chair: Juan Cabrera

Vice Chair: Joel Hernandez Laguna

### Finance Committee (Monthly)

Chair: Richard Turner

Vice Chair: Juan Cabrera

### Transformation, Strategic Planning, and Governance Committee (Quarterly)

Chair: Joel Hernandez Laguna

Vice Chair: Richard Turner

### Corporate Compliance and Audit Committee (Quarterly)

Chair: Juan Cabrera

Vice Chair: Joel Hernandez Laguna

### Community Advocacy Committee (Quarterly)

Chair: Regina M. Gage

Vice Chair: Joel Hernandez Laguna

## **MEDICAL STAFF JOINT CONFERENCE/QUALITY & SAFETY COMMITTEES**

### Joint Conference Committee (Quarterly)

Joel Hernandez Laguna

Victor Rey, Jr.

### Quality & Safety Committee (Monthly)

One Board Member, alternating every quarter

*REPORT FROM THE PRESIDENT/  
CHIEF EXECUTIVE OFFICER*

*(VERBAL)*

*(PETE DELGADO)*

# *PUBLIC INPUT*

*BOARD MEMBER COMMENTS*

*(VERBAL)*

**ANNUAL MEETING OF THE BOARD OF DIRECTORS  
SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**

**THURSDAY, DECEMBER 17, 2020 – 4:00 P.M.  
DOWNING RESOURCE CENTER, ROOMS A, B & C  
SALINAS VALLEY MEMORIAL HOSPITAL  
450 E. ROMIE LANE, SALINAS, CALIFORNIA AND BY PHONE  
OR VIDEO (VISIT [svmh.com/virtualboardmeeting](http://svmh.com/virtualboardmeeting) FOR ACCESS INFORMATION)**

Pursuant to Executive Order N-25-20 issued by the Governor of the State of California in response to concerns regarding COVID-19, Board Members of Salinas Valley Memorial Healthcare System, a local health care district, are permitted to participate in this duly noticed public meeting via teleconference and certain requirements of The Brown Act are suspended.

Present: President Victor Rey, Jr., Directors Regina M. Gage, Joel Hernandez Laguna in person; Director Juan Cabrera by teleconference.

Absent: Richard Turner.

Also Present: Pete Delgado, President/Chief Executive Officer; Rachel McCarthy Beck, M.D., Chief of Staff, in person; Matthew Ottone, Esq., District Legal Counsel by teleconference.

A quorum was present and the meeting was called to order by Board President Rey at 4:05 p.m.

**Closed Session**

Board President Rey announced that the closed session items to be discussed in Closed Session as listed on the posted Agenda are: (1) Conference with Real Property Negotiators – one property; (2) Report Involving Trade Secret – strategic planning/ proposed new programs and services; and (3) Hearings/Reports – Report of the Medical Staff Quality and Safety Committee, Report of the Medical Staff Credentials Committee, and Report of the Interdisciplinary Practice Committee.

The meeting was recessed into Closed Session under the Closed Session Protocol at 4:07 p.m.

The Board completed its business of the Closed Session at 5:08 p.m.

**Reconvene Open Session/Report on Closed Session**

The Board reconvened Open Session at 5:25 p.m. President Rey announced that in Closed Session the Board discussed: (1) Conference with Real Property Negotiators – one property; (2) Report Involving Trade Secret – strategic planning/proposed new programs and services; and (3) Hearings/Reports – Report of the Medical Staff Quality and Safety Committee, Report of the Medical Staff Credentials Committee, and Report of the Interdisciplinary Practice Committee.

Mr. Rey announced that in Closed Session, the Board received and accepted the Medical Staff Quality and Safety Committee Report. No other action was taken by the Board.

Mr. Rey stated that Agenda Item XVI. – Extended Closed Session will not be held.

## **Annual Board of Directors Report on the Overall Performance of Salinas Valley Memorial Healthcare System for 2020**

Board President Victor Rey, presented the Annual Report on the Overall Performance of Salinas Valley Memorial Healthcare System for 2020, as follows:

*“This Annual Meeting of our Board of Directors comes at a remarkable time. We are living in a very different world than we were at last year’s annual meeting, and as I speak, we remain in crisis. COVID-19 continues to take lives, spread illness, and demand more of us than ever before. It has also confirmed that we have an incredible staff of physicians, nurses, and clinical and general support staff - all of whom have met the challenge, and continue to provide exceptional care under the most challenging of circumstances. My thoughts go out to all who have been impacted by COVID-19 -- my sympathies to those who have lost loved ones to the disease, my well-wishes for a speedy recovery to those who are fighting the disease today, and my deepest thanks to those brave and talented members of the SVMHS family who work so tirelessly to help those in need.*

*The Pandemic has brought out the best in our people, and our capabilities. This year we were able to launch a telemedicine program that will continue to be a part of our clinical processes long after this crisis has passed. We also embraced technology that allowed our patients to visit virtually with family members, since proactive safety measures closed the hospital to visitors.*

*The Pandemic also provided us the opportunity to strengthen community ties. Through our Community and Staff Support Project we redeployed staff members to provide COVID education to ag workers, to partner with Grower Shipper Association on its COVID housing project, and to provide work hours to local non-profit organizations.*

*Despite our necessary focus on COVID-19, we have other significant events documenting the 2020 successes at Salinas Valley Memorial Healthcare System.*

- *Salinas Valley Medical Clinic implemented Epic – an electronic health record that will bring tremendous benefit to our patients and providers.*
- *Taylor Farms Family Health & Wellness Center expanded to be three times larger than it was previously. We have also opened a branch of our diabetes and endocrine center at that location so that residents of south Monterey County will have more convenient access to the care they need.*
- *In our pursuit to advance the nursing profession and how it is practiced in our organization, we submitted our application to Magnet for national recognition of the strength and quality of nursing practice at Salinas Valley Memorial.*
- *Our employees reached a record engagement level – putting us in the top 10-percent of hospitals across the country for employee engagement. As part of our focus on staff, we have two parallel, very important initiatives underway. One is being conducted by a resiliency task force, whose mission it is to support our staff during this challenging time. The other is in the area of diversity, equity and inclusion. We are absolutely committed to erasing any potential inequities and bias in the way we deliver care and in the way we conduct ourselves as an organization.*
- *This year we launched our Mobile Health Clinic program – making a difference in the lives of people from throughout all corners of our region, providing care at no cost to those who are uninsured or underinsured.*



- *Other important community initiatives this year included the Blue Zones Project, which is helping the people in our community live longer, healthier lives; the diabetes collaborative that has launched a powerful public messaging campaign, and our series of free flu shot clinics, bringing protective measures to hundreds of people in our community at no cost to them.*
- *This year our organization continued on the course of financial stability, which allowed us to invest in programs for our community such as the ones just mentioned, as well as allowing us to invest in the latest medical technology, staffing, and equipment.*
- *We also received a number of awards for quality care, including recognition from the American Heart Association for exceptional care in heart care; Leapfrog once again cited an “A” rating in patient safety; our obstetrics and emergency department care earned recognition, as did the efforts of our marketing department. Of course, any mention of awards wouldn’t be complete without referencing our CEO, Pete Delgado, being named Citizen of the Year by the Salinas Valley Chamber of Commerce.*

*I am sorry to report that this was also a year we lost some dear friends of our healthcare system.*

- *Our colleague on this board, Dr. Norm Nelson passed away unexpectedly in March. We miss his leadership and expertise, and at the same time we welcome board member Joel Hernandez-Laguna, who now represents Zone 5 in our district.*
- *Shirley Lavorato, a long-time supporter of Salinas Valley Memorial Healthcare System, also passed this year, leaving a long legacy of giving and support to our Foundation.*
- *And we also said goodbye to Salinas Mayor Joe Gunter, who was always quick to support our healthcare system in the community.*

*No year-end report would be complete without mention of our hospital Foundation and Volunteers. We miss having our volunteers here, and acknowledge the importance of their safety during this pandemic. We thank our Foundation volunteers for the continued support and the difference they make for our Healthcare System.*

*I hope that by next year at this time our lives will be significantly changed, yet again. The delivery of a COVID-19 vaccine brings hope that we will find a way out of our current crisis.*

*On behalf of the Board of Directors I thank the community for its unwavering support of our Healthcare System, and I thank the staff, physicians, volunteers and the Foundation board for your contributions to Salinas Valley Memorial Healthcare System.”*

### **Election of President of the Board (Two-Year Term)**

Board President Victor Rey announced that nominations are in order for the election of the President of the Board of Directors for a two-year term. Once elected, the President will Chair the meeting and future meetings.

**MOTION:** The Board of Directors nominates and elects Victor Rey, Jr. for the Office of President of the Board of Directors. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried. No Public Comment.

**Election of the Following Officers (Two-Year Term)**

Victor Rey, Jr. assumed the Office of President and announced that nominations are in order for the election of Vice President, Secretary, Treasurer, and Assistant Treasurer, to be elected by the Board of Directors, for a two-year term:

Office of Vice President

MOTION: The Board of Directors nominates and elects Regina Gage for the Office of Vice President of the Board of Directors. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried. No Public Comment.

Office of Secretary

MOTION: The Board of Directors nominates and elects Juan Cabrera for the Office of Secretary of the Board of Directors. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried. No Public Comment.

Office of Treasurer

MOTION: The Board of Directors nominates and elects Richard Turner for the Office of Treasurer of the Board of Directors. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried. No Public Comment.

Office of Assistant Treasurer

MOTION: The Board of Directors nominates and elects Joel Hernandez Laguna for the Office of Assistant Treasurer of the Board of Directors. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried. No Public Comment.

**Appointment of Board Members to Standing Committees of the Board and Medical Staff Committees**

President Rey tabled Agenda Item VII. Appointment of Board Members to Standing Committees of the Board and Medical Staff Committees. This item will be presented at a future meeting. Current Committee assignments will remain for January 2021.

**Report from the President/Chief Executive Officer**

Pete Delgado, President/Chief Executive Officer, reported the Hospital received its first delivery of the COVID-19 vaccine, an important milestone in protecting the people who have put their own lives at risk to care for patients.

The President's Report by Pete Delgado/Chief Executive Officer, members of Hospital Leadership and others, began with a Mission Moment highlighting the Emergency Department during the pandemic. A summary of key highlights, centered around the pillars that are the foundation of the Hospital's vision for the organization, and industry news, is as follows:

- Service
  - Clement Miller, Chief Operating Officer/Interim Chief Nursing Officer, introduced Aubree Collins, BSN, RNC-OB, and Chair of the Collaborative Care Committee. Ms. Collins provided an overview of the 2020 Shared Governance Year End Report. Accomplishments and highlights are as follows:
    - ✓ The Magnet® Document was submitted in October 2020 - Congratulations to the Magnet Team for the document submission: Kirsten Wisner, Magnet Program Director; Rebecca Rodriguez, Magnet Clinical Excellence Specialist; and Mari-Anne Low, Department Coordinator. The site visit is planned for March 10-12, 2021.
    - ✓ Two new Unit Practice Councils were added: Oncology and Rehab.
    - ✓ Many new members added to existing unit practice councils.
    - ✓ The 2020 Magnet Conference was virtual, with 34 nurses attending.
    - ✓ Change in Nursing Practice – nurses are using the referral process to initiate the changes they think would improve patient care. Improvements have been seen in process, communication, documentation, hands-on bedside care, and evidenced based care and research. Magnet data displays are used in each unit to help guide nursing practice.
- Growth
  - Aspire Health Plan is an important part of the Hospital's strategic growth strategy. Cyndie O'Brien, Aspire Health Plan, presented an overview of Aspire's 2021 Medicare Annual Enrollment Period which ended December 7, 2020.
- Quality
  - The Hospital was notified that it achieved Blue Distinction status for its maternity services.
- Finance
  - Kendra Howell, Director of Government Affairs, reported on the state and federal legislative activities.
- People
  - Technology is being rolled out to departments to screen employees as they come to work in an effort to help protect staff and providers.
  - The leadership team served a free holiday meal to staff.
- Community
  - The Salinas Downtown Rotary Club has raised more than \$20,000 to benefit the families of SVMHS COVID-19 patients who passed away, and donations are still coming in. The Sally Hughes Church Foundation and the D'Arrigo Foundation also donated to this fundraiser.
  - An Ask the Experts Facebook LIVE event was held December 3, 2020, where Jaime Gonzalez, MD, and Victor Delgado, MD, discussed how COVID-19 is impacting the Latino community.
  - Earned Media: COVID-19, stay-at-home orders, thanking frontline healthcare workers during the Thanksgiving holiday, and healthy recipes.

➤ **Industry News**

- 116+ hospital postponing elective surgeries broken down by state
- 10 latest hospital credit downgrades
- Tennessee field hospital won't open as nursing shortage persists
- California system alleges Kaiser tried to monopolize health insurance market
- 21 hospital closures in 2020
- CHS wants to refinance up to \$2B debt
- Moody's: Outlook negative for nonprofit hospitals
- 15 hospitals laying off workers

**Public Input**

An opportunity was provided for persons in the audience to make a brief statement, not to exceed three (3) minutes, on issues or concerns not covered by the agenda.

None.

**Board Member Comments**

Director Cabrera commended everyone for their great work.

Director Hernandez Laguna commented on the excellent Ask the Experts event in December where Jaime Gonzalez, MD, and Victor Delgado, MD, discussed COVID in Spanish, and reported on the communication he received from a resident in south county thanking the Heart Center for their tremendous patient care services. He also thanked Carla Spencer, Associate Chief Nursing Officer, Emergency Services, and the Emergency Department for their outstanding patient care services provided to a family member.

Director Gage stated that it is a privilege to serve on the SVMHS Board of Directors. Ms. Gage commented on the outstanding professionalism and level of care provided to patients at this unprecedented time, and was pleased to hear the Hospital began providing vaccines to frontline healthcare workers today. Thanks to all.

Board President Rey echoed the comments of his fellow board members, and congratulated the Magnet team on their document submission and site visit in March.

**Consent Agenda – General Business**

- A. Minutes of the Regular Meeting of the Board of Directors, November 19, 2020.
- B. Financial Report
- C. Statistical Report
- D. Approval of Certificate of Cancellation and Dissolution of Salinas Valley Imaging, LLC
- E. Policies Requiring Board Approval
  - a. Sleep Center: Inter Scorer Reliability
  - b. E-Mail Archiving

- c. Umbilical Vessel Catheterization: Insertion, Maintenance, Monitoring Blood Sampling Removal Clinical Procedure
- d. Discharge Criteria and Planning – NICU Procedure
- e. Hepatitis B Immunoprophylaxis in the Newborn Clinical Procedure
- f. Pronouncement of Death

Board President Rey presented the consent agenda items before the Board for action. This information was included in the Board packet.

No Public Comment.

MOTION: The Board of Directors approves Consent Agenda – General Business, Items (A) through (E), as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

**Reports on Standing and Special Committees**

**Quality and Efficient Practices Committee**

Juan Cabrera, Committee Chair, reported the minutes from the Quality and Efficient Practices Committee Meeting of December 14, 2020, were provided to the Board, and noted that the Committee received a comprehensive Patient Care Services Update, including quality, COVID-19 services, and Magnet® status. No action was taken by the Committee.

**Finance Committee**

Juan Cabrera, Committee Vice Chair, reported the minutes from the Finance Committee Meeting of December 14, 2020, were provided to the Board. Background information supporting the proposed recommendations made by the Committee was included in the Board packet and summarized by Director Cabrera:

- 1. Recommend Board Approval of Renewal of Disaster Recovery Services from CloudWave as Sole Source Justification and Contract Award

No Public Comment.

MOTION: The Board of Directors approves the renewal agreement for disaster recovery services from CloudWave as sole source justification and contract award in the amount of \$720,898.00, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

- 2. Recommend Board Approval for the Purchase of Philips Redi-Kit to Expand Bedside Monitoring by 20 Beds for COVID Population

No Public Comment.

**MOTION:** The Board of Directors approves the purchase of the Philips Redi-Kit to expand bedside monitoring by 20 beds for the COVID population at a cost of \$490,803.00, subject to final negotiation, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

3. **Recommend Board Approval of Amendment Number 2 to Office Lease Agreement with Los Palos Partners for 505 East Romie Lane Suites A, F & G, Salinas, California**

No Public Comment.

Director Joel Hernandez Laguna felt it was prudent to have a 10-year agreement.

**MOTION:** The Board of Directors approves Amendment Number 2 to Office Lease Agreement with Los Palos Partners, LLC for 505 East Romie Lane, Suites, A, F & G, Salinas, California, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

### **Personnel, Pension and Investment Committee**

Regina M. Gage, Committee Chair, reported the minutes from the Personnel, Pension and Investment Committee Meeting of December 15, 2020, were provided to the Board. Background information supporting the proposed recommendation made by the Committee was included in the Board packet and summarized by Director Gage.

Ms. Gage stated that at the Committee Meeting, Steven Kjar, Vice President, Lockton Investment Advisors (LIA), reported that a rigorous process was taken to develop the asset allocation investment strategy for the Employees' Defined Benefit Pension Plan of 40% fixed income, 55% equities and 5% real estate. In early April 2020, when the market produced an asset allocation for assets of the Plan of approximately 45% fixed income, 51-52% equities, and 4% real estate, a decision was made to rebalance the portfolio back to the original asset allocation objective of 40% fixed income, 55% equities and 5% real estate. The current market has produced an asset allocation of 61% equities, 4% real estate, and 35% fixed income. LIA has been in discussion with Hospital Administration to discuss the current market and is recommending a change in asset allocation to 65% equities (including real estate), and 35% fixed income.

1. **Recommend Board Approval of Asset Allocation for Pension Plan Change to 65% Equities / 35% Fixed Income**

No Public Comment.

Board Discussion: There was dialogue among the Board and Executive Leadership regarding the recommended change to move the asset allocation investment strategy for the Employees' Defined Benefit Pension Plan from 40% fixed income, 55% equities and 5% real estate to 65% equities (including real estate), and 35% fixed income. Executive Leadership noted that this change is recommended to continue to strengthen the performance of the Plan based on the

current market conditions. LIA and the Hospital will continue to periodically monitor this recommended change. The recommendation to move to 65% equities is an incremental change to the current allocation and is still considered moderate; additional risk would be assumed if equity allocation changed to 70% or 80%. In addition to the actuarially determined contribution to the Plan, the Hospital continues to make an additional contribution to the Plan.

**MOTION:** The Board of Directors approves the change in the asset allocation investment strategy for the Employees' Defined Benefit Pension Plan to 65% equities (including real estate), and 35% fixed income, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

### **Community Advocacy Committee**

Regina M. Gage, Committee Chair, reported the minutes from the Community Advocacy Committee Meeting of December 15, 2020, were provided to the Board. Background information supporting the proposed recommendation made by the Committee was included in the Committee packet and summarized by Director Gage. The Committee also received an update regarding the Blue Zones and Mobile Health Clinic projects.

1. **Recommend Board Approval of 2020 Community Health Needs Assessment Implementation Strategy and Report**

Director Gage noted that the Implementation Strategy recommended is the System's plan to address the following community health needs described in the Community Health Needs Assessment.

- Behavioral Health
  - Continue/expand access to programs and services that prevent poor mental health among community members
  - Support integration of behavioral health and physical health care
- Healthcare Access and Delivery
  - Increase health insurance coverage
  - Support pipeline programs for healthcare careers
- Healthy Lifestyles (Diabetes & Obesity and Food & Housing Insecurity)
  - Increase access to affordable exercise areas and options

No Public Comment.

**MOTION:** The Board of Directors approves the 2020 Community Health Needs Assessment Implementation Strategy and Report, as presented. Moved/ Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

**Consider Board Resolution No. 2020-07 Recognizing the Heroic Efforts of the SVMHS Providers and Staff Fighting the COVID-19 Pandemic**

Board President Victor Rey presented Board Resolution No. 2020-07 Recognizing the Heroic Efforts of the SVMHS Providers and Staff Fighting the COVID-19 Pandemic, as follows, for consideration by the Board that was included in the Board packet:

*“WHEREAS, Salinas Valley Memorial Healthcare System (“SVMHS”) is a local healthcare district whose mission is to provide quality healthcare to our patients and to improve the health and well-being of our community;*

*WHEREAS, on March 4, 2020, the Governor of the State of California issued a Proclamation of a State of Emergency due to an outbreak of COVID-19 resulting from the spread of the novel coronavirus in the State of California;*

*WHEREAS, the SVMHS Board of Directors determined that the spread and infection of the novel coronavirus in the community causing COVID-19 is an emergency threatening the public health, welfare, and safety of the residents of the SVMHS service area and surrounding communities;*

*WHEREAS, SVMHS physicians, nurses, respiratory care therapists, social workers, case managers, environmental and nutrition services professionals, as well as other clinical and non-clinical support staff have gone above and beyond to ensure the provision of care in challenging circumstances;*

*WHEREAS, the providers and staff of SVMHS have maintained clinical excellence throughout the current Pandemic;*

*WHEREAS, SVMHS staff has demonstrated a commitment to the community by bravely and tirelessly putting the needs of others above their own; handling unusually high and increasing demand to meet the needs of our patients during this pandemic;*

*WHEREAS, frontline healthcare workers at SVMHS have courageously cared for and saved the lives of community members infected with COVID-19 through selfless sacrifice;*

***NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:***

*On behalf of the Salinas Valley Memorial Healthcare System, the members of the Board of Directors offer their deep appreciation to all of the SVMHS providers and staff for the dedication and extraordinary effort required to confront and battle the ongoing COVID-19 pandemic.*

*The foregoing Resolution was passed by the following vote of the Board of Directors of Salinas Valley Memorial Healthcare System at its regular meeting on December 17, 2020.”*

No Public Comment.

Board Discussion: Director Gage reported that she recently rounded on the COVID-19 units with the Associate Chief Nursing Officer of Emergency Services, and commented on the courage, bravery and excellence of everyone in the organization.



Director Hernandez Laguna commended all staff for providing excellent patient care services, and for risking their lives to treat COVID-19 patients.

Director Cabrera thanked the hard working men and women at the Hospital for all of their outstanding efforts in dealing with an unpredictable virus and for the brave essential workers for their heroic efforts to put their own lives at risk to help someone in need and to be at the bedside for those patients who pass away.

MOTION: The Board of Directors adopts Board Resolution No. 2020-07 Recognizing the Heroic Efforts of the SVMHS Providers and Staff Fighting the COVID-19 Pandemic, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

**Consider Board Resolution No. 2020-08 Approving the Sale of the Real Property Located at 290 Regency Circle, Salinas, California and Authorizing the President/CEO to Execute Transaction Documents**

Matthew Ottone, Esq., District Legal Counsel, reported that Board Resolution No. 2020-08 Approving the Sale of the Real Property Located at 290 Regency Circle, Salinas, California and Authorizing the President/CEO to Execute Transaction Documents, effectuates the sale of real property owned by SVMHS at 290 Regency Circle to RBP Communities, LLC, in the amount of \$8,300,000.00, and authorizes the President/Chief Executive Officer of SVMHS to execute transaction documents. This information was included in the Board packet.

No Public Comment.

MOTION: The Board of Directors adopts Board Resolution No. 2020-08 Approving the Sale of the Real Property Located at 290 Regency Circle, Salinas, California and Authorizing the President/CEO to Execute Transaction Documents, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

**Report on Behalf of the Medical Executive Committee (MEC) Meeting of December 10, 2020, and Recommendations for Board Approval of the following:**

The following recommendations from the Medical Executive Committee (MEC) Meeting of December 10, 2020, were reviewed by Rachel McCarthy Beck, M.D., Chief of Staff, and recommended for Board approval.

Recommend Board Approval of the Following:

- A. From the Credentials Committee:
  - 1. Credentials Committee Report
- B. From the Interdisciplinary Practice Committee:
  - 1. Interdisciplinary Practice Committee Report

No Public Comment.

Dr. McCarthy Beck reported that the Medical Staff is working closely with Operating Room staff to help decompress the schedule, and expressed appreciation for the Board Resolution adopted to recognize the heroic efforts of the SVMHS providers and staff fighting the COVID-19 pandemic. Dr. McCarthy Beck noted that the Medical Staff is also examining a resiliency program for providers and staff. A Wellness Committee, led by the hospitalists, has already been formed toward this objective. She encouraged people to not gather with people outside of their household during the holiday season, and commented on the delivery of vaccines for frontline healthcare workers, an important milestone for the Hospital.

MOTION: The Board of Directors approves Recommendations (A) through (B) of the December 10, 2020, Medical Executive Committee Meeting, as presented. Moved/Seconded/Roll Call Vote: Ayes: Rey, Gage, Hernandez Laguna, Cabrera; Noes: None; Abstentions: None; Absent: Turner; Motion Carried.

### **Extended Closed Session**

President Rey reported that an Extended Closed Session will not be held.

**Adjournment** – The next Regular Meeting of the Board of Directors is scheduled for Thursday, January 28, 2021, at 4:00 p.m. There being no further business, the meeting was adjourned at 7:00 p.m.

Joel Hernandez Laguna  
Secretary, Board of Directors

/ks

**SPECIAL MEETING OF THE BOARD OF DIRECTORS  
SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**

**FRIDAY, DECEMBER 11, 2020 - 2:00 P.M.  
DOWNING RESOURCE CENTER, ROOMS A, B & C  
SALINAS VALLEY MEMORIAL HOSPITAL  
450 E. ROMIE LANE, SALINAS, CALIFORNIA  
OR BY PHONE OR VIDEO**

**(Visit [svmh.com/virtualboardmeeting](http://svmh.com/virtualboardmeeting) for Access Information)**

Please note: Pursuant to Executive Order N-25-20 issued by the Governor of the State of California in response to concerns regarding COVID-19, Board Members of Salinas Valley Memorial Healthcare System, a local health care district, are permitted to participate in this duly noticed public meeting via teleconference and certain requirements of The Brown Act are suspended.

**Reading of the Notice of Special Meeting/Workshop**

The Notice of the Special Meeting which stated the purpose of the Special Meeting of the District Board is as follows:

1. Closed Session for discussion regarding liability claim.

Present: President Victor Rey, Jr., Directors Regina Gage, Joel Hernandez Laguna, Richard Turner, and Juan Cabrera by teleconference.

Also Present: Pete Delgado, President/Chief Executive Officer, in person; and Gary Ray, Esq., District Legal Counsel by teleconference.

Each Board Member was timely notified of the Special Meeting of the Board of Directors of Salinas Valley Memorial Healthcare System.

A quorum was present and the meeting was called to order at 2:03 p.m.

**Closed Session**

Mr. Rey announced that in the Closed Session, the Board would have discussion regarding Liability Claims – one claim. The meeting was adjourned into Closed Session under the Closed Session Protocol at 2:05 p.m.

**Reconvene Open Session/Report on Closed Session**

The Board reconvened Open Session at 2:50 p.m. Mr. Rey announced that in the Closed Session, the Board had discussion regarding Liability Claims – one claim. Direction was given to Executive Leadership. No action was taken in the Closed Session.

**Adjournment**

There being no other business, the meeting was adjourned at 2:53 p.m.

Joel Hernandez Laguna  
Secretary, Board of Directors

SALINAS VALLEY MEMORIAL HOSPITAL  
SUMMARY INCOME STATEMENT  
December 31, 2020

	<u>Month of December,</u>		<u>Six months ended December 31,</u>	
	<u>current year</u>	<u>prior year</u>	<u>current year</u>	<u>prior year</u>
Operating revenue:				
Net patient revenue	\$ 50,733,224	\$ 52,364,669	\$ 289,669,271	\$ 290,923,011
Other operating revenue	3,117,039	602,543	7,941,143	9,064,635
Total operating revenue	<u>53,850,263</u>	<u>52,967,212</u>	<u>297,610,414</u>	<u>299,987,646</u>
Total operating expenses	42,641,710	38,846,506	247,850,797	231,286,937
Total non-operating income	<u>(283,076)</u>	<u>(2,194,187)</u>	<u>(15,854,333)</u>	<u>(10,487,608)</u>
Operating and non-operating income	<u>\$ 10,925,477</u>	<u>\$ 11,926,520</u>	<u>\$ 33,905,284</u>	<u>\$ 58,213,101</u>

SALINAS VALLEY MEMORIAL HOSPITAL  
 BALANCE SHEETS  
 December 31, 2020

	<u>Current year</u>	<u>Prior year</u>
<b>ASSETS:</b>		
Current assets	\$ 403,677,506	\$ 279,490,106
Assets whose use is limited or restricted by board	137,490,684	121,243,550
Capital assets	259,153,640	248,457,561
Other assets	188,396,260	184,530,379
Deferred pension outflows	<u>83,379,890</u>	<u>62,468,517</u>
	<u>\$ 1,072,097,980</u>	<u>\$ 896,190,113</u>
<b>LIABILITIES AND EQUITY:</b>		
Current liabilities	151,264,631	77,477,850
Long term liabilities	14,780,831	17,645,000
	126,340,336	108,429,468
Net assets	<u>779,712,182</u>	<u>692,637,795</u>
	<u>\$ 1,072,097,980</u>	<u>\$ 896,190,113</u>

**SALINAS VALLEY MEMORIAL HOSPITAL  
SCHEDULES OF NET PATIENT REVENUE  
December 31, 2020**

	<u>Month of December,</u>		<u>Six months ended December 31,</u>	
	<u>current year</u>	<u>prior year</u>	<u>current year</u>	<u>prior year</u>
Patient days:				
By payer:				
Medicare	1,941	2,186	9,944	11,349
Medi-Cal	1,190	1,170	6,496	6,475
Commercial insurance	876	903	4,671	5,238
Other patient	178	125	888	662
Total patient days	<u>4,185</u>	<u>4,384</u>	<u>21,999</u>	<u>23,724</u>
Gross revenue:				
Medicare	\$ 86,143,337	\$ 90,326,658	\$ 479,331,784	\$ 499,841,852
Medi-Cal	54,844,305	52,896,565	320,338,930	310,972,644
Commercial insurance	51,700,489	49,751,705	298,159,420	298,547,225
Other patient	7,468,982	9,219,351	52,511,594	51,105,533
Gross revenue	<u>200,157,113</u>	<u>202,194,279</u>	<u>1,150,341,728</u>	<u>1,160,467,253</u>
Deductions from revenue:				
Administrative adjustment	444,528	248,004	1,780,141	2,064,624
Charity care	952,180	883,602	5,252,560	5,699,305
Contractual adjustments:				
Medicare outpatient	24,343,399	23,207,748	147,602,398	154,380,134
Medicare inpatient	42,303,240	42,326,431	216,528,493	231,773,530
Medi-Cal traditional outpatient	1,966,785	2,653,417	11,708,638	18,027,078
Medi-Cal traditional inpatient	9,127,538	5,739,519	47,290,368	32,785,969
Medi-Cal managed care outpatient	17,092,178	19,392,418	108,463,399	118,862,827
Medi-Cal managed care inpatient	19,188,613	19,375,409	111,977,351	106,844,806
Commercial insurance outpatient	14,173,839	14,970,553	93,636,719	84,245,469
Commercial insurance inpatient	16,563,587	15,858,173	87,884,007	87,430,526
Uncollectible accounts expense	3,391,787	3,646,074	21,603,253	20,865,193
Other payors	(123,785)	1,528,263	6,945,130	6,564,782
Deductions from revenue	<u>149,423,889</u>	<u>149,829,609</u>	<u>860,672,457</u>	<u>869,544,243</u>
Net patient revenue	<u>\$ 50,733,224</u>	<u>\$ 52,364,669</u>	<u>\$ 289,669,271</u>	<u>\$ 290,923,011</u>
Gross billed charges by patient type:				
Inpatient	\$ 117,649,383	\$ 113,293,905	\$ 629,336,374	\$ 617,247,835
Outpatient	61,137,037	63,064,783	396,024,776	386,032,626
Emergency room	21,370,694	25,835,590	124,980,580	157,186,792
Total	<u>\$ 200,157,114</u>	<u>\$ 202,194,279</u>	<u>\$ 1,150,341,730</u>	<u>\$ 1,160,467,253</u>

**SALINAS VALLEY MEMORIAL HOSPITAL  
STATEMENTS OF REVENUE AND EXPENSES  
December 31, 2020**

	<u>Month of December,</u>		<u>Six months ended December 31,</u>	
	<u>current year</u>	<u>prior year</u>	<u>current year</u>	<u>prior year</u>
Operating revenue:				
Net patient revenue	\$ 50,733,224	\$ 52,364,669	\$ 289,669,271	\$ 290,923,011
Other operating revenue	<u>3,117,039</u>	<u>602,543</u>	<u>7,941,143</u>	<u>9,064,635</u>
Total operating revenue	<u>53,850,263</u>	<u>52,967,212</u>	<u>297,610,414</u>	<u>299,987,646</u>
Operating expenses:				
Salaries and wages	16,938,694	14,386,524	96,697,730	86,807,234
Compensated absences	2,747,386	2,358,859	16,162,471	15,558,816
Employee benefits	7,229,366	8,400,396	44,272,027	44,127,264
Supplies, food, and linen	6,257,645	5,085,602	37,474,248	33,635,115
Purchased department functions	3,016,032	2,857,628	18,275,972	17,777,988
Medical fees	1,938,088	1,966,136	10,046,048	10,046,142
Other fees	1,539,604	1,056,112	7,237,227	6,405,608
Depreciation	1,803,474	1,690,660	10,676,531	10,092,485
All other expense	<u>1,171,421</u>	<u>1,044,589</u>	<u>7,008,543</u>	<u>6,836,285</u>
Total operating expenses	<u>42,641,710</u>	<u>38,846,506</u>	<u>247,850,797</u>	<u>231,286,937</u>
Income from operations	<u>11,208,553</u>	<u>14,120,706</u>	<u>49,759,617</u>	<u>68,700,709</u>
Non-operating income:				
Donations	666,667	166,667	1,500,000	1,004,200
Property taxes	333,333	333,333	2,000,000	2,000,000
Investment income	880,465	363,190	2,109,563	(127,227)
Taxes and licenses	0	0	0	0
Income from subsidiaries	<u>(2,163,541)</u>	<u>(3,057,377)</u>	<u>(21,463,896)</u>	<u>(13,364,581)</u>
Total non-operating income	<u>(283,076)</u>	<u>(2,194,187)</u>	<u>(15,854,333)</u>	<u>(10,487,608)</u>
Operating and non-operating income	10,925,477	11,926,520	33,905,284	58,213,101
Net assets to begin	<u>768,786,705</u>	<u>680,711,275</u>	<u>745,806,899</u>	<u>634,424,694</u>
Net assets to end	<u>\$ 779,712,182</u>	<u>\$ 692,637,795</u>	<u>\$ 779,712,182</u>	<u>\$ 692,637,795</u>
Net income excluding non-recurring items	\$ 9,905,914	\$ 11,926,520	\$ 32,286,175	\$ 58,388,458
Non-recurring income (expense) from cost report settlements and re-openings and other non-recurring items	<u>1,019,563</u>	<u>0</u>	<u>1,619,109</u>	<u>(175,357)</u>
Operating and non-operating income	<u>\$ 10,925,477</u>	<u>\$ 11,926,520</u>	<u>\$ 33,905,284</u>	<u>\$ 58,213,101</u>

**SALINAS VALLEY MEMORIAL HOSPITAL  
SCHEDULES OF INVESTMENT INCOME  
December 31, 2020**

	Month of December,		Six months ended December 31,	
	current year	prior year	current year	prior year
Detail of other operating income:				
Dietary revenue	\$ 122,016	\$ 206,650	\$ 819,275	\$ 1,047,284
Discounts and scrap sale	68	155,149	223,320	849,202
Sale of products and services	6,094	63,913	149,933	145,776
Clinical trial fees	0	0	46,128	0
Stimulus Funds	0	0	0	0
Rental income	183,509	118,362	970,319	872,854
Other	2,805,352	58,469	5,732,168	6,149,519
	<u>\$ 3,117,039</u>	<u>\$ 602,543</u>	<u>\$ 7,941,143</u>	<u>\$ 9,064,635</u>
Detail of investment income:				
Bank and payor interest	\$ 37,930	\$ 320,410	\$ 863,446	\$ 1,330,533
Income from investments	842,535	42,780	1,216,367	(1,461,417)
Gain or loss on property and equipment	0	0	29,750	3,657
	<u>\$ 880,465</u>	<u>\$ 363,190</u>	<u>\$ 2,109,563</u>	<u>\$ (127,227)</u>
Detail of income from subsidiaries:				
Salinas Valley Medical Center:				
Pulmonary Medicine Center	\$ (345,940)	\$ (105,015)	\$ (1,173,713)	\$ (571,575)
Neurological Clinic	(11,581)	(79,865)	(448,960)	(403,319)
Palliative Care Clinic	(36,302)	(63,201)	(433,668)	(368,036)
Surgery Clinic	(141,748)	(147,004)	(950,875)	(516,269)
Infectious Disease Clinic	(15,267)	(39,088)	(172,947)	(159,227)
Endocrinology Clinic	(91,511)	(151,952)	(1,095,945)	(769,716)
Early Discharge Clinic	0	0	0	0
Cardiology Clinic	(299,266)	(559,657)	(2,933,330)	(2,780,781)
OB/GYN Clinic	(208,338)	(299,777)	(2,139,390)	(1,118,078)
PrimeCare Medical Group	(414,003)	(622,794)	(5,246,369)	(3,357,795)
Oncology Clinic	68,483	(384,847)	(1,563,882)	(1,280,292)
Cardiac Surgery	8,038	(80,338)	(858,285)	(528,223)
Sleep Center	(49,041)	(91,636)	(371,306)	(433,713)
Rheumatology	(28,932)	(64,630)	(320,223)	(112,553)
Precision Ortho MDs	(173,015)	(305,739)	(2,254,987)	(1,647,880)
Precision Ortho-MRI	1,263	36,029	(1,263)	6,089
Precision Ortho-PT	(16,170)	(33,001)	(264,663)	(28,319)
Dermatology	(6,676)	(39,353)	(178,299)	13,219
Hospitalists	0	(1)	0	0
Behavioral Health	(64,451)	(58,644)	(408,796)	(285,393)
Pediatric Diabetes	(38,160)	(41,952)	(198,165)	(184,110)
Neurosurgery	(31,894)	(18,073)	(180,910)	(113,228)
Multi-Specialty-RR	15,831	31,128	28,147	60,928
Radiology	(196,949)	0	(1,140,531)	0
Total SVMC	(2,075,629)	(3,119,410)	(22,308,360)	(14,578,271)
Doctors on Duty	(105,839)	(94,644)	(10,846)	247,679
Assisted Living	(1,964)	(830)	(41,583)	(36,026)
Salinas Valley Imaging	0	(23,590)	(19,974)	45,309
Vantage Surgery Center	11,050	100,244	116,748	72,878
LPCH NICU JV	0	0	0	0
Central Coast Health Connect	0	0	0	0
Monterey Peninsula Surgery Center	51,962	158,574	412,639	866,871
Aspire/CHI/Coastal	(25,759)	(120,563)	(202,042)	(351,118)
Apex	1,864	6,516	47,457	63,759
21st Century Oncology	(55,681)	72,642	(104,453)	141,650
Monterey Bay Endoscopy Center	36,455	(36,315)	646,518	162,688
	<u>\$ (2,163,541)</u>	<u>\$ (3,057,377)</u>	<u>\$ (21,463,896)</u>	<u>\$ (13,364,581)</u>



**SALINAS VALLEY MEMORIAL HOSPITAL  
BALANCE SHEETS  
December 31, 2020**

	<b>Current year</b>	<b>Prior year</b>
<b>A S S E T S</b>		
Current assets:		
Cash and cash equivalents	\$ 299,514,005	\$ 181,941,182
Patient accounts receivable, net of estimated uncollectibles of \$25,340,538	85,302,217	77,830,020
Supplies inventory at cost	8,762,916	5,992,180
Other current assets	10,098,368	13,726,724
Total current assets	403,677,506	279,490,106
Assets whose use is limited or restricted by board	137,490,684	121,243,550
Capital assets:		
Land and construction in process	46,821,193	56,230,913
Other capital assets, net of depreciation	212,332,447	192,226,648
Total capital assets	259,153,640	248,457,561
Other assets:		
Investment in Securities	148,588,983	142,681,226
Investment in SVMC	8,584,295	11,859,803
Investment in Aspire/CHI/Coastal	4,327,680	4,147,329
Investment in other affiliates	25,311,979	21,802,132
Net pension asset	1,583,323	4,039,889
Total other assets	188,396,260	184,530,379
Deferred pension outflows	83,379,890	62,468,517
	<b>\$ 1,072,097,980</b>	<b>\$ 896,190,113</b>
 <b>LIABILITIES AND NET ASSETS</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 58,586,921	\$ 50,798,943
Due to third party payers	74,822,042	9,391,497
Current portion of self-insurance liability	17,855,668	17,287,410
Total current liabilities	151,264,631	77,477,850
Long term portion of workers comp liability	14,780,831	17,645,000
Total liabilities	166,045,462	95,122,850
Pension liability	126,340,336	108,429,468
Net assets:		
Invested in capital assets, net of related debt	259,153,640	248,457,561
Unrestricted	520,558,542	444,180,234
Total net assets	779,712,182	692,637,795
	<b>\$ 1,072,097,980</b>	<b>\$ 896,190,113</b>

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**STATEMENTS OF REVENUE AND EXPENSES - BUDGET VS. ACTUAL**  
**December 31, 2020**

	Month of December,				Six months ended December 31,			
	Actual	Budget	Variance	% Var	Actual	Budget	Variance	% Var
Operating revenue:								
Gross billed charges	\$ 200,157,113	\$ 170,988,920	29,168,193	17.06%	\$ 1,150,341,728	\$ 989,541,312	160,800,416	16.25%
Deductions from revenue	149,423,889	129,817,427	19,606,462	15.10%	860,672,457	750,275,040	110,397,417	14.71%
Net patient revenue	50,733,224	41,171,492	9,561,732	23.22%	289,669,271	239,266,272	50,402,999	21.07%
Other operating revenue	3,117,039	919,590	2,197,449	238.96%	7,941,143	5,517,537	2,423,606	43.93%
<b>Total operating revenue</b>	<b>53,850,263</b>	<b>42,091,082</b>	<b>11,759,181</b>	<b>27.94%</b>	<b>297,610,414</b>	<b>244,783,809</b>	<b>52,826,605</b>	<b>21.58%</b>
Operating expenses:								
Salaries and wages	16,938,694	13,493,883	3,444,811	25.53%	96,697,730	83,737,009	12,960,721	15.48%
Compensated absences	2,747,386	3,165,869	(418,483)	-13.22%	16,162,471	17,085,613	(923,142)	-5.40%
Employee benefits	7,229,366	7,022,657	206,709	2.94%	44,272,027	43,110,410	1,161,617	2.69%
Supplies, food, and linen	6,257,645	5,172,174	1,085,471	20.99%	37,474,248	30,251,260	7,222,988	23.88%
Purchased department functions	3,016,032	3,114,974	(98,942)	-3.18%	18,275,972	18,633,829	(357,857)	-1.92%
Medical fees	1,938,088	1,682,486	255,602	15.19%	10,046,048	10,188,660	(142,612)	-1.40%
Other fees	1,539,604	837,801	701,803	83.77%	7,237,227	5,148,499	2,088,728	40.57%
Depreciation	1,803,474	1,789,255	14,219	0.79%	10,676,531	10,735,532	(59,001)	-0.55%
All other expense	1,171,421	1,420,374	(248,953)	-17.53%	7,008,543	8,462,799	(1,454,256)	-17.18%
<b>Total operating expenses</b>	<b>42,641,710</b>	<b>37,699,474</b>	<b>4,942,236</b>	<b>13.11%</b>	<b>247,850,797</b>	<b>227,353,611</b>	<b>20,497,186</b>	<b>9.02%</b>
<b>Income from operations</b>	<b>11,208,553</b>	<b>4,391,608</b>	<b>6,816,945</b>	<b>155.23%</b>	<b>49,759,617</b>	<b>17,430,198</b>	<b>32,329,419</b>	<b>185.48%</b>
Non-operating income:								
Donations	666,667	166,667	500,000	300.00%	1,500,000	1,000,000	500,000	50.00%
Property taxes	333,333	333,333	(0)	0.00%	2,000,000	2,000,000	0	0.00%
Investment income	880,465	160,094	720,371	449.97%	2,109,563	960,561	1,149,002	119.62%
Income from subsidiaries	(2,163,541)	(4,421,969)	2,258,428	-51.07%	(21,463,896)	(23,818,755)	2,354,859	-9.89%
<b>Total non-operating income</b>	<b>(283,076)</b>	<b>(3,761,876)</b>	<b>3,478,799</b>	<b>-92.48%</b>	<b>(15,854,333)</b>	<b>(19,858,194)</b>	<b>4,003,861</b>	<b>-20.16%</b>
<b>Operating and non-operating income</b>	<b>\$ 10,925,477</b>	<b>\$ 629,732</b>	<b>10,295,744</b>	<b>1634.94%</b>	<b>\$ 33,905,284</b>	<b>\$ (2,427,996)</b>	<b>36,333,280</b>	<b>-1496.43%</b>

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	Month of Dec		Six months to date		Variance
	2019	2020	2019-20	2020-21	
<b><u>NEWBORN STATISTICS</u></b>					
Medi-Cal Admissions	44	51	284	277	(7)
Other Admissions	108	105	679	593	(86)
Total Admissions	152	156	963	870	(93)
Medi-Cal Patient Days	70	78	460	412	(48)
Other Patient Days	186	177	1,182	939	(243)
Total Patient Days of Care	256	255	1,642	1,351	(291)
Average Daily Census	8.3	8.2	8.9	7.3	(1.6)
Medi-Cal Average Days	1.7	1.7	1.7	1.6	(0.2)
Other Average Days	1.0	1.6	1.7	1.6	(0.2)
Total Average Days Stay	1.7	1.7	1.7	1.6	(0.2)
<b><u>ADULTS &amp; PEDIATRICS</u></b>					
Medicare Admissions	427	326	2,312	1,911	(401)
Medi-Cal Admissions	321	249	1,545	1,420	(125)
Other Admissions	437	277	2,011	1,699	(312)
Total Admissions	1,185	852	5,868	5,030	(838)
Medicare Patient Days	2,007	1,730	10,231	1,344	(8,887)
Medi-Cal Patient Days	1,193	1,285	6,632	1,048	(5,584)
Other Patient Days	1,068	1,166	6,136	19,608	13,472
Total Patient Days of Care	4,268	4,181	22,999	22,000	(999)
Average Daily Census	137.7	134.9	125.0	119.6	(5.4)
Medicare Average Length of Stay	4.7	5.4	4.4	0.7	(3.7)
Medi-Cal Average Length of Stay	3.7	4.4	3.7	0.6	(3.0)
Other Average Length of Stay	2.4	3.1	2.3	8.5	6.2
Total Average Length of Stay	3.6	4.2	3.4	3.7	0.4
Deaths	39	42	164	187	23
Total Patient Days	4,524	4,436	24,641	23,351	(1,290)
Medi-Cal Administrative Days	12	60	48	156	108
Medicare SNF Days	0	0	0	0	0
Over-Utilization Days	0	0	0	0	0
Total Non-Acute Days	12	60	48	156	108
Percent Non-Acute	0.27%	1.35%	0.19%	0.67%	0.47%

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	Month of Dec		Six months to date		Variance
	2019	2020	2019-20	2020-21	
<u>PATIENT DAYS BY LOCATION</u>					
Level I	313	269	1,689	1,494	(195)
Heart Center	394	339	2,086	2,046	(40)
Monitored Beds	971	955	5,451	5,414	(37)
Single Room Maternity/Obstetrics	447	394	2,657	2,142	(515)
Med/Surg - Cardiovascular	848	850	4,602	4,347	(255)
Med/Surg - Oncology	330	326	1,486	1,031	(455)
Med/Surg - Rehab	413	510	2,508	2,491	(17)
Pediatrics	127	88	733	435	(298)
Nursery	256	255	1,642	1,351	(291)
Neonatal Intensive Care	119	162	713	817	104
<u>PERCENTAGE OF OCCUPANCY</u>					
Level I	77.67%	66.75%	70.61%	62.46%	
Heart Center	84.73%	72.90%	75.58%	74.13%	
Monitored Beds	116.01%	114.10%	109.72%	108.98%	
Single Room Maternity/Obstetrics	38.97%	34.35%	39.03%	31.46%	
Med/Surg - Cardiovascular	60.79%	60.93%	55.58%	52.50%	
Med/Surg - Oncology	81.89%	80.89%	62.12%	43.10%	
Med/Surg - Rehab	51.24%	63.28%	52.42%	52.07%	
Med/Surg - Observation Care Unit	0.00%	54.65%	0.00%	57.00%	
Pediatrics	22.76%	15.77%	22.13%	13.13%	
Nursery	50.05%	49.85%	27.04%	22.25%	
Neonatal Intensive Care	34.90%	47.51%	35.23%	40.37%	

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	<u>Month of Dec</u>		<u>Six months to date</u>		<u>Variance</u>
	<u>2019</u>	<u>2020</u>	<u>2019-20</u>	<u>2020-21</u>	
<b><u>DELIVERY ROOM</u></b>					
Total deliveries	168	148	955	861	(94)
C-Section deliveries	52	42	311	256	(55)
Percent of C-section deliveries	30.95%	28.38%	32.57%	29.73%	-2.83%
<b><u>OPERATING ROOM</u></b>					
In-Patient Operating Minutes	23,960	15,776	137,632	128,184	(9,448)
Out-Patient Operating Minutes	26,819	19,583	165,463	143,711	(21,752)
Total	50,779	35,359	303,095	271,895	(31,200)
Open Heart Surgeries	14	8	74	72	(2)
In-Patient Cases	164	120	1,024	877	(147)
Out-Patient Cases	291	214	1,732	1,585	(147)
<b><u>EMERGENCY ROOM</u></b>					
Immediate Life Saving	38	44	182	191	9
High Risk	663	566	3,758	3,080	(678)
More Than One Resource	2,736	2,154	16,543	12,702	(3,841)
One Resource	1,486	1,025	8,949	8,444	(505)
No Resources	40	39	286	247	(39)
Total	<u>4,963</u>	<u>3,828</u>	<u>29,718</u>	<u>24,664</u>	<u>(5,054)</u>

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	Month of Dec		Six months to date		Variance
	2019	2020	2019-20	2020-21	
<b>CENTRAL SUPPLY</b>					
In-patient requisitions	17,890	15,675	92,959	85,803	-7,156
Out-patient requisitions	10,516	9,108	64,050	61,717	-2,333
Emergency room requisitions	2,868	1,576	19,336	9,898	-9,438
Interdepartmental requisitions	7,787	8,211	43,670	41,795	-1,875
Total requisitions	<u>39,061</u>	<u>34,570</u>	<u>220,015</u>	<u>199,213</u>	<u>-20,802</u>
<b>LABORATORY</b>					
In-patient procedures	38,014	39,445	210,614	211,628	1,014
Out-patient procedures	10,176	11,221	63,653	66,776	3,123
Emergency room procedures	10,852	9,228	62,223	51,501	-10,722
Total patient procedures	<u>59,042</u>	<u>59,894</u>	<u>336,490</u>	<u>329,905</u>	<u>-6,585</u>
<b>BLOOD BANK</b>					
Units processed	<u>401</u>	<u>259</u>	<u>1,701</u>	<u>1,678</u>	<u>-23</u>
<b>ELECTROCARDIOLOGY</b>					
In-patient procedures	1,133	928	6,351	5,525	-826
Out-patient procedures	414	358	2,892	2,357	-535
Emergency room procedures	995	1,040	5,857	5,097	-760
Total procedures	<u>2,542</u>	<u>2,326</u>	<u>15,100</u>	<u>12,979</u>	<u>-2,121</u>
<b>CATH LAB</b>					
In-patient procedures	99	57	503	448	-55
Out-patient procedures	72	78	531	520	-11
Emergency room procedures	0	0	0	1	1
Total procedures	<u>171</u>	<u>135</u>	<u>1,034</u>	<u>969</u>	<u>-65</u>
<b>ECHO-CARDIOLOGY</b>					
In-patient studies	337	286	1,799	1,735	-64
Out-patient studies	206	175	1,226	1,124	-102
Emergency room studies	2	3	8	14	6
Total studies	<u>545</u>	<u>464</u>	<u>3,033</u>	<u>2,873</u>	<u>-160</u>
<b>NEURODIAGNOSTIC</b>					
In-patient procedures	174	172	1,083	969	-114
Out-patient procedures	19	25	126	145	19
Emergency room procedures	0	0	1	0	-1
Total procedures	<u>193</u>	<u>197</u>	<u>1,210</u>	<u>1,114</u>	<u>-96</u>

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	Month of Dec		Six months to date		Variance
	2019	2020	2019-20	2020-21	
<b>SLEEP CENTER</b>					
In-patient procedures	0	0	0	1	1
Out-patient procedures	191	168	1,272	1,132	-140
Emergency room procedures	0	0	0	0	0
Total procedures	191	168	1,272	1,133	-139
<b>RADIOLOGY</b>					
In-patient procedures	1,436	1,530	7,907	8,054	147
Out-patient procedures	361	452	2,594	3,907	1,313
Emergency room procedures	1,481	1,287	8,751	6,722	-2,029
Total patient procedures	3,278	3,269	19,252	18,683	-569
<b>MAGNETIC RESONANCE IMAGING</b>					
In-patient procedures	139	124	846	755	-91
Out-patient procedures	82	109	523	826	303
Emergency room procedures	11	10	77	66	-11
Total procedures	232	243	1,446	1,647	201
<b>MAMMOGRAPHY CENTER</b>					
In-patient procedures	3,729	3,034	22,960	18,192	-4,768
Out-patient procedures	3,726	3,008	22,860	18,094	-4,766
Emergency room procedures	0	0	7	0	-7
Total procedures	7,455	6,042	45,827	36,286	-9,541
<b>NUCLEAR MEDICINE</b>					
In-patient procedures	17	7	120	74	-46
Out-patient procedures	77	66	529	445	-84
Emergency room procedures	0	0	3	3	0
Total procedures	94	73	652	522	-130
<b>PHARMACY</b>					
In-patient prescriptions	100,898	104,022	544,253	524,865	-19,388
Out-patient prescriptions	16,671	12,644	99,750	89,539	-10,211
Emergency room prescriptions	8,069	5,658	46,396	31,641	-14,755
Total prescriptions	125,638	122,324	690,399	646,045	-44,354
<b>RESPIRATORY THERAPY</b>					
In-patient treatments	17,250	32,480	92,426	126,851	34,425
Out-patient treatments	529	346	3,843	3,248	-595
Emergency room treatments	507	185	2,383	806	-1,577
Total patient treatments	18,286	33,011	98,652	130,905	32,253
<b>PHYSICAL THERAPY</b>					
In-patient treatments	2,536	2,397	15,017	13,853	-1,164
Out-patient treatments	249	158	1,724	1,652	-72
Emergency room treatments	0	0	0	0	0
Total treatments	2,785	2,555	16,741	15,505	-1,236

**SALINAS VALLEY MEMORIAL HOSPITAL**  
**PATIENT STATISTICAL REPORT**  
For the month of Dec and six months to date

	Month of Dec		Six months to date		Variance
	2019	2020	2019-20	2020-21	
<b>OCCUPATIONAL THERAPY</b>					
In-patient procedures	1,619	1,320	8,522	7,958	-564
Out-patient procedures	137	72	812	723	-89
Emergency room procedures	0	0	0	0	0
Total procedures	<u>1,756</u>	<u>1,392</u>	<u>9,334</u>	<u>8,681</u>	<u>-653</u>
<b>SPEECH THERAPY</b>					
In-patient treatments	408	430	2,225	2,334	109
Out-patient treatments	17	23	148	148	0
Emergency room treatments	2	0	2	0	-2
Total treatments	<u>427</u>	<u>453</u>	<u>2,375</u>	<u>2,482</u>	<u>107</u>
<b>CARDIAC REHABILITATION</b>					
In-patient treatments	0	0	0	0	0
Out-patient treatments	456	389	2,867	2,139	-728
Emergency room treatments	0	0	0	1	1
Total treatments	<u>456</u>	<u>389</u>	<u>2,867</u>	<u>2,140</u>	<u>-727</u>
<b>CRITICAL DECISION UNIT</b>					
Observation hours	<u>424</u>	<u>223</u>	<u>1,792</u>	<u>1,488</u>	<u>-304</u>
<b>ENDOSCOPY</b>					
In-patient procedures	102	83	554	541	-13
Out-patient procedures	29	14	179	147	-32
Emergency room procedures	0	0	0	0	0
Total procedures	<u>131</u>	<u>97</u>	<u>733</u>	<u>688</u>	<u>-45</u>
<b>C.T. SCAN</b>					
In-patient procedures	700	498	3,943	3,266	-677
Out-patient procedures	239	489	1,643	3,153	1,510
Emergency room procedures	606	426	3,834	2,775	-1,059
Total procedures	<u>1,545</u>	<u>1,413</u>	<u>9,420</u>	<u>9,194</u>	<u>-226</u>
<b>DIETARY</b>					
Routine patient diets	21,386	14,895	121,383	95,600	-25,783
Meals to personnel	24,723	20,252	150,815	124,871	-25,944
Total diets and meals	<u>46,109</u>	<u>35,147</u>	<u>272,198</u>	<u>220,471</u>	<u>-51,727</u>
<b>LAUNDRY AND LINEN</b>					
Total pounds laundered	<u>118,857</u>	<u>94,703</u>	<u>818,929</u>	<u>610,515</u>	<u>-208,414</u>



## Memorandum

To: Board of Directors  
 From: Allen Radner, M.D. CMO  
 Date: January 28, 2021  
 Re: Policies Requiring Approval

As required under Title 22, CMS, and The Joint Commission (TJC), please find below a list of regulatory required policies with summary of changes that require your approval.

	Policy Title	Summary of Changes	Responsible VP
1.	Group Beta Streptococcus Perinatal Screening and Management	Updated References and attachments.	Clement Miller
2.	RC NICU Surfactant Administration Clinical Procedure	Updated Policy Statement bullet "B" number 3. Updated Education statement to standards verbiage. Updated References.	Clement Miller
3.	Cardiac Wellness: Patient Arrival Requirements for Cardiac Rehabilitation Therapy	Updated template and updated Education statement to standard verbiage.	Clement Miller
4.	Abbreviations Use	Updated Policy Statement for use with the Stedman's online Abbreviation Manual. Updated Definitions section and updated Education statement to standard verbiage.	Augustine Lopez
5.	Preceptor Policy	Removed form "Preceptor Agreement" from policy and created a hyperlink to it. Updated General Information section. Updated References.	Clement Miller

6.	Scope of Service: Medical Staff Services	Updates include deleted redundant language and removed non-applicable and/or outdated statements. Added updated Organizational Chart.	Allen Radner, M.D.
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## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

<b>Reference Number</b>	169
<b>Effective Date</b>	Not Approved Yet
<b>Applies To</b>	L & D, Mother/Baby, NICU
<b>Attachments/Forms</b>	<p><b>Updated definitions, <u>ACOG AAP Recommendations, CDC 2010 recommendations</u></b></p> <p><b><u>ATTACHMENT A</u></b> – Recommended treatment algorithm</p> <p><b><u>ATTACHMENT B</u></b> – Recommended treatment pre-term labor</p> <p><b><u>ATTACHMENT C</u></b> – Recommended treatment preterm premature rupture of membranes</p>

### I. POLICY STATEMENT:

- A. Women should be screened for (GBS) colonization between 36 0/7 -37 6/7 weeks and will be managed in compliance with national guidelines.
  - If test was completed more than **five (5)** weeks prior to onset of labor, the culture/DNA testing should be repeated and management based on the most recent-culture/DNA results. If five or more weeks have passed since a culture/DNA test, GBS status will be considered unknown and is to be documented as unknown.
- B. At risk newborns should be observed and managed in compliance with national guidelines.
- C. Physicians should be notified of the admission of a pregnant woman with positive or unknown GBS results to request initiation of GBS prophylaxis. Refer to Attachments A, B, and /or C for appropriate treatment algorithm.

### II. PURPOSE:

- A. To outline management of the pregnant woman to reduce the potential transmission of invasive Group Beta Streptococcus (GBS) infection to their newborn.

### III. DEFINITIONS:

- A. Adequately treated: Initiation of intrapartum antimicrobial prophylaxis and administration at least 4 hours before delivery can be considered adequate.
  - Duration shorter than four hours and all other antimicrobial regimens, including clindamycin and vancomycin, are considered as inadequate IAP because no data regarding efficacy are available.
- B. PPROM: Preterm premature rupture of membranes

## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

- C. PTL: Preterm labor
- D. IAP: Intrapartum antibiotic prophylaxis

### IV. GENERAL INFORMATION:

- A. N/A

### V. PROCEDURE:

- A. If screening for GBS will occur on the labor and delivery unit, specimen collection will be collected in the following manner:
  - Obtain physician's order
  - Swab the vaginal introitus, followed by the rectum (insert swab through the anal sphincter) using the same swab or two different swabs. Place in appropriate medium and send to lab for appropriate culture.
  - Following delivery, provide information regarding pending results to ~~to~~ Mother to Mother/Baby Unit or the NICU at time of handover.
- B. Indications for intrapartum antibiotic prophylaxis to prevent perinatal GBS disease

## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

Vaginal and rectal GBS screening cultures at 36~~5~~-37 6/7 weeks gestation for pregnant women (unless patient had GBS bacteriuria during the current pregnancy or a previous infant with invasive GBS disease).

### Intrapartum prophylaxis indicated

- Previous infant with invasive GBS disease
- GBS bacteriuria during current pregnancy
- Positive GBS screening culture during current pregnancy (unless a planned cesarean delivery, in the absence of labor or amniotic membrane rupture, is performed)
- Unknown GBS status (culture not done, incomplete, or results unknown) and any of the following:
  - Delivery at <37 weeks' gestation
  - Amniotic membrane rupture  $\geq$  18 hours
  - Intrapartum temperature  $\geq$ 100.4°F ( $\geq$ 38.0°C)

### Intrapartum prophylaxis not indicated

- Previous pregnancy with a positive GBS screening culture (unless an indication for GBS prophylaxis is present for the current pregnancy)
- GBS bacteriuria during previous pregnancy (unless another indication for GBS prophylaxis is present for current pregnancy)
- Cesarean delivery performed before onset of labor on a woman with intact amniotic membranes, regardless of GBS colonization status or gestational age.
- Negative vaginal and rectal GBS screening culture in late gestation during the current pregnancy, regardless of intrapartum risk factors.

### C. Intrapartum prophylaxis.

- Recommended regimens for intrapartum antimicrobial prophylaxis for Perinatal GBS disease prevention see [Attachment A](#).
- Recommended regimens for intrapartum antimicrobial prophylaxis for Perinatal GBS prevention with
  - Pre-term labor see [attachment B](#)
  - Pre-term premature rupture of membranes, see [attachment C](#)

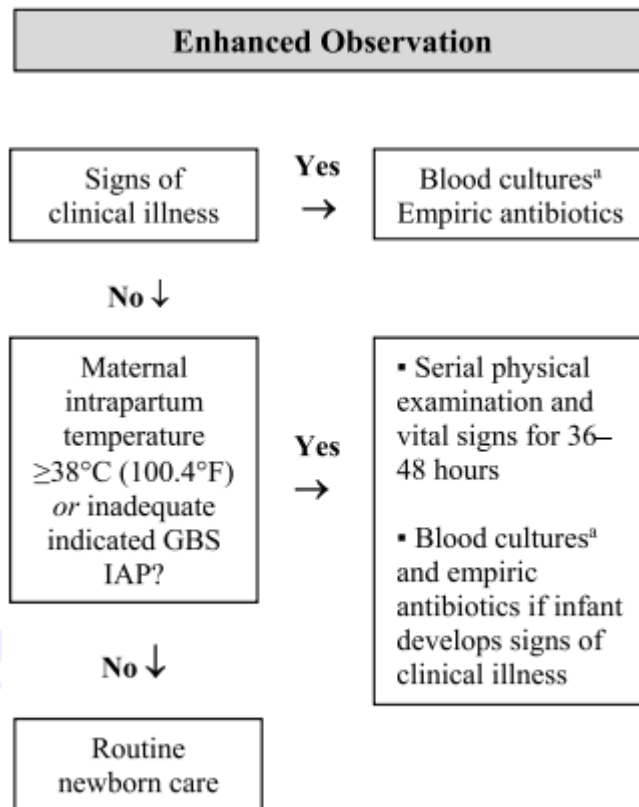
## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

D. Newborn management. There are three current approaches to risk assessment among infants born at  $\geq 35$  weeks' gestation

E. Documentation:

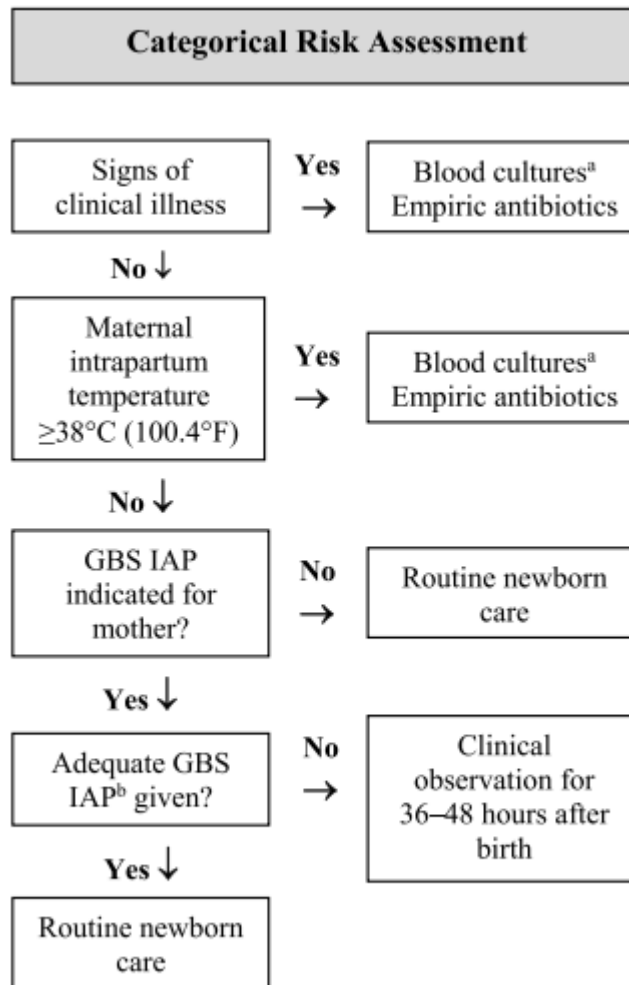
1. Document GBS status in electronic health record.
2. Document medication administration per policy.

### Recommended – Enhanced Observation



## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

### Categorical Risk Assessment



## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT

[Neonatal Early-Onset Sepsis Calculator \(recommend neonatologist consultation\)](#)

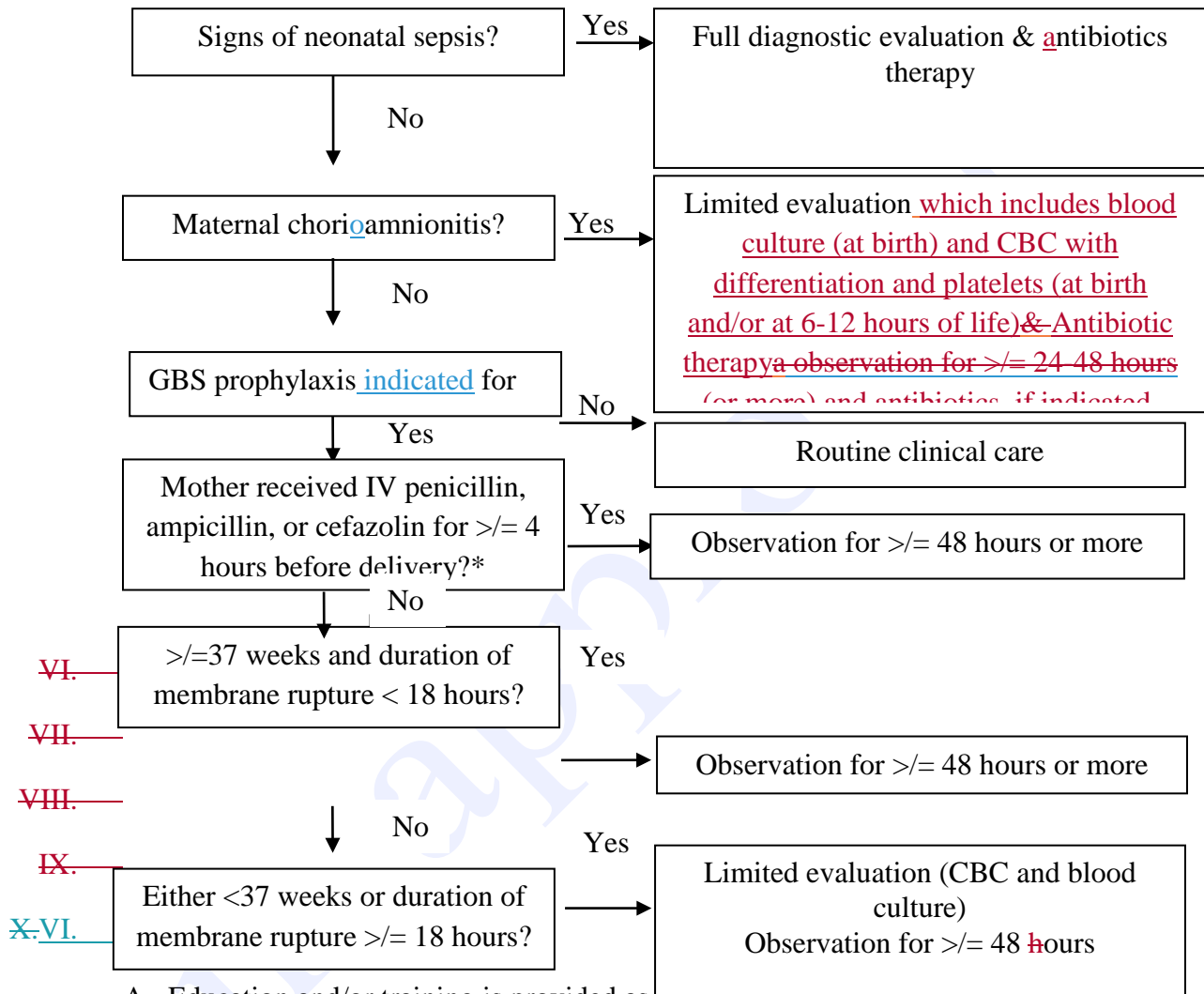
The image shows a screenshot of a web-based calculator titled "neonatalesepsiscalculator.kaiserpermanente.org". The interface is divided into two columns: "Predictor" and "Scenario".

Predictor	Scenario
Incidence of Early-Onset Sepsis	[Dropdown menu]
Gestational age	[Input field] weeks [Input field] days
Highest maternal antepartum temperature	[Input field] Fahrenheit
ROM (Hours)	[Input field]
Maternal GBS status	<input type="radio"/> Negative <input type="radio"/> Positive <input type="radio"/> Unknown
Type of intrapartum antibiotics	<input type="radio"/> Broad spectrum antibiotics > 4 hrs prior to birth <input type="radio"/> Broad spectrum antibiotics 2-3.9 hrs prior to birth <input type="radio"/> GBS specific antibiotics > 2 hrs prior to birth <input type="radio"/> No antibiotics or any antibiotics < 2 hrs prior to birth

— Algorithm for recommended secondary prevention or early-onset group B streptococcal (GBS) disease among newborns



## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT



A. Education and/or training is provided as needed.

### ~~XI.VII.~~ REFERENCES:

- A. AAP/ACOG. (2017~~207~~). Guidelines for perinatal care. (8th ~~7th~~ ed). Author.
- ~~B. Centers for Disease Control. (2010). Prevention of perinatal group B streptococcal disease. Revised guidelines from CDC. Author.~~
- B. American College of Obstetricians and Gynecologists. (2019). Prevention of Group B Streptococcal Early-onset disease in newborns. Committee opinion 782. Author.

GROUP BETA STREPTOCOCCUS  
PERINATAL SCREENING AND MANAGEMENT

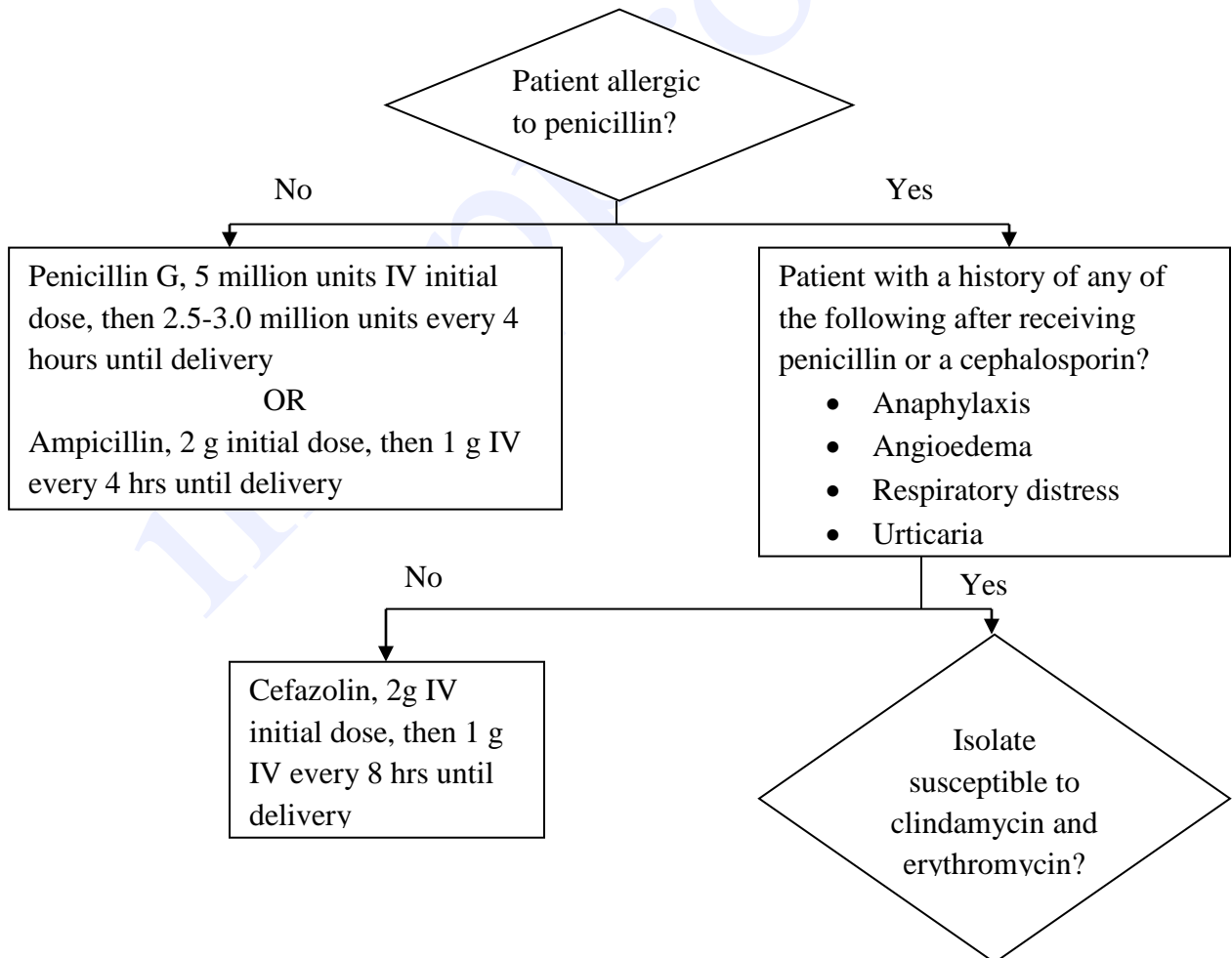
- C. [Puopolo, K., Lynfield, R., Cummings, J. \(2019\). Management of infants at risk for Group B Streptococcal Disease. \*Pediatrics\*, 144, 2.](#)

in approval

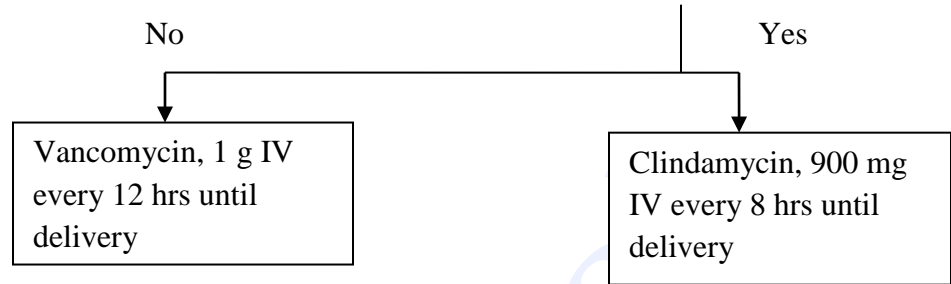
GROUP BETA STREPTOCOCCUS  
PERINATAL SCREENING AND MANAGEMENT

ATTACHMENT A

Recommended Treatment Algorithm

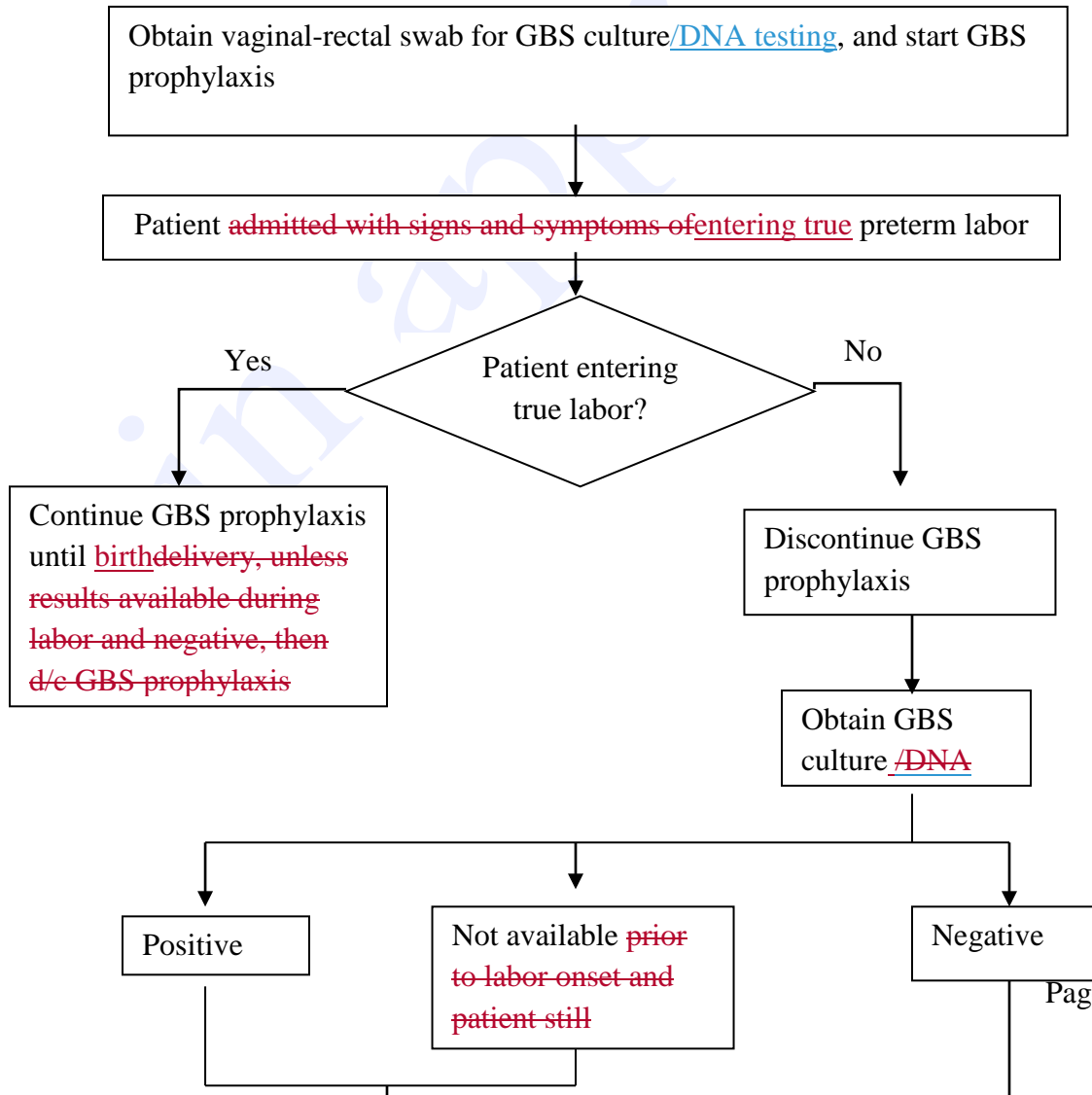


GROUP BETA STREPTOCOCCUS  
PERINATAL SCREENING AND MANAGEMENT



Attachment B

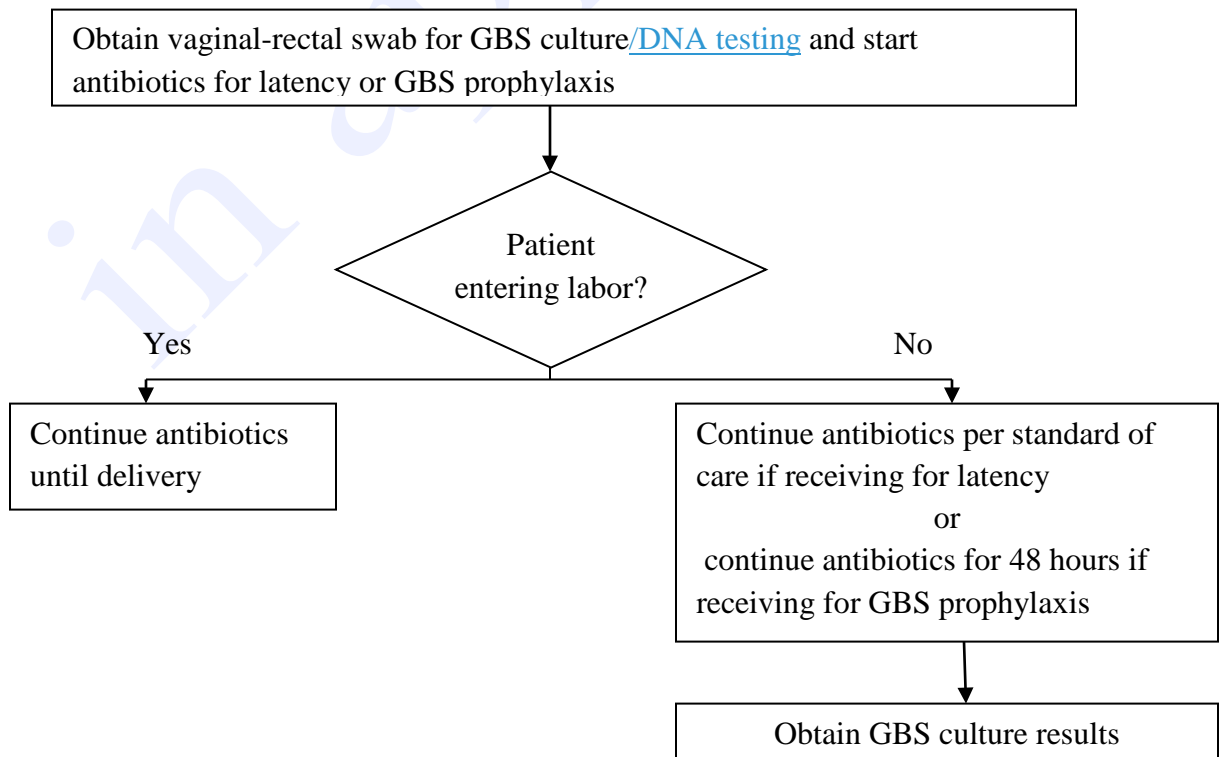
Algorithm for screening for GBS colonization and use of intrapartum prophylaxis for women with preterm labor (at <37 0/7 weeks gestation)



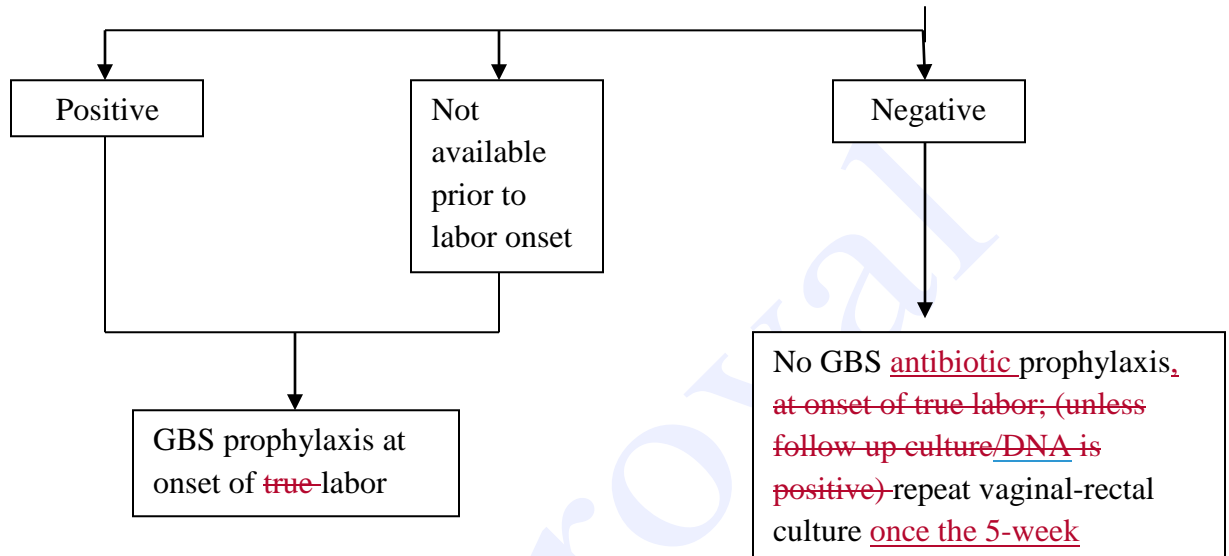
GROUP BETA STREPTOCOCCUS  
PERINATAL SCREENING AND MANAGEMENT

Attachment C

Algorithm for screening for GBS colonization and use of intrapartum prophylaxis for women with preterm (<37 0/7 weeks) premature rupture of membranes (pPROM)



## GROUP BETA STREPTOCOCCUS PERINATAL SCREENING AND MANAGEMENT



## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

<b>Reference Number</b>	646
<b>Effective Date</b>	Not Approved Yet
<b>Applies To</b>	NICU, RESPIRATORY CARE
<b>Attachments/Forms</b>	<a href="#">ATTACHMENT A: CUROSURF ADMINISTRATION</a>

### I. POLICY STATEMENT:

- A. Surfactant should be delivered by personnel trained to deliver the medication under guidance of the Neonatologist.
- B. Indications and usage:
  1. Surfactant therapy is indicated for neonate's  $\leq 72$  hours of age with RDS confirmed by clinical and radiologic findings and/or requiring endotracheal intubation.
    - a. Endogenous lung surfactant is essential to stabilize alveoli by lowering surface tension between air and alveolar surfaces.
  2. The deficiency of surfactant or surfactant dysfunction may contribute to respiratory failure in a broader group of disorders, including meconium aspiration syndrome.
  3. In premature infants  $\leq 29$  weeks gestational age at significant risk for RDS, prophylactic ~~surfactant~~ **surfactant may** be administered in the delivery room, preferably within the first 15-30 minutes of life.

### II. PURPOSE:

- A. To provide guidelines for surfactant replacement therapy in the neonatal population.

### III. DEFINITIONS:

- A. ABG – ARTERIAL BLOOD GAS
- B. BP – BLOOD PRESSURE
- C. ECG - ELECTROCARDIOGRAM
- D. ET<sub>CO2</sub> – END TIDAL CARBON DIOXIDE
- E. FIO<sub>2</sub> – FRACTION OF INSPIRED OXYGEN
- F. HR – HEART RATE
- G. RCP - RESPIRATORY CARE PRACTITIONER
- H. RDS – RESPIRATORY DISTRESS SYNDROME
- I. RR – RESPIRATORY RATE

## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

- J. SaO<sub>2</sub> – OXYGEN SATURATION
- K. VT – TIDAL VOLUME
- L. PPV- POSITIVE PRESSURE VENTILATION

### IV. GENERAL INFORMATION:

- A. N/A

### V. PROCEDURE:

- A. Reviews the medical record for patient history, diagnosis, physician orders and current status.
- B. Treatment
  - 1. Two attendants, one to instill the surfactant, the other to monitor the patient and assist in positioning, facilitate each dosing procedure.
  - 2. Prior to administration the patient must be:
    - a. Continuously monitored by a pulse oximeter
    - b. Intubated with an endotracheal tube, confirmed by two or more of the following:
      - 1) Chest Radiograph
      - 2) ETCO<sub>2</sub> adapter with positive color change
      - 3) Existence of equal bilateral breath sounds
    - c. Continuously monitored by ECG monitor
  - 3. All patients should be removed from ventilatory support during surfactant delivery unless otherwise specified per doctor orders. Positive pressure ventilation with a resuscitation bag will be used for surfactant delivery.
  - 4. Clear secretions and/or water droplets, created from humidified air, from endotracheal tube prior to administration of surfactant as surfactant has an extremely high affinity for water molecules.
- C. Monitoring
  - 1. Before, during, and after administration of surfactant, patients should be carefully monitored so that oxygen therapy and ventilatory support can be modified in response to changes in respiratory status.
  - 2. Baseline vital signs, which may include, HR, BP, RR, color, breath sounds, VT, SaO<sub>2</sub> and ABG's, should be noted before and after each dose of surfactant.



## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

3. Decrease in peak inspiratory pressure, inspiratory time and/or FiO<sub>2</sub> may be necessary soon after surfactant administration due to surfactant's rapid affect on oxygenation and lung compliance.
  4. Transient episodes of reflux of surfactant into the endotracheal tube, cyanosis, bradycardia, or airway obstruction may occur during the dosing procedure. These events require stopping surfactant administration and taking appropriate measures to alleviate the condition. After the patient is stable, dosing can proceed with continued monitoring.
  5. **NOTE:** Avoid suctioning the patient for at least 1 hour after surfactant administration **unless** signs of significant airway obstruction occur.
  6. Rales and moist breath sounds will occur transiently after administration.
  7. All patients receiving surfactant should be closely monitored for a period of at least 30 minutes following administration assessing any change in patient condition.
- D. Documentation:
1. Documentation should be done in the patient's electronic medical record each time the surfactant is given.
  2. Document the following:
    - a. Amount of surfactant given
    - b. Delivery method and positioning during administration
    - c. Time of administration
    - d. Which dose was given (i.e. second or third dose/course)
    - e. Patient's tolerance of procedure

## VI. EDUCATION/TRAINING:

- ~~A. —Education is provided during general or department specific orientation and periodically as practice or policy changes.~~
- A. and/or training is provided as needed.

## VII. REFERENCES:

- A. AARC Clinical Practice Guideline: Surfactant Replacement Therapy: 2013. Respiratory ~~Care 2013~~Care 2013: 58(2):367-375.
- ~~B. —Lucile Packard Children's Hospital. Neonatal Care: Surfactant Administration Protocol. Policy and Procedure (2004).~~

## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

- ~~C. Weisman, L., Hansen T. (2003) Neonatal Respiratory Diseases. p259-263. Handbooks in HealthCare Co Newtown, PA~~
- B. American Academy of Pediatrics. Surfactant Replacement: Therapy for Preterm and Term Neonates (2014)
- C. Sardesai S, Biniwale M, Wertheimer F, Garingo A, Ramanathan R: Evolution of surfactant therapy for respiratory distress syndrome: past, present, and future. *Pediatr Res.* 2017, 81:240-248.
- D. Blennow M, Bohlin K: Surfactant and noninvasive ventilation. *Neonatology.* 2015, 107:330-336. ~~volume 133/issue 1~~

in approval

## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

### ATTACHMENT A

#### Curosurf Administration

1. Equipment needed:

- Anesthesia bag
- ECG monitor
- Pulse oximeter
- Surfactant
- Surfactant delivery device (Multi access catheter)
- Personal protective equipment

2. Direction for Use:

- Surfactant should be inspected visually for discoloration prior to administration. Gently turn vial upside down in order to obtain a uniform suspension (DO NOT SHAKE or SWIRL) to disperse. Some foaming at the surface may occur during handling and is inherent to the nature of the product.
- Surfactant is stored refrigerated (2-8 °C). Before use, Curosurf should be slowly warmed to room temperature, doing so may improve patient tolerance. **ARTIFICIAL WARMING METHODS SHOULD NOT BE USED.** If a prophylactic dose is to be given, preparation of surfactant should begin before the infant's birth.

3. Dosage:

- Curosurf (poractant alfa) initial dose is 2.5 ml/kg
- Repeat doses are 1.25 ml/kg at 12 hour intervals. The maximum recommended total dose (initial and 2 repeat doses) is 5 ml/kg birth weight
- Follow manufacturer guidelines and physician's order for doses and delivery methods.

## RC NICU SURFACTANT ADMINISTRATION CLINICAL PROCEDURE

### 4. Administration:

- General
  - i. Surfactant is administered intratracheal by instillation via a 5 french Trach Care multi access catheter (Mac).
- Preparation
  - i. Slowly withdraw the entire contents of the vial of Curosurf into 2 individual 5 ml syringes or 1 single 10 ml syringe through a 18 gauge needle.  
  
NOTE: Slowly withdrawing surfactant will help to avoid excessive foaming
  - ii. Remove the needle and discard in marked sharps container.
  - iii. Attach syringe to the multi access catheter (Mac).

- Positioning

The total dose can be divided into 2 separate doses (2 individual 5 ml syringes) or 1 single dose (10 ml syringe) depending on delivery method (positioning side to side or supine).

- i. Place the patient supine
- ii. Surfactant can be administered: ( side to side or supine position, depending on MD preference)
- iii. The surfactant is to be administered in 1ml to 1.5ml boluses for patients >1000g, or 0.5ml to 1ml for patients <1000g, all boluses will be followed by 1 minute of PPV/30 breaths, this to be repeated until dose is delivered.
- iv. Delivered dose to be followed by 2cc of air to clear multi access catheter.

## CARDIAC WELLNESS: PATIENT ARRIVAL REQUIREMENTS FOR CARDIAC REHABILITATION THERAPY

<i>Reference Number</i>	5519
<i>Effective Date</i>	Not Approved Yet
<i>Applies To</i>	Cardiac Rehab
<i>Attachments/Forms</i>	

### I. POLICY STATEMENT:

- A. Prior to participation each patient must be clearly identified using at least two (2) unique identifiers. In keeping with hospital policy, the two identifiers to be used are: **patient's name and date of birth (DOB)**. Following the procedure outlined below, staff providing service is responsible for:

1. Collecting ID information from the patient prior to any therapy session.

Note: the source of that information must be the patient NOT the staff member, i.e.

You should ask...	What is your birth date?	Patient to supply the answers.
You should NOT ask...	Is your date of birth 8/8/88?	A patient who is confused, disoriented, or simply mishears the question could easily respond YES incorrectly.

### II. PURPOSE:

- A. To properly identify each patient who arrives for Cardiac Rehabilitation (CR) treatment in the Cardiac Wellness Center.

### III. DEFINITIONS:

- A. N/A

### IV. GENERAL INFORMATION:

- A. N/A

### V. PROCEDURE:

- A. Initial Orientation/ Intake Interview

## CARDIAC WELLNESS: PATIENT ARRIVAL REQUIREMENTS FOR CARDIAC REHABILITATION THERAPY

1. Prior to arrival to the Cardiac Wellness Department, the patient will be instructed to provide their health insurance cards to be scanned into the electronic medical record (EMR) system.
2. The Cardiac Wellness staff will make a photo ID lanyard for the patient that will include their photo on one side and patient's name and DOB on opposite side.
3. Upon arrival for all subsequent sessions, patients will be instructed to obtain their photo ID from the staff and state their name and DOB.
  - a. Patients will be required to wear photo ID lanyard for duration of exercise session.
  - b. Using the patient's ID lanyard, staff will verify name and DOB with medical records.
  - c. At completion of exercise session, the patient will return their photo ID lanyard to staff.

### VI. **EDUCATION/TRAINING:**

- A. Education and/or training is provided as needed.

### VII. **REFERENCES:**

- A. TJC Standards: PC

## ABBREVIATIONS USE

<b>Reference Number</b>	660
<b>Effective Date</b>	Not Approved Yet
<b>Applies To</b>	All Departments
<b>Attachments/Forms</b>	

### I. POLICY STATEMENT:

#### I.

- A. Stedman's Medical Abbreviation Manual has been designated as the Salinas Valley Memorial Hospitals approved abbreviation list.
- B. Abbreviations are not to be used on Informed Consent documents, Patient Rights documents, and Discharge Instructions.
- A. ~~Approved abbreviations, acronyms and symbols are standardized for use in medical record documentation.~~
- B. ~~It is the policy of Salinas Valley Memorial Healthcare System (SVMHS) not to use an abbreviation if it can be interpreted to have more than one meaning in the context of the documentation.~~

### II. PURPOSE:

- A. To guide the staff in the use of abbreviations that have been approved for use in the patient medical record. ~~Per accreditation organizations (The Joint Commission) and Federal, State and Local regulatory requirements, abbreviations appearing on patient care forms must be included in an Approved Abbreviations list or publication.~~

### III. DEFINITIONS:

- A. Abbreviation - is defined as a shortened form of a written word or symbol used in place of a whole word. The word "Abbreviation" in this policy includes the use of acronyms and symbols.
- B. ~~All abbreviations will have a single meaning and be standardized within the context of the documentation.~~

### IV. GENERAL INFORMATION:

## ABBREVIATIONS USE

- A. Approved abbreviations, acronyms and symbols are standardized for use in medical record documentation.
- B. The Joint Commission DO NOT USE abbreviations are published within the MEDICATION USE policy. Refer to this policy regarding medication ordering.
- A. ~~N/A~~

### V. **PROCEDURE:**

~~The appropriate use of abbreviations will be monitored via the Ongoing Medical Record Review process. Data from the ongoing medical record review process regarding the appropriate use of abbreviations as well as the inappropriate use of abbreviations on the DO NOT USE list will be aggregated by physician on a quarterly basis, and forwarded to the Medical Executive Committee for review and further action as required.~~

~~Regarding medication ordering: When a physician writes a medication order in which a DO NOT USE abbreviation is used, the Pharmacy will send a reminder/educational letter to physician about the DO NOT USE abbreviation policy. See MEDICATION USE policy. This data will be aggregated by physician on a quarterly basis and forwarded to the Medical Executive Committee for review and further action as required.~~

~~Regarding medication ordering: When a nurse writes a verbal/telephone medication order in which a DO NOT USE abbreviation is used, the Pharmacy will send this information to the Nurse Director for individual staff follow up and/or counseling as deemed appropriate by the Nurse Director.~~

~~Participants in the review process have the responsibility for identifying additions and deletions to the list based on current practice.~~

- A. The list of approved abbreviations and the DO NOT USE list will be published and maintained electronically. Stedman's Medical Abbreviations is a publish reference source. Access to Stedman's Medical Abbreviation manual is available from the STARnet web site. Follow the directions below for access:
  - 1. Go to STARnet.svmh.com
  - 2. Click on the Departments Tab
  - 3. Click on the HIM Department
  - 4. Under the Quick Links, click on Stedman's Dictionary



## ABBREVIATIONS USE

5. This Quick Link will take you to the Abbreviations and Dictionary Home Page

6. Use the Search Box to inquire the needed information

~~If there is an abbreviation that within context can have multiple meanings, SVMHs will identify the meaning to be used at SVMHS. Contact the Director of HIM regarding clarification of abbreviations.~~

~~The Director of HIM will utilize recommendations from various clinical committees to determine the meaning of a questionable abbreviation. Once the meaning is determined, the Stedman's Medical Abbreviations reference will be updated for use by SVMHS.~~

~~D. The Joint Commission DO NOT USE abbreviations are published within the MEDICATION USE policy. Refer to this policy regarding medication ordering.~~

~~E. Abbreviations are not to be used on Informed Consent documents, Patient Rights documents, and Discharge Instructions.~~

~~F.B. Documentation: NA~~

~~1. List of "DO NOT USE" Abbreviations MemnetSTARNET MEDICATION USE policy.~~

### VI. EDUCATION/TRAINING:

~~A. Education is provided during general or department specific orientation and periodically as practice or policy changes. Education and/or training is provided as needed.~~

~~B. The Forms Committee minutes will document that forms are reviewed for use of appropriate abbreviations.~~

### VII. REFERENCES:

A. The Joint Commission (TJC)  
Title 22

## PRECEPTOR POLICY

<b>Reference Number</b>	5949
<b>Effective Date</b>	Not Approved Yet
<b>Applies To</b>	CLINICAL AND NON-CLINICAL DEPARTMENTS
<b>Attachments/Forms</b>	<a href="#">Attachment A Preceptor Agreement</a>

### I. POLICY STATEMENT:

#### A. Preceptor selection

1. The Department Director/Manager is responsible to select and assign a primary and secondary preceptor for every new hire or student. In the event that a department/unit does not have a preceptor available, the Clinical Manager will coordinate the orientation program.

### II. PURPOSE:

- A. To guide the staff regarding the use of preceptors in the orientation of students from affiliated schools and/or new hires to Salinas Valley Memorial Healthcare System.

### III. DEFINITIONS:

- A. Preceptor: Qualified employee who serves as a teacher or instructor for new graduate and transition of practice nurses, students or new hires
- B. Orientee: New hire or student from an affiliated school who needs training for specific role and job function
- C. New Graduate Nurse: A nurse that has graduated from an accredited school (associate's degree, bachelor's degree, or master's degree) with less than 12 months experience.
- ~~B.D.~~ Transitions of Practice Nurse: A nurse transitioning into a specialty area without prior specialty experience.
- ~~C.E.~~ Stage 1: Novice – These are beginners who have had no experience of the situations in which they are expected to perform. For example, a newly graduate professional with less than one year of work experience or is new to a clinical area or practice.
- ~~D.F.~~ Stage 2: Advanced Beginner - Those who can demonstrate marginally acceptable performance, those who have coped with enough real situations to note, or to have pointed out to them the recurring meaningful situational components. At this phase, the orientee demonstrates concrete thinking and focuses on individual aspects of role instead of the holistic situation.
- ~~E.G.~~ Stage 3: Competent – Competence typified for those who have been on the job in the same or similar situations two or three years, develops when the orientee begins to see

## PRECEPTOR POLICY

his or her actions in terms of long-range goals or plans of which he or she is consciously aware. At this phase, the orientee enters the competent stage during which an expanded knowledge base and increased ability to act independently is demonstrated.

F.H. Stage 4: Proficient – The proficient performer perceives situations as wholes rather than segmented parts or aspects, and enters the proficient stage of development after about five years of experience in the same area of practice. At this level, the orientee demonstrates independence with sound decision making processes and serves as a resource to other staff.

G.I. Stage 5: Expert – The expert performer no longer relies on an analytic principle (rule, guideline) to connect her or his understanding of the situation to an appropriate action. After seven to ten years of work experience in same area of practice, the orientee may demonstrate the expert level of professional performance by intuitively carrying out duties and role based on extensive experience.

### IV. GENERAL INFORMATION:

#### A. Preceptor selection

1. To be considered for an assignment as preceptor, an employee must have been employed by the hospital for a period of six (6) months, and shall have at least two (2) years of satisfactory experience ~~in the relevant area of clinical expertise/practice and demonstrated current competency in the department to which the orientee is assigned.~~ and demonstrated current competency in the department to which the orientee is assigned.
2. Qualified employees who ~~volunteer are~~ to be designated preceptors for new hires will attend a hospital provided preceptor training program. Preceptorship is conducted in accordance with each department's established standards of practice, and reviewed by Director/Manager and Education department in collaboration with the Unit Practice Council, if present. The Director/Manager may designate a staff to be a preceptor for a student, without the pre-requisite preceptor class, based on department needs and the number of students assigned at a given time.

#### B. Preceptor assignments

1. Preceptor assignments will be rotated among the unit preceptors to equalize the responsibility of orientation, i.e. if the department has more than one qualified preceptor.
2. When assigned to perform preceptor duties, the preceptor and the orientee will work a shared assignment. For nursing department, only one of the nursing pair will be counted in the staffing matrix.

## PRECEPTOR POLICY

3. The orientee is assigned duties as determined by the preceptor and manager, mutually agreed upon by both the orientee and preceptor and/or manager.
  4. Floating assignments for preceptors who have an orientee is minimized when possible, and when unavoidable, a case-by-case determination is made by the director/manager/shift-leader whether the orientee will accompany the preceptor, or will be re-assigned to another preceptor who is remaining on the home unit.
- C. Preceptor and orientee scheduling
1. The orientee is assigned to the primary preceptor's schedule as much as possible, for a seamless clinical orientation. If the primary preceptor is scheduled off, the secondary preceptor assumes responsibility to orient the new staff member.
- D. Preceptor eligibility differential
1. The RN preceptor enters into a voluntary agreement with Salinas Valley Memorial Healthcare System to receive a pay differential when participating in the development of new graduates and/or transition of practice of RN's transferring to a new clinical department where extensive training is needed.
  2. The Preceptor agreement is contingent upon the applicant having a minimum of (2) years of experience. Nurses with 2 years of experience must all be in the current specialty area to precept, nurses with 3 or more years of experience must have at least 1 year experience in the current specialty area to precept. ~~in the specialty to be precepted.~~
  3. The applicant's job performance must meet or exceed expectations. The applicant may not have any active disciplinary action.
  4. The applicant is required to complete the Preceptor Workshop Course within the past two years.
  5. Upon approval of the Preceptor Agreement, the applicant will be provided access to the Preceptor Clocking Code. It is the responsibility of the preceptor to clock in using the Preceptor Clocking Code.
- ~~D.E.~~ The applicant acknowledges that no further differential will be paid by Salinas Valley Memorial Healthcare System if the employee fails to meet the criteria set forth and agreed upon by the Preceptor Policy and the Preceptor Agreement.
- ~~7.~~
- F. Preceptor Evaluation
- ~~8.~~ The RN will be evaluated in their role as a preceptor in the practice care area on a continual basis and at a minimum annually.
- ~~9.1.~~

## PRECEPTOR POLICY

### V. **PROCEDURE:**

- A. Human Resources department notifies the Education Department of new hires beginning each pay period, and transitions of practice RNs upon release of previous employment. Student list for approved clinical rotation is provided by the affiliated school and communicated to the Student Liaison from the Education Department.
- B. The ~~Staff Development Specialist and/or~~ Student Liaison/designee from the Education Department communicate with the respective Department Director/Manager for specific preceptor selection.
- C. The Department Director/Manager communicates assignment to the preceptor, the new hire, the Staffing Office and the Education Department prior to the new hire or student rotation start date.
- D. The Benner's Novice to Expert Model is utilized as conceptual framework for the orientee's preceptorship program.
- E. Written orientation skills checklist is available for preceptors and orientee's to use in accomplishing the department orientation. This checklist is ~~provided~~developed by the Education Department ~~and developed~~ in collaboration with the Department Director/Manager.
- F. Each department may have a pre-determined time line for completion of orientation and this time line may be adjusted at the discretion of the Department Director/Manager in collaboration with the Clinical Educator, working with the preceptor and orientee.
- G. The preceptor communicates orientation progress with the Department Director/Manager and Clinical Educator as assigned.
- H. The orientee is responsible for completing the orientation competency checklist while the preceptor, Clinical Educator, and Department Director/Manager's job is to assist, guide, and to evaluate.
- I. At the end of the clinical orientation, the orientation competency checklist is completed and signed by the employee and preceptor, and returned to the Department Director/Manager for signature.
- J. The Department Director/Manager ensures that the completed orientation checklist is included in employee files.
- K. Documentation:
  1. Orientation is documented using the Department Specific Orientation Skills Checklist.

### VI. **EDUCATION/TRAINING:**

## PRECEPTOR POLICY

- A. Education and/or training is provided as needed.

### VII. REFERENCES:

- A. Benner, P. ~~(1984)~~. From novice to expert: Excellence and power in clinical nursing practice. Upper Saddle River, NJ: Prentice-Hall.
- Nurse Preceptor Academy, Michigan Center for Nursing. Retrieved from [Http://michigancenterfornursing.org/education/preceptor-tool-kit](http://michigancenterfornursing.org/education/preceptor-tool-kit).
- ~~Attachment A~~

in approval

## PRECEPTOR POLICY

Preceptor Program Guidelines of Eligibility of Preceptor Differential

### APPENDIX A: PRECEPTOR AGREEMENT

This Agreement is entered into between SALINAS VALLEY MEMORIAL HOSPITAL (hereinafter called HOSPITAL), and \_\_\_\_\_, hereinafter called "EMPLOYEE."  
*(Name of Employee)*

**WITNESSETH**

WHEREAS, HOSPITAL has a preceptor pay differential allowing certain employees to participate in developing new graduates and/or transition of practice of RNs transferring to a new clinical department where extensive training is needed.

WHEREAS, EMPLOYEE desires and is selected to participate in said program.

NOW, THEREFORE, IT IS CONFIRMED THE FOLLOWING REQUIRMENTS HAVE BEEN MET:

**1. DIRECTOR: (complete section 1 by Director or Manager)**

- New
- Renewal
  
- Minimum of two (2) years of experience in the specialty to be precepted (certification in the area of specialty will be required by 1/1/2021)
- Meets or Exceeds expectations for job performance
- No active discipline

**2. EDUCATION: (complete section 2 by Education department)**

- Completed the Preceptor course within the past two years

HOSPITAL will provide EMPLOYEE access to the preceptor clocking code. HOSPITAL will schedule staff using the Preceptor scheduling code and it is the EMPLOYEE responsibility to clock in using the preceptor clocking code.

**FAILURE TO MEET CRITERIA:** EMPLOYEE acknowledges that no further differential will be paid by HOSPITAL if EMPLOYEE fails to meet the criteria set forth and agreed to in the Policy and this Agreement.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Employee

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Nursing Director

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Clinical Nurse Educator

## PRECEPTOR POLICY

C.B.

in approval



## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

<b>Reference Number</b>	5702
<b>Effective Date</b>	Not Approved Yet
<b>Applies To</b>	Medical Staff <u>Services and Medical Library</u>
<b>Attachments/Forms</b>	

### I. SCOPE OF SERVICE

Medical Staff Services supports the Mission, Vision, Values and Strategic Plan of Salinas Valley Memorial Healthcare System (SVMHS) and has designed services to meet the needs and expectations of patients, families and the community.

~~The purpose of Medical Staff Services is to enhance patient services and health programs that help Salinas Valley Memorial Healthcare System remain a leading provider of medical care. The goal of Medical Staff Services is to ensure that all customers will receive high quality care / service in the most expedient and professional manner possible.~~

### II. GOALS

~~In addition to the overall SVMHS goals and objectives, the Medical Staff Services Department develops goals to direct short term projects and address opportunities evolving out of performance improvement activities. These goals will have input from other staff and leaders as appropriate and reflect commitment to annual hospital goals.~~

The goals of Medical Staff Services and the Medical Library will be to:

A. Administer all application Medical Staff Bylaws, Rules and Regulations to ensure accreditation compliance.

B. To provide a wide range of support to physicians and advanced practice providers to promote safe and quality healthcare.

A.C. Ensure that all Physicians and Advanced Practice Professionals will receive high quality service in the most expedient and professional manner ~~possible while meeting all applicable accreditation and regulatory requirements.~~

B.D. To provide oversight of the quality of care, treatment, and services delivered by practitioners who are credentialed and privileged through the Mmedical sStaff process.

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

~~C.E.~~ To coordinate all ~~M~~medical ~~s~~Staff functions and affairs within the parameters established by administration and ~~O~~fficers of the ~~m~~Medical ~~s~~Staff and to serve as a resource to the health system community.

~~D.F.~~ Maintain sufficient equipment and supplies to adequately those functions described.

### III. DEPARTMENT OBJECTIVES

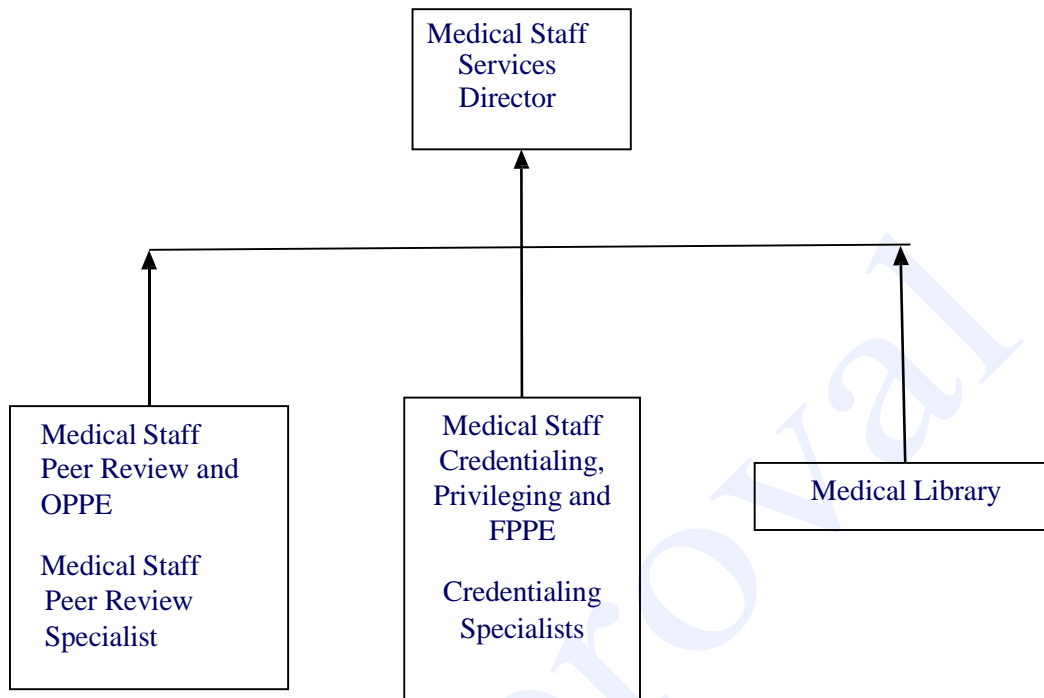
- A. To support the Salinas Valley Memorial Healthcare System objectives.
- B. To support safe, effective, and appropriate care in a cost effective manner.
- C. To plan for the allocation of human/material resources.
- D. To support high level medical management with a focus on a collaborative, multi-disciplinary approach ~~to minimize the negative physical and psychological effects of disease processes and surgical interventions through patient/significant other education and to restore the patient to as high a level of wellness as possible.~~
- E. To collect data about the department function, staff performance, and patient care for quality ~~management~~ purposes and continuous quality improvement.
- F. To support necessary expertise, technology, instrumentation and equipment for the management of patients.
- G. To develop/implement/evaluate standards utilized in the Medical Staff Services Department and Medical Library.
- H. To evaluate staff performance on an ongoing basis.
- I. To provide appropriate staff orientation and development.

### IV. POPULATION SERVED

1. All credentialed ~~m~~Medical ~~S~~staff and ~~A~~advanced ~~p~~Practice ~~professionals~~Providers
2. All clinical and support departments
3. Administration and Board of Directors
4. External regulatory agencies

### V. ORGANIZATION OF THE DEPARTMENT

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES



A. Staff includes:

1. Medical Staff Director
2. Medical Staff Coordinator
3. Credentialing Coordinator
4. Medical Staff Peer Review Specialist
- ~~5. Department Assistant~~

B. Hours of Operation:

Monday – Friday from 7:30 am – 4:30 pm. ~~The Department Director is available via cell phone 24 hours per day and 7 days per week.~~

C. Location of department:

The hospital's Medical Staff Services Department is located in the Downing Resource Center Room 116. The Medical Library is primarily an online resource available through the SVMH Intranet (STARnet) and the SVMH Physician Portal.

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

### VI. DEFINITION OF PRACTICE AND ROLE IN MULTIDISCIPLINARY CARE /SERVICE

A. The Medical Staff Services Department assesses, supports, coordinates and educates the ~~M~~medical ~~S~~Staff and ~~A~~advanced ~~p~~Practice ~~professional-staff~~Providers to assure the standard of care provided by credentialed staff within the health care system through:

1. Credentialing
2. Re-credentialing
3. Development of privileging criteria
4. Proctoring (focused professional practice evaluation)
5. Continuing medical education
6. Maintaining ~~emergency department~~Unassigned Emergency Call schedules
7. Medical staff meeting scheduling, staffing, coordinating and follow-up
8. Medical ~~s~~Staff ~~b~~Bylaws/~~r~~Rules and ~~r~~Regulations maintenance
9. Orientation of new physicians and advanced practice providers
10. Effective peer review (ongoing professional practice evaluation)

~~B. Staff includes:~~

- ~~1. Medical Staff Director~~
- ~~2. Medical Staff Coordinator~~
- ~~3. Credentialing Coordinator~~
- ~~4. Department Assistant~~

~~C.B.~~ The Director of the Medical Staff Services is directly responsible to the Chief Medical Officer. ~~It is the Medical Staff/ Director's duty to attend all administrative and technical functions within the department.~~

~~D.C.~~ All personnel within the department are under the guidance and direction of the Medical Staff Services Director. In the Director's absence, the position is filled by the Credentialing Coordinator. It is ~~his/her~~their responsibility to carry out the duties of the Director in his/her absence.

### VII. REQUIREMENTS FOR STAFF

All individuals who provide services in this Department have the appropriate training and competence.

A. Licensure / Certifications:

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

*The basic requirements for the Credentialing Coordinator include:*

Current NAMSS CPCS Certification (National Association of Medical Staff Services Certified Professional Credentialing Specialist)

*The basic requirements for the Medical Staff Services Director include:*

Current NAMSS CPMSM Certification (National Association of Medical Staff Services Certified Professional in Medical Staff Management)

Current NAHQ CPHQ Certification (National Association of Healthcare Quality Certified Professional in Healthcare Quality)

### B. Competency

Staff are required to have routine competence assessments in concert annual performance appraisals. Once a year staff are required to complete the online education modules that have been defined by the organization.

Department personnel who attend educational conferences are strongly encouraged to share pertinent information from the conferences with other staff members at in-services. Additional teleconferences, videoconferences, and speakers are scheduled for staff on occasion. Other internal and external continuing education opportunities are communicated to staff members.

### C. Identification of Educational Needs

Staff educational needs are identified utilizing a variety of input:

- Employee educational needs assessment at the time of hire and annually as part of developmental planning
- Performance improvement planning, data collections and activities
- Staff input
- Evaluation of patient population needs
- New services/programs/technology implemented
- Change in the standard of practice/care
- Change in regulations and licensing requirements
- Needs assessment completed by Nursing Education

The educational needs of the department are assessed through a variety of means, including:

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

- STAR Values
- Quality Assessment and Improvement Initiatives
- Strategic Planning (Goals & Objectives)
- New / emerging products and/or technologies
- Changes in Practice
- Regulatory Compliance

Feedback and requests for future topics are regularly solicited from staff via e-mail, surveys, in-service evaluation forms, and in person.

### D. Continuing Education

Continuing education may be required to maintain licensure / certifications. Additional in-services and continuing education programs may be provided to staff in cooperation with the Education Department ~~of Education~~.

## VIII. STAFFING PLAN

Staffing is adequate to service the customer population. The Department is staffed with a sufficient number of professional, technical and clerical personnel to permit coverage of established hours of care / service, to provide a safe standard of practice and meet regulatory requirements.

### General Staffing Plan:

Assignments are made based on acuity and needs of the department, competencies of the staff, the degree of supervision required, and the level of supervision available. In the event of employee absences, workloads are shifted to provide that service which cannot wait responsible employee's return.

In the event of an an-severe emergency, the minimum amount of staff required to safely operate this unit is: **2**

## IX. EVIDENCED BASED STANDARDS

The SVMHS staff will design, implement and evaluate systems and services for care / service delivery which are consistent with a "Patient First" philosophy and which will be delivered:

- With compassion, respect and dignity for each individual without bias.

## SCOPE OF SERVICE: MEDICAL STAFF SERVICES

- In a manner that best meets the individualized needs of the patient.
- In a timely manner.
- Coordinated through multidisciplinary team collaboration.
- In a manner that maximizes the efficient use of financial and human resources.

SVMHS has developed administrative and clinical standards for staff practice and these are available on the internal intranet site.

### **X. CONTRACTED SERVICES**

Contracted services under this Scope of Service are maintained in the electronic contract management system.

### **XI. PERFORMANCE IMPROVEMENT AND PATIENT SAFETY**

Medical Staff Services supports the SVMHS commitment to continuously improving the quality of patient care to the patients we serve and to an environment which encourages performance improvement within all levels of the organization. Performance improvement activities are planned in a collaborative and interdisciplinary manner, involving teams/committees that include representatives from other hospital departments as necessary. Participation in activities that support ongoing improvement and quality care is the responsibility of all staff members. Improvement activities involve department specific quality improvement activities, interdisciplinary performance improvement activities and quality control activities.

Systems and services are evaluated to determine their timeliness, appropriateness, necessity and the extent to which the care / service(s) provided meet the customers' needs through any one or all of the quality improvement practices / processes determined by this organizational unit.

In addition to the overall SVMHS Strategic initiatives and in concert with the Quality Improvement Plan and the Quality Oversight Structure, the Medical Staff Services Department will develop measures to direct short-term projects and deal with problem issues evolving out of quality management activities.

## Consent Agenda for Board Approved Projects

Agenda Item: **Consider Board Approval of Lease Assignment and Assumption with Liliart Publishing Company, LLC and The Fred and Margaret Goldsmith Living Trust for 451 Washington Street, Monterey, CA**

Executive Sponsor: Adrienne Laurent, Chief Strategic Communications Officer  
Tiffany DiTullio, Executive Director, Blue Zones

Date: January 18, 2021

### Executive Summary

In October, 2018, Salinas Valley Memorial Healthcare System (SVMHS) launched a collaborative initiative to transform the well-being of the Salinas community through the Blue Zones Project. This effort is aligned with the SVMHS mission to improve the health of the community. Now, more than two years later, in collaboration with our co-sponsors Taylor Farms and Montage Health, we are expanding the Blue Zones Project to additional areas of Monterey County – to the Monterey Peninsula as well as South County.

Current plans call for Blue Zones Project offices in South County to be located in the Taylor Farms Family Health and Wellness Center in Gonzales (with later expansion to King City). The location identified for our Blue Zones Project offices in Monterey is in a building located at 451 Washington Street.

The current lease for the 2,100 square feet of office space at 451 Washington in Monterey was entered into effective October 15, 2019 for a three (3) year term by Liliart Publishing Company, LLC (“Liliart”) and The Fred and Margaret Goldsmith Living Trust (“Landlord”). Liliart is no longer occupying the space and the Landlord has been seeking alternative tenants to take over the existing lease. The proposed lease assumption agreement includes SVMHS taking over responsibility for the lease effective February of 2021 for the remaining one (1) year and nine and one half (9.5) months remaining on the initial term. The lease contains a five (5) year option for renewal that requires one hundred eighty (180) days written notice and includes three percent (3%) annual increases.

The SVMHS executive team has negotiated with the building owners to secure the terms as outlined below.

### Timeline

January 28, 2021 – SVMHS Board of Directors Meeting/Consider Recommendation for Approval  
February 1, 2021 – Beginning of Lease Assignment

### Strategic Plan Alignment:

This lease agreement is aligned with our goals for the community pillar. This space will be utilized to support the Blue Zone project expansion into Monterey Peninsula in partnership with Taylor Farms and Montage Health.

### Pillar/Goal Alignment:

Service    People    Quality    Finance    Growth    Community

### Financial/Quality/Safety/Regulatory Implications

1. Proposed Effective Date	February 1, 2021
2. Term of agreement	1 Year 9.5 Months (Remaining Lease Term)
3. Renewal terms	5 Year Option with 180 Days’ Notice
4. Security Deposit	\$6,000
5. Termination provision(s)	None
6. Payment Terms	Monthly, in advance



7. Building Operating & Tax Expenses	\$12,612 annually (estimated annual tax & CAM)
8. Annual Rent Cost	\$57,960 (\$2.30/psf/monthly/NNN)
9. Cost Over Remaining Term + 5 Year Option	\$514,139 (inclusive of estimated annual tax and CAM)
10. Budgeted	Yes, as part of Blue Zones Project

### Recommendation

Consider Board Approval of Lease Assignment and Assumption with Liliart Publishing Company, LLC and The Fred and Margaret Goldsmith Living Trust for 451 Washington Street, Monterey, CA

### Attachments

- First Amendment to Lease & Assignment and Assumption of Lease
- Commercial Property Lease by and Between The Goldsmith Living Trust Dated March 31, 1999 and LiliArt Publishing Company, Inc. dba The Curtis Gallery

FIRST AMENDMENT TO LEASE  
ASSIGNMENT AND ASSUMPTION OF LEASE

This FIRST AMENDMENT AND ASSIGNMENT AND ASSUMPTION OF LEASE, (the "Agreement:") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date") by and between LILIART PUBLISHING COMPANY, INC., A CALIFORNIA LIMITED LIABILITY COMPANY (Assignor), SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM , a local healthcare district organized and operating pursuant to Division 23 of the California Health and Safety Code ("Assignee"), and THE FRED AND MARGARET GOLDSMITH LIVING TRUST DATED MARCH 31, 1999, ("Landlord").

RECITALS

This Agreement is entered into upon the basis of the following facts, understandings, and intentions of the parties:

A) Assignor is the Tenant under that certain Lease dated September 9, 2019, hereinafter the "Lease".

B) The parties have agreed that Assignor shall assign to Assignee, and that Assignee shall assume all of Assignors right, title, and interest as Tenant under the Lease, on the terms and conditions set forth in this Agreement.

Now, Therefore, in consideration of the foregoing Recitals, and the mutual covenants and obligations of the parties contained herein and in the Lease, the parties agree as follows:

1. This Agreement is subject to the Lease and to all of the terms, covenants, conditions, provisions and agreements set forth in the Lease, whether or not they have accrued prior to the Effective Date.

2. Assignee hereby assumes all of the obligations of the Tenant under the Lease and Assignee agrees to perform faithfully and be bound by all of the terms, covenants, conditions, provisions and agreements of the Lease. Assignor represents that it has not exercised the option to extend the term of the Lease for five (5) additional years pursuant to Lease Addendum 1.

3. This Agreement and this Assignment and Assumption of Lease shall:

(a) not be construed to modify, waive or affect any of the terms, covenants, conditions, provisions or agreements of the Lease or to waive any breach thereof, or any of Landlord's rights as Landlord thereunder; or to enlarge or increase Landlord's obligations as Landlord thereunder, or

(b) not be construed as a consent by Landlord to any further assignment or any subletting by Assignee.

4. Assignor shall be released from liability under the Lease as of January 31, 2020.

5. Assignee, as of February 1, 2021, shall be fully liable for the payment of all rental and charges under the Lease.

6. This Agreement is not assignable, nor shall this Agreement be a consent to any amendment or modification, of the Agreement, without Landlord's prior written consent.

7. Assignor covenants and agrees that, under no circumstances shall Landlord be liable for any brokerage commission or other charge or expense in connection with the Assignment, and Assignor agrees to indemnify Landlord against same and against any cost or

expense (including but not limited to attorneys fees) incurred by Landlord in resisting any claim for any such brokerage commission.

8. Assignor and Assignee understand and acknowledge that Landlord's consent hereto is not a consent to any improvement or alteration work being performed in the Premises, and that Landlord's consent must be separately sought for such work.

9. Notwithstanding any provision of the Agreement, Assignee agrees that Landlord shall not be (i) liable for any act or omission of Assignor under the Assignment, (ii) subject to any offsets or defenses which Assignee may have against Assignor, or (iii) bound by any amendment or modification of the Assignment made without Landlord's prior written consent, which may be withheld in the sole and absolute discretion of Landlord.

10. This Agreement shall for all purposes be construed in accordance with and governed by the laws of the State of California.

11. This Agreement shall not be effective until executed by all the parties hereto.

12. If any one of more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Consent shall not in any way be affected or impaired thereby.

13. Concurrent with the execution of this Agreement, Assignor shall pay to Landlord an amount equal to \$0.00, as an assignment fee representing an estimate of Landlord's reasonable costs incurred in connection with the review of the Assignment and the preparation of this Agreement.

14. The term commencement date of the Lease is October 16, 2019. The Term Expiration Date is October 15, 2022. Tenant has one remaining option to renew for five (5) years pursuant to the terms of the Lease.

15. Permitted Use pursuant to Article 8 of the Lease Summary shall be modified to allow for Assignees use as general offices for a SVMH and CHOMP jointly operated Blue Zones office.

16. Security Deposit: The security deposit in the amount of \$6,000.00, shall be refunded by Landlord to Assignor within 5 business days of the Effective Date of this Assignment. Assignee shall deposit with Landlord a Security Deposit in the amount of \$6,000.00 upon execution of this Agreement.

17. Addresses for Notices under this Agreement or the Lease shall be as follows:

Landlord: Bonifacio Properties  
c/o PGI Management  
1606 North Main Street  
Salinas, CA. 93906  
telephone: 831-449-6672  
telecopier: 831-449-3255  
attention: Arlene Nissen

Assignor: LiliArt Publishing Company, a California limited liability company  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_

Assignee: Salinas Valley Memorial Healthcare System, a local healthcare district organized and operating pursuant to Division 23 of the California health and Safety Code.  
Address:  
Office of the President/CEO  
450 East Romie Lane  
Salinas, CA 93901  
Telephone: 831-755-0741

The execution of a copy of this Agreement by Assignor and Assignee shall indicate your joint and several confirmation of the foregoing conditions and of your agreement to be bound thereby and shall constitute Assignee's acknowledgment that it has received a copy of the Lease. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year of the Assignment.

LANDLORD:  
THE FRED AND MARGARET GOLDSMITH LIVING TRUST DATED MARCH 31,1999

By: \_\_\_\_\_ Date \_\_\_\_\_  
Trustee

\_\_\_\_\_ Date \_\_\_\_\_  
Trustee

ASSIGNOR:  
LILIART PUBLISHING COMPANY, INC. A CALIFORNIA LIMITED LIABILITY COMPANY

By: \_\_\_\_\_ Date: \_\_\_\_\_

ASSIGNEE:  
SALINAS VALLEY MEMORIAL HEALTHCARE, SYSTEM, a local healthcare district organized and operating pursuant to Division 23 of the California Health and Safety Code

By: \_\_\_\_\_ Date: \_\_\_\_\_

## **Commercial Property Lease**

BY AND BETWEEN

**The Goldsmith Living Trust dated March 31, 1999**  
(LANDLORD)

AND

**LiliArt Publishing Company, Inc.,**  
**a California Limited Liability Company**  
(TENANT)

**dba**

**The Curtis Gallery**

PREMISES

451 WASHINGTON ST.

MONTEREY, CALIFORNIA 93940

**LEASE SUMMARY FOR**  
**STANDARD COMMERCIAL PROPERTY LEASE**

1. Landlord: The Fred and Margaret Goldsmith Living Trust dated March 31, 1999
2. Landlord's Address: Bonifacio Properties  
c/o PGI Management  
1606 N. Main St.  
Salinas, CA 93906  
Phone: (831) 449-6672  
Fax: (831) 449-3255
3. Tenant: **LiliArt Publishing Company Inc., a California Limited Liability Company**
4. Tenant's Address: 451 Washington St.  
Monterey, CA 93940
5. Guarantors: **Kenneth R. Zerbe**
6. Tenant's Trade Name: The Curtis Gallery
7. Gross Leasable Area of Premises: Approximately 2,100 square feet located at 451 Washington Street in Monterey, California. Square footage measured from exterior line of exterior walls to center line of demising walls. Tenant to be provided six (6) total parking stalls, five (5) in Landlord's adjacent parking lot at 435 Washington St. and one (1) in the adjacent City Parking Lot on Bonifacio Place.
8. Permitted Use of Premises: Primary Use is retail/office for art gallery and on-line sales. The Permitted Use of the Premises shall limit Tenant's use thereof in accordance with Section 4.1 of the Lease.
9. Signage: Tenant shall be allowed two (2) signs on the exterior of the building at the Premises and one (1) sign panel on the Building Directory. All signage is subject to review and approval by Landlord.
10. Term Commencement/Expiration Date: The Term Commencement Date shall be the earlier of 1) the date Tenant opens for business in the Premises or 2) thirty (30) days after Landlord delivers the Premises to Tenant. Tenant shall be granted one (1) 5-year option to extend the lease under the terms and conditions of Addendum 1 herein. 10/16/19
11. Fixed Minimum Rent: Each Month during the Term, Tenant shall pay to Landlord "Fixed Minimum Rent" as follows:

<u>Lease Years</u>	<u>Annual Rent</u>	<u>Monthly Installments</u>
1*	\$55,440	\$4,620.00
2	\$57,960	\$4,830.00
3	\$60,480	\$5,040.00
4-8**		

**THE TERM SHALL BE THREE YEARS (3).**

\* Fixed Minimum Rent shall commence thirty (30) days after delivery of premises by Landlord to Tenant, **BUT NO SOONER THAN OCTOBER 16, 2019.**

\*\*Fixed Minimum Rent during the Option Period shall be increased annually over the prior year's fixed minimum rent by three percent (3%).

10/16/19

Please refer to the attached Lease Exhibit which breaks down all details of these actual costs.

14. Percentage Rent: *Not Applicable*

15. Exhibits, Addenda and Additional Provisions or Attachments:

Exhibit A: Site Plan of Property  
Exhibit B: Legal Description of Property  
Exhibit C: Landlord's Work and Tenant's Work

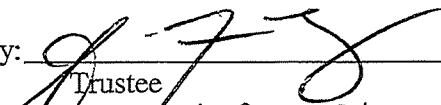
16. Delivery Condition: Landlord shall deliver the Premises to Tenant in "As-Is" condition as of the date of this Lease, confirming the roof, electrical systems, plumbing systems, lighting, and heating systems are all in good working order.

17. Definitions: Unless otherwise provided herein, capitalized terms which are defined in the Lease and used herein shall have the meanings specified in the Lease.

18. Effect of Lease Summary: This Lease Summary is an integral part of the Lease attached hereto and each reference in the Lease to any provision contained herein shall be construed to incorporate all of the terms provided under each such provision.

**LANDLORD:**

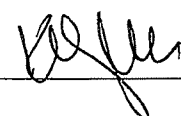
THE FRED AND MARGARET GOLDSMITH LIVING TRUST DATED MARCH 31, 1999.

By:  Date 9-9-19  
Trustee

By: Margaret Goldsmith, Trustee Date 9/9/19  
Trustee

**TENANT:**

LILIART PUBLISHING COMPANY, INC., A CALIFORNIA LIMITED LIABILITY COMPANY

By:  Date 8/29/19

## STANDARD COMMERCIAL PROPERTY LEASE

THIS LEASE (the "Lease") is made and entered into, and is effective and fully binding, as of September 9, 2019, by and between the Fred and Margaret Goldsmith Living Trust dated March 31, 1999, ("Landlord"), and LiliArt Publishing Company, Inc., a California Limited Liability Company ("Tenant").

IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

### 1. LEASE OF PREMISES.

1.1. Lease and Hiring. Landlord hereby leases the Premises (as defined below) to Tenant, and Tenant hereby rents the Premises from Landlord, for the term, at the rental, and upon the other terms, covenants and conditions contained in this Lease. As used in this Lease, the term "Premises" means the space designated as "the Premises" on Exhibit A, containing the Gross Leasable Area (as defined in Section 8.2) specified in the attached Lease Summary.

1.2. Term. The term of this Lease (the "Term") shall commence on the Term Commencement Date and shall end (unless sooner terminated as provided in this Lease) on the "Term Expiration Date" (as defined in the attached Lease Summary).

1.3. Reservation by Landlord. Landlord reserves the use of the exterior walls (other than Tenant's storefront), the roof, and the area beneath the floor of the Premises, and the right to install, maintain, use, and replace ducts, wires, conduits and pipes in and through the Premises in locations which will not materially interfere with Tenant's use of the Premises.

### 2. TERM.

2.1. Duration. This Lease, and the terms, covenants and conditions contained herein, shall be effective as of the date hereof.

2.2. Termination for Delay. Landlord shall have the right, by written notice to Tenant, to terminate this Lease, without any liability or obligation to Tenant, in the event of any of the following: (i) Tenant has not commenced "Tenant's Work" in the Premises pursuant to Exhibit C within fifteen (15) days after substantial completion by Landlord of Landlord's Work; or (ii) Tenant fails to prosecute diligently Tenant's Work to substantial completion in accordance with Exhibit C. Upon termination hereunder, Landlord shall return to Tenant any security deposit paid by Tenant, without interest, and Landlord shall be released from all obligation or liability to Tenant hereunder.

2.3. Holding Over. If Tenant should remain in possession of the Premises after the expiration of the Term with the express written consent of Landlord and without executing a new lease, then such holding over shall be deemed a tenancy from month-to-month, subject to all conditions, provisions and obligations of this Lease, except that the Fixed Minimum Rent then in effect shall be increased to an amount equal to one hundred fifty percent (150%) of such Fixed Minimum Rent.

### 3. RENT.

3.1. Fixed Minimum Rent. Each whole or partial calendar month during the Term ("Month"), Tenant shall pay to Landlord "Fixed Minimum Rent" in the amount set forth in the attached Lease Summary. Fixed Minimum Rent shall be paid without notice, deduction or offset in advance on or before the first day of each Month during the Term; provided, however, that upon the execution of this Lease, Tenant shall pay to Landlord, in advance, the Fixed Minimum Rent for the first full calendar Month of the Term. If the Term commences on a day other than the first day of a calendar month, Tenant shall pay to Landlord on the first day of such first Month of the Term, as Fixed Minimum Rent for such first Month, a pro rata portion of the Fixed Minimum Rent based on a thirty (30) day month.

3.2. Additional Rent. For all purposes under this Lease, all sums and other amounts payable by Tenant to Landlord or otherwise hereunder which are not specifically denominated as "rent" shall be payable as rent and shall be deemed to be additional rent. Such



sums and amounts shall be payable as and when provided under this Lease, unless no date is specified, in which case such sums shall be payable together with each installment of Fixed Minimum Rent payable hereunder.

3.3. Late Charge; Rent Notices. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due under this Lease will cause Landlord to incur additional costs not contemplated by this Lease, the exact amount of which will be extremely difficult or impossible to ascertain. Such additional costs include processing and accounting charges and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. Therefore, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord within ten (10) days after the date that such amount is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount. The parties hereby acknowledge, warrant and represent that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of an Event of Default (as defined in Article 18) with respect to such overdue amount or prevent Landlord from exercising any or all of the other rights and remedies granted under this Lease. Landlord may, as a matter of convenience, provide to Tenant from time to time billings or invoices for Rent or other sums due under this Lease, but Tenant's failure to receive any such billing or invoice, or Landlord's omission or cessation of any such billing or invoice shall not excuse Tenant's obligation for the timely payment of Rent and other sums due in accordance with this Lease.

#### 4. PERMITTED USE; TENANT'S CONDUCT OF BUSINESS.

4.1. Use; Trade Name. Tenant shall use the Premises solely for the "Permitted Use" specified in the attached Lease Summary. Tenant shall conduct its business in the Premises under "Tenant's Trade Name" specified in the attached Lease Summary. Tenant shall not use or permit the Premises to be used for any other purpose or purposes or under any other trade name whatsoever.

4.2. Continuous And Full Operation. Tenant shall remain open for business continuously and uninterruptedly during the Term, during all reasonable hours as determined by Tenant. Tenant shall occupy and use the entire Premises for the purpose or purposes specified herein and shall continuously fully merchandise the Premises (except during times when the Premises may be untenable by reason of fire or other casualty), subject only to the provisions of this Article 4.

4.3. Insurance Requirements; Compliance With Laws. Tenant shall not do or permit anything to be done in or about the Premises, or bring or keep anything therein, which will increase the rate of any insurance on the Property, or any portion thereof or interest therein. Tenant shall, at its sole cost and expense, comply with any and all orders and requirements imposed by any insurance company providing casualty (including fire and extended coverage) or public liability insurance to Tenant or Landlord and covering the Property, or any portion thereof or interest therein. Tenant shall promptly comply with any and all laws, ordinances, rules, regulations and orders applicable to the Premises (except for structural or extraordinary improvements and alterations not arising out of Tenant's use or occupancy of the Premises). Tenant's obligations hereunder shall include the making of alterations, additions and improvements and the installation of additional facilities required for the conduct or continuance of Tenant's business on the Premises. Tenant shall not use, or permit the use of, any portion of the Premises for any unlawful purpose. Tenant may contest or review, by procedures permitted by applicable law or insurance policies, at its own expense, any such order, requirement, law, ordinance, rule or regulation, and may delay compliance therewith if permitted by such law or policy, provided that Landlord or any other tenant, occupant or owner of the Property is not subject to civil liability or criminal prosecution as a result thereof and Landlord's title to or interest in, or such tenant's, occupant's or owner's business in or title to, the Property, or any portion thereof, is not subjected to forfeiture, involuntary sale, loss or closure as a result thereof. Tenant shall indemnify, defend, protect and hold Landlord and such other tenants, occupants and owners harmless from and against any and all liability, loss, cost, damage or expense (including attorneys' fees) resulting from or in connection with any contest hereunder. Any contest shall be conducted with all due diligence. Tenant shall diligently comply with any final, non-appealable decision in any such contest.

4.4. Use Limitations and Requirements. Tenant shall keep the Premises, front and rear walkways adjacent to the Premises, and any service delivery facilities allocated for the use of Tenant (whether or not exclusive) clean and free from rubbish and dirt at all times, shall

store all trash and garbage within the Premises, and shall arrange for the regular pickup of such trash and garbage at Tenant's expense, unless garbage pick-up is included in Common Area Maintenance Costs under Article 11. Tenant shall not burn any trash or garbage of any kind in or about the Premises. All plumbing facilities within or serving the Premises shall be used only for the purposes for which they are installed, and no foreign substance of any kind shall be thrown therein; any and all costs and expenses resulting from misuse of such plumbing facilities in violation of the foregoing by Tenant or any other person shall be borne by Tenant. Neither Tenant nor its employees, agents, or contractors shall mark or deface any walls, ceilings, partitions, floors, wood, stone or iron within or about the Premises. Tenant shall not be allowed to use pay telephones, pay lockers, pay toilets, scales or amusement devices in or about the Premises.

4.5. Restrictions on Similar Business. *Not Applicable.*

5. INSURANCE.

5.1. Tenant's Insurance. At its sole cost and expense, Tenant shall maintain in full force and effect during the Term the following policies of insurance:

5.1.1. Liability Insurance. Comprehensive General Liability Insurance or Commercial General Liability Insurance, insuring against liability for bodily injury or death to persons, property damage and personal injury, covering the Premises and the business of Tenant, with a comprehensive single limit of liability not less than \$1,000,000, such coverage to be in a commercial general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including Tenant's indemnity obligations contained in this Lease), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employers automobile non-ownership liability; and (v) if required by Landlord, providing liquor liability coverage. All such insurance: (i) shall be primary and non-contributory; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and (iv) shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. If, in the opinion of Landlord's insurance advisor, the amount or scope of such coverage is deemed inadequate at any time during the Term, Tenant shall increase such coverage to such reasonable amounts or scope as Landlord's advisor deems adequate and subject to Tenants Approval.

5.1.2. Plate Glass Insurance. Plate glass insurance, sufficient to pay for the replacement of, and any or all damage to, exterior plate glass and storefront supports in the Premises.

5.1.3. Tenant's Insurance on Fixtures. Fire insurance, with standard extended coverage, sprinkler leakage, vandalism and malicious mischief endorsements on all of Tenant's fixtures and equipment in the Premises, in an amount not less than one hundred percent (100%) of their full insurable value, the proceeds of which shall, so long as this Lease is in effect, be used for the repair or replacement of the fixtures and equipment so insured.

5.1.4. Tenant's Workers Compensation Insurance. Workers Compensation Insurance in the manner and to the extent required by applicable law and with limits of liability not less than the minimum required under applicable law, covering all employees of Tenant having any duties or responsibilities in or about the Premises.

5.2. Landlord's Insurance. Landlord shall during the Term maintain in full force and effect a policy or policies of fire insurance covering the buildings within the Property, with standard extended coverage, vandalism, malicious mischief and sprinkler leakage endorsements, and earthquake and/or flood coverage if required by Landlord, and such other insurance in such amounts and covering such other liability or hazards as deemed appropriate by Landlord. The amount and scope of coverage of Landlord's insurance hereunder shall be determined by Landlord from time to time in its sole discretion and shall be subject to such deductible amounts as Landlord may elect. Landlord shall have the right to reduce or terminate any insurance or coverage called for by this Section 5.2 to the extent that any such coverage is not reasonably available in the commercial insurance industry from recognized carriers or not available at a cost which is in Landlord's judgment economic or feasible under the circumstances. The cost of all insurance maintained by Landlord hereunder, or otherwise on all or any portion of the property,

shall be included in Common Area Maintenance Costs under Article 11. All insurance proceeds payable under Landlord's casualty insurance carried hereunder shall be payable solely to Landlord, and Tenant shall have no interest therein.

5.3. Policy Requirements. All insurance policies required to be carried under this Lease shall be issued by financially sound qualified insurers, licensed to do business in the State in which the Property is located. All Tenant's insurance (other than Worker's Compensation) shall name Landlord, and such other persons or entities as Landlord may from time to time designate, as additional insureds. Tenant's Workers Compensation Insurance shall contain an employer's contingent liability endorsement. Tenant shall deliver to Landlord certificates of all insurance required to be carried by Tenant hereunder, showing that such policies are in full force and effect in accordance with this Article 5. Tenant shall obtain written undertakings from each insurer under policies maintained by Tenant hereunder to notify Landlord, and any other additional insured thereunder, at least thirty (30) days prior to cancellation, amendment or reduction in coverage under any such policy.

5.4. Blanket Coverage. Any policy required to be maintained hereunder by either party may be maintained under a so-called "blanket policy", insuring other parties and other locations, so long as the amount of insurance required to be provided hereunder is not thereby diminished and so long as Tenant's insurance obligations are not in any way greater than if they were not on a blanket policy.

5.5. Waiver of Subrogation. To the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other on account of any and all claims Landlord or Tenant may have against the other with respect to any risk insured against by insurance actually carried, or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage. Each casualty insurance policy carried by Landlord or Tenant hereunder, or which either may obtain with respect to the Premises or the property independent of obligations hereunder, shall provide that the insurer waives all rights of recovery by way of subrogation against Landlord or Tenant in connection with all matters included within the scope of the waiver of recovery contained in this Section 5.5.

## 6. TAXES.

6.1. Tenant's Payment of Common Taxes. Commencing on the Term Commencement Date and thereafter throughout the Term, Tenant shall pay to Landlord, as part of Common Area Maintenance Costs under Article 11, Tenant's Proportionate Share (as defined in Article 25) of Taxes. As used in this Lease, the term "Taxes" means the following: (i) all real estate taxes and assessments and all other taxes relating to or levied, assessed or imposed on the Property or any portion thereof or interest therein; (ii) all other taxes, assessments, charges, levies, fees or penalties, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature imposed, levied, assessed, charged, conformed or collected by any governmental authority or other entity either directly or indirectly (A) for public improvements, user, maintenance or development fees, services, or benefits, (B) upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of, or business operations in, the Property, (C) upon, against or measured by the area of the property or uses made thereof or leases made to tenants thereof, and (iii) any tax or excise, however described, imposed in addition to, or in substitution partially or totally of, any or all of the foregoing taxes, assessments, charges or fees; and (iv) any and all costs, expenses and attorneys' fees paid or incurred by Landlord in connection with any proceeding or action to contest in whole or in part, formally or informally, the imposition, collection or validity of any of the foregoing taxes, assessments, charges or fees. If by law any Tax may be paid in installments at the option of the taxpayer, then Landlord shall include within Taxes hereunder only those installments (including interest, if any) which would become due by exercise of such option. Taxes shall not include any taxes, assessment fees or charges for which Tenant is directly responsible under Section 6.2 or taxes payable by Landlord measured by Landlord's net income, or as franchise or inheritance taxes.

6.2. Tenant's Payment of Taxes Relating to the Premises. In addition to payment by Tenant of its Proportionate Share of Taxes, Tenant shall pay any and all taxes, assessments, levies, license fees, business taxes, impositions, in lieu taxes or fees, excises or charges, of any kind or character, general or special, ordinary or extraordinary, unforeseen as well as foreseen, which are: (i) levied against, upon, measured by or attributable to any and all leasehold improvements to the Premises over and above the base building shell, whether installed or paid

for by Landlord or Tenant, and upon any and all fixtures, equipment and personal property installed or located in the Premises, or levied upon, measured by or reasonably attributable to the cost or value of any of the foregoing; (ii) levied upon or measured by the Fixed Minimum Rent, Percentage Rent or any other amounts payable by Tenant hereunder, including any gross income taxes, excise tax or value added tax levied by any governmental authority or other entity with respect to the receipt or making of such payments; (iii) levied upon or with respect to the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of, or business operations of Tenant in, the Premises or any portion thereof; (iv) levied upon or with respect to the transaction under this Lease, any document to which Tenant is a party creating or transferring any interest or an estate in the Premises, or any leases, subleases, licenses or concessions made to Tenant, any subtenant or other occupant of the Premises; or (v) enacted by way of substitution for or in addition to all or any part of the foregoing. Tenant shall make payment of all amounts hereunder before delinquency directly to the levying authority and shall provide Landlord receipts evidencing such payments. If any of the foregoing taxes, assessments, fees or charges are included in tax bills to Landlord for Taxes, then Tenant shall pay to Landlord the amount attributable to the taxes, fees, assessments or charges so included immediately upon demand by Landlord and prior to the payment date required with respect to such tax bill. Notwithstanding the above, Tenant's share of Property Tax payment shall be included in Fixed Minimum Rent and shall not be an additional charge.

## 7. CONSTRUCTION.

7.1. Initial Construction; Landlord's and Tenant's Work. The design, construction and development of the building in which the Premises are to be located (the "Building"), if either or both are not yet constructed or completed, and the design and construction of the Premises and "Landlord's Work" and "Tenant's Work" therein, shall be undertaken in accordance with this Article 7 and the provisions of Exhibit C.

### 7.2. Not Applicable

7.5. Tenant's Acceptance. The opening by Tenant of its business in the Premises shall constitute acknowledgment by Tenant that the Premises, the Building and the Common Area are then in the condition called for by this Lease and that Landlord has performed all of Landlord's work with respect thereto. Failure of Landlord to complete any work of construction or improvement called for hereunder within the time and in the condition provided for in this Lease shall not give rise to any claim for damages by Tenant against Landlord or against Landlord's contractors or architects, and Tenant hereby waives any such claims.

## 8. REPAIRS AND MAINTENANCE; ALTERATIONS.

8.1 By Landlord. Landlord shall keep in good order, condition and repair, the exterior foundations, exterior walls, canopy, roof, downspouts and gutters of the Building (excluding therefrom the exterior and interior of all windows, doors, plate glass, show cases and glass storefront parts and mullions, and except for reasonable wear and tear, any damage thereto caused by any act, negligence or omission of Tenant or its employees, agents, invitees, licensees, contractors or subtenants, damage or destruction caused by any casualty not required to be repaired under Article 15 and any condemnation or taking of the Premises, or any portion of or interest in either, governed by Article 14). Landlord shall have no obligation to make any repairs or replacements hereunder until the expiration of ten (10) days following written notice from Tenant to Landlord of the need therefor. Tenant waives any right now or hereafter granted by law to make any repairs under this Section 8.1 upon Landlord's failure to do so hereunder or otherwise. Typical of many buildings in Historic Downtown Monterey, Tenant acknowledges that the Premises are located in a building with lower than normal sewer line flow. Tenant will agree not to allow anything other than normal sewage and tissue into the toilet. Tenant acknowledges that Landlord runs water down the line as a preventative measure two times per week. Landlord shall be responsible for all costs associated with the plumbing systems. In the event at anytime during the Term of this Lease that Tenant is not satisfied with the plumbing system, Tenant may, as its remedy, terminate the Lease with 30 days prior written notice to Landlord.

8.2. By Tenant. Tenant, at Tenant's sole cost and expense, shall at all times keep the Premises, all glass, plate glass, show cases, glass storefront parts and moldings, doors, door jams, door closers, door hardware, fixtures, equipment and appurtenances thereof, floors, partitions, all electrical, lighting, heating, plumbing and sprinkler systems, fixtures and equipment, and any air conditioning system serving the Premises in good order, condition, and

repair, including replacements, reasonable periodic painting as determined by Landlord, and repair of leaks around ducts, pipes, vents or other parts of the air conditioning, heating or plumbing systems which protrude through the roof or floor, excepting any damage or destruction caused by any casualty not required to be repaired under Article 15. Tenant shall also be responsible for the repair of any and all damage caused to the Building or any other portion of the property by any act, neglect or omission of Tenant or its employees, agents, invitees, licensees, contractors or subtenants; the repair of any such damage shall be made by Landlord at Tenant's cost and expense, and Tenant shall reimburse to Landlord all such costs and expenses, together with a management and administration fee of seven percent (7%) of the amount thereof, excluding taxes, within ten (10) days after submission by Landlord to Tenant of a statement of the amount thereof. Landlord shall maintain in force at Tenant's expense a service and preventative maintenance contract with an authorized air-conditioning service company covering all heating and air conditioning equipment serving the Premises, and shall provide Tenant with a copy thereof prior to commencement of the Term, unless Landlord elects to obtain such a contract for the entire Building, or for any larger portion of the Property, in which event Tenant shall not be required to maintain such contract but shall be required to reimburse Landlord for Tenant's pro rata share of the cost of such contract. Tenant's pro rata share shall be determined by multiplying the total cost thereof by a fraction, the numerator of which is the Gross Leasable Area (as defined below) of the Premises and the denominator of which is the Gross Leasable Area of the Property, or any such larger portion of the property to which the contract applies. As used in this Lease, the term "Gross Leasable Area" means the number of square feet of all areas in the Property appropriated to the exclusive use or occupancy of the tenants or owner/occupants, whether or not such areas are actually leased or occupied, measured from the exterior surface of exterior walls (and extensions thereof for openings) and/or from the center line of party or common walls or demising partitions.

8.3. Alterations by Tenant. Tenant shall make no alterations, improvements or additions in, upon, to, or about the Premises without Landlord's prior written consent. In addition, Tenant shall make no alterations, improvements, additions, changes or decorations to any storefront, the exterior walls, mechanical or utility systems or roof of the Building, including any penetration through the roof above or below the Premises, without the prior written consent of Landlord made in Landlord's sole discretion. Unless otherwise specified by Landlord pursuant to Section 21.1, all alterations, additions or improvements, to the Premises, including air conditioning and heating equipment, mechanical systems, floor coverings, and fixtures, other than Tenant's trade fixtures, which may be made or installed by either of the parties in, upon or about the Premises shall be the property of Landlord, and at the termination of this Lease shall remain upon and be surrendered with the Premises.

8.4. Construction Requirements. Any and all alterations, additions or improvements made by Tenant under this Article 8 shall be designed by a competent licensed architect or structural engineer and shall be made under the supervision of such architect or engineer by financially sound, bondable contractors of good reputation in accordance with plans and specifications approved in writing by Landlord hereunder before commencement of any work. Landlord may require in connection with its consent to any alterations, additions or improvements hereunder, that any contractor, or major subcontractors, provide payment and completion bonds in such amounts and with sureties acceptable to Landlord. All alterations, additions and improvements made by Tenant hereunder shall be performed in a good and workmanlike manner, diligently prosecuted to completion, and using new materials. Tenant shall notify Landlord at least twenty (20) days prior to commencement of any work, alteration, addition or improvement hereunder so that Landlord may post, file and/or record any notice of nonresponsibility or other notice required under applicable mechanic's lien laws. Upon completion of any work hereunder, Tenant shall record in the office of the County Recorder where the Property is located a notice of completion or any other notice required or permitted by applicable mechanic's lien law to commence the running of, or terminate, any period for the filing of liens or claims, and shall deliver to Landlord any certificate of occupancy or other equivalent evidence of completion of such work in accordance with the requirements of applicable law. Prior to commencing any work hereunder, Tenant shall supply to Landlord evidence that its contractor or contractors have procured such insurance as Landlord may prescribe in connection with such work.

8.5. Liens. Tenant shall pay, or cause to be paid, all sums, costs and expenses due for, or purporting to be due for, any work, labor, services, materials, supplies or equipment furnished, or claimed to be furnished, to or for Tenant in, upon or about the Premises, and shall keep the Premises and the Property free of all mechanic's, materialmen's or other liens arising therefrom. Tenant may contest any such lien, if Tenant first procures and posts, records and/or

files a bond or bonds issued by a financially sound, qualified corporate surety, in conformance with the requirements of applicable law for the release of such lien from the Premises and/or Property. Tenant shall pay and fully discharge any contested claim of lien within five (5) days after entry of final judgment adverse to Tenant in any action to enforce or foreclose the same; notwithstanding any such contest, Landlord shall have the absolute right at any time to pay any lien imposed hereunder if in Landlord's reasonable good faith judgment such payment is necessary to avoid the forfeiture, involuntary sale or loss of any interest of Landlord or any other tenant or owner in the Property, or any portion thereof. Tenant shall indemnify, defend, protect and hold Landlord harmless of and from any and all loss, cost, liability, damage, injury or expense (including attorneys' fees) arising out of or in connection with claims or liens for work, labor, services, materials, supplies or equipment furnished or claimed to be furnished to or for Tenant in, upon or about the Premises or the Property.

## 9. UTILITIES.

9.1. Tenant To Pay for Utilities and Utility Connections. Tenant shall promptly pay, as the same become due and payable, all bills, charges, fees, assessments and exactions for all water, gas, electricity, heat, refuse pickup, sewer service, telephone, and any other utilities, materials and services furnished to or used by Tenant in, on or about the Premises. If any utility, material or service is not separately charged or metered to the Premises, Tenant shall pay to Landlord, within ten (10) days after written demand therefor, Tenant's pro rata share of the total cost thereof as may be determined by Landlord; if any utility, material or service is included as part of the maintenance of the Common Area under Article 11, then the cost thereof shall be included in Common Area Maintenance Costs and Tenant shall pay its share thereof in accordance with Section 11.2.

9.2. Landlord to Provide Mains and Conduits; No Liability for Interruption of Service. Landlord shall provide and maintain the necessary mains, conduits and cables to bring water, telephone, electricity and gas (if required by Tenant and approved by Landlord) to the Premises, and to remove sewage from the Premises. Landlord shall stub such services to the exterior wall of the building containing the Premises and Tenant shall be responsible for all portions of such services beginning at the exterior wall of the building containing the Premises. In no event shall Landlord be liable for any interruption or failure of any utility services for any cause, whether or not within Landlord's control or due to Landlord's act or neglect.

## 10. SIGNS, DISPLAYS, ADVERTISING AND PROMOTION.

10.1. Signs and Other Advertising Media. Tenant shall not erect or install in, upon or about the Premises any exterior or interior signs or advertising media, or window or door lettering or placards, without Landlord's reasonable consent. Upon expiration of the Lease, Tenant shall promptly remove all signs installed hereunder, unless otherwise specified by Landlord pursuant to Section 21.1, and shall "cap off" the electrical wiring thereto. Tenant shall not use any advertising media or other media that is objectionable to Landlord, or which can be heard outside the Premises, such as loudspeakers, phonographs or radio broadcasts.

10.2. Exterior Displays; Illumination of Window Displays. Tenant shall not keep or display any merchandise on, or otherwise obstruct in any manner, the sidewalks or area ways adjacent to the Premises without Landlord's reasonable consent. Tenant shall maintain its display windows and show cases of the Premises in a neat and clean condition, and shall also keep them well lighted from dusk until such time as Landlord may determine from time to time during each and every day of the Term. No exposed fluorescent tubes or incandescent bulbs, except in factory built track lighting fixtures reasonably approved by Landlord, shall be used for the illumination of display windows.

## 11. COMMON AREA.

11.1 Maintenance and Repairs. As used in this Lease, the term "Common Area" means all areas and facilities within the Property not appropriated to the exclusive occupancy of tenants or other occupants, including all Parking Area, sidewalks, pedestrian ways, driveways, signs, service delivery facilities, common storage areas, common utility facilities and all other areas in the Property established by Landlord for non-exclusive use. The term "Parking Area" means all Common Areas (except sidewalks and service delivery facilities) now or hereafter designated by Landlord for the parking or access of motor vehicles, including roads, traffic lanes, vehicular parking spaces, landscaped areas and walkways. Throughout the Term, Landlord shall maintain in good order, condition and repair (ordinary wear and tear, damage due to casualty and



condemnation or taking excepted) all Common Area. Landlord may at any time delegate such maintenance, or any portion thereof, to any other third party, affiliated or non-affiliated, upon such terms and conditions as Landlord deems compensatory, necessary or appropriate. The manner in which the Common Area is maintained hereunder, and the expenditures therefor, shall be at Landlord's sole discretion. Any use of the Common Area shall be subject to such rules and regulations as Landlord may from time to time or at any time promulgate.

11.2. Payment by Tenant of Management Fee and Proportionate Share of Common Area Maintenance Costs. Commencing with the Term Commencement Date and thereafter throughout the Term, Tenant shall pay to Landlord in the manner hereinafter provided, Tenant's Proportionate Share of Common Area Maintenance Costs (as defined below), except that Taxes shall be paid by Tenant under Article 6. In addition, Tenant shall pay to Landlord, in the manner hereinafter provided, a management and administrative fee (the "Management Fee") equal to Ten percent (10%) of the total Common Area Maintenance Costs, excluding property taxes and Utilities, for the Lease Year in question. The Management Fee represents reimbursement for Landlord's internal administrative and overhead costs incurred in the operation and management of the Common Area hereunder.

11.2.1. Method of Payment. On the first day of each Month during each Lease Year, Tenant shall pay in advance one-twelfth (1/12th) of the amount which Landlord estimates as Tenant's Proportionate Share of Common Area Maintenance Costs for such Lease Year. Within sixty (60) days after the end of each Lease Year, or as soon thereafter as practicable, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's Proportionate Share of Common Area Maintenance Costs. If the amount paid by Tenant during such Lease Year is less than Tenant's Proportionate Share of Common Area Maintenance Costs as shown by Landlord's statement, then Tenant shall pay the difference within twenty (20) days after the date of Landlord's statement; if the amount paid by Tenant during such Lease Year is more than Tenant's Proportionate Share of Common Area Maintenance Costs as shown by such statement, then Tenant shall receive a credit on future payments of Common Area Maintenance Costs hereunder for the amount of such excess

11.2.2. Adjustments During Lease Year. If at any time it appears to Landlord that Common Area Maintenance Costs for any Lease Year will exceed Landlord's estimate thereof, then Landlord shall have the right by notice to Tenant to revise the estimated monthly amount payable by Tenant hereunder and subsequent payments of Tenant's estimated Proportionate Share of Common Area Maintenance Costs hereunder shall be increased based upon such revised statement.

11.2.3. Prorations. For the Lease Years in which the Term commences and expires, Common Area Maintenance Costs shall be prorated based on the number of days of the calendar year the Term is in effect.

11.2.4. Definition of Common Area Maintenance Costs. As used in this Lease, the term "Common Area Maintenance Costs" means the total of all costs and expenses paid or incurred by Landlord in connection with the operation, maintenance, ownership and repair of the Common Area. Without limiting the generality of the foregoing, Common Area Maintenance Costs include all costs of and expenses for: (i) maintenance and repairs of the Common Area; (ii) resurfacing, resealing, remarking, painting or restriping the Parking Area; (iii) maintenance and repair of all public or common facilities and installations such as public toilets, music program equipment and loudspeakers, customer accommodation facilities and similar installations; (iv) maintenance, repair and replacement of sidewalks, curbs, paving, walkways, Parking Area, Property signs, landscaping, planting and irrigation systems, trash facilities, lighting, drainage and common utility facilities, directional or other signs, markers and bumpers; (v) wages, salaries, benefits, payroll burden fees and charges of all outside personnel employed for the maintenance and repair of the Common Area, and for security personnel retained by Landlord in connection with the operation and maintenance of the Common Area (although Landlord shall not be required to obtain security services); (vi) maintenance and repair of security systems and alarms; (vii) premiums for the insurance carried by Landlord pursuant to Section 5.2 and for Comprehensive General Liability Insurance or Commercial General Liability Insurance, casualty insurance, workers compensation insurance or other insurance on the Common Area or Property, or any portion thereof or interest therein; (ix) Taxes and all personal property or real property taxes and assessments levied or assessed on the Property, or any portion thereof or interest therein; (x) cleaning, collection, storage and removal of trash, rubbish, dirt and debris, and sweeping and cleaning the Common Area; (xi) maintenance, repair and replacement of Christmas decorations; and (xii) servicing and maintaining and monitoring any fire sprinkler

system. Landlord agrees to manage the Property and Common Areas in accordance with standard operating procedures for properties similar to the Property.

11.3. Grant of Non-Exclusive Rights in Common Area; Rules and Regulations. Subject to the terms and conditions of this Lease, and such rules and regulations as Landlord may from time to time promulgate with respect thereto, until termination of this Lease, Landlord hereby grants to Tenant, and its invitees and licensees, the non-exclusive right to use the Common Area for ingress and egress to and from the Premises and to Tenant the non-exclusive right to connect to common utility facilities for the installation and maintenance of utilities within the Premises. Tenant and its invitees and licensees shall observe all rules and regulations which Landlord may from time to time or at any time promulgate with respect to the use, operation and maintenance of the Common Area. Any such rules and regulations shall be binding upon Tenant and its licensees and invitees upon Landlord's delivery of a copy thereof to Tenant. Tenant shall not use the Common Area, or any other portion of the Property, for any purpose, or allow therein any use, other than that specifically allowed hereunder or under any rules and regulations promulgated by Landlord hereunder. Tenant's use of the Common Area is granted hereunder as a revocable license and, if Landlord revokes such license or if the amount of Common Area or Tenant's use thereof hereunder is diminished, altered, damaged or modified, Landlord shall not be subject to any liability or claims of any kind or character nor shall Tenant be entitled to any compensation, damages or rental abatement on account thereof, nor shall any such diminution, alteration, change or modification be deemed a constructive or actual eviction of Tenant, and all such rights and remedies are hereby waived by Tenant.

11.4. Receiving and Deliveries. All receiving of goods and materials at the Premises, all delivery of goods and merchandise to the Premises, and all removal of garbage and refuse from the Premises shall be made only by way of Tenant's rear service door, if any, or the service delivery facilities designated by Landlord for Tenant's use. Landlord hereby grants to Tenant and Tenant's employees, invitees and licensees, the non-exclusive right, during the Term, to use, in common with others entitled to the use thereof, the service delivery facilities most immediately adjacent to the Premises, subject to the terms and conditions of this Lease and any rules and regulations as Landlord may from time to time or at any time promulgate hereunder.

11.5. Tenant Parking. Tenant and its officers, agents, contractors and employees shall park their motor vehicles only in the five parking stalls in the Parking Area which Landlord shall from time to time designate hereunder, and one parking stall in the adjacent public parking lot. Tenant shall not at any time park, or permit the parking, of motor vehicles in truck passageways or adjacent to any service delivery facility so as to interfere in any way with the use thereof by others, nor shall Tenant at any time park, or permit the parking, of motor vehicles of its suppliers or vendors in the Parking Area. Tenant will encourage its employees to use public transportation, car pool, and other modes of transportation in an effort to reserve parking for customers.

## 12. ASSIGNMENT AND SUBLETTING.

12.1. Lease as Personal to Tenant. Tenant acknowledges that Landlord has entered into this Lease based on Tenant's qualifications to operate Tenant's business under its current trade name, pursuant to the information given and representations made by Tenant to Landlord with respect thereto. As such, this Lease is intended by the parties to create a leasehold estate personal to Tenant to enable Tenant so to operate its business in the Premises under such trade name. Tenant acknowledges that Landlord is the owner of the Property and has bargained for and entered into this Lease in order to derive the economic and other benefits of such ownership, and that Tenant has no intention of capitalizing on the value of the leasehold estate created hereunder in a manner which would deprive Landlord of the benefits of its ownership of the Property. The parties have agreed to the provisions of this Article 12 in order to effectuate the foregoing understandings.

12.2. Landlord Consent Required; Notice. Tenant shall not assign this Lease, or any rights, duties or obligations hereunder, and Tenant shall not sublet all or any portion of the Premises, without Landlord's prior written consent to such assignment or sublease, which consent shall not be unreasonably withheld, and then only upon and subject to the terms and conditions hereinafter set forth. In considering any request for consent to a proposed assignment or sublease, Landlord shall make its decision based on the standards and criteria set forth in Section 12.5. Prior to effectuating any such assignment or sublease, Tenant shall notify Landlord in writing of the name and address of the proposed assignee or sublessee, and deliver to Landlord with such notice a true and complete copy of the proposed assignment agreement or



sublease, such other information or documents as may be necessary or appropriate to enable Landlord to determine the qualifications of the proposed assignee or sublessee and the compliance of such transaction with the requirements of this Article 12, and a request that Landlord consent thereto. Within thirty (30) days after the receipt of such written notice, Landlord shall either: (i) consent in writing to such proposed assignment or sublease, subject to the terms and conditions hereinafter set forth; or (ii) notify Tenant in writing that Landlord refuses such consent; or (iii) terminate this Lease with respect to the portion of the Premises which Tenant desires to assign or sublease. Upon such termination, the Fixed Minimum Rent then payable by Tenant to Landlord hereunder shall be reduced in the proportion that the number of square feet of Gross Leasable Area in such portion of the Premises bears to the total number of square feet of Gross Leasable Area of the Premises then leased by Tenant under this Lease.

### 12.3. Rent. Not Applicable

12.4. Parameters of Landlord's Consent. Landlord shall have the right to base its consent to any proposed assignment or sublease hereunder upon such factors and considerations as Landlord, in its reasonable good faith judgment, deems relevant or material to the proposed assignment or sublease transaction and the best interest of the Property operations. Without limiting the generality of the foregoing, Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to any proposed assignment or sublease transaction if Tenant has not demonstrated to Landlord's complete satisfaction, within the exercise by Landlord of its reasonable good faith judgment, that: (i) the proposed assignee or sublessee is financially responsible, with sufficient net worth and net current assets, properly and successfully to operate its business in the Premises and meet the financial and other obligations of this Lease; (ii) the proposed assignee or sublessee possesses sound and good business judgment, reputation and experience, and proven management skills in the operation of a business or businesses substantially similar to the uses permitted in the Premises under Section 4.1; (iii) the use of the Premises proposed by such assignee or sublessee does not violate the restrictions specified or referred to in Article 4 and otherwise conforms with Landlord's tenant-mix requirements then pertaining in the Property; (iv) Intentionally deleted, (v) the assignment or sublease would not breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease, financing agreement or other agreement relating to the Property or contained in this Lease.

12.5. Other Terms and Conditions. Each assignment or sublease to which Landlord consents shall be effected by an instrument in writing in form and substance satisfactory to Landlord, and shall be executed by both Tenant and the assignee or sublessee, as the case may be. One (1) executed copy of such written instrument shall be delivered to Landlord concurrently with the consummation of such assignment or sublease transaction. Each assignee or sublessee in any assignment or sublease transaction hereunder shall agree in such written instrument to assume and be bound by all of the terms, covenants, conditions and obligations of this Lease. Every sublease shall be subject and subordinate to the provisions of this Lease. If Landlord consents to an assignment or sublease, Tenant shall remain liable for all its obligations and liabilities under this Lease, including the payment of Fixed Minimum Rent and Percentage Rent. No consent by Landlord to any modification, amendment or termination of this Lease, or extension, waiver or modification of payment or any other obligations under this Lease, or any other action of Landlord with respect to any assignee or sublessee, or the insolvency, bankruptcy or default of any such assignee or sublessee, shall affect the continuing liability of Tenant for its obligations and liabilities hereunder, and Tenant waives any defense arising out of or based thereon. Tenant shall reimburse Landlord for all costs and expenses incurred in connection with any proposed assignment or sublease transaction hereunder, including attorneys' fees and lease administration fees incurred by Landlord in connection with the processing and documentation of any requested assignment or subletting, regardless of whether such transaction is actually consummated. Landlord may also require, as a condition of any assignment or subletting, that Tenant not then have committed an Event of Default (as defined in Article 18).

12.6. Landlord Rights and Remedies. Any assignment or sublease made without Landlord's prior written consent hereunder shall, at Landlord's sole election, be void and shall constitute an Event of Default by Tenant under this Lease. No consent to any assignment or sublease shall constitute a waiver of the provisions of this Article 12 with respect to any subsequent assignment or sublease, and each assignment or sublease by Tenant hereunder shall require Landlord's prior written consent pursuant to this Article 12. If Tenant purports to assign this Lease, or sublease all or any portion of the Premises, or permit any person or persons other than Tenant to occupy the Premises, without Landlord's prior written consent given hereunder, Landlord may collect rent from the person or persons then or thereafter occupying the Premises

and apply the net amount collected to the Rent hereunder, but no such collection shall be deemed a waiver of this Article 12, or the acceptance of any such purported assignee, sublessee or occupant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained.

12.7. Scope of Assignment or Subletting. As used herein, an assignment or subletting includes the following: (i) if Tenant is a partnership, a transfer, voluntary or involuntary, of all or any part of any interest in such partnership, or the dissolution of the partnership, whether voluntary or involuntary; (ii) if Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the transfer, either by a single transaction or in a series of transactions, of a controlling percentage of the stock of Tenant, or the sale, by a single transaction or series of transactions, within any one (1) year period, of corporate assets equaling or exceeding twenty percent (20%) of the total value of Tenant's assets, unless any such corporate change results from the trading of shares listed on a recognized public stock exchange and such trading is not for the purposes of acquiring effective control of Tenant; (iii) if Tenant is a trust, the transfer, voluntarily or involuntarily, of all or any part of the controlling interest in such trust; and (iv) if Tenant is any other form of entity, a transfer, voluntary or involuntary, of all or any part of any interest in such entity. As used herein, the phrase "controlling percentage" or "controlling interest" means the ownership of, and/or the right to vote, stock possessing at least fifty-one percent (51%) of the total combined interests in Tenant, or voting power of all classes of Tenant's capital stock issued, outstanding, and entitled to vote for the election of directors.

12.8. Encumbrances. Tenant shall not encumber, hypothecate or transfer as security (whether by conditional assignment or sublease, or otherwise) this Lease, or any Tenant's rights, duties or obligations hereunder.

### 13. ACCESS.

13.1. Access to Premises. Landlord and its designees shall have the right to enter upon the Premises only during Tenant's reasonable operating hours and with prior 2 days notice (and in emergencies at all times) without notice, diminution or abatement of Rent or liability to Tenant: (i) to inspect the same or show the same to prospective lenders or buyers; (ii) to make repairs, improvements additions or alterations to the Premises, the Building or any property owned or controlled by Landlord (and for such purposes erect scaffolding and other necessary structures where required by the character of the work to be performed, always providing the entrance to the Premises is not blocked thereby); (iii) to serve or post any notice required or permitted under the provisions of this Lease or by law; and (iv) for any other lawful purposes.

13.2. Excavations. If an excavation is made upon the land adjacent to the Premises or the Building, Tenant shall permit entry to the Premises by all persons performing such work as Landlord may deem necessary or appropriate to shore or underpin to preserve the Premises or the Building from injury or damage, or otherwise. Tenant shall have no claim against Landlord nor shall Landlord be liable for damages, indemnification or diminution or abatement of Rent payable hereunder, and Tenant waives any such right or remedy.

13.3. Access for Prospective Tenants. For the period commencing ninety (90) days prior to the end of the Term, Landlord shall have access to the Premises to exhibit the same to prospective tenants and to post any usual "To Let" or "For Lease" signs upon the Premises.

### 14. EMINENT DOMAIN.

14.1. Entire or Substantial Taking. If the Premises or the Property, or any portion of or interest in either, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, so that in Landlord's judgment a reasonable amount of reconstruction of the Premises and/or Property will not result in the Premises being reasonably suited for Tenant's continued occupancy for the uses and purposes for which the Premises are leased, then this Lease shall terminate as of the date that possession of the Premises or Property, or part thereof, or interest therein is taken.

14.2. Partial Taking. If any part of or interest in the Premises or the Property is so taken and the remaining part thereof or interest therein is, in Landlord's judgment, after reconstruction of the remaining Premises or property, reasonably suitable for Tenant's continued occupancy for the purposes and uses for which the Premises are leased, then this Lease shall, as

to the part of the Premises so taken, terminate as of the date possession of such part is taken, and the Fixed Minimum Rent then in effect shall be reduced in the proportion that the Gross Leasable Area of the part taken (less any additions thereto by reason of any reconstruction) bears to the original Gross Leasable Area of the Premises. Landlord shall, at its own cost and expense, make necessary repairs or alterations to the remaining Premises and/or Property, so as to constitute the remaining Premises (or the Building) a complete architectural unit, provided that (i) the cost of such work does not exceed the amount of the award available to Landlord as a result of the taking, and (ii) the scope of such work shall not exceed that done by Landlord in originally constructing the Building and/or the Premises. A just part of the Fixed Minimum Rent shall be abated during such restoration to the extent that such restoration substantially interferes with the conduct of Tenant's business in the Premises.

14.3. Disposition of Award. Intentionally ommitted.

14.4. Further Assurance. Each party shall execute and deliver to the other all documents or instruments that may be necessary or appropriate to effectuate the provisions hereof.

15. DAMAGE OR DESTRUCTION.

15.1. Landlord to Rebuild. If the Premises are damaged or destroyed by fire or other casualty insured under Landlord's casualty insurance carried under Section 5.2, then Landlord shall repair the damaged or destroyed portions of the Premises, using reasonable diligence, unless Landlord elects not to repair as hereinafter provided. If such damage or destruction substantially interferes with the conduct of Tenant's business in the Premises, then a just part of the Fixed Minimum Rent shall be abated, to the extent of such interference reasonably attributable to such damage or destruction, until substantial completion of such repairs.

15.2. Landlord's Options to Terminate. If (i) fifty percent (50%) or more of the Gross Leasable Area of the Building or the Property is damaged or destroyed by fire or other casualty insured under Landlord's casualty insurance carried under Section 5.2 (notwithstanding that the Premises may sustain no material damage), or (ii) the Building is damaged or destroyed by casualty so insured and the cost of repair or replacement equals or exceeds thirty-three and one-third percent (33-1/3%) of the actual replacement cost thereof, or (iii) the Premises, the Building and/or the Property, or any portion thereof, are damaged or destroyed in whole or in part from any cause or casualty, and Landlord does not actually receive insurance proceeds sufficient to fund the cost of repair and restoration, then, in any such event, Landlord may elect, in its sole discretion, to (a) repair or rebuild the damaged or destroyed portion of the Premises, Building or Property or (b) terminate this Lease by giving written notice of such termination to Tenant. Landlord shall make its election within thirty (30) days after any such damage or destruction. If Landlord elects to repair or rebuild, then it shall proceed with reasonable diligence to make such repairs or rebuilding. Unless Landlord elects to terminate this Lease hereunder, any damage or destruction to the Premises, the Building and/or the property shall have no effect on this Lease and this Lease shall remain in full force and effect, the parties waiving the provisions of any statute or law to the contrary.

15.3. Extent of Landlord's Repair and Rebuilding Obligations. If Landlord elects to repair and rebuild hereunder, then its obligation for such repair and rebuilding shall be limited to a scope of work not exceeding the original scope of work for the portions of the Property repaired and reconstructed hereunder and Landlord's Work as set forth in Exhibit C. Landlord shall have sole control over all design and construction decisions with respect to such repair and rebuilding. All costs and expenses for such repair and rebuilding shall be borne by Landlord. If Landlord elects to repair and rebuild hereunder, then Tenant shall forthwith replace or repair all of Tenant's Work as set forth in Exhibit C, Tenant's signs, trade fixtures, equipment display cases and all other installations made or installed by Tenant under this Lease, regardless of whether paid for by Landlord or Tenant. Tenant shall prosecute its work of repair and reconstruction hereunder with all due diligence and shall re-open for business in the Premises at the earliest possible time after the event of damage or destruction, so that Landlord will be deprived of the benefits of Tenant's business operations in the Premises for as short a time as possible.

15.4. Tenant Waivers. Tenant hereby waives any right at law or in equity which it might have to terminate this Lease on account of any damage or destruction to the Premises, the Building and/or the Property, including all rights under California Civil Code Sections 1932(2) and 1933(4), and any successor statutes. In the event of any such damage or

destruction, the rights, duties and obligations of the parties shall be governed solely by the applicable provisions of this Lease with respect thereto.

16. WAIVER OF CLAIMS; INDEMNITY.

16.1. Waiver of Claims. Landlord shall not be liable to Tenant, or to any other person or entity, from or for any event, occurrence, act, neglect, omission, loss, damage, injury or death, howsoever caused or whenever occurring, including damages occasioned by falling plaster, electricity, plumbing, gas, water, steam, sprinkler or other pipe and sewage system or by the bursting, running or leaking of any tank, washstand, closet or waste or other pipes in or about the Premises or the Building, damages occasioned by water being upon or coming through the roof, skylight, vent, trapdoor or otherwise of any portion of the Building, damages arising from any act or neglect of tenants, owners or other occupants of the Property, or of adjacent property, or of their employees, agents, contractors, licensees or invitees, or the public, or damages for any failure to furnish, or interruption of, service of any water, gas, electricity and/or telephone, or caused by fire, accident, riot, strike, labor disputes, acts of God, or the making of or failure to make any repairs or improvements. This provision shall not release Landlord from liability resulting from Landlord's gross negligence or willful misconduct. Tenant's sole remedy under this provision shall be to Terminate the Lease with 30 days prior written notice to Landlord.

16.2. Indemnity. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees) arising from or in connection with or caused by: (i) any act, omission or negligence of Tenant or any subtenant of Tenant, or their respective contractors, licensees, invitees, agents, servants or employees, wheresoever the same may occur.

17. NOTICES.

17.1. Procedure. All notices, consents, waivers or other communications which this Lease requires or permits either party to give to the other shall be in writing and shall be given by personal delivery (including delivery by messenger or carrier service) or by registered or certified mail, or Express Mail, return receipt requested, postage prepaid (or by facsimile, telecopier or other equivalent means if personal delivery or mail delivery is concurrently effected), addressed if to Landlord at Landlord's Address shown in the Lease Summary, and addressed if to Tenant at Tenant's Address shown in the Lease Summary or to the Premises. Either party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effected. Rent and other charges required by this Lease to be paid by Tenant to Landlord shall be delivered to Landlord at Landlord's Address or to such other address as Landlord may from time to time specify by written notice to Tenant. All notices under this Lease shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

17.2. Multiple Tenants; Receipt. If there is more than one (1) person or entity comprising Tenant, then all notices, consents, waivers or other communications under this Lease may be given by or to any one of such persons or entities, and when so served, shall have the same force and effect as if given or served upon each such person or entity, and each such person or entity hereby designates each other such person or entity as its agent for service of such notices in accordance herewith.

18. DEFAULT; REMEDIES.

18.1. Events of Default. The occurrence of any of the following shall constitute an "Event of Default" by Tenant under this Lease:

18.1.1. Vacation or Abandonment. Vacation or Abandonment of the Premises for a continuous period in excess of seven (7) days.

18.1.2. Nonpayment of Money. Failure to pay when due Fixed Minimum Rent, or any other charge or sum due and payable by Tenant under this Lease.

18.1.3. Prohibited Assignment or Subletting. The making by Tenant of any assignment or sublease in contravention of the terms and conditions of Article 12.

18.1.4. Insolvency. The admission by Tenant in writing of its inability to pay its debts as they become due; the filing by Tenant of a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the filing by Tenant of an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant in any such proceedings or, if within thirty (30) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed; the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Tenant; a general assignment by Tenant for the benefit of creditors; any action or proceeding commenced by Tenant under any insolvency or bankruptcy act or under any other statute or regulation having as its purpose the protection of creditors, or any such action commenced against Tenant and not discharged within thirty (30) days after the date of commencement; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or the Premises, if such attachment or other seizure remains undismissed or undischarged for a period of ten (10) days after the levy thereof.

18.1.5. Other Obligations. Failure to perform any other term, obligation, covenant or agreement under this Lease.

18.2. Notice to Tenant. Upon the occurrence of any Event of Default, Landlord shall give Tenant written notice thereof, specifying the Event of Default and the provisions of this Lease breached by Tenant and Tenant shall have the right to cure such Event of Default within the time periods, if any, hereinafter specified.

18.2.1. Vacation or Abandonment. For vacation or abandonment of the Premises, within three (3) days after Landlord's notice.

18.2.2. Non-payment of Money. For failure to pay Fixed Minimum Rent, Percentage Rent or any other charge or sum, within fifteen (15) days after Landlord's notice, unless Tenant has failed more than two (2) times during a given Lease Year timely to pay any Rent so that Landlord has been required to give notice hereunder, in which event no written notice or cure period shall thereafter be required or applicable during such Lease Year.

18.2.3. Other Obligations. For failure to perform any obligation, agreement or covenant under this Lease, other than nonpayment of monies, within thirty (30) days after Landlord's notice, unless Tenant has defaulted in the performance of any obligation, agreement or covenant more than two (2) times during the Term and notice of such Event of Default has been given by Landlord in each instance, in which event no notice or cure period shall thereafter be required or applicable hereunder. Notwithstanding the foregoing 30-day period, if such obligation, agreement or covenant is of such a nature that it cannot be cured within thirty (30) days after Landlord's notice, then Tenant shall not be in default provided that it has commenced to perform such obligation, agreement or covenant within such 30-day period and is diligently pursuing performance thereof.

18.2.4. No Notice. No notice or cure period shall be required or applicable hereunder for any Event of Default specified in Sections 18.1.3 or 18.1.4.

18.3. Remedy Upon Occurrence of Event of Default. On the occurrence of an Event of Default which Tenant fails to cure after notice and expiration of the cure period, if any, specified above, Landlord shall have the right either (i) to terminate this Lease, and at any time thereafter recover possession of the Premises, or any part thereof, and expel and remove therefrom Tenant and any other person occupying the same, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease or at law or in equity by reason of the Event of Default or of such termination, or (ii) to continue this Lease in effect for so long as Landlord does not so terminate Tenant's right to possession, and enforce all Landlord's rights and remedies under this Lease, including the right to recover Fixed Minimum Rent as it becomes due, or relet the Premises at such rental and upon such terms and conditions as Landlord, in its sole discretion, may deem advisable. Acts of maintenance, preservation or efforts to lease the Premises, the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, or re-entry or taking of possession of the Premises by Landlord hereunder, shall not constitute an election to terminate Tenant's right to possession unless specific written notice of such termination is given to Tenant hereunder. Landlord may store any property of Tenant located in the Premises in a public warehouse or elsewhere at Tenant's expense or otherwise dispose of

such property in the manner provided by law. If Landlord does not terminate this Lease hereunder, then Tenant shall continue to pay currently all amounts payable by Tenant under this Lease, together with the cost of obtaining possession of and reletting the Premises, any repairs and alterations necessary to prepare the Premises for reletting, and brokerage commissions and attorneys' fees incurred in connection therewith, less the rents, if any, received from such reletting. Any and all monthly deficiencies so payable by Tenant shall be paid on each due date for Fixed Minimum Rent herein specified. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease pursuant to this Section 18.3.

18.4. Damages Upon Termination. If Landlord terminates this Lease pursuant to Section 18.3, then Landlord may exercise all rights and remedies available to a landlord at law or in equity, including the right to recover from Tenant: (i) the worth at the time of award of the unpaid Rent and other amounts payable by Tenant hereunder which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent and such other amounts which would have been earned after termination until the time of the award exceeds the amount of loss of Rent and such other amounts that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent and such other amounts for the balance of the term after the time of the award exceeds the amount of loss of Rent and such other amounts that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom, including without limitation any unamortized Tenant Improvement costs or Tenant Improvement allowance. The "worth at the time of award" of the amounts referred to in clauses (i) and (ii) shall be computed with Interest. The "worth at the time of award" of the amount referred to in clause (iii) shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco, California, plus one percent (1%). As used herein, "time of award" shall mean either the date upon which Tenant pays to Landlord the amount recoverable by Landlord as hereinabove set forth, or the date of entry of any determination, order or judgment, of any court or other legally constituted body determining the amount recoverable, whichever first occurs.

18.5. Computation of Rent and Other Amounts for Purposes of Default. For purposes of Section 18.4, unpaid Rent and other amounts which would have accrued and become payable under this Lease shall consist of the the total Fixed Minimum Rent for the balance of the Term, however shortene, in event of notice of Tenant's right to Terminat the Lease herein,

18.6. Waiver of Statutory Notice Periods. The notice periods after Events of Default specified in Section 18.2 shall be exclusive of any other notice period provided by law with respect to any such Event of Default, and Tenant hereby waives any right under law to any other notice period now or hereinafter enacted.

18.7. Landlord's Right to Perform on Tenant's Breach. In addition to any other right or remedy of Landlord hereunder, upon the occurrence of an Event of Default and without waiving or releasing Tenant from any obligation of Tenant hereunder, Landlord may (but shall not be required to) cure such Event of Default for the account of Tenant. Landlord shall not be responsible or liable to Tenant for any loss or damage that may be caused to Tenant's stock or business by reason of effecting cure hereunder. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with such cure (including attorneys' fees), together with Interest thereon from the respective dates of Landlord's incurrence of each item of cost or expense, shall be payable by Tenant on demand.

18.8. Receiver. If a receiver is appointed in any action by Landlord against Tenant on account of any Event of Default, such receiver may take possession of any personal property belonging to Tenant and used in the business conducted on the Premises, and the entry or possession by such a receiver shall not constitute an eviction of Tenant from the Premises or any portion thereof. Tenant shall indemnify, defend, protect and hold Landlord harmless from any damages, causes of action, liability, cost or expense (including attorneys' fees) arising out of or in connection with the entry by such receiver and the taking of possession of the Premises and/or such personal property. Neither the application for the appointment of such receiver, nor the appointment itself, shall constitute an election on Landlord's part to terminate this Lease, unless written notice of such election is given by Landlord to Tenant hereunder.

18.9. Landlord's Defaults.



18.9.1. Notice and Cures; Landlord's Liability. If Landlord fails to perform any of its obligations under this Lease, then Tenant shall give Landlord written notice thereof, specifying with particularity the breach claimed by Tenant. Landlord shall have the right to cure such breach during the 30-day period following receipt of Tenant's notice hereunder, unless such breach cannot reasonably be cured within such 30-day period, in which event Landlord shall not be in default under this Lease if Landlord commences such cure within such 30-day period and thereafter diligently prosecutes the same to completion. If the Premises, or any portion thereof, are at any time subject to any mortgage or a deed of trust, Tenant shall serve on the mortgagee or beneficiary thereunder concurrent copies of any notice of default served on Landlord hereunder. If Landlord fails to cure any noticed breach hereunder within the time period provided in this Section 18.9.1, then any such mortgagee or beneficiary shall have an additional thirty (30) days within which to cure Landlord's breach, plus such additional time as may be necessary to perfect such mortgagee's or beneficiary's rights and remedies under its mortgage or deed of trust (including foreclosure proceedings or the appointment of a receiver) and complete cure in fact. If and when such mortgagee or beneficiary has rendered performance on behalf of Landlord, Landlord's breach shall be deemed cured, and if for any reason Landlord's breach is not susceptible of cure, it shall nevertheless be deemed cured upon such mortgagee's or beneficiary's taking of possession of Landlord's interest in the Premises. Notwithstanding anything to the contrary under applicable law, Tenant shall have no right to terminate this Lease during the notice and cure periods hereunder. If Landlord fails to cure its breach hereunder (or such breach is not cured by a mortgagee or beneficiary as herein specified), then Landlord shall be liable to Tenant only for Tenant's direct damages caused thereby and Tenant waives any rights to recover consequential damages on account thereof.

18.9.2. Certain Limitations on Tenant's Remedies. Landlord shall never be personally liable under this Lease; Tenant shall look solely to Landlord's interest in the Property for any recovery of damages for any breach by Landlord of this Lease, or any recovery of any judgment from Landlord. None of the members comprising Landlord (whether partners, shareholders, officers, directors, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any such judgment. There shall be no levy of execution against any assets of Landlord, other than the Property, or the assets of such members on account of any liability of Landlord hereunder. Tenant hereby waives any right of recovery or satisfaction of any judgment against Landlord or its members, except as to Landlord's interest in the Property herein specified.

18.10. Waiver; Remedies Cumulative. Failure of Landlord to declare an Event of Default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such Event of Default, but Landlord shall have the right to declare any such Event of Default at any time thereafter. No waiver by Landlord of an Event of Default, or any agreement, term, covenant or condition contained in this Lease, shall be effective or binding on Landlord unless made in writing and no such waiver shall be implied from any omission by Landlord to take action with respect to such Event of Default or other such matter. No express written waiver by Landlord of any Event of Default, or other such matter, shall affect or cover any other Event of Default, matter or period of time, other than the Event of Default, matter and/or period of time specified in such express waiver. One or more written waivers by Landlord of any Event of Default, or other matter, shall not be deemed to be a waiver of any subsequent Event of Default, or other matter, in the performance of the same provision of this Lease. Acceptance of Rent by Landlord hereunder shall not, in and of itself, constitute a waiver of any Event of Default or of any agreement, term, covenant or condition of this Lease, except as to the payment of Rent so accepted, regardless of Landlord's knowledge of any concurrent Event of Default or matter. All of the remedies permitted or available to Landlord under this Lease, or at law or in equity, shall be cumulative and not alternative; invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

18.11. Interest. Any sum due and payable to Landlord under the terms of this Lease which is not paid when due shall bear Interest from the date when the same becomes due and payable by the provisions hereof until paid.

18.12. No Accord and Satisfaction. No payment by Tenant, or receipt by Landlord, of a lesser amount than the Rent herein provided shall be deemed to be other than on account of the earliest Rent due and payable hereunder, nor shall any endorsement or statement on any check, or letter accompanying any check or payment, as Rent be deemed an accord and satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's

right to recover the balance of such Rent or pursue any other right or remedy provided in this Lease.

18.13. Waiver of Right of Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future law in the event Tenant is evicted or dispossessed from the Premises for any cause, or in the event Landlord obtains possession of the Premises by reason of the commission by Tenant of an Event of Default or otherwise.

19. SUBORDINATION AND ATTORNMENT; ESTOPPEL CERTIFICATES.

19.1. Subordination. This Lease, and all of Tenant's rights and interest in the leasehold estate hereunder, shall be subject and subordinate to any mortgages or deeds of trust that now encumber, or may hereafter be placed upon, the Premises, and to the rights of the mortgagees or beneficiaries thereunder, any and all advances made or to be made thereunder, the interest thereon, and all modifications, renewals, replacements and extensions thereof. If any such mortgagee or beneficiary so elects in writing, then this Lease shall be superior to the lien of the mortgage or deed of trust held by such mortgagee or beneficiary, whether this Lease is dated or recorded before or after such mortgage or trust deed. Upon request, Tenant shall promptly execute and deliver to Landlord, or any such mortgagee or beneficiary, any documents or instruments required by any of them to evidence subordination of this Lease hereunder or to make this Lease prior to the lien of any mortgage or deed of trust as herein specified. If Tenant fails or refuses to do so within ten (10) days after written request therefor by Landlord or such mortgagee or beneficiary, such failure or refusal shall constitute an Event of Default by Tenant, but shall in no way affect the validity or enforceability of the subordination to or by the mortgage or deed of trust held by such mortgagee or beneficiary. As used herein, the terms "mortgage" and "deed of trust" include any sale and leaseback transaction in which Landlord sells and simultaneously leases back all or any portion of its interest in the Property, provided, however, that the subordination only applies if the lender provides a nondisturbance agreement.

19.2. Attornment by Tenant. Upon enforcement of any rights or remedies under any mortgage or deed of trust to which this Lease is subordinated (including proceedings for judicial foreclosure or a trustee's sale pursuant to a power of sale, or deed in lieu of foreclosure delivered by Landlord to the mortgagee or beneficiary thereunder), Tenant shall attorn to and recognize such purchaser or transferee as Tenant's landlord under this Lease. Tenant shall execute and deliver any document or instrument required by such purchaser or transferee confirming the attornment hereunder.

19.3. Intentionally Omitted.

19.4. Estoppel Certificates. Tenant shall, at any time and from time to time, upon not less than ten (10) business days' prior written request by Landlord, execute, acknowledge and deliver to Landlord, or Landlord's designee, a statement in writing certifying: (i) the date of this Lease, and that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified and stating the date[s] and identifying the nature of the modification[s]); (ii) the amounts of pre-paid Rent and other charges (if any) and the dates to which such Rent and other charges have been paid, if applicable; (iii) and confirming Tenant's acceptance of the Premises and the Term Commencement Date; (iv) that Tenant is not in default under this Lease, that no notice has been received by or delivered to Tenant of any Event of Default which has not been cured, except as to Events of Default specified in the certificate, and that no event has occurred which but for the giving of required notice or expiration of an applicable grace period would constitute an Event of Default by Tenant under this Lease; (v) that Landlord is not in default in the performance of any of its obligations under this Lease, that Tenant has given no notice of default to Landlord and that no event has occurred which but for the giving of required notice or expiration of an applicable grace period would constitute a default by Landlord hereunder; and (vi) such other matters as may be requested by Landlord or any designee of Landlord. Upon not less than ten (10) days' prior written request by Landlord, Tenant shall execute, acknowledge and deliver to any lender supplying financing to the Shopping Center, or any portion thereof or interest therein, an estoppel certificate on such lender's standard form. If Tenant fails or refuses to give a statement or certificate within the time provided hereunder after proper notice and request, then the information contained in such statement or certificate shall be deemed correct for all purposes, but Landlord shall have the right to treat such failure or refusal as an Event of Default under this Lease and seek recourse to all rights and remedies granted herein.



20. SECURITY DEPOSIT.

20.1. Tenant shall deposit with Landlord at the time of Lease execution the Security Deposit in the amount of \$6,000.00

20.2. Transfer by Landlord. If Landlord conveys or transfers its interest in the Premises and, as a part of such conveyance or transfer, assigns its interest in this Lease and Security Deposit, or any portion thereof not previously applied, the Security Deposit shall be transferred to Landlord's successor, and Landlord shall be released and discharged from any further liability to Tenant with respect to such Security Deposit.

21. SURRENDER OF PREMISES ON TERMINATION.

21.1. Condition of Premises. On the last day or sooner termination of the Term, Tenant shall quit and surrender the Premises to Landlord, broom clean, in good order, condition and repair as required by Section 8.2, together with all alterations, additions and improvements made in, to or on the Premises, except movable furniture and Tenant's trade fixtures installed at the expense of Tenant, except that Tenant shall ascertain from Landlord within thirty (30) days before the end of the Term whether Landlord desires to have the Premises, or any part or parts thereof, restored to the condition in which the Premises were delivered to Tenant, or to their condition prior to making any alteration, addition or improvements thereto, and if Landlord shall so desire, then Tenant shall, at Tenant's sole cost and expense, so restore the Premises, or such part or parts thereof, before the end of the Term. On or before the end of the Term, Tenant shall remove all its personal property from the Premises, and all property of Tenant not removed hereunder shall be deemed, at Landlord's option, to be abandoned by Tenant and Landlord may store such property in Tenant's name at Tenant's expense, and/or dispose of the same in any manner permitted by law. Tenant shall repair any and all damage to the Premises caused by Tenant's removal of its furniture, trade fixtures or property hereunder. If the Premises are not surrendered as of the end of the Term in the manner and condition herein specified, Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all loss, liability, cost or expense (including attorneys' fees) resulting from or caused by Tenant's delay or failure in so surrendering the Premises, including any claims made by any succeeding tenant due to such delay or failure.

21.2. Effect of Surrender on Subleases. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination of this Lease prior to the expiration of the Term, shall not work a merger and shall, at the sole option of Landlord, either terminate any or all existing subleases or subtenancies, or operate as an assignment to it of all or any such subleases or subtenancies.

22. SALE OF PREMISES BY LANDLORD.

22.1. Release of Landlord. In the event of any sale or exchange by the Landlord of its interest in the Premises and assignment by Landlord of this Lease, Landlord shall be released and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease accruing after the consummation of such sale or exchange and assignment.

23. BROKERS.

23.1. Tenant Warranty. Tenant warrants and represents that Tenant has not had any dealings with any realtor, broker or agent, other than the broker specified in the attached Lease Summary, in connection with the negotiation of this Lease and shall pay, indemnify, defend, protect and hold Landlord harmless from and against any cost, expense or liability (including attorneys' fees) on account of or in connection with any compensation, commissions or charges claimed by any other realtor, broker or agent with respect to this Lease and/or the negotiation thereof.

24. HAZARDOUS MATERIALS.

24.1. Landlord's Representations. Tenant acknowledges and agrees that Landlord is making no representations or warranties to Tenant with respect to the presence or absence of Hazardous Materials (as defined below) on, under or about the Premises, the Property or any property adjacent to the Premises or the Property. To the best of Landlord's knowledge, there has been no spill or contamination of Hazardous Materials other than those noted in the report by

Toxichem Management Systems dated December 17, 1999 and made available to Tenant. As used in this Lease, the term "Hazardous Materials" means petroleum, asbestos polychlorinated biphenyls, radioactive materials, radon gas or any chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste" or "toxic substances", or words of similar import, under any applicable laws, including but not limited to, Federal Water Pollution Act, as amended (33 U.S.C. § 1251 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.), Sections 25115, 25117, 25122.7, 25140, 25249.8, 25281, 25316 and 25501 of the California Health and Safety Code, and Section 12000 et seq. of the California Code of Regulations, Division 2, Title 22. In addition, for the purpose of this Article 24, the term "Release" means the disposal, placement or existence of any Hazardous Materials in, on, about or under the Premises or the Shopping Center in violation of any statutes, ordinances, orders, rules and regulations of any federal, state or local governmental agencies.

#### 24.2. Tenant's Obligations.

24.2.1. Covenants. If Tenant obtains knowledge of the actual or suspected Release of Hazardous Materials on, about, under or in the Premises or the Building, then Tenant shall promptly notify Landlord of same. Neither Tenant nor its agents, employees or contractors, shall cause or permit Hazardous Materials to be brought upon, kept or used in, on, or about the Premises or the Property. Tenant shall immediately notify Landlord of any inquiry, test, investigation or enforcement proceeding by or against Tenant involving the Premises and/or the Shopping Center and a Hazardous Material.

24.2.2. Indemnification. If Tenant breaches any obligation set forth in this Article or if a Release is caused or permitted by Tenant or its agents, employees or contractors, and results in contamination of the Premises or the Property, then Tenant shall indemnify, defend, protect and hold Landlord, its employees, agents, partners, partners of partners, officers and directors, harmless from and against any and all claims, actions, suits, proceedings, losses, costs, damages, liabilities (including without limitation sums paid in settlement of claims), deficiencies, fines, penalties, punitive damages or expenses (including, without limitation, reasonable attorneys' fees and consultants' fees, investigation and laboratory fees, court costs and litigation expenses) which arise during or after the Term as a result of such breach or contamination. This indemnity shall include, without limitation (i) any damage, liability, fine, penalty, punitive damage, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease, or death), tangible property damage, nuisance, pollution, contamination, leak, spill, Release or other effect on the environment, and (ii) the cost of any required or necessary investigation, repair, clean-up, treatment or detoxication of the Premises or the Property and the preparation and implementation of any closure, disposal, remedial or other required actions in connection with the Premises.

#### 25. GENERAL PROVISIONS.

25.1. Relationship. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between Landlord and Tenant, and neither the method of computation of Rent, nor any other provision contained in this Lease, nor any acts of the parties shall be deemed to create any relationship between Landlord and Tenant, other than the relationship of landlord and tenant.

25.2. Binding on Successors. Subject to the provisions of Article 12 regarding assignment and subletting by Tenant, all of the provisions, terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

25.3. Litigation Expenses. If either party brings any action or proceeding against the other (including any cross-complaint, counterclaim or third party claim) to enforce or interpret this Lease, or otherwise arising out of this Lease, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including reasonable attorneys' fees and accountants' fees, which shall be payable whether or not such action or proceeding is prosecuted to judgment. "Prevailing party" within the meaning of this Section 25.3 shall include a party who dismisses an action for recovery hereunder in exchange for payment of the sums

allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action.

25.4. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State in which the Shopping Center is located.

25.5. Excuse for Non-Performance. If either party is delayed in the performance of any covenant of this Lease because of acts of the other party, unusual action of the elements, war, riot, strikes, lockouts, labor disputes, inability to procure or general shortage of labor or materials in the normal channels of trade, or delay in governmental action or inaction where action is required, (financial inability, imprudent management or negligence excepted) then such performance shall be excused for the period of the delay and the period of such performance shall be extended for a period equivalent to the period of such delay, except that the foregoing shall in no way affect or apply to (i) Tenant's obligation to pay Rent or any other sums or amounts hereunder, (ii) the length of the Term or (iii) Tenant's covenants contained in Article 4 or any other provision of this Lease which obligates Tenant to open and/or operate its business in the Premises, or use due diligence so to do. Nothing herein contained shall excuse a party from exercising all due diligence and taking all necessary actions possible under the circumstances to terminate any delaying cause herein specified at the earliest feasible time.

25.6. Construction and Interpretation. Except in Section 25.7 ("Miscellaneous Definitions"), the headings or titles to the Articles and Sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof. All provisions of this Lease have been negotiated by Landlord and Tenant at arm's length and neither party shall be deemed the scrivener of this Lease. This Lease shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof or by reason of the status of the respective parties as Landlord or Tenant.

25.7. Miscellaneous Definitions. As used in this Lease, the following terms have the following meanings.

25.7.1. CPI. The Consumer Price Index, All Items, for the San Francisco-Oakland-San Jose Area, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor (1982-1984 equals 100). If the Base Year of the CPI is changed, then all calculations pursuant to this Lease which require the use of the CPI shall be made by using the appropriate conversion factor published by the Bureau of Labor Statistics (or successor agency) to correlate to the Base Year of the CPI herein specified. If no such conversion factor is published, then Landlord shall, if possible, make the necessary calculation to achieve such conversion. If such conversion is not in Landlord's judgment possible, or if publication of the CPI is discontinued, or if the basis of calculating the CPI is materially changed, then the term "CPI" shall mean (i) comparable statistics on the cost of living, as computed by an agency of the United States Government performing a function similar to the Bureau of Labor Statistics, or (ii) if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the CPI, as may be determined by Landlord in the exercise of its reasonable good faith business judgment.

25.7.2. Interest. The per annum rate equal to the greater of (i) ten percent (10%) or (ii) the reference rate, or succeeding similar index, of Bank of America in effect from time to time plus two percent (2%), but not to exceed the maximum rate allowed by applicable usury law.

25.7.3. Proportionate Share. Unless otherwise specified in this Lease, whenever Tenant is required to pay its Proportionate Share, such Proportionate Share shall be calculated in the ratio (expressed as a percentage) which the number of square feet of Gross Leasable Area in the Premises bears to the total number of square feet of Gross Leasable Area in the Buildings on the Property. If the Buildings on the Property is expanded or contracted, then as of the date of completion of such expansion or contraction, Tenant's Proportionate Share shall be adjusted, pursuant to the foregoing formula, to reflect any increased or decreased amount of Gross Leasable Area contained in the Property.

25.7.4. Rent. Fixed Minimum Rent, and all other sums and amounts payable by Tenant under this Lease.

25.8. Entire Agreement and Amendment. This Lease and the Exhibits and addenda listed in the attached Lease Summary contain all the representations and the entire

understanding between the parties with respect to the subject matter hereof. The Exhibits and addenda listed in the attached Lease Summary, and the Lease Summary itself, are fully incorporated herein by reference. Any prior negotiations, correspondence, memoranda, agreements, representations or warranties are replaced in total by this Lease and such Exhibits and addenda. All reliance with respect to representations and warranties is solely upon the representations and warranties contained in this Lease. This Lease may be modified or amended only by an agreement in writing signed by each of the parties.

25.9. References. All references herein to the Lease Summary or a given Article, Section, subsection or Exhibit refer to the Lease Summary attached hereto and the Articles, Sections, subsections and Exhibits of this Lease. References to a party or parties shall refer to Landlord or Tenant, or both, as the context may require.

25.10. Standards of Performance with Respect to Covenant of Good Faith and Fair Dealing. The parties intend by this Lease to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

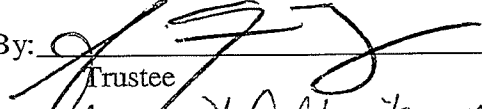
25.11. Warranty of Authority to Enter into Lease. Tenant warrants and represents to Landlord that Tenant has the full right, power and authority to enter into this Lease and has obtained all necessary consents and approvals from its partners, officers, board of directors or other members required under the documents governing its affairs in order to consummate the Lease transaction contemplated hereby. The persons executing this Lease on behalf of Tenant have the full right, power and authority so to do and affirm the foregoing warranty on behalf of Tenant and on their own behalf.

25.12. Severability of Provisions. If any term or provision of this Lease, or the application thereof to any person or circumstance, shall be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year first above written.

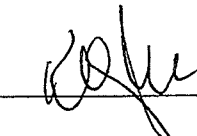
**LANDLORD:**

THE FRED AND MARGARET GOLDSMITH LIVING TRUST DATED MARCH 31, 1999.

By:  Date 9-9-19  
Trustee  
Margaret Goldsmith, Trustee Date 9/9/19  
Trustee

**TENANT:**

LILIART PUBLISHING COMPANY, INC., A CALIFORNIA LIMITED LIABILITY COMPANY

By:  Date 9/20/19

**EXHIBIT "A"**  
**SITE PLAN OF PROPERTY**

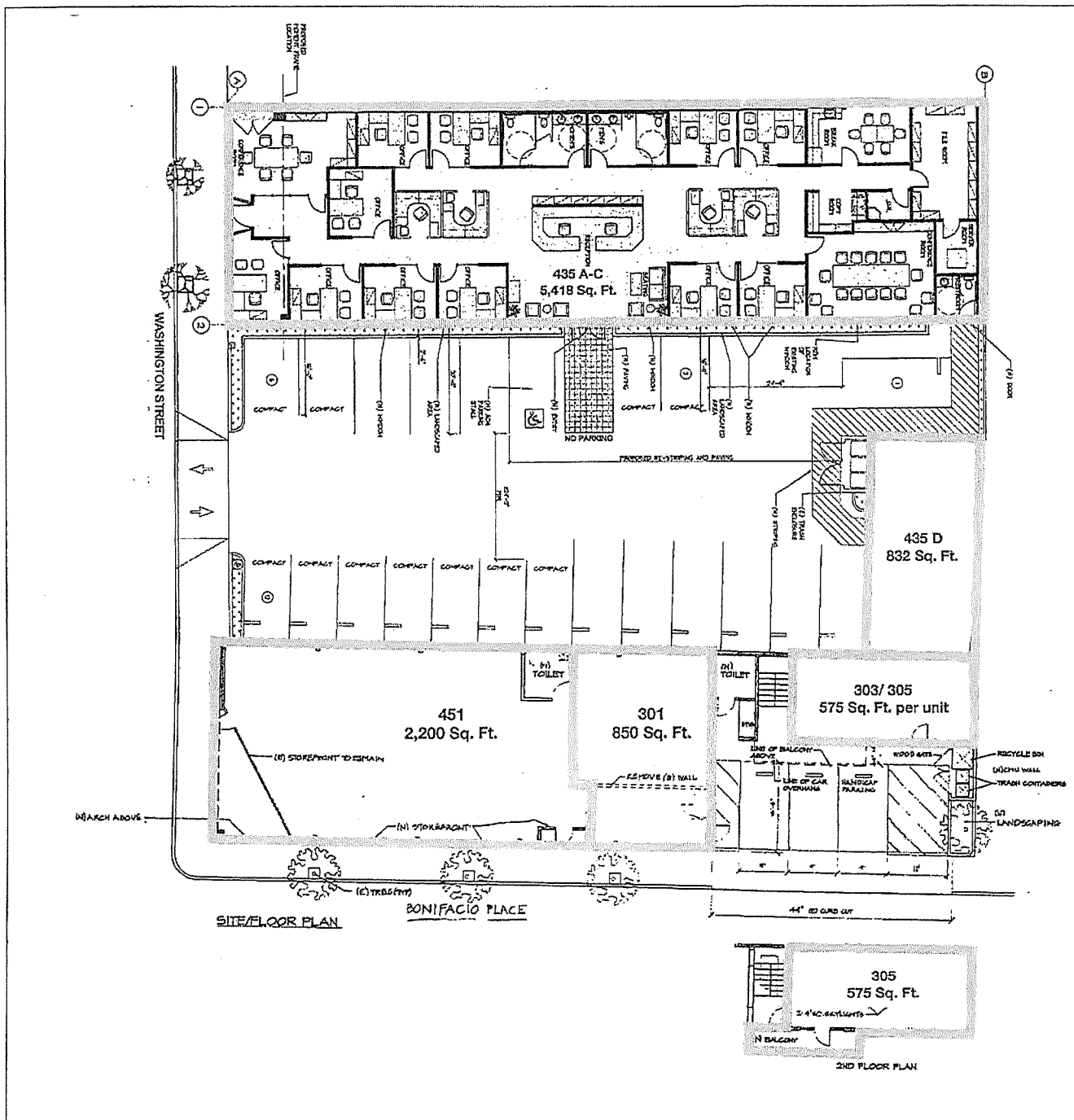


EXHIBIT B

LEGAL DESCRIPTION

That certain real property situated in the County of Monterey, City of Monterey, State of California, described as follows:

A portion of Lot 7 in Block 11, in the City of Monterey as said lot and block are shown on the official "Block Book Of The City Of Monterey, Monterey County, California, compiled by H. D. Severance, 1913," a copy of which was filed for record October 22, 1915 in the Office of the County Recorder of the County of Monterey, State of California, and being more particularly described as follows, to wit:

Beginning at the Northwest corner of Lot 7 and the Southwest corner of Lot 3 in said Block 11; thence Easterly along the Northerly line of said Lot 7, 137.8 feet to the Northeast corner thereof; thence Southerly along the Easterly line of said Lot 7, 102.1 feet to a point distant 36 feet Northerly, measured along the Easterly line of said Lot 7, from the Northerly line of the alley running through said Block 11; thence Westerly and parallel with the Northerly line of said alley, 137.9 feet to a point on the Easterly line of Washington Street, distant thereon, 36 feet Northerly from the Northerly line of said alley; thence Northerly along the Easterly line of Washington Street, 97.32 feet to the point of beginning.

Assessor's Parcel Number: 001-694-002

**EXHIBIT "C"**  
**LANDLORD'S WORK AND TENANT'S WORK**

1. LANDLORD'S WORK

Subject to Landlord's maintenance requirements as set forth in Section 7.1 of the Lease, Landlord will deliver the Premises to Tenant in its "As-Is" condition as of the date of this Lease confirming roof, electrical systems, plumbing, lighting and heating systems are in good working condition. Tenant has inspected the Premises and accepts them in their current as-is condition subject to Landlord's maintenance requirements set forth in Section 7.1 of the Lease.

2. TENANT'S WORK

2.1. Within thirty (30) days following the Effective Date of this Lease, Tenant shall deliver to Landlord for its written approval three (3) sets of scale drawings depicting Tenant's Work. Landlord shall have fourteen (14) days within which to approve or disapprove Tenant's drawings. If the plans are disapproved, Tenant shall make such reasonable changes to the Plans as are required by Landlord and shall again submit three (3) sets to Landlord for approval. The foregoing procedure shall be followed until a mutually satisfactory set of plans is approved by Landlord. Upon delivery of possession, Tenant shall thereupon immediately proceed with due diligence, at its own expense, to install thereon Tenant's property (meaning all items of Tenant's construction and Tenant's trade fixtures, equipment and merchandise) without interference with other work, if any, being done in the building, and in compliance with all reasonable rules which Landlord, its architect and its contractors may make. Tenant shall, upon final completion of its work, furnish Landlord with all certificates and approvals relating to any work or installations done by Tenant that may be required by any governmental or insurance requirements. Landlord shall have no responsibility for any loss of or damage to any of Tenant's property so installed or left on the premises. Tenant's entry shall be subject to all of the provisions of this Lease other than the payment of rent and other charges to Landlord; and at all times after such entry, Tenant shall maintain or cause to be maintained in effect insurance complying with this Lease.

2.2. Tenant's Work shall include, but not be limited to, the purchase and/or installation and/or performance of any and all of the following items required by Tenant in its plans, including all applicable governmental, architectural and engineering fees therefore:

- A. All interior partitions and curtain walls within the Premises.
- B. All electrical work.
- C. Light coves and special hung or furred ceilings.
- D. Internal communications systems and alarm systems.
- E. Business fixtures and furnishings.
- F. Plumbing and plumbing fixtures.
- G. Show window display platforms, window backs.
- H. Special heating, cooling or ventilating.
- I. Special lighting fixtures.
- J. All interior finish in show windows.
- K. Tenant's signs, both interior and exterior.
- L. The finish of all walls, ceilings and columns on the inside of the glass line.
- M. All work other than that which is specifically designated in paragraph 1.
- N. Any and all other items required by tenant.
- O. All permit fees, sewer hook-up fees, and utility assessments whether billed directly by governmental authorities or prepaid by Landlord in which event such amount shall be reimbursed by Tenant to Landlord.
- P. All construction related debris will be removed from premises and property by Tenant.

Q. All gas lines required by Tenant.

R. Any Tenant roof penetrations shall be made by Landlord's roofing contractor if required to maintain roof guarantee and shall be reimbursed by Tenant.

2.3 All work performed on the Premises by Tenant shall be performed by certified licensed contractors, workers, subcontractors and material men.

**LANDLORD:**

THE GOLDSMITH LIVING TRUST DATED MARCH 31, 1999.

By: [Signature] 9-9-19  
Trustee Date

By: Margaret Goldsmith, trustee 9/9/19  
Trustee Date

**TENANT:**

LILIART PUBLISHING COMPANY, INC., A CALIFORNIA LIMITED LIABILITY COMPANY

By: [Signature] 9/29/19  
Date



Please refer to the attached Lease Exhibit which breaks down all details of these actual costs.

- 14. Percentage Rent: *Not Applicable*
- 15. Exhibits, Addenda and Additional Provisions or Attachments:  
 Addendum 1: Option to Extend Term  
 Exhibit A: Site Plan of Property  
 Exhibit B: Legal Description of Property  
 Exhibit C: Landlord's Work and Tenant's Work
- 16. Delivery Condition: Landlord shall deliver the Premises to Tenant in "As-Is" condition as of the date of this Lease, confirming the roof, electrical systems, plumbing systems, lighting, and heating systems are all in good working order.
- 17. Definitions: Unless otherwise provided herein, capitalized terms which are defined in the Lease and used herein shall have the meanings specified in the Lease.
- 18. Effect of Lease Summary: This Lease Summary is an integral part of the Lease attached hereto and each reference in the Lease to any provision contained herein shall be construed to incorporate all of the terms provided under each such provision.

LANDLORD:

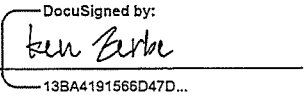
THE FRED AND MARGARET GOLDSMITH LIVING TRUST DATED MARCH 31, 1999.

By: \_\_\_\_\_ Date \_\_\_\_\_  
Trustee

By: \_\_\_\_\_ Date \_\_\_\_\_  
Trustee

TENANT:

LILIART PUBLISHING COMPANY, INC., A CALIFORNIA LIMITED LIABILITY COMPANY

By:  \_\_\_\_\_ Date 9/9/2019  
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**LEASE ADDENDUM 1  
STANDARD LEASE:  
OPTION TO EXTEND TERM**

THIS ADDENDUM ("Addendum 1") is made as of this \_\_\_\_\_ day of September 2019, by and between The Goldsmith Living Trust dated March 31, 1999, ("Landlord"), and LiliArt Publishing Company, Inc., a California Limited Liability Company ("Tenant"), and is made a part of that Commercial Property Lease (the "Lease") entered into between Landlord and Tenant and dated of even date herewith, for 451 Bonifacio Place, in Monterey, California 93940. For good and valuable consideration, Landlord and Tenant agree as follows:

1. Definitions. Unless otherwise provided herein, capitalized terms which are defined in the Lease and used herein shall have the meanings specified in the Lease.

2. Option to Extend.

2.1 Grant of Option. Landlord hereby grants to Tenant one (1) option to extend the original Term of the Lease for an additional term of five (5) years. The option term shall commence when the original term expires. The option is expressly conditioned upon Tenant's not being in default under any term or condition of the Lease, either at the time such option is exercised or at the time the extended term of such option would commence.

2.2 Exercise of Option. Tenant may exercise an option only by giving Landlord written notice not less than one hundred eighty (180) days prior to the expiration of the then existing term of the Lease.

2.3 Terms and Conditions. If the option is exercised, then the Fixed Minimum Rent for the option term shall be as defined below, as of the commencement of the option term. All other terms and conditions of the Lease, as amended from time to time by the parties in accordance with the provisions of the Lease, shall remain in full force and effect and shall apply during the option term.

2.4 Fixed Minimum Rent. The Fixed Minimum Rent during the first year of the option term shall be equal to the Fixed Minimum Rent during the Lease Year just prior to the option term increases by three percent (3%). Fixed Minimum Rent during the remainder of the option term shall be increased annually by three percent (3%) over the prior year's Fixed Minimum Rent.

3. Effect of Addendum. Except as modified and supplemented by the express terms of this Addendum, the Lease is in full force and effect and unmodified.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Addendum as of the date first above written.

**LANDLORD:**

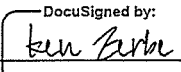
THE GOLDSMITH LIVING TRUST DATED MARCH 31, 1999.

By: \_\_\_\_\_  
Trustee Date

By: \_\_\_\_\_  
Trustee Date

**TENANT:**

LILIART PUBLISHING COMPANY, INC., a California limited liability company

By:  \_\_\_\_\_  
Date 9/9/2019

## *FINANCE COMMITTEE*

*Minutes from the January 25, 2021 meeting  
of the Finance Committee will be  
distributed at the Board Meeting*

*Background information supporting the  
proposed recommendations from the  
Committee is included in the Board Packet*

*(RICHARD TURNER)*

- Committee Chair Report*
- Board Questions to Committee Chair/Staff*
- Motion/Second*
- Public Comment*
- Board Discussion/Deliberation*
- Action by Board/Roll Call Vote*

# Board Paper: Finance Committee

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**Request:** Consider Recommendation for Board Approval of Change Order in our Disaster Recovery Services from CloudWave as Sole Source Justification and Contract Award

**Executive Sponsor:** Augustine Lopez, Chief Financial Officer  
Audrey Parks, Chief Information Officer

**Date:** January 19, 2021

## Executive Summary

We are seeking to modify our current disaster recovery services from CloudWave. Changes needed to accommodate changes to our Meditech and API (human resources, time and attendance, payroll) computing environments which are part of our disaster recovery program.

## Background/Situation/Rationale

This request is being submitted to the Board of Directors since it exceeds the original request by more than 10%. Thereby requiring review by the Board of Directors.

The original master agreement was signed in 2013 in response to the government incentive program, Promoting Interoperability, formerly Meaningful Use. Our current disaster recovery solution encompasses disaster recovery for Meditech, Exchange (email) and API (payroll). We also have off-site storage for our archived PACS (picture and communications system) images at our CloudWave disaster recovery site.

## Meeting our Mission, Vision, Goals

### Strategic Plan Alignment:

It is the mission of Salinas Valley Memorial Healthcare System (SVMHS) to provide quality healthcare to our patients and to improve the health and well-being of our community. Ensuring disaster recovery solutions for our key healthcare information systems is in line with our responsibility to ensure continuity and access to our electronic medical record in the event of a disaster.

### Pillar/Goal Alignment:

Service    People    Quality    Finance    Growth    Community

## Financial/Quality/Safety/Regulatory Implications:

Key Contract Terms	Vendor: CloudWave (dba Park Place International)
1. Proposed effective date	January 1, 2021 – January 31, 2026 (61 months)
2. Term of agreement	January 1, 2021 – January 31, 2026
3. Renewal terms	One-year at a time
4. Termination provision(s)	May terminate with 180 days' notice. Change orders allowed to effectively reduce need for disaster recovery services.
5. Payment Terms	Net 45
6. Annual cost(s)	Additional \$1,654/month
7. Cost over life of agreement	Additional \$100,894; this is subject to change up or down depending on the computing environment and data storage utilization of our information systems in the disaster recovery program (Meditech, email, API (time and attendance, human resources)).  The actual cost will vary over the five year term as we make add and remove equipment (servers, storage) to which we subscribe.
8. Budgeted (indicate y/n)	Yes.
9. Contract	1001.1644

## Recommendation

Consider Recommendation for Board approval of change order in our disaster recovery services from CloudWave as sole source justification and contract award for \$100,894 over the life of the 61 months.

## Attachments

- Sole Source Justification
- Change Order #45, dated January 4, 2021

## Justification for Sole Source Form

To: Proposal Evaluation Panel

From: Audrey Parks, IT

Type of Purchase: (check one)

- Materials/Supplies
- Data Processing/Telecommunication Goods > \$25,000
- Medical/Surgical – Supplies/Equipment > \$25,000
- Purchased Services

Cost Estimate (\$):	\$ 100,894
Vendor Name:	CloudWave
Item Title:	Change Order, disaster recovery services

**Statement of Need:** My department's recommendation for sole source is based upon an objective review of the product/service required and appears to be in the best interest of the SVMHS. I know of no conflict of interest on my part or personal involvement in any way with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to sole source this purchase when there are other known suppliers to exist.

**Describe how this selection results in the best value to SVMHS. See typical examples below.**

- Licensed or patented product or service. No other vendor provides this. Warranty or defect correction service obligations of the consultant. **Describe why it is mandatory to use this licensed or patented product or service:**
- Existing SVMHS equipment, inventory, custom-built information system, custom built data inventory system, or similar products or programs. **Describe. If product is off-the-shelf, list efforts to find other vendors (i.e. web site search, contacting the manufacturer to see if other dealers are available to service this region, etc.).**

We currently have disaster recover solutions with CloudWave and conduct testing each year. Changes needed to accommodate changes to our Meditech and API (human resources, time and attendance, payroll) computing environment. This request is being submitted to the Board of Directors since it exceeds the original request by more than 10%. Thereby requiring review by the Board of Directors.

- Uniqueness of the service. **Describe.**
- SVMHS has established a standard for this manufacturer, supplier or provider and there is only one vendor. **Attach documentation from manufacturer to confirm that only one dealer provides the product.**
- Factory-authorized warranty service available from only this single dealer. Sole availability at the location required. **Describe.**
- Used item with bargain price (describe what a new item would cost). **Describe.**
- Other -The above reasons are the most common and established causes for an eligible sole source. If you have a different reason, **Describe:**

**By signing below, I am attesting to the accuracy and completeness of this form.**

Submitter Signature: 

Date: January 19, 2021

## Change Order #R45 (01/04/21)

Customer: Salinas Valley Memorial Healthcare System

Date: 01/04/21

Requestor: Audrey Parks

Summary: Contract True-up

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**Modified Components:**

See attached Server List

In addition to the server changes, 500 VDI View Desktops will be added to the contract

**Total Change in Monthly Recurring Charge (MRC):** \$1,654/monthly**Authorization:**

I authorize the requested changes for the OpSus environment and understand monthly billing rates will be adjusted according to The Proposal and Service Agreement. By signing below, I certify that I am a legal fiduciary officer of Salinas Valley Memorial Healthcare System, duly authorized to legally obligate the organization. A purchase order for the additional services from the effective date is attached to this signed order. The next MRC will include pro-rata portion of the current month's adjusted service plus the incremental addition to the MRC for both being billed. I understand that subsequent MRCs due will follow the terms under this proposal.

Does your organization require a PO to accompany the executed Change Order? Yes  No 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### Change Order R45 – Server List

#	Server	LUNs	RAID	Server Type	Cores	RAM	Boot	Software	Type
<b>Silver</b>									
1	SAVDRSVR	75+15+1000+1200 to 1000	10	Data Repository	8 to 12	16 to 230	N/C	SQL Std	MOD
2	SAV-FS01	250 to 350	10	File	N/C	N/C	N/C		MOD
3	SAV-FS02	200+100 to 250+155	10	File	N/C	N/C	N/C		MOD
4	SAV-FS03	Remove 12 GB LUN	10	File	N/C	N/C	N/C		MOD
5	SAV-FS04	450 to 600	10	File	N/C	N/C	N/C		MOD
6	SAV-FS07	575+500+500 to 700+500+400	10	File	N/C	N/C	N/C		MOD
7	SAV-FS10	500 to 673	10	File	N/C	N/C	N/C		MOD
8	SAV-FS11	50 to 2000	10	File	N/C	N/C	N/C		MOD
9	SAV-CON01	0	N/A	VDI	4	10	70		NEW
10	SAV-CON02	0	N/A	VDI	4	10	70		NEW
11	SAV-SEC01	0	N/A	VDI	4	10	70		NEW
12	SAV-SEC02	0	N/A	VDI	4	10	70		NEW
<b>Gold</b>									
13	SCAARCHIVESVR	58+55 to 224	5	SCA	N/C	N/C	N/C		MOD
14	SAV-FDB	Remove 60 GB Drive	10	First DataBank	N/C	N/C	N/C		MOD
15	intellimo2svrv	Remove 150 GB Drive	10	IMO Server	N/C	N/C	N/C		MOD
16	SAV-BG10	N/C	N/A	Background	4 to 2	8 to 4	N/C		MOD
17	SAV-BG13	N/C		Background	4 to 2	N/C	N/C		MOD
18	SAV-BG15	N/C		Background	4 to 2	8 to 4	N/C		MOD
19	SAV-BG16	N/C		Background	N/C	8 to 4	N/C		MOD
20	SAV-BG18	N/C		Background	8 to 2	16 to 4	N/C		MOD
21	SAV-CM01	N/C		Connection	4 to 8	8 to 16	N/C		MOD
22	CITRIXWEBSVRV	N/C			4 to 2	N/C	N/C		MOD
23	SAV-PDEC	0	N/A	N/A	2	4	60		Remove
24	apidbsvr	400	5	API - DB	4	72	60		Remove
25	apihrdbsvr	550	10	API DB Server	6	64	60		Remove
26	apihrpsrv	0	N/A	API	4	16	100		Remove
27	APITASS1	0	N/A	API	4	16	100		Remove
28	APIWEB2SVR	0	N/A	API Web Server	4	8	100		Remove
29	apidb1v	1,300	5	API - Database Server	4	24	75		NEW
30	apihrdb1v	825	10	API - Database Server	6	16	75		NEW
31	apihrp1v	0		API HRP App Server	4	8	100		NEW
32	apitass3v	0		API TA/SS App Server	4	16	100		NEW
33	apiweb1v	0		API TA/SS Web Server	4	8	75		NEW



# Finance Committee Board Paper

Agenda Item: **Consider Recommendation for Board Approval of Project Budget and Lease Agreements for Development of 212 San Jose Street Suites 100 and 201**

Executive Sponsor: Allen Radner, MD, Chief Medical Officer  
 Clint Hoffman, Chief Administrative Officer, Physician Integration & Business Development

Date: January 14, 2021

## Executive Summary

SVMHS has been a partner in Monterey Bay Endoscopy, LLC since February of 2018. At the inception of our partnership we agreed to expansion of endoscopy services to a suitable location in Salinas. In July of 2019 SVMHS acquired 212 San Jose Street which has ambulatory surgery suites on the first floor in suite 100 and administrative office space that can be reconfigured into medical office space on the second floor in suite 201. The SVMHS executive team is requesting approval for a total project budget of three million eight hundred twenty five thousand two hundred eighty one dollars (\$3,825,281.00) to complete the necessary improvements to suite 100 and 201 for their intended uses as an ambulatory endoscopy center and medical office. Suite 100 will be leased to Monterey Bay Endoscopy, LLC and Suite 201 will be leased to Monterey Bay GI Consultants Medical Group, Inc.

## Timeline:

January 23, 2018 – Request SVMHS Finance Committee Recommendation for Board Approval  
 January 25, 2018 – SVMHS Board of Directors Meeting/Consider Recommendation for Approval  
 February 1, 2018 – Effective date of Purchase

## Meeting our Mission, Vision, Goals

### Strategic Plan Alignment:

This transaction is aligned with the strategic initiatives outlined in our most recent strategic planning work for growth, in developing partnerships that drive value for our patients.

### Pillar/Goal Alignment:

Service    People    Quality    Finance    Growth    Community

## Financial/Quality/Safety/Regulatory Implications

### Total Project Budget:

212 San Jose Budget			
Description	Budget	COST SPLIT	
		ASC 1st Level	Clinic 2nd Level
<b>Construction</b>			
Construction - Tenant Improvements First Level	\$1,847,993	\$1,847,993	\$0
Construction - Tenant Improvements Second Level	\$807,313	\$0	\$807,313
Owner Contingency (Estimating & Construction)	\$185,871	\$148,697	\$37,174
<b>Design</b>			
Professional Fees - Fixed	\$219,800	\$175,840	\$43,960
Professional Fees - T+M	\$9,500	\$4,750	\$4,750
<b>Inspections and Consultation</b>			
Special Inspections	\$50,000	\$45,000	\$5,000
<b>AHJ Fees</b>			
City Fees	\$113,647	\$79,868	\$33,779
TAMC Fees	\$50,000	\$40,000	\$10,000
Monterey One Fees	\$25,000	\$22,500	\$2,500
<b>Soft Costs</b>			
Program Management	\$319,000	\$223,300	\$95,700
<b>FF&amp;E</b>			
Signage - Exterior	\$15,000	\$12,000	\$3,000
<b>Contingency</b>			
Project Contingency	\$182,156	\$145,725	\$36,431
	<b>\$3,825,281</b>	<b>\$2,745,673</b>	<b>\$1,079,608</b>

Lease Terms for Suite 100 with Monterey Bay Endoscopy, LLC:

1. Proposed Effective Date	February 1, 2021
2. Lease Commencement Date	Upon issuance of certificate of occupancy by City of Salinas
2. Term of agreement	Five Years
3. Renewal terms	Four (4) Five (5) Year Options
5. Termination provision(s)	None
6. Payment Terms	Monthly, in advance
8. Annual Rent	\$85,753 (\$2.30/psf/monthly/NNN)
9. Annual Increases	None, to be reappraised at each five (5) year option
10. Rent Over Initial Five (5) Year Term	\$428,766

Lease Terms for Suite 201 with Monterey Bay GI Consultants Medical Group, Inc:

1. Proposed Effective Date	February 1, 2021
2. Lease Commencement Date	Upon issuance of certificate of occupancy by City of Salinas
2. Term of agreement	Five Years
3. Renewal terms	Four (4) Five (5) Year Options
5. Termination provision(s)	None
6. Payment Terms	Monthly, in advance
8. Annual Rent	\$195,030 (\$3.75/psf/monthly/NNN)
9. Annual Increases	None, to be reappraised at each five (5) year option
10. Rent Over Initial Five (5) Year Term	\$975,150

Recommendation

**Administration requests that the Board Finance Committee make a recommendation to the Board of Directors for approval (with final review of documents by District legal counsel) of the following agreements:**

- 1. The project budget for development of 212 San Jose Street Suites 100 and 201 in an amount of three million eight hundred twenty-five thousand two hundred eighty-one dollars (\$3,825,281.00);**
- 2. Lease Agreement with Monterey Bay Endoscopy Center, LLC for 212 San Jose Street Suite 100; and**
- 3. Lease Agreement with Monterey Bay GI Consultants Medical Group, Inc. for 212 San Jose Street Suite 201.**

Attachments

- Lease Agreement with Monterey Bay Endoscopy Center, LLC for 212 San Jose Street Suite 100
- Lease Agreement with Monterey Bay GI Consultants Medical Group, Inc. for 212 San Jose Street Suite 201

## LEASE AGREEMENT

This Lease Agreement (“Lease”) entered into and effective on **February 1, 2021** (“Effective Date”) is made by and between **SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**, a local health care district organized and operating pursuant to Division 23 of the California Health and Safety Code (“Landlord”), and **MONTEREY BAY ENDOSCOPY CENTER, LLC.**, a California limited liability company.

1. **PREMISES.** Landlord leases to Tenant, and Tenant leases from Landlord, upon terms and conditions set forth in this Lease, the premises described as **Suite 100 consisting of four thousand three hundred thirty-four (4334) square feet** (“Premises”) in the **medical office building located at 212 San Jose Street, Salinas, California** (“Building”) owned by Landlord. The Building, real property upon which the Building is located, and improvements located on such real property are referred to collectively as the “Property.”

2. **POSSESSION, OCCUPANCY, AND TERM COMMENCEMENT.** Landlord shall deliver possession and occupancy of the Premises to Tenant and the Initial Term of the Lease shall commence upon completion of Tenant Improvements by Landlord and issuance of a certificate of occupancy by the City of Salinas (“Term Commencement Date”). Tenant Improvements to the Premises shall be made by Landlord based on specifications provided by Tenant based on plans and budget agreed to by Tenant and Landlord in advance of Effective Date. Tenant acknowledges that no representations regarding the condition of the Premises or improvements to the Premises have been made by Landlord unless expressly set forth in this Lease, or as mutually agreed to by the parties pursuant to written specifications for the Tenant Improvements.

3. **TERM.** The Term of this Lease shall commence on the Term Commencement Date and continue in full force and effect for a period of **five (5) years** (“Initial Term”), or until this Lease is extended or terminated as otherwise provided in this Lease.

3.1 **OPTIONS TO EXTEND.** Landlord grants to Tenant the right to extend the term of this Lease beyond the Initial Term as it applies to the Premises for **three (3) additional terms of sixty (60) months each** (each an “Extended Term”). Tenant shall exercise each Extended Term with respect to the Premises, if at all, by giving Landlord written notice exercising such each such Extended Term not later than six (6) months prior to the then scheduled date for expiration of this Lease. In no event shall any purported exercise of an Extended Term by Tenant be effective if any event of default by Tenant shall exist under this Lease at the time of giving of such notice or on the date of commencement of the Extended Term, in which event Tenant’s exercise of the Extended Term shall be null and void and the term of this Lease shall end and expire on the then scheduled date for expiration of the term without regard to the option or the Extended Term. Time is of the essence in the giving of notice of the exercise of each of Extended Term. Each Extended Term shall be upon the terms and conditions of this Lease. Base Rent for each Extended Term shall be adjusted as provided in Section 6.3 of this Lease.

4. **USE.**

4.1 **General.** Tenant shall use the Premises only as an **endoscopy center** (“Permitted Use”). Tenant shall control Tenant’s employees, agents, patients, visitors, invitees, contractors, and subtenants (collectively, “Tenant’s Parties”) in such a manner that Tenant and Tenant’s Parties comply with the rules and regulations established by Landlord. Landlord grants to Tenant a revocable license for use of the parking areas and driveways of the Property by Tenant and Tenant’s Parties on a nonexclusive basis in common with other parties occupying the Building, subject to rules and regulations as Landlord may from time to time prescribe. Landlord may revoke such license upon occurrence of an event of default by Tenant. Notwithstanding any provision of this Lease to the contrary, Landlord shall have the right to restrict the parking provided on the Property and/or to require Tenant’s employees to park their vehicles in off-site locations.

4.2 **Limitations.** Tenant shall not permit any odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises, or take any action which would disturb, obstruct, or endanger any other tenant of the Building or interfere with any tenant’s use of its respective premises or the Property. Storage outside the Premises of materials, vehicles, or any other items is prohibited. Tenant shall not use or allow the Premises to be used for any improper, immoral, or unlawful purpose. Tenant shall not cause or maintain or permit any nuisance in, on or about the Premises or the Property. Tenant shall not commit waste in, on, or about the Premises. Tenant shall not allow any sale by auction upon the Premises. Tenant shall not place or cause to be placed any load upon the floors, walls or any other part of the Premises or the Building that is in excess of their bearing capacity.

If Landlord reasonably determines that any action by Tenant places a load upon the floors, walls or any other portion of the Premises or the Building that is in excess of their capacity, then Landlord may retain an engineer to determine how to reduce excess load, and Tenant shall implement the recommendations of the engineer and shall pay to Landlord the fees and costs of such engineer upon written demand. Tenant shall not place any harmful liquids in the drainage or plumbing systems of the Building or Property. No waste, materials or refuse shall be permitted to remain outside the Premises, except in trash containers placed inside enclosures designated for that purpose by Landlord.

4.3 Compliance with Regulations. By entering the Premises, Tenant accepts the Premises in the condition existing as of the date of such entry, subject to all existing or future applicable municipal, state and federal and other governmental statutes, regulations, laws, and ordinances, including zoning ordinances and regulations governing and relating to the use, occupancy and possession of the Premises and the use, storage, generation and disposal of Hazardous Materials in, on and under the Premises (collectively "Regulations"). Tenant shall, at Tenant's sole expense, strictly comply with all Regulations relating to the Premises and the use of the Premises and/or the use, storage, generation of Hazardous Materials in, on and under the Premises. Tenant shall at its sole cost and expense obtain any and all licenses or permits necessary for Tenant's use of the Premises. Tenant shall promptly comply with the requirements of any board of fire underwriters or other similar body. Tenant shall not do or permit anything to be done in, on, or about the Premises or bring or keep anything on the Premises which will in any way increase the rate of any insurance upon the Premises, Building or Property or upon any contents therein, or cause a cancellation of insurance or otherwise affect insurance in any manner. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all loss, cost, expense, damage, attorneys' fees or liability arising out of the failure of Tenant to comply with any Regulations or with the requirements as set forth in this Lease.

4.4 Hazardous Materials. Tenant shall not cause, or allow any of Tenant's Parties to cause, any Hazardous Materials to be used, generated, stored, released or disposed of on or about the Premises, the Building or the Property, except in connection with the Permitted Use of the Premises as specified in the Basic Lease Information. The use, generation, storage, release and/or disposal of any Hazardous Materials by Tenant under this Lease shall be made only in compliance with all federal, state and local statutes, laws ordinances, and all rules and regulations of governmental authorities having jurisdiction. "Hazardous Materials" shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance. Landlord shall have the right at all reasonable times to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions, the costs of all such inspections, tests and investigations to be borne by Tenant. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all liabilities, losses, costs and expenses, demands, causes of action, claims or judgments directly or indirectly arising out of the use, generation, storage, release or disposal of Hazardous Materials by Tenant or any of Tenant's Parties, which indemnity shall include, without limitation, the cost of any required or necessary repair, cleanup, or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the expiration or termination of this Lease. Neither written consent by Landlord to the use, generation, storage or disposal of Hazardous Materials nor strict compliance by Tenant with all Regulations pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification under this Lease. Tenant's obligations of indemnity shall survive the expiration or termination of this Lease.

4.5 Medical, Biological Waste and Sharps. Tenant shall comply with all requirements of Landlord's janitorial service company and shall separate needles, sharps, items contaminated with bodily fluids, and other biologically hazardous materials from routine waste materials to be collected by Landlord's janitorial service company. Tenant, at Tenant's sole cost and expense, shall be solely responsible for, and shall arrange for, the proper, safe collection and disposal of all needles, items contaminated with bodily fluids, and other biologically hazardous materials from the Premises on a daily basis.

5. **RULES AND REGULATIONS.** Tenant shall comply with any rules and regulations Landlord may from time to time prescribe in writing for the purpose of maintaining the proper operation, use, care, cleanliness, safety, traffic flow and general order of the Premises, Building, or Property. Tenant shall cause Tenant's Parties to comply with such rules and regulations. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building with any of the rules and regulations. Landlord's Rules and Regulations as of the date of this Lease are attached as Exhibit B to this Lease.

## 6. RENT.

6.1 Base Rent. Tenant shall pay to Landlord throughout the Initial Term, without notice or demand, Base Rent (NNN-triple net) at the rate of **three dollars and seventy-five cents (\$3.75) per square foot** of the Premises equal to the amount of **sixteen thousand two hundred fifty-two dollars and fifty cents (\$16,252.50)**, payable in monthly installments in advance on or before the first (1<sup>st</sup>) day of each calendar month, without deduction or offset, at the address of Landlord specified by Landlord, or to such other place as Landlord may from time to time designate in writing. Base Rent and Tenant's Proportionate Share of Basic Operating Cost for the first full month of the Term shall be paid by Tenant upon the Term Commencement Date. If the obligation for payment of Base Rent commences on a day other than the first (1<sup>st</sup>) day of a calendar month, then Base Rent shall be prorated based on a thirty (30) day month and the prorated installment shall be paid on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month following the Term Commencement Date.

6.2 Additional Rent. All monies other than Base Rent required to be paid by Tenant under this Lease, including, but not limited to, any interest or late charge under this Lease, any sums paid and costs incurred by Landlord pursuant to Section 31, and Tenant's Proportionate Share of Basic Operating Cost, as specified in Section 7, shall be additional rent ("Additional Rent"). "Rent" shall mean Base Rent and Additional Rent.

6.3 Base Rent Adjustment for Extended Terms. The Monthly Base Rent set forth in Section 6.1 of this Lease shall apply during the Initial Term of this Lease. Upon exercise by Tenant of any option to extend this Lease, the parties shall mutually agree upon a then-current fair market value for Base Rent for the Extended Term based upon a market analysis provided by a third party with experience determining market values in the area.

## 7. BASIC OPERATING COST.

7.1 Definition of Basic Operating Cost. In addition to the Base Rent, Tenant shall pay Tenant's Proportionate Share as defined in the Basic Lease Information of Basic Operating Cost as set forth below. Landlord shall account for each item of Basic Operating Cost as either a cost attributable to the Building or to the Property, as determined by Landlord in Landlord's sole discretion, and unless provided to the contrary in this Lease, Tenant shall pay Tenant's Proportionate Share of each item of Basic Operating Cost, as specified in the Basic Lease Information. "Basic Operating Cost" shall mean all expenses and costs which Landlord shall pay or become obligated to pay, because of or in connection with the ownership, management, maintenance, preservation and operation of the Property and its supporting facilities (determined in accordance with generally accepted accounting principles, consistently applied) including but not limited to the following:

a. Taxes. All real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of every kind (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed, or imposed by any public authority upon the Property, its operations or the rentals received by Landlord from the Property or any portion or component thereof, or any tax imposed in substitution, partially or totally, of any foregoing item, or any additional item the nature of which is similar to any of the foregoing items (all of the foregoing being hereinafter collectively referred to as "real property taxes"), except (i) inheritance or estate taxes imposed upon or assessed against the Property, or any part thereof or interest therein, and (ii) taxes computed upon the basis of the net income of Landlord or the owner of any interest therein, except as otherwise provided in the following sentence.

b. Insurance. All insurance premiums and costs, including but not limited to, any deductible amounts, incurred by Landlord with respect to Landlord's insurance, as set forth in Section 8.

c. Repairs and Improvements. Repairs, replacements and general maintenance for the Premises, Building and Property, except for those repairs expressly made the responsibility of Landlord pursuant to the provisions of this Lease, repairs to the extent paid for by proceeds of insurance or by Tenant or other third parties, and alterations attributable solely to tenants of the Building other than Tenant.

d. Legal and Accounting. Legal and accounting expenses relating to the Property, including the cost of audits by certified public accountants.

e. Services. All expenses related to maintenance, janitorial, and services, costs of supplies, and equipment, used in maintaining Premises, Building, and Property, and associated equipment, and the adjacent sidewalks, driveways, parking and service areas, including, without limitation, alarm service, window cleaning, elevator maintenance, Building interior and exterior maintenance and Property landscaping. Landlord will provide routine janitorial service to the Premises (excluding supplies and consumable items) in accordance with the service agreement with Landlord's janitorial service company.

f. Utilities. Costs of electricity, water, gas, sewer and other utility services supplied to or consumed on all or a portion of the Premises, Building or Property that are not billed directly to tenants, including, but not limited to, surcharges, assessments or impositions levied, assessed or imposed upon the Premises, the Building or the Property or any part thereof, or upon the use and occupancy of the Premises, the Building or the Property, as a result of any rationing of utility services or restriction on the use or quality of utility services supplied to the Premises, the Building and/or the Property.

If the Building is not fully occupied during any fiscal year of the Term as determined by Landlord, an adjustment shall be made in computing Basic Operating Cost for such year so that Tenant pays an equitable portion of all variable items of Basic Operating Cost, as reasonably determined by Landlord; provided, however, that Landlord shall not be entitled to collect in excess of one hundred percent (100%) of the total Basic Operating Cost from all of the tenants in the Building including Tenant.

7.2 Exclusions. Basic Operating Cost shall not include specific costs incurred for the account of, separately billed to, and paid by specific tenants. Notwithstanding anything in this Lease to the contrary, where Landlord, in Landlord's sole discretion, deems Tenant to be responsible for any amounts greater than Tenant's Proportionate Share, Landlord shall have the right to allocate costs in any manner Landlord deems appropriate.

7.3 Payment of Estimated Basic Operating Cost. "Estimated Basic Operating Cost" for any particular fiscal year shall mean Landlord's estimate of the Basic Operating Cost for such fiscal year made as hereinafter provided. Landlord shall have the right from time to time to revise its fiscal year and interim accounting periods so long as the periods as so revised are reconciled with prior periods in accordance with generally accepted accounting principles applied in a consistent manner. During the last month of each fiscal year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Basic Operating Cost for the ensuing fiscal year. Tenant shall pay Tenant's Proportionate Share of the Estimated Basic Operating Cost with installments of Base Rent for the fiscal year to which the Estimated Basic Operating Cost applies in monthly installments on the first (1<sup>st</sup>) day of each calendar month during such fiscal year, in advance. If at any time during the course of the fiscal year, Landlord determines that Basic Operating Cost is projected to vary from the then Estimated Basic Operating Cost by more than ten percent (10%), Landlord may, by written notice to Tenant, revise the Estimated Basic Operating Cost for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such fiscal year shall be adjusted so that by the end of such fiscal year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Basic Operating Cost for such fiscal year.

7.4 Computation of Basic Operating Cost Adjustment. "Basic Operating Cost Adjustment" shall mean the difference between Estimated Basic Operating Cost and Basic Operating Cost for any fiscal year determined as hereinafter provided. Within one hundred twenty (120) days after the end of each fiscal year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a written statement of Basic Operating Cost for the fiscal year just ended and a computation of Basic Operating Cost Adjustment (the "Statement"). If the Statement shows that the total of Tenant's payments based upon the Estimated Basic Operating Cost is less than Tenant's Proportionate Share of the Basic Operating Cost, then Tenant shall pay the difference to Landlord within twenty (20) days after receipt of such statement. If the Statement shows that the total of Tenant's payments of the Estimated Basic Operating Cost exceeds Tenant's Proportionate Share of the Basic Operating Cost, then provided that Tenant is not in default under this Lease Landlord shall credit the excess to the next installment of the Estimated Basic Operating Cost payable by Tenant. If this Lease has been terminated or the Term hereof has expired prior to the date of the Statement, then the Basic Operating Cost Adjustment shall be paid by the appropriate party within twenty (20) days after the date of delivery of the Statement. Should this Lease commence or terminate at any time other than the first day of the fiscal year, Tenant's Proportionate Share of the Basic Operating Cost Adjustment shall be prorated based upon the number of calendar days during such fiscal year that this Lease is in effect.

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7.5 Net Lease. This shall be an absolute net Lease and Base Rent shall be paid to Landlord absolutely net of all costs and expenses of the Building and Property, except as specifically provided to the contrary in this Lease. The provisions for payment of Basic Operating Cost and the Basic Operating Cost Adjustment are intended to pass onto Tenant and reimburse Landlord for all costs and expenses of the nature described in Section 7.1 incurred in connection with the ownership, maintenance and operation of the Building and Property and such additional facilities as may be determined by Landlord to be necessary to the Building or Property.

7.6 Tenant Audit. Each Statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of the Statement Tenant shall notify Landlord in writing that Tenant disputes the correctness of such Statement, specifying the particular respects in which the Statement is claimed to be incorrect. Following Landlord's receipt of Tenant's notice disputing any Statement, Landlord and Tenant shall meet and attempt to resolve the matters in dispute. If the matters in dispute are not resolved by Landlord and Tenant within thirty (30) days following Landlord's receipt of Tenant's dispute notice, then Tenant shall have the right, by written notice delivered to Landlord not later than sixty (60) days following the receipt of the Statement in dispute and upon the condition that Tenant shall first pay to Landlord the full amount in dispute, to request an independent audit of Landlord's books and records with respect to Basic Operating Cost for the matters in dispute. The independent audit of the books and records shall be conducted by a Certified Public Accountant not then employed by, affiliated with or related to either Landlord or Tenant who is to be compensated on an hourly basis and is otherwise acceptable to both Landlord and Tenant ("CPA"). If, within thirty (30) days after Landlord's receipt of Tenant's notice requesting an audit, Landlord and Tenant are unable to agree on the CPA to conduct such audit, then Landlord may designate an accounting firm not then employed by, affiliated with or related to Landlord or Tenant to conduct such audit. Such audit shall be completed and the final audit report delivered to Landlord and Tenant no later than thirty (30) days after Tenant's notice requesting such audit. Tenant shall have the right to request an audit any Statement provided by Landlord only once. The Basic Operating Cost Adjustment shall be appropriately adjusted on the basis of such audit. Tenant shall pay the costs of the audit and the fees of the auditors; provided, however, if such audit discloses a liability for a refund to Tenant in excess of ten percent (10%) of Tenant's Proportionate Share of the Basic Operating Cost Adjustment previously reported in the Statement, then the reasonable cost of such audit shall be borne by Landlord.

## 8. INSURANCE AND INDEMNIFICATION.

8.1 Landlord's Insurance. Landlord agrees to maintain insurance insuring the Building against fire, lightning, vandalism and malicious mischief (including, if Landlord elects in its sole discretion, "All Risk" or "Special Form", earthquake, and/or flood insurance coverage), in an amount not less than eighty percent (80%) of the replacement cost thereof, with deductibles and the form and endorsements of such coverage as selected by Landlord in its sole discretion. Such insurance may also include, at Landlord's option, insurance against loss of Base Rent and Additional Rent, in an amount equal to the amount of Base Rent and Additional Rent payable by Tenant for a period of at least twelve (12) months commencing on the date of loss. Such insurance shall be for the sole benefit of Landlord and under Landlord's sole control. Landlord shall not be obligated to insure any furniture, equipment, machinery, goods or supplies which Tenant may keep or maintain in the Premises, or any leasehold improvements, additions or alterations within the Premises. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance, in such amounts and on such terms as Landlord shall determine from time to time.

8.2 Tenant's Insurance. Tenant shall procure at Tenant's sole cost and expense and keep in effect from the Term Commencement Date and at all times during the Term of this Lease the following forms of insurance:

a. Property Insurance. "All-risk" or "Special Form" property insurance, with theft, vandalism, sprinkler leakage and malicious mischief endorsements, on all personal property, equipment and fixtures of Tenant and all leasehold improvements, additions and alterations made by or for Tenant to the Premises, insuring such property for the full replacement value of such property, and replacement and/or repair of plate glass within the Premises. So long as this Lease remains in effect, the proceeds of Tenant's property insurance shall be used solely for the repair or replacement of the fixtures, equipment and improvements so insured. Landlord shall be named as a loss payee on such insurance.

b. Liability Insurance. Commercial General Liability insurance applying to the use and occupancy of the Premises and the Property, and any part of either, and any areas adjacent thereto, and the business operated by Tenant, or by any other occupant on the Premises. Such insurance shall include Broad Form Contractual Liability insurance coverage insuring all of Tenant's indemnity obligations under

this Lease. Such coverage shall have a minimum combined single limit of liability (per occurrence and aggregate) of at least Three Million Dollars (\$3,000,000.00). All such policies shall be written to apply to all bodily injury, property damage or loss, personal injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add Landlord, Landlord's property manager and any person or entity holding an interest in or encumbrance on the Property or any part thereof, as an additional insured, and shall provide that such coverage shall be primary and not contributory with any insurance maintained by Landlord. Such policies shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; (iii) deleting any liquor liability exclusion; (iv) providing broad form property damage, products completed operations, and owner's protective and personal injury coverage; and (v) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds or additional insureds shall not reduce or void coverage to the other named insureds or additional insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Said coverage shall be written on an "occurrence" basis.

c. Workers' Compensation Insurance. Workers' Compensation insurance with limits of liability not less than the minimum amount required by applicable law, and Employer's Liability insurance with limits of liability not less than that specified for Tenant's liability insurance. Landlord, Landlord's property manager and any person or entity holding an interest in or encumbrance on the Property or any part thereof shall be named as an additional insured under Tenant's Employer's Liability insurance.

d. General Insurance Requirements. All coverages described in this Section shall be endorsed to provide Landlord with thirty (30) days' notice of cancellation or change in terms or coverage. If at any time during the Term the amount or coverage of insurance which Tenant is required to carry under this Section. is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or tenants of properties located in the general area in which the Property is located which are similar to and operated for similar purposes as the Property, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required. All insurance policies required to be carried by Tenant under this Lease shall be written by companies rated NVIII or better in "Best's Insurance Guide" and authorized to do business in California. Deductible amounts shall not exceed One Thousand Dollars (\$1,000.00). Tenant shall deliver to Landlord on or before the Term Commencement Date, and thereafter at least thirty (30) days before the expiration dates of the expiring policies, certified copies of Tenant's insurance policies, or a satisfactory certificate evidencing the same issued by the insurer, showing that all premiums have been paid for the full policy period (but in no event less than one (1) year); and, in the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at Landlord's option and in addition to Landlord's other remedies hereunder, procure the same for the account of and at the expense of Tenant, and the costs incurred by Landlord, together with interest at the Applicable Interest Rate from the date incurred, shall be paid to Landlord by Tenant as Additional Rent upon demand.

e. Minimum Requirements. The requirements for Tenant's insurance contained in this Lease are minimum requirements and Tenant shall be solely responsible for determining the scope and amount of insurance coverage to be maintained by Tenant. The scope and amount of insurance coverage required in this Lease shall not limit the liability of Tenant under this Lease.

8.3 Indemnification. Landlord shall not be liable to Tenant for any loss or damage to person or property caused by theft, fire, acts of nature, acts of a public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or for any damage or inconvenience which may arise through repair or alteration of any part of the Building or Property or failure to make any such repair, except as expressly otherwise provided in Section 10. Tenant shall indemnify, defend by counsel acceptable to Landlord, protect and hold Landlord harmless from and against any and all liabilities, losses, costs, damages, injuries or expenses, including reasonable attorneys' fees and court costs, arising out of or related to: (i) claims of injury to or death of persons or damage to property occurring or resulting directly or indirectly from the use or occupancy of the Premises, or from activities of Tenant, Tenant's Parties or anyone in or about the Premises or Property, or from any cause whatsoever; (ii) claims for work or labor performed, or for materials or supplies furnished to or at the request of Tenant in connection with performance of any work done for the account of



Tenant within the Premises or Property; and (iii) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease. The foregoing indemnity shall not be applicable to claims arising from the sole active negligence or willful misconduct of Landlord. The provisions of this Section 8.3. shall survive the expiration or termination of this Lease with respect to any claims or liability occurring or the onset of which occurred prior to such expiration or termination.

9. **WAIVER OF SUBROGATION.** To the maximum extent permitted by law and without affecting the coverage provided by insurance to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for damage to property including the personal property of Tenant and Tenant's Parties and damage to the Premises, Building and Property, to the extent such damage is covered by insurance maintained or required to be maintained by the parties and to the extent of insurance proceeds actually recovered. This provision is intended to waive fully, and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The insurance coverages obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this Section 9.

10. **LANDLORD'S REPAIRS AND SERVICES.** Landlord shall at Landlord's expense maintain the structural soundness of the structural beams of the roof, foundations and exterior walls of the Building in good repair, reasonable wear and tear and casualty damage excepted. The term "exterior walls" as used herein shall not include windows, glass or plate glass, doors, storefronts or office entries. Landlord shall perform on behalf of Tenant and other tenants of the Building and as an item of Basic Operating Cost, the maintenance of the Building, Property, and public and common areas of the Building and Property, including but not limited to the maintenance, repair or replacement (as determined by Landlord in its sole discretion) of the roof and roof membrane; pest extermination; cleaning and maintenance of the landscaped areas, parking areas, driveways and truck staging areas; maintenance of fire sprinkler systems (if any), sanitary and storm sewer lines, utility and telephone lines and equipment servicing and outside of the Premises and the premises of other tenants; exterior lighting (if any), and anything which affects the operation or exterior appearance of the Building or Property, which determination shall be at Landlord's sole discretion. Landlord may enter into a regularly scheduled preventive maintenance/service contracts with a maintenance contractors for periodic inspection and servicing of elements of the Building including, but not limited to, the heating and air conditioning systems and elevator serving the Building. Except for the expenses directly involving the items specifically described in the first sentence of this Section 10, Tenant shall reimburse Landlord for all such costs in accordance with Section 7. Any damage caused by or repairs necessitated by any act or omission of Tenant or Tenant's Parties may be repaired by Landlord at Landlord's option and at Tenant's expense, and the costs incurred by Landlord, together with interest at the Applicable Interest Rate from the date incurred, shall be paid to Landlord by Tenant as Additional Rent. Tenant shall immediately give Landlord written notice of any defect or need for repairs after which Landlord shall have a reasonable time within which to repair. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance and Landlord shall not be liable for any injury to or interference with Tenant's business arising from the performance of any repairs, maintenance, alteration, or improvement in or to any portion of the Premises, Building, or Property or to any fixtures, appurtenances or equipment serving the Premises, Building, or Property or the failure of Landlord to perform any repairs, maintenance, alteration or improvement. Landlord's obligation under this Section 10 is subject to the condition precedent that Landlord shall have received written notice of the need for such repairs and maintenance and has been afforded a reasonable time after receipt of such notice to perform such repairs and maintenance.

11. **TENANT'S REPAIRS.** Tenant shall at Tenant's expense maintain all parts of the Premises in a good clean and secure condition and promptly make all necessary repairs and replacements, including but not limited to all windows, glass, doors, walls and wall finishes, floor covering, heating, ventilating and air conditioning systems and fixtures, plumbing work and fixtures, electrical and lighting systems and fixtures, and fire sprinklers (if any). Tenant shall at Tenant's expense also perform regular removal of trash and debris except as provided by Landlord's janitorial service company. Tenant shall not damage any part of the Premises or disturb the integrity and support provided by any wall and shall, at its sole expense, immediately repair any damage to any wall caused by Tenant or Tenant's Parties. Landlord and Tenant agree that the rights and obligations of the parties regarding the repair and maintenance of the Premises, Building and Property are to be governed solely by the provisions of Sections 10 and 11. To the fullest extent permitted by law, Tenant waives any right which Tenant may now or hereafter hold to make any repairs at the expense of Landlord, to require Landlord to make any repairs other than those specified in Section 10 or to apply any Rent to the making of any repairs.

12. **ALTERATIONS.** Tenant shall not make, or allow to be made, any alterations additions, improvements or changes in the improvements in, about or to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld with respect to proposed alterations, additions, improvements or changes which: (i) comply with all applicable laws, ordinances, rules and regulations; (ii) are in Landlord's opinion compatible with the Building and its mechanical, plumbing, electrical, HVAC systems; and (iii) will not interfere with the use and occupancy of any other portion of the Building by any other tenant or its invitees. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, Building or Property whatsoever. If Tenant fails to so remove such alterations, additions or improvements or Tenant's trade fixtures or furniture, Landlord may keep and use them or remove them and cause them to be stored or sold in accordance with applicable law, at Tenant's sole expense. In addition to and wholly apart from Tenant's obligation to pay Tenant's Proportionate Share of Basic Operating Cost, Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against Tenant's personal property, on the value of the alterations, additions, improvements or changes within the Premises, and on Tenant's interest in the Premises created pursuant to this Lease. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

13. **SIGNS.** Tenant shall not place or permit to be placed any sign, display, notice or advertisement which is visible in or from the corridors, common areas or exterior of the Premises or Building. Landlord shall furnish standard signage at the Premises and on the lobby directory consistent with the signage of the Building, which Landlord shall obtain and install at Tenant's expense. Landlord shall remove all such signage prior to the termination of this Lease at Tenant's expense. As a Basic Operating Cost, Landlord will provide standard signage in the common areas of the Building identifying the tenants of the Building including Tenant. If additional exterior signage is provided by Landlord, the cost of the construction and maintenance of such signage shall be included in Basic Operating Cost.

14. **INSPECTION.** After reasonable notice, except in emergencies where no such notice shall be required, Landlord, and Landlord's agents and representatives, shall have the right to enter the Premises: to inspect the same, to perform such work as may be permitted or required hereunder; to make repairs or alterations to the Premises, Building or Property or to other tenant premises within the Building; to deal with emergencies; to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Property; to exhibit the Premises to prospective tenants, purchasers, encumbrancers or others; or for any other purpose as Landlord may deem necessary or desirable; provided, however, that Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business operations. Tenant shall not be entitled to any abatement of Rent by reason of the exercise of any such right of entry and the exercise of such right of entry shall not in any event be deemed a constructive eviction. At any time within one hundred eighty (180) days prior to the end of the Term, Landlord shall have the right to erect on the Premises, Building and/or Property a suitable sign indicating that the Premises are available for lease. Tenant shall give written notice to Landlord at least thirty (30) days prior to expiration of the Term of this Lease and shall meet with Landlord for a joint inspection of the Premises at the time of such expiration. In the event of Tenant's failure to give such notice or participate in such joint inspection, Landlord's inspection at or after expiration of the Term of this Lease shall be deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

15. **UTILITIES.** Tenant shall pay directly for all water, gas, heat, air conditioning, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or from the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto, and maintenance charges for utilities and shall furnish all electric light bulbs, ballasts and tubes. If any such services are not separately metered to the Premises, Tenant shall pay a reasonable proportion of all charges for such utilities and services jointly serving other premises, as determined by Landlord. Landlord shall not be liable for any damages directly or indirectly resulting from nor shall the Rent or any monies owed Landlord under this Lease be abated by reason of: (i) the installation, use or interruption of use of any equipment used in connection with the furnishing of any such utilities or services; (ii) the failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by acts of nature, labor disturbances, accidents or other conditions beyond the reasonable control of Landlord; or (iii) the limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or Property. Landlord shall be entitled to cooperate voluntarily with the efforts of national, state or local governmental agencies or utility suppliers in reducing energy or other resource consumption.

16. **SUBORDINATION.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease is and shall remain subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or Property; and (iii) any mortgage or deed of trust which may now exist or be placed upon the Property, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Landlord shall have the right to have this Lease prior to any such ground leases or underlying leases, mortgages or deeds of trust. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Within ten (10) days after request by Landlord, Tenant shall execute and deliver any documents evidencing or confirming such matters, in the form requested by Landlord or by any ground landlord, mortgagee, or beneficiary under a deed of trust. If Tenant fails to execute and deliver such documents within the time period specified in Landlord's notice (not be less than ten (10) days after receipt of the requested documents by Tenant), then Tenant shall be conclusively deemed to have certified as true and accurate the matters set out in the documents delivered by Landlord to Tenant, and such failure shall, at the election of Landlord, constitute an event of default by Tenant under this Lease.

17. **ESTOPPEL CERTIFICATE.** At any time and from time to time, upon not less than ten (10) days' prior written notice by Landlord, Tenant shall deliver to Landlord, or Landlord's designee, an estoppel certificate stating with such noted factual exceptions that: this Lease is in full force and effect; the date to which Rent has been paid; the Term Commencement Date and the date of expiration of the Term; and such other matters pertaining to this Lease as may be reasonably requested by Landlord. Failure by Tenant to execute and deliver such certificate shall constitute an acknowledgment by Tenant that the statements included in such certificate are true and correct without exception. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Property or any interest therein. The parties agree that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease, and shall be an event of default if Tenant fails to fully and timely comply.

18. **NO SECURITY DEPOSIT REQUIRED.** Based on the joint venture relationship between Landlord and Tenant related to Tenant's occupancy of the Premises, no Security Deposit shall be required under this Lease.

19. **ASSIGNMENT AND SUBLETTING.**

19.1 **General.** Tenant shall not assign or sublet the Premises or any part of the Premises without Landlord's prior written consent, which shall not be unreasonably withheld. Tenant agrees that Landlord operates the Premises and Property as a medical office building supporting the operation of the Landlord's hospital located adjacent to the Premises and Property, and therefore all subtenants or assignees must be considered by Landlord to be complementary to such use. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease. Any assignment or subletting which conflicts with the provisions of this Section 19 shall be void.

19.2 **Bonus Rent.** If any rent or other consideration realized by Tenant (or benefiting Tenant) under any sublease or assignment is in excess of the Base Rent payable under this Lease, then Tenant shall pay to Landlord all of such excess as and when received by Tenant. In any subletting or assignment undertaken by Tenant, Tenant shall diligently seek to obtain the maximum rental amount available in the marketplace for such subletting or assignment. Such consideration shall include all monetary and non-monetary consideration received by Tenant in connection with any such subletting or assignment, whether or not attributable to the value of this Lease or the Premises. Any non-monetary consideration shall be converted to its reasonable monetary equivalent for purposes of this Section 19.2.

19.3 **Corporation.** If Tenant is a corporation, a transfer of corporate shares by sale, assignment, bequest, inheritance, operation of law or other disposition (including a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceedings), so as to result in a change in the control of such corporation or any of its parent corporations by the person or persons owning a majority of said corporate shares as of the date of this Lease, shall constitute an assignment for purposes of this Lease.

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19.4 Partnership. If Tenant is a partnership, joint venture or other business entity, a transfer of the interest of persons, firms or entities responsible for managerial control of Tenant by sale, assignment, bequest, inheritance, operation of law or other disposition, so as to result in a change in the control of said entity as of the date of this Lease and/or a change in the identity of the persons responsible for the general credit obligations of said entity as of the date of this Lease, shall constitute an assignment for all purposes of this Lease.

19.5 No Mortgage, Pledge or Encumbrance. Tenant shall not mortgage, pledge, encumber or otherwise create any lien upon the leasehold estate created by this Lease, any of the interest of Tenant under this Lease, or any interest in or right appurtenant to the Premises.

20. **AUTHORITY OF PARTIES**. Landlord represents that it has full right and authority to enter into this Lease and to perform all of Landlord's obligations. Tenant represents and warrants that it has full right and authority to enter into this Lease and to perform all of Tenant's obligations. Each person executing this Lease on behalf of Tenant represents and warrants that he or she is authorized to bind Tenant to this Lease.

21. **CONDEMNATION**.

21.1 Condemnation Resulting in Termination. If (i) the whole or any substantial part of the Premises are taken or condemned for any public use under any law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively a "taking"), and the taking would, in Landlord's reasonable judgment, prevent or materially interfere with the continued use of the Premises for the use permitted under this Lease, or (ii) the whole or any substantial part of the Building or Property are subject to any taking, then Landlord may terminate this Lease by written notice given to Tenant at any time prior to the taking of physical possession by or the granting of the right of possession to the condemning authority. In the event of such termination, this Lease shall terminate as of the date of the taking of physical possession by or the granting of the right of possession to the condemning authority and the Rent shall be abated during the unexpired portion of this Lease.

21.2 Condemnation Not Resulting in Termination. In the event of any taking which does not result in the termination of this Lease as provided in Section 21.1, this Lease shall not terminate, but the Rent payable during the unexpired portion of the Lease shall be reduced, beginning on the date when the taking of physical possession shall have occurred, in proportion to the floor area of the Premises so taken. In such event, Landlord shall restore the remaining portion of the Premises or Building to a complete architectural unit to the extent of any award received by Landlord for the taking of the Premises or the Building. Landlord's restoration obligation shall not exceed the scope of Landlord's restoration obligation under Section 22.2.

21.3 Award. Landlord shall be entitled to any payment, income, rent, award compensation or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired portion of this Lease. Notwithstanding the foregoing, Tenant may seek a separate award from the condemning authority for loss of business, Tenant's personal property, moving costs or loss of goodwill, provided that any such award shall not reduce the amount to which Landlord is otherwise entitled.

21.4 Waiver. Landlord and Tenant agree that the rights and obligations of the parties in the event of the condemnation or taking of any portion of the Premises, the Building or the Property shall be solely governed by the provisions of this Section 23. Landlord and Tenant each hereby waives the provisions of Section 1265.110 of the California Code of Civil Procedure and any other right which Landlord or Tenant may now or hereafter hold to terminate this Lease upon any condemnation or taking of the Premises.

22. **CASUALTY DAMAGE**.

22.1 General. If the Premises or Building should be damaged or destroyed by any casualty, Tenant shall give immediate written notice thereof to Landlord. Within thirty (30) days after Landlord's receipt of such notice, Landlord shall notify Tenant whether in Landlord's opinion such repairs can reasonably be made: (i) within ninety (90) days; (ii) in more than ninety (90) days but in less than one hundred eighty (180) days; or (iii) in more than one hundred eighty (180) days, from the date of such notice. Landlord's determination shall be conclusive and binding on Tenant.

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22.2 Less Than 90 Days. If the Premises or Building should be damaged by any casualty covered under the insurance maintained by Landlord under Section 8.1, but only to such extent that rebuilding or repairs can in Landlord's estimation be reasonably completed within ninety (90) days after the date of such damage, and provided that insurance proceeds are available to fully repair the damage, this Lease shall not terminate, and Landlord shall proceed to rebuild and repair the Premises and/or Building to substantially the condition in which they existed prior to such damage, except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, additions or improvements which may have been placed in, on or about the Premises by or for Tenant or any of Tenant's furniture, fixtures, equipment or other personal property. If the Premises are untenantable in whole or in part following such damage, then, except as otherwise provided in Section 22.5, the Rent payable during the period during which the Premises are untenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds, if any, received by Landlord during the time and to the extent the Premises are unfit for occupancy.

22.3 Greater Than 90 Days. If the Premises or Building should be damaged by any casualty covered by the insurance maintained by Landlord pursuant to Section 8.1., but only to such extent that rebuilding or repairs can in Landlord's estimation be reasonably completed in more than ninety (90) days but in less than one hundred eighty (180) days, then Landlord shall have the option of either: (i) terminating this Lease effective upon the date of the occurrence of such damage, in which event the Rent shall be abated during the unexpired portion of the Term of this Lease; or (ii) electing to rebuild or repair the Premises and/or Building to substantially the condition in which they existed prior to such damage, provided that insurance proceeds are available, to fully repair the damage. Landlord's restoration obligation shall not exceed the scope of Landlord's restoration obligation under Section 22.2. If the Premises are untenantable in whole or in part following such damage, then, except as otherwise provided in Section 22.5, the Rent payable hereunder during the period the Premises are untenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds, if any, received by Landlord during the time and to the extent the Premises are unfit for occupancy.

22.4 Greater Than 180 Days. If the Premises or Building should be so damaged by any casualty covered under the insurance maintained by Landlord under Section 8.2. such that rebuilding or repairs cannot in Landlord's estimation be completed within one hundred eighty (180) days after such damage, this Lease shall terminate and the Rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

22.5 Tenant's Fault. If the Premises or any other portion of the Building are damaged by fire or other casualty resulting from the fault, negligence, willful misconduct, or breach of this Lease by Tenant or any of Tenant's Parties, Base Rent and Additional Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Premises and Building to the extent such cost and expense is not covered by insurance proceeds received by Landlord.

22.6 Uninsured Casualty. Notwithstanding anything to the contrary, if Premises or Building are damaged or destroyed by a casualty not covered by the insurance maintained by Landlord under Section 8.1, or if the cost of repair or restoration of Premises or Building are not fully covered by insurance proceeds Landlord receives, or if the holder of any indebtedness secured by a mortgage or deed of trust covering the Property requires that all or a portion of the insurance proceeds be applied to such indebtedness, then in such case Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after the date of receipt of notice by Landlord that the casualty is not a covered casualty, the cost or repair or restoration is not fully covered by insurance proceeds or such requirement is imposed by any such indebtedness holder, as the case may be, whereupon all rights and obligations hereunder shall cease and terminate.

22.7 Waiver. Tenant agrees that the rights and obligations of the parties in the event of damage or destruction to the Premises or the Building shall be solely governed by the provisions of this Section 22. Tenant hereby waives the provisions of Sections 1932(a) and 1933(4) of the California Civil Code and any other right which Tenant may now or hereafter hold to terminate this Lease upon the damage to or destruction of the Premises.

23. **HOLDING OVER**. If Tenant shall retain possession of the Premises or any portion thereof without Landlord's consent following the expiration or sooner termination of the Term of this Lease, then Tenant shall be a tenant at sufferance only and Tenant shall pay to Landlord for each day of such holding over one hundred fifty percent (150%) of the amount of the daily Rent as of the last month prior to the date of expiration or termination. Tenant shall also indemnify, defend, protect and hold Landlord harmless from any loss, liability or cost, including reasonable attorneys' fees, resulting from delay by Tenant in surrendering the Premises,

including, without limitation, any claims made by any succeeding tenant founded on such delay. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease, and nothing contained in this Section 25 shall waive Landlord's right of reentry or any other right. Additionally, in the event that upon the expiration or termination of the Term of this Lease, Tenant has not fulfilled its obligation with respect to repairs and surrender of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord shall have the right to perform any such obligations as Landlord deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over by Tenant and the terms of this Section 25 shall apply to such period.

24. **DEFAULT.** The occurrence of any of the following shall constitute an event of default by Tenant:

24.1 **Abandonment.** Abandonment of the Premises for a continuous period in excess of five (5) days. Tenant waives any right to notice Tenant may have under Section 1951.3 of the California Civil Code, the terms of this Section 24.1 being deemed such notice to Tenant as required by said Section 1951.3.

24.2 **Nonpayment of Rent.** Failure to pay any installment of Rent or any other amount due and payable hereunder upon the date when said payment is due.

24.3 **Subordination Documents, Financial Information and Estoppel Certificates.** Failure to deliver to Landlord documents requested by Landlord pursuant to Sections 16 or 17 within the time period specified.

24.4 **Other Obligations.** Failure to perform any obligation, agreement or covenant under this Lease other than as specified in Sections 26.1 and 26.2, where such failure continues for ten (10) days after written notice of such failure from Landlord; provided however, if the nature of the default is such that more than ten (10) days is reasonably required to cure such default, Tenant shall not be in default if Tenant commences to cure such default within such ten (10) day period and thereafter diligently pursues such cure to completion to the satisfaction of Landlord.

24.5 **General Assignment.** A general assignment by Tenant for the benefit of creditors.

24.6 **Bankruptcy.** The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant (as a debtor in possession) has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant (as a debtor in possession) shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to assure Landlord of the continued performance of Tenant's obligations under this Lease.

24.7 **Receivership.** The appointment of a receiver to take possession of all or substantially all of Tenant's assets or Tenant's interest in the Premises, if such appointment remains undismissed or undischarged for a period of ten (10) days after the order is entered.

24.8 **Attachment.** The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or Tenant's interest in the Premises, if such attachment, execution or seizure remains undismissed or undischarged for a period of ten (10) days after the levy thereof.

25. **REMEDIES UPON DEFAULT.**

25.1 **Termination.** Upon the occurrence of any event of default, Landlord shall have the right to give a written notice of termination to Tenant, and on the date specified in such notice, the Term of this Lease and Tenant's right to possession shall terminate. At any time after such termination, Landlord may recover possession of the Premises or any part thereof and expel and remove from the Premises Tenant and any other person occupying the same, by any lawful means, and repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, at law or in equity by reason of Tenant's default or of such termination.

25.2 **Continuation After Default.** Even though an event of default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession as provided in Section 24.1, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including without limitation, the right to recover Rent as it becomes due. Landlord has the remedy described in Section 1951.4 of

the California Civil Code (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under Section 1951.4 of the California Civil Code or any successor code section. Acts of maintenance, preservation, or efforts to re-lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest in the Premises shall not constitute an election by Landlord to terminate Tenant's right to possession.

25.3 Damages After Default. Should Landlord terminate this Lease pursuant to the provisions of Section 24.1, Landlord shall have the rights and remedies of a Landlord provided by Section 1951.2 of the California Civil Code, or successor code sections.

25.4 Late Charge. If any installment of Rent is not paid when due, such amount shall bear interest at the Applicable Interest Rate from the date on which said payment was due until the date on which Landlord shall receive said payment. In addition, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent amount, to compensate Landlord for the loss of the use of the amount not paid and the administrative costs caused by the delinquency. The parties agree that Landlord's damage by virtue of such delinquencies would be difficult to compute and the amount stated represents a reasonable estimate thereof. This provision shall not relieve Tenant from Tenant's obligation to pay Rent at the time and in the manner specified.

25.5 Remedies Cumulative. All rights, privileges and elections or remedies of Landlord are cumulative and not alternative and are in addition to any and all other rights and remedies now or hereafter available to Landlord at law or in equity by reason of any event of default by Tenant.

25.6 Waiver of Right of Redemption. Tenant waives any right which Tenant may now or hereafter hold (including any right under California Code of Civil Procedure Sections 1174 and 1179, California Civil Code Section 3275 or any successor statute) to apply for reinstatement of this Lease following termination of this Lease by Landlord pursuant to Section 24.1. Landlord and Tenant agree that the notice requirements of this section shall be in lieu of and not in addition to any notice requirements provided by law in the event of a breach or default by Tenant under this Lease.

26. LIENS. Tenant shall keep the Premises free from liens arising out of or related to work performed, materials or supplies furnished or obligations incurred by Tenant or in connection with work made, suffered or done by or on behalf of Tenant in or on the Premises or Property. In the event that Tenant shall not, within ten (10) days following the imposition or recording of any claim of lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord on behalf of Tenant and all expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant as Additional Rent on demand with interest at the Applicable Interest Rate. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord may deem proper, for the protection of Landlord, the Premises, the Property and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give Landlord not less than ten (10) business days prior written notice of the commencement of any work in the Premises or Property which could give rise to mechanics' or materialmen's liens.

27. TRANSFERS BY LANDLORD. In the event of a sale or conveyance by Landlord of the Property the same shall operate to automatically release Landlord from any liability for the performance of any of the covenants, conditions or agreements herein contained in favor of Tenant, to the extent the same are required to be performed after the passing of title to Landlord's successor-in-interest. In such event, Tenant agrees to look solely to the successor-in-interest of Landlord under this Lease with respect to the performance of the covenants, conditions and agreements of "Landlord" to be performed after the passing of title to Landlord's successor-in-interest. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser. Landlord's successor(s)-in-interest shall not have liability to Tenant with respect to the failure to perform the obligations of "Landlord", to the extent the same were required to be performed prior to the date such successor(s)-in-interest became the owner of the Property. If Landlord shall transfer the Security Deposit to any such successor-in-interest, Landlord shall be relieved of all responsibility for the return of the Security Deposit, and Tenant shall look solely to Landlord's successor-in-interest for the return of the same.

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28. **RIGHT OF LANDLORD TO PERFORM TENANT'S COVENANTS.** All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Base Rent and Basic Operating Cost, required to be paid by Tenant hereunder or shall fail to perform any other act on Tenant's part to be performed hereunder, and such failure shall continue for five (5) days after notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed. All sums, so paid by Landlord and all incidental costs incurred by Landlord, together with interest thereon at the Applicable Interest Rate from the date of such payment by Landlord, shall be payable to Landlord by Tenant as Additional Rent on demand.

29. **WAIVER.** If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of Rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Rent. Failure by Landlord to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to diminish the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Lease may only be made by a written document signed by Landlord.

30. **NOTICES.** Each provision of this Lease or of any applicable governmental laws, ordinances, regulations and other requirements with reference to giving, sending, mailing or delivery of any notice or the making of any payment by Landlord or Tenant to the other shall be deemed to be complied with when and if the following steps are taken:

30.1 **Rent.** All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address set forth in the Basic Lease Information, or at such other address as Landlord may specify from time to time by written notice delivered in accordance with this Section 31. Tenant's obligation to pay Rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such Rent and other amounts have been actually received by Landlord.

30.2 **Other.** All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and either personally delivered, sent by commercial overnight courier, or mailed, certified or registered, postage prepaid, return receipt requested, and addressed to the party to be notified at the address for such party as specified in the Basic Lease Information. Either party may change its address for notices by written notices given to the other party in the manner specified in this Section 32.2, which change of address shall be effective fifteen (15) days after service of such notice. Notices shall be deemed served upon receipt or refusal to accept delivery. Tenant appoints as its agent to receive the service of all notices the person in charge of or occupying the Premises at the time, and, if there is no such person, then such service may be made by attaching the same on the door of the main entrance to the Premises.

31. **ATTORNEYS' FEES.** In the event Landlord places the enforcement of this Lease, or any part thereof, or the collection of any Rent due, or to become due hereunder, or recovery of possession of the Premises in the hands of an attorney, Tenant shall pay to Landlord, upon demand, Landlord's reasonable attorneys' fees and court costs. In any action which Landlord or Tenant brings to enforce its respective rights under this Lease, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

32. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, and subject to the restrictions specified in Section 21, its successors and assigns.

33. **FORCE MAJEURE.** Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of nature, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes of any kind which are beyond the control of Landlord.

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34. **BROKERAGE COMMISSION**. Landlord shall pay a brokerage commission to the Broker identified in the Basic Lease Information in accordance with a separate agreement between Landlord and Broker. Tenant represents and warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this Lease has been directly with Landlord and Broker, and that no other person can properly claim a right to any compensation or fee based upon contacts between the claimant and Tenant with respect to Landlord or the Premises. Tenant shall indemnify, defend by counsel acceptable to Landlord, protect and hold Landlord harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for any compensation or fee by any person in connection with the Premises and this Lease, other than Broker.

35. **ADDITIONAL TERMS**.

35.1 **Choice of Law**. This Lease shall in all respects be governed by the laws of the State of California.

35.2 **Severability**. If for any reason any of the provisions of this Lease shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

35.3 **Accord and Satisfaction**. No payment by Tenant of a lesser amount than the full amount due, nor any endorsement on any check or letter accompanying any check or payment, shall be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the full amount due or to pursue any other rights or remedies available to Landlord.

35.4 **Easements**. Landlord may grant easements on the Property and dedicate for public use portions of the Property without Tenant's consent; provided that no such grant or dedication shall substantially interfere with Tenant's use of the Premises. Upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord documents, instruments, maps and plats necessary to subordinate Tenant's interest hereunder to such grants or dedications.

35.5 **Drafting and Determination Presumption**. The parties acknowledge that this Lease has been agreed to by both parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against Landlord because Landlord drafted this Lease.

35.6 **No Third-Party Benefit**. This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third-party benefit.

35.7 **Reservation by Landlord**. Landlord reserves: (i) the use of the exterior walls and roof of the Building; (ii) the right to install, use, maintain, repair and replace ducts, wires, conduits and pipes in and through the Premises in locations which will not substantially interfere with Tenant's use of the Premises; (iii) the right to make such additions, deletions or changes to the corridors, restrooms, lobbies and other common areas of the Building, provided that access to the Premises shall not be substantially impaired thereby; (iv) the right to use the surface of the land upon which the Property is located and to make such additions, deletions or changes to the improvements located thereon, as Landlord shall deem appropriate from time to time.

35.8 **Representations by Tenant**. Tenant represents and warrants to Landlord that each individual executing this Lease on behalf of Tenant is authorized to do so on behalf of Tenant and that Tenant is not, and the entities or individuals constituting Tenant or which may own or control Tenant or which may be owned or controlled by Tenant are not in violation of any laws relating to terrorism or money laundering.

35.9 **Attachments**. Exhibits A and B are attached and made a part of this Lease:

**Exhibit A** – Premises/Map

**Exhibit B** – Medical Building Rules and Regulations.

35.10 **Time**. Time is of the essence regarding this Lease and all of its provisions.

35.11 **Entire Agreement/Modification**. This Lease and its Exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations and understandings, whether written or oral. There have been no representations made by Landlord or understandings made between the parties other than those set forth in this Lease and its Exhibits. This Lease shall not be effective until execution and delivery by both Landlord and Tenant. This Lease may not be modified except by a written instrument executed by Landlord and Tenant.

The parties have executed this Lease Agreement for **Suite 100, 212 San Jose Street, Salinas, California** as of the Effective Date first set forth above.

**LANDLORD**

Salinas Valley Memorial Healthcare System

**TENANT**

Monterey Bay Endoscopy Center, LLC

By: \_\_\_\_\_  
Pete Delgado, President/CEO

By: \_\_\_\_\_  
Daniel G. Luba, MD, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**Premises/Map**

## **EXHIBIT B**

### **Medical Building Rules and Regulations**

Tenant agrees to the establishment of, and to abide by, the following rules and regulations:

Sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises. The halls, passages, exits, entrances, elevators and stairways are not for the general public, and Landlord shall, in all cases, retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Building and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not place any parcels or other articles in the halls or in any other part of the Building outside of the Premises.

Windows, sashes, glass doors, lights and skylights that reflect or admit light into the halls or other public places of the Building shall not be covered or obstructed. Plumbing fixtures shall not be used for any purpose other than those for which they were installed, and no rubbish, newspapers or other substances of any kind shall be thrown into them. Waste and excessive or unusual use of water shall not be allowed. Tenant shall not deface the walls, ceilings, doors, partitions, floors, wood, stone or ironwork. The expense of any breakage, stoppage or damage resulting from violation of this rule shall be borne by Tenant.

No sign, advertisement or notice shall be exhibited, painted or affixed by Tenant on any part of the Premises or Building so as to be seen from the outside of the Premises or Building or the land upon which the Building is located without the prior written consent of Landlord. Written material visible from outside the Building will not be permitted. Landlord shall, at Tenant's expense, place Tenant's name on any lobby and floor directories of the Building and at the entrance to Tenant's Premises. Tenant shall not have the right to have additional names placed on any directory without Landlord's prior written consent. Any change to such initial lobby, directory and entrance signage shall be performed by Landlord at Tenant's expense. In the event of a violation of the foregoing, Landlord may remove the violating sign, advertisement or notice without any liability and may charge the expense incurred in such removal to Tenant.

Wiring shall be introduced and connected only as directed by Landlord. No boring or cutting for wires will be allowed except with prior written consent of Landlord. Any installation of communications wiring outside the Premises shall be approved in advance by Landlord in writing, and installed at Tenant's expense.

Neither Tenant nor any of Tenant's Parties shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Building or neighboring buildings or premises whether by use of any musical instrument, radio, television, electronic equipment, or by any other means whatsoever. Neither Tenant nor any of Tenant's Parties shall not throw substances of any kind out of the windows or doors, or down the passageways of the Building, or sit or place anything upon the window sills, or bring into or keep within the Premises or Building any animal or bicycle, motorcycle or other vehicle. No cooking shall be done or permitted in the Premises, except for use by Lessee of Underwriter's Laboratory approved equipment for the preparation of coffee, tea, hot chocolate, soups, and snack foods that can be prepared in a microwave oven provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations and is provided only for the convenience of Tenant and its employees and invitees. Neither Tenant nor any of Tenant's Parties shall cause or permit any unusual or objectionable odors to be produced in or emanate from the Premises.

Landlord will furnish Tenant with two keys to each door lock in the Premises. Landlord may make a reasonable charge for these and any additional keys. Tenant shall not have any additional keys made. No additional locks or bolts or any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made to existing locks or the mechanisms thereof without prior consent of Landlord and provided such consent is granted, Landlord shall then install same at Tenant's expense. Landlord shall retain a duplicate set of keys to all entrance doors to the Premises and to all doors within the Premises. Tenant must, upon the termination of its tenancy, give Landlord all keys to stores, offices or toilet rooms, either furnished to, or otherwise procured by Tenant. In the event of a loss of such keys, Tenant shall pay Landlord the cost of replacing the same or for changing the lock or locks opened by any lost key if Landlord shall deem it necessary to make such change.

The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises for general office or medical office purposes. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes. Neither Tenant nor any of Tenant's Parties shall at any time bring or keep upon the Premises any inflammable, or combustible or explosive fluid, chemical or substance.

The moving of furniture, fixtures, freight, construction materials or bulky items of any kind cannot be made without prior approval by Landlord. Such items may be moved only during such times as Landlord may specify including weekends or non-business hours and only with Landlord's presence during such activities. The persons employed by Tenant for such work must be acceptable to Landlord. Landlord reserves the right to inspect all furniture, fixtures, freight, construction materials or other bulky items to be brought into the Building and to exclude from the Building items which violate any of these Rules and Regulations or the Lease. Tenant take all steps necessary to protect the Building and the common areas (including lobbies, hallways, stairwells, elevator, railings, doors, light fixtures and flooring) from damage resulting from the moving of furniture, fixtures, freight, construction materials or bulky items by or for Tenant. Landlord shall have the right to require Tenant to provide a cash deposit to Landlord to be used by Landlord for the repair of any damage to the Building resulting from the moving of furniture, fixtures, freight, construction materials or bulky items by or for Tenant. Landlord reserves the right to prescribe the weight and position of all heavy items (including file and storage cabinets), which must be placed upon supports approved by Landlord. Business machines and other equipment shall be placed and maintained by Tenant at Tenant's expense in locations sufficient, in Landlord's reasonable judgment, to absorb and prevent unreasonable vibration and prevent noise and annoyance. Only hand trucks equipped with rubber tires, side guards, and security straps are allowed in the Building. Any of the foregoing notwithstanding, Landlord shall not be responsible for any loss of or damage to any property from any cause whatsoever. Any damage done to the Building by moving or maintaining such property shall be repaired solely at the expense of Tenant. Tenant shall not use the elevator for the moving of furniture, fixtures, freight, construction materials or bulky items unless the walls and floor of the elevator are protected with protective pads and plywood flooring protector which are available from Landlord.

No awning or other item shall be attached to the outside wall of the Building by Tenant without the prior written consent of Landlord. Draperies or other window coverings, whether or not furnished by Landlord, and any additional window coverings desired by Tenant shall be installed at Tenant's expense and must be of such uniform shape, color, material and make as prescribed by Landlord. No files, cabinets, boxes, containers or similar items shall be placed in, against or adjacent to any window of the Premises so as to be visible from the outside of the Building.

Tenant shall not employ any person or persons other than Landlord's janitor for the purpose of cleaning the Premises without the prior written consent of Landlord. Janitorial services provided by Landlord, if any, shall include ordinary dusting and cleaning by a janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, moving of furniture or other special services. Landlord shall not be responsible to Tenant for any loss of or damage to property on the Premises however occurring.

Landlord reserves the right to control access to the Building by all persons after the Building operating hours and all day on Sundays and legal holidays. Tenant and its employees or agents must be sure that the doors to the Building are securely closed and locked when leaving after the normal hours of business for the Building. Tenant or any of Tenant's Parties entering or leaving the Building at any time when it is locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access is known to the employee or agent of Landlord responsible for the Building, or unless the person seeking access has proper identification or has previously arranged for access to the Building. Landlord and its agents shall in no case be liable for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

The normal hours of operation of the Building ("Normal Business Hours") are 8:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. Such hours are subject to change by Landlord. Access to the Building and Property will be permitted during such hours. If Tenant desires access during other hours or on a Sunday or legal holiday, Tenant shall make appropriate prior arrangements with Landlord. Tenant will be responsible for any additional costs which may be incurred for extended hours of operations including, but not limited to, charges for heating and air conditioning services, electricity consumption, and security services.

Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to diminish the reputation of the Building or its desirability as an office and medical building and, upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising. Tenant shall not distribute any advertising material in the common areas of the Building or outside of the Premises.

No physician, surgeon, dentist, attorney, or other professional Tenant shall advertise in any manner which is prohibited by the code of ethics of the recognized association for such Tenant's profession.

No vending or coin operated machines shall be placed by Tenant within the Premises without the prior consent of Landlord.

The requirements of Tenant will be attended to only upon written application to Landlord. Employees of Landlord or of contractors or agents retained by Landlord shall not perform any work or do anything outside of their regular duties except under special instructions from Landlord.

Tenant shall not use any method of heating or air conditioning other than that which may be supplied by Landlord without Landlord's prior written consent.

In all carpeted areas where desks and chairs that are utilized by Tenant, Tenant shall, at Tenant's cost, place mats under each and every chair in order to protect carpeting from unnecessary wear and tear.

Tenant shall not waste electricity, water or utilities and agrees to cooperate fully with Landlord to assure the most effective and efficient operation of the Building's heating and air condition systems. Tenant shall refrain from attempting to adjust any controls, other than room thermostats (if any) installed for Tenant's use.

Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental authority or agency.

Tenant assumes any and all responsibility for protecting its Premises from theft, robbery, and pilferage. Other than during normal business hours for the Building, Tenant shall keep its access doors locked and keep other means of entry to the Premises secured.

Landlord shall have the right, but not the obligation, to control access to the Building at all times by messenger and delivery personnel, including without limitation, the right to refuse access unless Tenant is available to accept delivery. In no event shall Landlord or Landlord's agents accept any delivery on behalf of Tenant unless Landlord has consented to the same and arrangements satisfactory to Landlord have been made in advance. Landlord and its agents shall in no case be liable for damages arising from admission to or exclusion from the Building of any messenger or delivery personnel.

Tenant and its invitees shall comply with all speed limit, curb markings and directional and other signage located in or about the driveways and parking areas. All parking spaces are unreserved and unassigned unless otherwise designated. All parking spaces shall be used only for parking of vehicles no larger than full size passenger automobiles, sports utility vehicles, pickup trucks and other non-commercial vehicles. The parking and drive areas of the Property shall be used only for parking and vehicle access for which they are intended, and shall be used exclusively by Tenant's patients, customers, invitees, and visitors only during the hours of 8:00am to 5pm, Monday through Friday. Tenant's employees shall not use the parking areas of the Property. No vehicle shall be left standing overnight, parked in any fire lane, walkway, or areas designated as "no parking." Landlord shall have the right to place violation stickers upon any vehicle that is in violation and/or have the vehicle towed at the owner's expense.

Tenant shall keep the public areas of the Building and the Property free of all debris, trash and rubbish generated by Tenant's use of the Premises.

Landlord does not provide any security services for the Building or the Property. Tenant shall provide all security services and devices deemed appropriate by Tenant for the safety of Tenant, Tenant's Parties and the Premises.

No birds or animals shall be brought into the Building or kept in or about the Premises except for service animals. No bicycles or shopping carts shall be brought into the Building or kept in or about the Premises.

Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything in or about the Premises, which shall in any way increase the rate of any insurance on the Premises, the Building or any other tenant's premises in the Building, or conflict with the regulations of the Fire Department or fire laws, or with any insurance policy upon the Building, or any part thereof.

No hand trucks or vehicles, other than a wheel chair for an individual, shall be used in the elevator without Landlord's prior approval. Any hand trucks permitted in the Building must be equipped with soft rubber tires and rubber side guards.

In the event any demonstration, picketing, or other event or commotion is directed primarily at Tenant, Landlord may, but shall not be obligated to, charge directly to Tenant any additional direct or indirect costs occasioned thereby.

Canvassing, soliciting and peddling in the Building or on the Property is prohibited except from within the Premises.

Landlord shall have no liability to any tenant by reason of the non-compliance with or violation of these rules and regulations by any tenant.

These rules and regulations are in addition to, and shall not be construed in any manner to modify or amend, in whole or in part, the covenants and agreements contained in any lease of a premises in the Building.

Tenant shall be liable for all damage and injury to persons and property resulting from any non-compliance or violation of these rules and regulations by Tenant or any of Tenant's Parties.

Tenant shall not install or display any sign outside of the Premises. Landlord shall obtain, install and remove Building standard directory and suite signs, and exterior signs, if any, all at Tenant's cost and expense.

Tenant and Tenant's Parties shall not go upon the roof of the Building.

Landlord will provide Tenant with one set of keys consisting of one key for the exterior doors of the Building, one key for the public restrooms in the Building and one key to the Premises. If Tenant requires additional keys for the exterior doors of the Building or for the public restrooms, Landlord will have duplicate keys made at Tenant's expenses. Keys to the exterior doors of the Building or to the public restrooms are not to be duplicated by Tenant. Tenant shall be responsible for the safekeeping of all keys. If Tenant or any of Tenant's Parties loses any key to the exterior doors of the Building, Tenant shall immediately notify Landlord, and Tenant shall be responsible for any loss or damage resulting such loss including, but not limited to, the cost of rekeying the exterior doors of the Building and providing new keys to Tenant and the other tenants of the Building. Upon expiration or termination of this Lease, Tenant shall return to Landlord all keys (including duplicate keys).

The trash dumpsters and bins provided by Landlord for the use of the tenants of the Building shall be used only for the disposal of normal office trash. Trash and debris resulting from moving (including wooden pallets and boxes), construction, medical procedures (including any biologically hazardous material, needles, drugs, chemicals or human wastes) and other activities other than office activities shall be properly stored in the Premises and disposed of separately by Tenant at Tenant's cost.

Landlord reserves the right to amend or modify these rules and regulations and to make such other and further rules and regulations in its judgment may from time to time be necessary for the safety, cleanliness, and preservation of good order in the Building and on the Property.

Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other lessee or lessees, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Building.

## LEASE AGREEMENT

This Lease Agreement ("Lease") entered into and effective on **February 1, 2021** ("Effective Date") is made by and between **SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**, a local health care district organized and operating pursuant to Division 23 of the California Health and Safety Code ("Landlord"), and **MONTEREY BAY GI CONSULTANTS MEDICAL GROUP, INC.**, a California professional medical corporation.

1. **PREMISES.** Landlord leases to Tenant, and Tenant leases from Landlord, upon terms and conditions set forth in this Lease, the premises described as **Suite 201 consisting of three thousand one hundred seven (3,107) square feet** ("Premises") in the **medical office building located at 212 San Jose Street, Salinas, California** ("Building") owned by Landlord. The Building, real property upon which the Building is located, and improvements located on such real property are referred to collectively as the "Property."

2. **POSSESSION, OCCUPANCY, AND TERM COMMENCEMENT.** Landlord shall deliver possession and occupancy of the Premises to Tenant and the Initial Term of the Lease shall commence upon completion of Tenant Improvements by Landlord and issuance of a certificate of occupancy by the City of Salinas ("Term Commencement Date"). Tenant Improvements to the Premises shall be made by Landlord based on specifications provided by Tenant based on plans and budget agreed to by Tenant and Landlord in advance of Effective Date. Tenant acknowledges that no representations regarding the condition of the Premises or improvements to the Premises have been made by Landlord unless expressly set forth in this Lease, or as mutually agreed to by the parties pursuant to written specifications for the Tenant Improvements.

3. **TERM.** The Term of this Lease shall commence on the Term Commencement Date and continue in full force and effect for a period of **five (5) years** ("Initial Term"), or until this Lease is extended or terminated as otherwise provided in this Lease.

3.1 **OPTIONS TO EXTEND.** Landlord grants to Tenant the right to extend the term of this Lease beyond the Initial Term as it applies to the Premises for **three (3) additional terms of sixty (60) months each** (each an "Extended Term"). Tenant shall exercise each Extended Term with respect to the Premises, if at all, by giving Landlord written notice exercising such each such Extended Term not later than six (6) months prior to the then scheduled date for expiration of this Lease. In no event shall any purported exercise of an Extended Term by Tenant be effective if any event of default by Tenant shall exist under this Lease at the time of giving of such notice or on the date of commencement of the Extended Term, in which event Tenant's exercise of the Extended Term shall be null and void and the term of this Lease shall end and expire on the then scheduled date for expiration of the term without regard to the option or the Extended Term. Time is of the essence in the giving of notice of the exercise of each of Extended Term. Each Extended Term shall be upon the terms and conditions of this Lease. Base Rent for each Extended Term shall be adjusted as provided in Section 6.3 of this Lease.

4. **USE.**

4.1 **General.** Tenant shall use the Premises only as a **medical office** ("Permitted Use"). Tenant shall control Tenant's employees, agents, patients, visitors, invitees, contractors, and subtenants (collectively, "Tenant's Parties") in such a manner that Tenant and Tenant's Parties comply with the rules and regulations established by Landlord. Landlord grants to Tenant a revocable license for use of the parking areas and driveways of the Property by Tenant and Tenant's Parties on a nonexclusive basis in common with other parties occupying the Building, subject to rules and regulations as Landlord may from time to time prescribe. Landlord may revoke such license upon occurrence of an event of default by Tenant. Notwithstanding any provision of this Lease to the contrary, Landlord shall have the right to restrict the parking provided on the Property and/or to require Tenant's employees to park their vehicles in off-site locations.

4.2 **Limitations.** Tenant shall not permit any odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises, or take any action which would disturb, obstruct, or endanger any other tenant of the Building or interfere with any tenant's use of its respective premises or the Property. Storage outside the Premises of materials, vehicles, or any other items is prohibited. Tenant shall not use or allow the Premises to be used for any improper, immoral, or unlawful purpose. Tenant shall not cause or maintain or permit any nuisance in, on or about the Premises or the Property. Tenant shall not commit waste in, on, or about the Premises. Tenant shall not allow any sale by auction upon the Premises. Tenant shall not place or cause to be placed any load upon the floors, walls or any other part of the Premises or the Building that is in excess of their bearing capacity.



If Landlord reasonably determines that any action by Tenant places a load upon the floors, walls or any other portion of the Premises or the Building that is in excess of their capacity, then Landlord may retain an engineer to determine how to reduce excess load, and Tenant shall implement the recommendations of the engineer and shall pay to Landlord the fees and costs of such engineer upon written demand. Tenant shall not place any harmful liquids in the drainage or plumbing systems of the Building or Property. No waste, materials or refuse shall be permitted to remain outside the Premises, except in trash containers placed inside enclosures designated for that purpose by Landlord.

4.3 Compliance with Regulations. By entering the Premises, Tenant accepts the Premises in the condition existing as of the date of such entry, subject to all existing or future applicable municipal, state and federal and other governmental statutes, regulations, laws, and ordinances, including zoning ordinances and regulations governing and relating to the use, occupancy and possession of the Premises and the use, storage, generation and disposal of Hazardous Materials in, on and under the Premises (collectively "Regulations"). Tenant shall, at Tenant's sole expense, strictly comply with all Regulations relating to the Premises and the use of the Premises and/or the use, storage, generation of Hazardous Materials in, on and under the Premises. Tenant shall at its sole cost and expense obtain any and all licenses or permits necessary for Tenant's use of the Premises. Tenant shall promptly comply with the requirements of any board of fire underwriters or other similar body. Tenant shall not do or permit anything to be done in, on, or about the Premises or bring or keep anything on the Premises which will in any way increase the rate of any insurance upon the Premises, Building or Property or upon any contents therein, or cause a cancellation of insurance or otherwise affect insurance in any manner. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all loss, cost, expense, damage, attorneys' fees or liability arising out of the failure of Tenant to comply with any Regulations or with the requirements as set forth in this Lease.

4.4 Hazardous Materials. Tenant shall not cause, or allow any of Tenant's Parties to cause, any Hazardous Materials to be used, generated, stored, released or disposed of on or about the Premises, the Building or the Property, except in connection with the Permitted Use of the Premises as specified in the Basic Lease Information. The use, generation, storage, release and/or disposal of any Hazardous Materials by Tenant under this Lease shall be made only in compliance with all federal, state and local statutes, laws ordinances, and all rules and regulations of governmental authorities having jurisdiction. "Hazardous Materials" shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance. Landlord shall have the right at all reasonable times to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions, the costs of all such inspections, tests and investigations to be borne by Tenant. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against all liabilities, losses, costs and expenses, demands, causes of action, claims or judgments directly or indirectly arising out of the use, generation, storage, release or disposal of Hazardous Materials by Tenant or any of Tenant's Parties, which indemnity shall include, without limitation, the cost of any required or necessary repair, cleanup, or detoxification, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the expiration or termination of this Lease. Neither written consent by Landlord to the use, generation, storage or disposal of Hazardous Materials nor strict compliance by Tenant with all Regulations pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification under this Lease. Tenant's obligations of indemnity shall survive the expiration or termination of this Lease.

4.5 Medical, Biological Waste and Sharps. Tenant shall comply with all requirements of Landlord's janitorial service company and shall separate needles, sharps, items contaminated with bodily fluids, and other biologically hazardous materials from routine waste materials to be collected by Landlord's janitorial service company. Tenant, at Tenant's sole cost and expense, shall be solely responsible for, and shall arrange for, the proper, safe collection and disposal of all needles, items contaminated with bodily fluids, and other biologically hazardous materials from the Premises on a daily basis.

5. **RULES AND REGULATIONS**. Tenant shall comply with any rules and regulations Landlord may from time to time prescribe in writing for the purpose of maintaining the proper operation, use, care, cleanliness, safety, traffic flow and general order of the Premises, Building, or Property. Tenant shall cause Tenant's Parties to comply with such rules and regulations. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building with any of the rules and regulations. Landlord's Rules and Regulations as of the date of this Lease are attached as Exhibit B to this Lease.

## 6. RENT.

6.1 Base Rent. Tenant shall pay to Landlord throughout the Initial Term, without notice or demand, Base Rent (NNN-triple net) at the rate of **two dollars and thirty cents (\$2.30) per square foot** of the Premises equal to the amount of **seven thousand one hundred forty-six dollars and ten cents (\$7,146.10)**, payable in monthly installments in advance on or before the first (1<sup>st</sup>) day of each calendar month, without deduction or offset, at the address of Landlord specified by Landlord, or to such other place as Landlord may from time to time designate in writing. Base Rent and Tenant's Proportionate Share of Basic Operating Cost for the first full month of the Term shall be paid by Tenant upon the Term Commencement Date. If the obligation for payment of Base Rent commences on a day other than the first (1<sup>st</sup>) day of a calendar month, then Base Rent shall be prorated based on a thirty (30) day month and the prorated installment shall be paid on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) calendar month following the Term Commencement Date.

6.2 Additional Rent. All monies other than Base Rent required to be paid by Tenant under this Lease, including, but not limited to, any interest or late charge under this Lease, any sums paid and costs incurred by Landlord pursuant to Section 31, and Tenant's Proportionate Share of Basic Operating Cost, as specified in Section 7, shall be additional rent ("Additional Rent"). "Rent" shall mean Base Rent and Additional Rent.

6.3 Base Rent Adjustment for Extended Terms. The Monthly Base Rent set forth in Section 6.1 of this Lease shall apply during the Initial Term of this Lease. Upon exercise by Tenant of any option to extend this Lease, the parties shall mutually agree upon a then-current fair market value for Base Rent for the Extended Term based upon a market analysis provided by a third party with experience determining market values in the area.

## 7. BASIC OPERATING COST.

7.1 Definition of Basic Operating Cost. In addition to the Base Rent, Tenant shall pay Tenant's Proportionate Share as defined in the Basic Lease Information of Basic Operating Cost as set forth below. Landlord shall account for each item of Basic Operating Cost as either a cost attributable to the Building or to the Property, as determined by Landlord in Landlord's sole discretion, and unless provided to the contrary in this Lease, Tenant shall pay Tenant's Proportionate Share of each item of Basic Operating Cost, as specified in the Basic Lease Information. "Basic Operating Cost" shall mean all expenses and costs which Landlord shall pay or become obligated to pay, because of or in connection with the ownership, management, maintenance, preservation and operation of the Property and its supporting facilities (determined in accordance with generally accepted accounting principles, consistently applied) including but not limited to the following:

a. Taxes. All real property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, housing fund assessments, open space charges, assessments, levies, fees or charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of every kind (including fees "in-lieu" of any such tax or assessment) which are assessed, levied, charged, confirmed, or imposed by any public authority upon the Property, its operations or the rentals received by Landlord from the Property or any portion or component thereof, or any tax imposed in substitution, partially or totally, of any foregoing item, or any additional item the nature of which is similar to any of the foregoing items (all of the foregoing being hereinafter collectively referred to as "real property taxes"), except (i) inheritance or estate taxes imposed upon or assessed against the Property, or any part thereof or interest therein, and (ii) taxes computed upon the basis of the net income of Landlord or the owner of any interest therein, except as otherwise provided in the following sentence.

b. Insurance. All insurance premiums and costs, including but not limited to, any deductible amounts, incurred by Landlord with respect to Landlord's insurance, as set forth in Section 8.

c. Repairs and Improvements. Repairs, replacements and general maintenance for the Premises, Building and Property, except for those repairs expressly made the responsibility of Landlord pursuant to the provisions of this Lease, repairs to the extent paid for by proceeds of insurance or by Tenant or other third parties, and alterations attributable solely to tenants of the Building other than Tenant.

d. Legal and Accounting. Legal and accounting expenses relating to the Property, including the cost of audits by certified public accountants.

e. Services. All expenses related to maintenance, janitorial, and services, costs of supplies, and equipment, used in maintaining Premises, Building, and Property, and associated equipment, and the adjacent sidewalks, driveways, parking and service areas, including, without limitation, alarm service, window cleaning, elevator maintenance, Building interior and exterior maintenance and Property landscaping. Landlord will provide routine janitorial service to the Premises (excluding supplies and consumable items) in accordance with the service agreement with Landlord's janitorial service company.

f. Utilities. Costs of electricity, water, gas, sewer and other utility services supplied to or consumed on all or a portion of the Premises, Building or Property that are not billed directly to tenants, including, but not limited to, surcharges, assessments or impositions levied, assessed or imposed upon the Premises, the Building or the Property or any part thereof, or upon the use and occupancy of the Premises, the Building or the Property, as a result of any rationing of utility services or restriction on the use or quality of utility services supplied to the Premises, the Building and/or the Property.

If the Building is not fully occupied during any fiscal year of the Term as determined by Landlord, an adjustment shall be made in computing Basic Operating Cost for such year so that Tenant pays an equitable portion of all variable items of Basic Operating Cost, as reasonably determined by Landlord; provided, however, that Landlord shall not be entitled to collect in excess of one hundred percent (100%) of the total Basic Operating Cost from all of the tenants in the Building including Tenant.

7.2 Exclusions. Basic Operating Cost shall not include specific costs incurred for the account of, separately billed to, and paid by specific tenants. Notwithstanding anything in this Lease to the contrary, where Landlord, in Landlord's sole discretion, deems Tenant to be responsible for any amounts greater than Tenant's Proportionate Share, Landlord shall have the right to allocate costs in any manner Landlord deems appropriate.

7.3 Payment of Estimated Basic Operating Cost. "Estimated Basic Operating Cost" for any particular fiscal year shall mean Landlord's estimate of the Basic Operating Cost for such fiscal year made as hereinafter provided. Landlord shall have the right from time to time to revise its fiscal year and interim accounting periods so long as the periods as so revised are reconciled with prior periods in accordance with generally accepted accounting principles applied in a consistent manner. During the last month of each fiscal year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Basic Operating Cost for the ensuing fiscal year. Tenant shall pay Tenant's Proportionate Share of the Estimated Basic Operating Cost with installments of Base Rent for the fiscal year to which the Estimated Basic Operating Cost applies in monthly installments on the first (1<sup>st</sup>) day of each calendar month during such fiscal year, in advance. If at any time during the course of the fiscal year, Landlord determines that Basic Operating Cost is projected to vary from the then Estimated Basic Operating Cost by more than ten percent (10%), Landlord may, by written notice to Tenant, revise the Estimated Basic Operating Cost for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such fiscal year shall be adjusted so that by the end of such fiscal year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Basic Operating Cost for such fiscal year.

7.4 Computation of Basic Operating Cost Adjustment. "Basic Operating Cost Adjustment" shall mean the difference between Estimated Basic Operating Cost and Basic Operating Cost for any fiscal year determined as hereinafter provided. Within one hundred twenty (120) days after the end of each fiscal year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a written statement of Basic Operating Cost for the fiscal year just ended and a computation of Basic Operating Cost Adjustment (the "Statement"). If the Statement shows that the total of Tenant's payments based upon the Estimated Basic Operating Cost is less than Tenant's Proportionate Share of the Basic Operating Cost, then Tenant shall pay the difference to Landlord within twenty (20) days after receipt of such statement. If the Statement shows that the total of Tenant's payments of the Estimated Basic Operating Cost exceeds Tenant's Proportionate Share of the Basic Operating Cost, then provided that Tenant is not in default under this Lease Landlord shall credit the excess to the next installment of the Estimated Basic Operating Cost payable by Tenant. If this Lease has been terminated or the Term hereof has expired prior to the date of the Statement, then the Basic Operating Cost Adjustment shall be paid by the appropriate party within twenty (20) days after the date of delivery of the Statement. Should this Lease commence or terminate at any time other than the first day of the fiscal year, Tenant's Proportionate Share of the Basic Operating Cost Adjustment shall be prorated based upon the number of calendar days during such fiscal year that this Lease is in effect.

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7.5 Net Lease. This shall be an absolute net Lease and Base Rent shall be paid to Landlord absolutely net of all costs and expenses of the Building and Property, except as specifically provided to the contrary in this Lease. The provisions for payment of Basic Operating Cost and the Basic Operating Cost Adjustment are intended to pass onto Tenant and reimburse Landlord for all costs and expenses of the nature described in Section 7.1 incurred in connection with the ownership, maintenance and operation of the Building and Property and such additional facilities as may be determined by Landlord to be necessary to the Building or Property.

7.6 Tenant Audit. Each Statement shall be conclusive and binding upon Tenant unless within thirty (30) days after receipt of the Statement Tenant shall notify Landlord in writing that Tenant disputes the correctness of such Statement, specifying the particular respects in which the Statement is claimed to be incorrect. Following Landlord's receipt of Tenant's notice disputing any Statement, Landlord and Tenant shall meet and attempt to resolve the matters in dispute. If the matters in dispute are not resolved by Landlord and Tenant within thirty (30) days following Landlord's receipt of Tenant's dispute notice, then Tenant shall have the right, by written notice delivered to Landlord not later than sixty (60) days following the receipt of the Statement in dispute and upon the condition that Tenant shall first pay to Landlord the full amount in dispute, to request an independent audit of Landlord's books and records with respect to Basic Operating Cost for the matters in dispute. The independent audit of the books and records shall be conducted by a Certified Public Accountant not then employed by, affiliated with or related to either Landlord or Tenant who is to be compensated on an hourly basis and is otherwise acceptable to both Landlord and Tenant ("CPA"). If, within thirty (30) days after Landlord's receipt of Tenant's notice requesting an audit, Landlord and Tenant are unable to agree on the CPA to conduct such audit, then Landlord may designate an accounting firm not then employed by, affiliated with or related to Landlord or Tenant to conduct such audit. Such audit shall be completed and the final audit report delivered to Landlord and Tenant no later than thirty (30) days after Tenant's notice requesting such audit. Tenant shall have the right to request an audit any Statement provided by Landlord only once. The Basic Operating Cost Adjustment shall be appropriately adjusted on the basis of such audit. Tenant shall pay the costs of the audit and the fees of the auditors; provided, however, if such audit discloses a liability for a refund to Tenant in excess of ten percent (10%) of Tenant's Proportionate Share of the Basic Operating Cost Adjustment previously reported in the Statement, then the reasonable cost of such audit shall be borne by Landlord.

## 8. INSURANCE AND INDEMNIFICATION.

8.1 Landlord's Insurance. Landlord agrees to maintain insurance insuring the Building against fire, lightning, vandalism and malicious mischief (including, if Landlord elects in its sole discretion, "All Risk" or "Special Form", earthquake, and/or flood insurance coverage), in an amount not less than eighty percent (80%) of the replacement cost thereof, with deductibles and the form and endorsements of such coverage as selected by Landlord in its sole discretion. Such insurance may also include, at Landlord's option, insurance against loss of Base Rent and Additional Rent, in an amount equal to the amount of Base Rent and Additional Rent payable by Tenant for a period of at least twelve (12) months commencing on the date of loss. Such insurance shall be for the sole benefit of Landlord and under Landlord's sole control. Landlord shall not be obligated to insure any furniture, equipment, machinery, goods or supplies which Tenant may keep or maintain in the Premises, or any leasehold improvements, additions or alterations within the Premises. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, including, without limitation, liability insurance, in such amounts and on such terms as Landlord shall determine from time to time.

8.2 Tenant's Insurance. Tenant shall procure at Tenant's sole cost and expense and keep in effect from the Term Commencement Date and at all times during the Term of this Lease the following forms of insurance:

a. Property Insurance. "All-risk" or "Special Form" property insurance, with theft, vandalism, sprinkler leakage and malicious mischief endorsements, on all personal property, equipment and fixtures of Tenant and all leasehold improvements, additions and alterations made by or for Tenant to the Premises, insuring such property for the full replacement value of such property, and replacement and/or repair of plate glass within the Premises. So long as this Lease remains in effect, the proceeds of Tenant's property insurance shall be used solely for the repair or replacement of the fixtures, equipment and improvements so insured. Landlord shall be named as a loss payee on such insurance.

b. Liability Insurance. Commercial General Liability insurance applying to the use and occupancy of the Premises and the Property, and any part of either, and any areas adjacent thereto, and the business operated by Tenant, or by any other occupant on the Premises. Such insurance shall include Broad Form Contractual Liability insurance coverage insuring all of Tenant's indemnity obligations under

this Lease. Such coverage shall have a minimum combined single limit of liability (per occurrence and aggregate) of at least Three Million Dollars (\$3,000,000.00). All such policies shall be written to apply to all bodily injury, property damage or loss, personal injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add Landlord, Landlord's property manager and any person or entity holding an interest in or encumbrance on the Property or any part thereof, as an additional insured, and shall provide that such coverage shall be primary and not contributory with any insurance maintained by Landlord. Such policies shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; (iii) deleting any liquor liability exclusion; (iv) providing broad form property damage, products completed operations, and owner's protective and personal injury coverage; and (v) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds or additional insureds shall not reduce or void coverage to the other named insureds or additional insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Said coverage shall be written on an "occurrence" basis.

c. Workers' Compensation Insurance. Workers' Compensation insurance with limits of liability not less than the minimum amount required by applicable law, and Employer's Liability insurance with limits of liability not less than that specified for Tenant's liability insurance. Landlord, Landlord's property manager and any person or entity holding an interest in or encumbrance on the Property or any part thereof shall be named as an additional insured under Tenant's Employer's Liability insurance.

d. General Insurance Requirements. All coverages described in this Section shall be endorsed to provide Landlord with thirty (30) days' notice of cancellation or change in terms or coverage. If at any time during the Term the amount or coverage of insurance which Tenant is required to carry under this Section. is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or tenants of properties located in the general area in which the Property is located which are similar to and operated for similar purposes as the Property, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required. All insurance policies required to be carried by Tenant under this Lease shall be written by companies rated NVIII or better in "Best's Insurance Guide" and authorized to do business in California. Deductible amounts shall not exceed One Thousand Dollars (\$1,000.00). Tenant shall deliver to Landlord on or before the Term Commencement Date, and thereafter at least thirty (30) days before the expiration dates of the expiring policies, certified copies of Tenant's insurance policies, or a satisfactory certificate evidencing the same issued by the insurer, showing that all premiums have been paid for the full policy period (but in no event less than one (1) year); and, in the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at Landlord's option and in addition to Landlord's other remedies hereunder, procure the same for the account of and at the expense of Tenant, and the costs incurred by Landlord, together with interest at the Applicable Interest Rate from the date incurred, shall be paid to Landlord by Tenant as Additional Rent upon demand.

e. Minimum Requirements. The requirements for Tenant's insurance contained in this Lease are minimum requirements and Tenant shall be solely responsible for determining the scope and amount of insurance coverage to be maintained by Tenant. The scope and amount of insurance coverage required in this Lease shall not limit the liability of Tenant under this Lease.

8.3 Indemnification. Landlord shall not be liable to Tenant for any loss or damage to person or property caused by theft, fire, acts of nature, acts of a public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority or for any damage or inconvenience which may arise through repair or alteration of any part of the Building or Property or failure to make any such repair, except as expressly otherwise provided in Section 10. Tenant shall indemnify, defend by counsel acceptable to Landlord, protect and hold Landlord harmless from and against any and all liabilities, losses, costs, damages, injuries or expenses, including reasonable attorneys' fees and court costs, arising out of or related to: (i) claims of injury to or death of persons or damage to property occurring or resulting directly or indirectly from the use or occupancy of the Premises, or from activities of Tenant, Tenant's Parties or anyone in or about the Premises or Property, or from any cause whatsoever; (ii) claims for work or labor performed, or for materials or supplies furnished to or at the request of Tenant in connection with performance of any work done for the account of

Tenant within the Premises or Property; and (iii) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease. The foregoing indemnity shall not be applicable to claims arising from the sole active negligence or willful misconduct of Landlord. The provisions of this Section 8.3. shall survive the expiration or termination of this Lease with respect to any claims or liability occurring or the onset of which occurred prior to such expiration or termination.

9. **WAIVER OF SUBROGATION.** To the maximum extent permitted by law and without affecting the coverage provided by insurance to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for damage to property including the personal property of Tenant and Tenant's Parties and damage to the Premises, Building and Property, to the extent such damage is covered by insurance maintained or required to be maintained by the parties and to the extent of insurance proceeds actually recovered. This provision is intended to waive fully, and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The insurance coverages obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this Section 9.

10. **LANDLORD'S REPAIRS AND SERVICES.** Landlord shall at Landlord's expense maintain the structural soundness of the structural beams of the roof, foundations and exterior walls of the Building in good repair, reasonable wear and tear and casualty damage excepted. The term "exterior walls" as used herein shall not include windows, glass or plate glass, doors, storefronts or office entries. Landlord shall perform on behalf of Tenant and other tenants of the Building and as an item of Basic Operating Cost, the maintenance of the Building, Property, and public and common areas of the Building and Property, including but not limited to the maintenance, repair or replacement (as determined by Landlord in its sole discretion) of the roof and roof membrane; pest extermination; cleaning and maintenance of the landscaped areas, parking areas, driveways and truck staging areas; maintenance of fire sprinkler systems (if any), sanitary and storm sewer lines, utility and telephone lines and equipment servicing and outside of the Premises and the premises of other tenants; exterior lighting (if any), and anything which affects the operation or exterior appearance of the Building or Property, which determination shall be at Landlord's sole discretion. Landlord may enter into a regularly scheduled preventive maintenance/service contracts with a maintenance contractors for periodic inspection and servicing of elements of the Building including, but not limited to, the heating and air conditioning systems and elevator serving the Building. Except for the expenses directly involving the items specifically described in the first sentence of this Section 10, Tenant shall reimburse Landlord for all such costs in accordance with Section 7. Any damage caused by or repairs necessitated by any act or omission of Tenant or Tenant's Parties may be repaired by Landlord at Landlord's option and at Tenant's expense, and the costs incurred by Landlord, together with interest at the Applicable Interest Rate from the date incurred, shall be paid to Landlord by Tenant as Additional Rent. Tenant shall immediately give Landlord written notice of any defect or need for repairs after which Landlord shall have a reasonable time within which to repair. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance and Landlord shall not be liable for any injury to or interference with Tenant's business arising from the performance of any repairs, maintenance, alteration, or improvement in or to any portion of the Premises, Building, or Property or to any fixtures, appurtenances or equipment serving the Premises, Building, or Property or the failure of Landlord to perform any repairs, maintenance, alteration or improvement. Landlord's obligation under this Section 10 is subject to the condition precedent that Landlord shall have received written notice of the need for such repairs and maintenance and has been afforded a reasonable time after receipt of such notice to perform such repairs and maintenance.

11. **TENANT'S REPAIRS.** Tenant shall at Tenant's expense maintain all parts of the Premises in a good clean and secure condition and promptly make all necessary repairs and replacements, including but not limited to all windows, glass, doors, walls and wall finishes, floor covering, heating, ventilating and air conditioning systems and fixtures, plumbing work and fixtures, electrical and lighting systems and fixtures, and fire sprinklers (if any). Tenant shall at Tenant's expense also perform regular removal of trash and debris except as provided by Landlord's janitorial service company. Tenant shall not damage any part of the Premises or disturb the integrity and support provided by any wall and shall, at its sole expense, immediately repair any damage to any wall caused by Tenant or Tenant's Parties. Landlord and Tenant agree that the rights and obligations of the parties regarding the repair and maintenance of the Premises, Building and Property are to be governed solely by the provisions of Sections 10 and 11. To the fullest extent permitted by law, Tenant waives any right which Tenant may now or hereafter hold to make any repairs at the expense of Landlord, to require Landlord to make any repairs other than those specified in Section 10 or to apply any Rent to the making of any repairs.

12. **ALTERATIONS.** Tenant shall not make, or allow to be made, any alterations additions, improvements or changes in the improvements in, about or to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld with respect to proposed alterations, additions, improvements or changes which: (i) comply with all applicable laws, ordinances, rules and regulations; (ii) are in Landlord's opinion compatible with the Building and its mechanical, plumbing, electrical, HVAC systems; and (iii) will not interfere with the use and occupancy of any other portion of the Building by any other tenant or its invitees. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, Building or Property whatsoever. If Tenant fails to so remove such alterations, additions or improvements or Tenant's trade fixtures or furniture, Landlord may keep and use them or remove them and cause them to be stored or sold in accordance with applicable law, at Tenant's sole expense. In addition to and wholly apart from Tenant's obligation to pay Tenant's Proportionate Share of Basic Operating Cost, Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against Tenant's personal property, on the value of the alterations, additions, improvements or changes within the Premises, and on Tenant's interest in the Premises created pursuant to this Lease. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

13. **SIGNS.** Tenant shall not place or permit to be placed any sign, display, notice or advertisement which is visible in or from the corridors, common areas or exterior of the Premises or Building. Landlord shall furnish standard signage at the Premises and on the lobby directory consistent with the signage of the Building, which Landlord shall obtain and install at Tenant's expense. Landlord shall remove all such signage prior to the termination of this Lease at Tenant's expense. As a Basic Operating Cost, Landlord will provide standard signage in the common areas of the Building identifying the tenants of the Building including Tenant. If additional exterior signage is provided by Landlord, the cost of the construction and maintenance of such signage shall be included in Basic Operating Cost.

14. **INSPECTION.** After reasonable notice, except in emergencies where no such notice shall be required, Landlord, and Landlord's agents and representatives, shall have the right to enter the Premises: to inspect the same, to perform such work as may be permitted or required hereunder; to make repairs or alterations to the Premises, Building or Property or to other tenant premises within the Building; to deal with emergencies; to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Property; to exhibit the Premises to prospective tenants, purchasers, encumbrancers or others; or for any other purpose as Landlord may deem necessary or desirable; provided, however, that Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business operations. Tenant shall not be entitled to any abatement of Rent by reason of the exercise of any such right of entry and the exercise of such right of entry shall not in any event be deemed a constructive eviction. At any time within one hundred eighty (180) days prior to the end of the Term, Landlord shall have the right to erect on the Premises, Building and/or Property a suitable sign indicating that the Premises are available for lease. Tenant shall give written notice to Landlord at least thirty (30) days prior to expiration of the Term of this Lease and shall meet with Landlord for a joint inspection of the Premises at the time of such expiration. In the event of Tenant's failure to give such notice or participate in such joint inspection, Landlord's inspection at or after expiration of the Term of this Lease shall be deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

15. **UTILITIES.** Tenant shall pay directly for all water, gas, heat, air conditioning, light, power, telephone, sewer, sprinkler charges and other utilities and services used on or from the Premises, together with any taxes, penalties, surcharges or the like pertaining thereto, and maintenance charges for utilities and shall furnish all electric light bulbs, ballasts and tubes. If any such services are not separately metered to the Premises, Tenant shall pay a reasonable proportion of all charges for such utilities and services jointly serving other premises, as determined by Landlord. Landlord shall not be liable for any damages directly or indirectly resulting from nor shall the Rent or any monies owed Landlord under this Lease be abated by reason of: (i) the installation, use or interruption of use of any equipment used in connection with the furnishing of any such utilities or services; (ii) the failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by acts of nature, labor disturbances, accidents or other conditions beyond the reasonable control of Landlord; or (iii) the limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or Property. Landlord shall be entitled to cooperate voluntarily with the efforts of national, state or local governmental agencies or utility suppliers in reducing energy or other resource consumption.

16. **SUBORDINATION.** Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease is and shall remain subject and subordinate at all times to: (i) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or Property; and (iii) any mortgage or deed of trust which may now exist or be placed upon the Property, land, ground leases or underlying leases, or Landlord's interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Landlord shall have the right to have this Lease prior to any such ground leases or underlying leases, mortgages or deeds of trust. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to and become the Tenant of the successor in interest to Landlord at the option of such successor in interest. Within ten (10) days after request by Landlord, Tenant shall execute and deliver any documents evidencing or confirming such matters, in the form requested by Landlord or by any ground landlord, mortgagee, or beneficiary under a deed of trust. If Tenant fails to execute and deliver such documents within the time period specified in Landlord's notice (not be less than ten (10) days after receipt of the requested documents by Tenant), then Tenant shall be conclusively deemed to have certified as true and accurate the matters set out in the documents delivered by Landlord to Tenant, and such failure shall, at the election of Landlord, constitute an event of default by Tenant under this Lease.

17. **ESTOPPEL CERTIFICATE.** At any time and from time to time, upon not less than ten (10) days' prior written notice by Landlord, Tenant shall deliver to Landlord, or Landlord's designee, an estoppel certificate stating with such noted factual exceptions that: this Lease is in full force and effect; the date to which Rent has been paid; the Term Commencement Date and the date of expiration of the Term; and such other matters pertaining to this Lease as may be reasonably requested by Landlord. Failure by Tenant to execute and deliver such certificate shall constitute an acknowledgment by Tenant that the statements included in such certificate are true and correct without exception. Landlord and Tenant intend that any statement delivered pursuant to this Section 18 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Property or any interest therein. The parties agree that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease, and shall be an event of default if Tenant fails to fully and timely comply.

18. **NO SECURITY DEPOSIT REQUIRED.** No Security Deposit shall be required under this Lease.

19. **ASSIGNMENT AND SUBLETTING.**

19.1 **General.** Tenant shall not assign or sublet the Premises or any part of the Premises without Landlord's prior written consent, which shall not be unreasonably withheld. Tenant agrees that Landlord operates the Premises and Property as a medical office building supporting the operation of the Landlord's hospital located adjacent to the Premises and Property, and therefore all subtenants or assignees must be considered by Landlord to be complementary to such use. No assignment or subletting by Tenant shall relieve Tenant of any obligation under this Lease. Any assignment or subletting which conflicts with the provisions of this Section 19 shall be void.

19.2 **Bonus Rent.** If any rent or other consideration realized by Tenant (or benefiting Tenant) under any sublease or assignment is in excess of the Base Rent payable under this Lease, then Tenant shall pay to Landlord all of such excess as and when received by Tenant. In any subletting or assignment undertaken by Tenant, Tenant shall diligently seek to obtain the maximum rental amount available in the marketplace for such subletting or assignment. Such consideration shall include all monetary and non-monetary consideration received by Tenant in connection with any such subletting or assignment, whether or not attributable to the value of this Lease or the Premises. Any non-monetary consideration shall be converted to its reasonable monetary equivalent for purposes of this Section 19.2.

19.3 **Corporation.** If Tenant is a corporation, a transfer of corporate shares by sale, assignment, bequest, inheritance, operation of law or other disposition (including a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceedings), so as to result in a change in the control of such corporation or any of its parent corporations by the person or persons owning a majority of said corporate shares as of the date of this Lease, shall constitute an assignment for purposes of this Lease.

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19.4 Partnership. If Tenant is a partnership, joint venture or other business entity, a transfer of the interest of persons, firms or entities responsible for managerial control of Tenant by sale, assignment, bequest, inheritance, operation of law or other disposition, so as to result in a change in the control of said entity as of the date of this Lease and/or a change in the identity of the persons responsible for the general credit obligations of said entity as of the date of this Lease, shall constitute an assignment for all purposes of this Lease.

19.5 No Mortgage, Pledge or Encumbrance. Tenant shall not mortgage, pledge, encumber or otherwise create any lien upon the leasehold estate created by this Lease, any of the interest of Tenant under this Lease, or any interest in or right appurtenant to the Premises.

20. **AUTHORITY OF PARTIES**. Landlord represents that it has full right and authority to enter into this Lease and to perform all of Landlord's obligations. Tenant represents and warrants that it has full right and authority to enter into this Lease and to perform all of Tenant's obligations. Each person executing this Lease on behalf of Tenant represents and warrants that he or she is authorized to bind Tenant to this Lease.

21. **CONDEMNATION**.

21.1 Condemnation Resulting in Termination. If (i) the whole or any substantial part of the Premises are taken or condemned for any public use under any law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively a "taking"), and the taking would, in Landlord's reasonable judgment, prevent or materially interfere with the continued use of the Premises for the use permitted under this Lease, or (ii) the whole or any substantial part of the Building or Property are subject to any taking, then Landlord may terminate this Lease by written notice given to Tenant at any time prior to the taking of physical possession by or the granting of the right of possession to the condemning authority. In the event of such termination, this Lease shall terminate as of the date of the taking of physical possession by or the granting of the right of possession to the condemning authority and the Rent shall be abated during the unexpired portion of this Lease.

21.2 Condemnation Not Resulting in Termination. In the event of any taking which does not result in the termination of this Lease as provided in Section 21.1, this Lease shall not terminate, but the Rent payable during the unexpired portion of the Lease shall be reduced, beginning on the date when the taking of physical possession shall have occurred, in proportion to the floor area of the Premises so taken. In such event, Landlord shall restore the remaining portion of the Premises or Building to a complete architectural unit to the extent of any award received by Landlord for the taking of the Premises or the Building. Landlord's restoration obligation shall not exceed the scope of Landlord's restoration obligation under Section 22.2.

21.3 Award. Landlord shall be entitled to any payment, income, rent, award compensation or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for the value of any unexpired portion of this Lease. Notwithstanding the foregoing, Tenant may seek a separate award from the condemning authority for loss of business, Tenant's personal property, moving costs or loss of goodwill, provided that any such award shall not reduce the amount to which Landlord is otherwise entitled.

21.4 Waiver. Landlord and Tenant agree that the rights and obligations of the parties in the event of the condemnation or taking of any portion of the Premises, the Building or the Property shall be solely governed by the provisions of this Section 23. Landlord and Tenant each hereby waives the provisions of Section 1265.110 of the California Code of Civil Procedure and any other right which Landlord or Tenant may now or hereafter hold to terminate this Lease upon any condemnation or taking of the Premises.

22. **CASUALTY DAMAGE**.

22.1 General. If the Premises or Building should be damaged or destroyed by any casualty, Tenant shall give immediate written notice thereof to Landlord. Within thirty (30) days after Landlord's receipt of such notice, Landlord shall notify Tenant whether in Landlord's opinion such repairs can reasonably be made: (i) within ninety (90) days; (ii) in more than ninety (90) days but in less than one hundred eighty (180) days; or (iii) in more than one hundred eighty (180) days, from the date of such notice. Landlord's determination shall be conclusive and binding on Tenant.

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22.2 Less Than 90 Days. If the Premises or Building should be damaged by any casualty covered under the insurance maintained by Landlord under Section 8.1, but only to such extent that rebuilding or repairs can in Landlord's estimation be reasonably completed within ninety (90) days after the date of such damage, and provided that insurance proceeds are available to fully repair the damage, this Lease shall not terminate, and Landlord shall proceed to rebuild and repair the Premises and/or Building to substantially the condition in which they existed prior to such damage, except that Landlord shall not be required to rebuild, repair or replace any part of the alterations, additions or improvements which may have been placed in, on or about the Premises by or for Tenant or any of Tenant's furniture, fixtures, equipment or other personal property. If the Premises are untenantable in whole or in part following such damage, then, except as otherwise provided in Section 22.5, the Rent payable during the period during which the Premises are untenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds, if any, received by Landlord during the time and to the extent the Premises are unfit for occupancy.

22.3 Greater Than 90 Days. If the Premises or Building should be damaged by any casualty covered by the insurance maintained by Landlord pursuant to Section 8.1., but only to such extent that rebuilding or repairs can in Landlord's estimation be reasonably completed in more than ninety (90) days but in less than one hundred eighty (180) days, then Landlord shall have the option of either: (i) terminating this Lease effective upon the date of the occurrence of such damage, in which event the Rent shall be abated during the unexpired portion of the Term of this Lease; or (ii) electing to rebuild or repair the Premises and/or Building to substantially the condition in which they existed prior to such damage, provided that insurance proceeds are available, to fully repair the damage. Landlord's restoration obligation shall not exceed the scope of Landlord's restoration obligation under Section 22.2. If the Premises are untenantable in whole or in part following such damage, then, except as otherwise provided in Section 22.5, the Rent payable hereunder during the period the Premises are untenantable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds, if any, received by Landlord during the time and to the extent the Premises are unfit for occupancy.

22.4 Greater Than 180 Days. If the Premises or Building should be so damaged by any casualty covered under the insurance maintained by Landlord under Section 8.2. such that rebuilding or repairs cannot in Landlord's estimation be completed within one hundred eighty (180) days after such damage, this Lease shall terminate and the Rent shall be abated during the unexpired portion of this Lease, effective upon the date of the occurrence of such damage.

22.5 Tenant's Fault. If the Premises or any other portion of the Building are damaged by fire or other casualty resulting from the fault, negligence, willful misconduct, or breach of this Lease by Tenant or any of Tenant's Parties, Base Rent and Additional Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Premises and Building to the extent such cost and expense is not covered by insurance proceeds received by Landlord.

22.6 Uninsured Casualty. Notwithstanding anything to the contrary, if Premises or Building are damaged or destroyed by a casualty not covered by the insurance maintained by Landlord under Section 8.1, or if the cost of repair or restoration of Premises or Building are not fully covered by insurance proceeds Landlord receives, or if the holder of any indebtedness secured by a mortgage or deed of trust covering the Property requires that all or a portion of the insurance proceeds be applied to such indebtedness, then in such case Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after the date of receipt of notice by Landlord that the casualty is not a covered casualty, the cost or repair or restoration is not fully covered by insurance proceeds or such requirement is imposed by any such indebtedness holder, as the case may be, whereupon all rights and obligations hereunder shall cease and terminate.

22.7 Waiver. Tenant agrees that the rights and obligations of the parties in the event of damage or destruction to the Premises or the Building shall be solely governed by the provisions of this Section 22. Tenant hereby waives the provisions of Sections 1932(a) and 1933(4) of the California Civil Code and any other right which Tenant may now or hereafter hold to terminate this Lease upon the damage to or destruction of the Premises.

23. **HOLDING OVER**. If Tenant shall retain possession of the Premises or any portion thereof without Landlord's consent following the expiration or sooner termination of the Term of this Lease, then Tenant shall be a tenant at sufferance only and Tenant shall pay to Landlord for each day of such holding over one hundred fifty percent (150%) of the amount of the daily Rent as of the last month prior to the date of expiration or termination. Tenant shall also indemnify, defend, protect and hold Landlord harmless from any loss, liability or cost, including reasonable attorneys' fees, resulting from delay by Tenant in surrendering the Premises,

including, without limitation, any claims made by any succeeding tenant founded on such delay. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease, and nothing contained in this Section 25 shall waive Landlord's right of reentry or any other right. Additionally, in the event that upon the expiration or termination of the Term of this Lease, Tenant has not fulfilled its obligation with respect to repairs and surrender of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord shall have the right to perform any such obligations as Landlord deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over by Tenant and the terms of this Section 25 shall apply to such period.

24. **DEFAULT.** The occurrence of any of the following shall constitute an event of default by Tenant:

24.1 **Abandonment.** Abandonment of the Premises for a continuous period in excess of five (5) days. Tenant waives any right to notice Tenant may have under Section 1951.3 of the California Civil Code, the terms of this Section 24.1 being deemed such notice to Tenant as required by said Section 1951.3.

24.2 **Nonpayment of Rent.** Failure to pay any installment of Rent or any other amount due and payable hereunder upon the date when said payment is due.

24.3 **Subordination Documents, Financial Information and Estoppel Certificates.** Failure to deliver to Landlord documents requested by Landlord pursuant to Sections 16 or 17 within the time period specified.

24.4 **Other Obligations.** Failure to perform any obligation, agreement or covenant under this Lease other than as specified in Sections 26.1 and 26.2, where such failure continues for ten (10) days after written notice of such failure from Landlord; provided however, if the nature of the default is such that more than ten (10) days is reasonably required to cure such default, Tenant shall not be in default if Tenant commences to cure such default within such ten (10) day period and thereafter diligently pursues such cure to completion to the satisfaction of Landlord.

24.5 **General Assignment.** A general assignment by Tenant for the benefit of creditors.

24.6 **Bankruptcy.** The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors which involuntary petition remains undischarged for a period of thirty (30) days. In the event that under applicable law the trustee in bankruptcy or Tenant (as a debtor in possession) has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant (as a debtor in possession) shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to assure Landlord of the continued performance of Tenant's obligations under this Lease.

24.7 **Receivership.** The appointment of a receiver to take possession of all or substantially all of Tenant's assets or Tenant's interest in the Premises, if such appointment remains undismissed or undischarged for a period of ten (10) days after the order is entered.

24.8 **Attachment.** The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or Tenant's interest in the Premises, if such attachment, execution or seizure remains undismissed or undischarged for a period of ten (10) days after the levy thereof.

25. **REMEDIES UPON DEFAULT.**

25.1 **Termination.** Upon the occurrence of any event of default, Landlord shall have the right to give a written notice of termination to Tenant, and on the date specified in such notice, the Term of this Lease and Tenant's right to possession shall terminate. At any time after such termination, Landlord may recover possession of the Premises or any part thereof and expel and remove from the Premises Tenant and any other person occupying the same, by any lawful means, and repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, at law or in equity by reason of Tenant's default or of such termination.

25.2 **Continuation After Default.** Even though an event of default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession as provided in Section 24.1, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including without limitation, the right to recover Rent as it becomes due. Landlord has the remedy described in Section 1951.4 of

the California Civil Code (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under Section 1951.4 of the California Civil Code or any successor code section. Acts of maintenance, preservation, or efforts to re-lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest in the Premises shall not constitute an election by Landlord to terminate Tenant's right to possession.

25.3 Damages After Default. Should Landlord terminate this Lease pursuant to the provisions of Section 24.1, Landlord shall have the rights and remedies of a Landlord provided by Section 1951.2 of the California Civil Code, or successor code sections.

25.4 Late Charge. If any installment of Rent is not paid when due, such amount shall bear interest at the Applicable Interest Rate from the date on which said payment was due until the date on which Landlord shall receive said payment. In addition, Tenant shall pay Landlord a late charge equal to five percent (5%) of the delinquent amount, to compensate Landlord for the loss of the use of the amount not paid and the administrative costs caused by the delinquency. The parties agree that Landlord's damage by virtue of such delinquencies would be difficult to compute and the amount stated represents a reasonable estimate thereof. This provision shall not relieve Tenant from Tenant's obligation to pay Rent at the time and in the manner specified.

25.5 Remedies Cumulative. All rights, privileges and elections or remedies of Landlord are cumulative and not alternative and are in addition to any and all other rights and remedies now or hereafter available to Landlord at law or in equity by reason of any event of default by Tenant.

25.6 Waiver of Right of Redemption. Tenant waives any right which Tenant may now or hereafter hold (including any right under California Code of Civil Procedure Sections 1174 and 1179, California Civil Code Section 3275 or any successor statute) to apply for reinstatement of this Lease following termination of this Lease by Landlord pursuant to Section 24.1. Landlord and Tenant agree that the notice requirements of this section shall be in lieu of and not in addition to any notice requirements provided by law in the event of a breach or default by Tenant under this Lease.

26. LIENS. Tenant shall keep the Premises free from liens arising out of or related to work performed, materials or supplies furnished or obligations incurred by Tenant or in connection with work made, suffered or done by or on behalf of Tenant in or on the Premises or Property. In the event that Tenant shall not, within ten (10) days following the imposition or recording of any claim of lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord on behalf of Tenant and all expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant as Additional Rent on demand with interest at the Applicable Interest Rate. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord may deem proper, for the protection of Landlord, the Premises, the Property and any other party having an interest therein, from mechanics' and materialmen's liens. Tenant shall give Landlord not less than ten (10) business days prior written notice of the commencement of any work in the Premises or Property which could give rise to mechanics' or materialmen's liens.

27. TRANSFERS BY LANDLORD. In the event of a sale or conveyance by Landlord of the Property the same shall operate to automatically release Landlord from any liability for the performance of any of the covenants, conditions or agreements herein contained in favor of Tenant, to the extent the same are required to be performed after the passing of title to Landlord's successor-in-interest. In such event, Tenant agrees to look solely to the successor-in-interest of Landlord under this Lease with respect to the performance of the covenants, conditions and agreements of "Landlord" to be performed after the passing of title to Landlord's successor-in-interest. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser. Landlord's successor(s)-in-interest shall not have liability to Tenant with respect to the failure to perform the obligations of "Landlord", to the extent the same were required to be performed prior to the date such successor(s)-in-interest became the owner of the Property. If Landlord shall transfer the Security Deposit to any such successor-in-interest, Landlord shall be relieved of all responsibility for the return of the Security Deposit, and Tenant shall look solely to Landlord's successor-in-interest for the return of the same.

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28. **RIGHT OF LANDLORD TO PERFORM TENANT'S COVENANTS.** All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Base Rent and Basic Operating Cost, required to be paid by Tenant hereunder or shall fail to perform any other act on Tenant's part to be performed hereunder, and such failure shall continue for five (5) days after notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such act on Tenant's part to be made or performed. All sums, so paid by Landlord and all incidental costs incurred by Landlord, together with interest thereon at the Applicable Interest Rate from the date of such payment by Landlord, shall be payable to Landlord by Tenant as Additional Rent on demand.

29. **WAIVER.** If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein. The acceptance of Rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Rent. Failure by Landlord to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to diminish the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Lease may only be made by a written document signed by Landlord.

30. **NOTICES.** Each provision of this Lease or of any applicable governmental laws, ordinances, regulations and other requirements with reference to giving, sending, mailing or delivery of any notice or the making of any payment by Landlord or Tenant to the other shall be deemed to be complied with when and if the following steps are taken:

30.1 **Rent.** All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at the address set forth in the Basic Lease Information, or at such other address as Landlord may specify from time to time by written notice delivered in accordance with this Section 31. Tenant's obligation to pay Rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such Rent and other amounts have been actually received by Landlord.

30.2 **Other.** All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and either personally delivered, sent by commercial overnight courier, or mailed, certified or registered, postage prepaid, return receipt requested, and addressed to the party to be notified at the address for such party as specified in the Basic Lease Information. Either party may change its address for notices by written notices given to the other party in the manner specified in this Section 32.2, which change of address shall be effective fifteen (15) days after service of such notice. Notices shall be deemed served upon receipt or refusal to accept delivery. Tenant appoints as its agent to receive the service of all notices the person in charge of or occupying the Premises at the time, and, if there is no such person, then such service may be made by attaching the same on the door of the main entrance to the Premises.

31. **ATTORNEYS' FEES.** In the event Landlord places the enforcement of this Lease, or any part thereof, or the collection of any Rent due, or to become due hereunder, or recovery of possession of the Premises in the hands of an attorney, Tenant shall pay to Landlord, upon demand, Landlord's reasonable attorneys' fees and court costs. In any action which Landlord or Tenant brings to enforce its respective rights under this Lease, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

32. **SUCCESSORS AND ASSIGNS.** This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, and subject to the restrictions specified in Section 21, its successors and assigns.

33. **FORCE MAJEURE.** Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of nature, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes of any kind which are beyond the control of Landlord.

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34. **BROKERAGE COMMISSION**. Landlord shall pay a brokerage commission to the Broker identified in the Basic Lease Information in accordance with a separate agreement between Landlord and Broker. Tenant represents and warrants to Landlord that Tenant's sole contact with Landlord or with the Premises in connection with this Lease has been directly with Landlord and Broker, and that no other person can properly claim a right to any compensation or fee based upon contacts between the claimant and Tenant with respect to Landlord or the Premises. Tenant shall indemnify, defend by counsel acceptable to Landlord, protect and hold Landlord harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and costs, resulting from any claim for any compensation or fee by any person in connection with the Premises and this Lease, other than Broker.

35. **ADDITIONAL TERMS**.

35.1 **Choice of Law**. This Lease shall in all respects be governed by the laws of the State of California.

35.2 **Severability**. If for any reason any of the provisions of this Lease shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

35.3 **Accord and Satisfaction**. No payment by Tenant of a lesser amount than the full amount due, nor any endorsement on any check or letter accompanying any check or payment, shall be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the full amount due or to pursue any other rights or remedies available to Landlord.

35.4 **Easements**. Landlord may grant easements on the Property and dedicate for public use portions of the Property without Tenant's consent; provided that no such grant or dedication shall substantially interfere with Tenant's use of the Premises. Upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord documents, instruments, maps and plats necessary to subordinate Tenant's interest hereunder to such grants or dedications.

35.5 **Drafting and Determination Presumption**. The parties acknowledge that this Lease has been agreed to by both parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created against Landlord because Landlord drafted this Lease.

35.6 **No Third-Party Benefit**. This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third-party benefit.

35.7 **Reservation by Landlord**. Landlord reserves: (i) the use of the exterior walls and roof of the Building; (ii) the right to install, use, maintain, repair and replace ducts, wires, conduits and pipes in and through the Premises in locations which will not substantially interfere with Tenant's use of the Premises; (iii) the right to make such additions, deletions or changes to the corridors, restrooms, lobbies and other common areas of the Building, provided that access to the Premises shall not be substantially impaired thereby; (iv) the right to use the surface of the land upon which the Property is located and to make such additions, deletions or changes to the improvements located thereon, as Landlord shall deem appropriate from time to time.

35.8 **Representations by Tenant**. Tenant represents and warrants to Landlord that each individual executing this Lease on behalf of Tenant is authorized to do so on behalf of Tenant and that Tenant is not, and the entities or individuals constituting Tenant or which may own or control Tenant or which may be owned or controlled by Tenant are not in violation of any laws relating to terrorism or money laundering.

35.9 **Attachments**. Exhibits A and B are attached and made a part of this Lease:

**Exhibit A** – Premises/Map

**Exhibit B** – Medical Building Rules and Regulations.

35.10 **Time**. Time is of the essence regarding this Lease and all of its provisions.

35.11 **Entire Agreement/Modification**. This Lease and its Exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations and understandings, whether written or oral. There have been no representations made by Landlord or understandings made between the parties other than those set forth in this Lease and its Exhibits. This Lease shall not be effective until execution and delivery by both Landlord and Tenant. This Lease may not be modified except by a written instrument executed by Landlord and Tenant.

The parties have executed this Lease Agreement for **Suite 201, 212 San Jose Street, Salinas, California** as of the Effective Date first set forth above.

**LANDLORD**

Salinas Valley Memorial Healthcare System

**TENANT**

Monterey Bay GI Consultants Medical Group, Inc.

By: \_\_\_\_\_  
Pete Delgado, President/CEO

By: \_\_\_\_\_  
Daniel G. Luba, MD, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**Premises/Map**



## **EXHIBIT B**

### **Medical Building Rules and Regulations**

Tenant agrees to the establishment of, and to abide by, the following rules and regulations:

Sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building shall not be obstructed by Tenant or used by Tenant for any purpose other than ingress and egress to and from the Premises. The halls, passages, exits, entrances, elevators and stairways are not for the general public, and Landlord shall, in all cases, retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Building and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not place any parcels or other articles in the halls or in any other part of the Building outside of the Premises.

Windows, sashes, glass doors, lights and skylights that reflect or admit light into the halls or other public places of the Building shall not be covered or obstructed. Plumbing fixtures shall not be used for any purpose other than those for which they were installed, and no rubbish, newspapers or other substances of any kind shall be thrown into them. Waste and excessive or unusual use of water shall not be allowed. Tenant shall not deface the walls, ceilings, doors, partitions, floors, wood, stone or ironwork. The expense of any breakage, stoppage or damage resulting from violation of this rule shall be borne by Tenant.

No sign, advertisement or notice shall be exhibited, painted or affixed by Tenant on any part of the Premises or Building so as to be seen from the outside of the Premises or Building or the land upon which the Building is located without the prior written consent of Landlord. Written material visible from outside the Building will not be permitted. Landlord shall, at Tenant's expense, place Tenant's name on any lobby and floor directories of the Building and at the entrance to Tenant's Premises. Tenant shall not have the right to have additional names placed on any directory without Landlord's prior written consent. Any change to such initial lobby, directory and entrance signage shall be performed by Landlord at Tenant's expense. In the event of a violation of the foregoing, Landlord may remove the violating sign, advertisement or notice without any liability and may charge the expense incurred in such removal to Tenant.

Wiring shall be introduced and connected only as directed by Landlord. No boring or cutting for wires will be allowed except with prior written consent of Landlord. Any installation of communications wiring outside the Premises shall be approved in advance by Landlord in writing, and installed at Tenant's expense.

Neither Tenant nor any of Tenant's Parties shall make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of the Building or neighboring buildings or premises whether by use of any musical instrument, radio, television, electronic equipment, or by any other means whatsoever. Neither Tenant nor any of Tenant's Parties shall not throw substances of any kind out of the windows or doors, or down the passageways of the Building, or sit or place anything upon the window sills, or bring into or keep within the Premises or Building any animal or bicycle, motorcycle or other vehicle. No cooking shall be done or permitted in the Premises, except for use by Lessee of Underwriter's Laboratory approved equipment for the preparation of coffee, tea, hot chocolate, soups, and snack foods that can be prepared in a microwave oven provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations and is provided only for the convenience of Tenant and its employees and invitees. Neither Tenant nor any of Tenant's Parties shall cause or permit any unusual or objectionable odors to be produced in or emanate from the Premises.

Landlord will furnish Tenant with two keys to each door lock in the Premises. Landlord may make a reasonable charge for these and any additional keys. Tenant shall not have any additional keys made. No additional locks or bolts or any kind shall be placed upon any of the doors or windows by Tenant, nor shall any changes be made to existing locks or the mechanisms thereof without prior consent of Landlord and provided such consent is granted, Landlord shall then install same at Tenant's expense. Landlord shall retain a duplicate set of keys to all entrance doors to the Premises and to all doors within the Premises. Tenant must, upon the termination of its tenancy, give Landlord all keys to stores, offices or toilet rooms, either furnished to, or otherwise procured by Tenant. In the event of a loss of such keys, Tenant shall pay Landlord the cost of replacing the same or for changing the lock or locks opened by any lost key if Landlord shall deem it necessary to make such change.

The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises for general office or medical office purposes. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes. Neither Tenant nor any of Tenant's Parties shall at any time bring or keep upon the Premises any inflammable, or combustible or explosive fluid, chemical or substance.

The moving of furniture, fixtures, freight, construction materials or bulky items of any kind cannot be made without prior approval by Landlord. Such items may be moved only during such times as Landlord may specify including weekends or non-business hours and only with Landlord's presence during such activities. The persons employed by Tenant for such work must be acceptable to Landlord. Landlord reserves the right to inspect all furniture, fixtures, freight, construction materials or other bulky items to be brought into the Building and to exclude from the Building items which violate any of these Rules and Regulations or the Lease. Tenant take all steps necessary to protect the Building and the common areas (including lobbies, hallways, stairwells, elevator, railings, doors, light fixtures and flooring) from damage resulting from the moving of furniture, fixtures, freight, construction materials or bulky items by or for Tenant. Landlord shall have the right to require Tenant to provide a cash deposit to Landlord to be used by Landlord for the repair of any damage to the Building resulting from the moving of furniture, fixtures, freight, construction materials or bulky items by or for Tenant. Landlord reserves the right to prescribe the weight and position of all heavy items (including file and storage cabinets), which must be placed upon supports approved by Landlord. Business machines and other equipment shall be placed and maintained by Tenant at Tenant's expense in locations sufficient, in Landlord's reasonable judgment, to absorb and prevent unreasonable vibration and prevent noise and annoyance. Only hand trucks equipped with rubber tires, side guards, and security straps are allowed in the Building. Any of the foregoing notwithstanding, Landlord shall not be responsible for any loss of or damage to any property from any cause whatsoever. Any damage done to the Building by moving or maintaining such property shall be repaired solely at the expense of Tenant. Tenant shall not use the elevator for the moving of furniture, fixtures, freight, construction materials or bulky items unless the walls and floor of the elevator are protected with protective pads and plywood flooring protector which are available from Landlord.

No awning or other item shall be attached to the outside wall of the Building by Tenant without the prior written consent of Landlord. Draperies or other window coverings, whether or not furnished by Landlord, and any additional window coverings desired by Tenant shall be installed at Tenant's expense and must be of such uniform shape, color, material and make as prescribed by Landlord. No files, cabinets, boxes, containers or similar items shall be placed in, against or adjacent to any window of the Premises so as to be visible from the outside of the Building.

Tenant shall not employ any person or persons other than Landlord's janitor for the purpose of cleaning the Premises without the prior written consent of Landlord. Janitorial services provided by Landlord, if any, shall include ordinary dusting and cleaning by a janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, moving of furniture or other special services. Landlord shall not be responsible to Tenant for any loss of or damage to property on the Premises however occurring.

Landlord reserves the right to control access to the Building by all persons after the Building operating hours and all day on Sundays and legal holidays. Tenant and its employees or agents must be sure that the doors to the Building are securely closed and locked when leaving after the normal hours of business for the Building. Tenant or any of Tenant's Parties entering or leaving the Building at any time when it is locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access is known to the employee or agent of Landlord responsible for the Building, or unless the person seeking access has proper identification or has previously arranged for access to the Building. Landlord and its agents shall in no case be liable for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building during the continuance of same by any means it deems appropriate for the safety and protection of life and property.

The normal hours of operation of the Building ("Normal Business Hours") are 8:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. Such hours are subject to change by Landlord. Access to the Building and Property will be permitted during such hours. If Tenant desires access during other hours or on a Sunday or legal holiday, Tenant shall make appropriate prior arrangements with Landlord. Tenant will be responsible for any additional costs which may be incurred for extended hours of operations including, but not limited to, charges for heating and air conditioning services, electricity consumption, and security services.

Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to diminish the reputation of the Building or its desirability as an office and medical building and, upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising. Tenant shall not distribute any advertising material in the common areas of the Building or outside of the Premises.

No physician, surgeon, dentist, attorney, or other professional Tenant shall advertise in any manner which is prohibited by the code of ethics of the recognized association for such Tenant's profession.

No vending or coin operated machines shall be placed by Tenant within the Premises without the prior consent of Landlord.

The requirements of Tenant will be attended to only upon written application to Landlord. Employees of Landlord or of contractors or agents retained by Landlord shall not perform any work or do anything outside of their regular duties except under special instructions from Landlord.

Tenant shall not use any method of heating or air conditioning other than that which may be supplied by Landlord without Landlord's prior written consent.

In all carpeted areas where desks and chairs that are utilized by Tenant, Tenant shall, at Tenant's cost, place mats under each and every chair in order to protect carpeting from unnecessary wear and tear.

Tenant shall not waste electricity, water or utilities and agrees to cooperate fully with Landlord to assure the most effective and efficient operation of the Building's heating and air condition systems. Tenant shall refrain from attempting to adjust any controls, other than room thermostats (if any) installed for Tenant's use.

Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental authority or agency.

Tenant assumes any and all responsibility for protecting its Premises from theft, robbery, and pilferage. Other than during normal business hours for the Building, Tenant shall keep its access doors locked and keep other means of entry to the Premises secured.

Landlord shall have the right, but not the obligation, to control access to the Building at all times by messenger and delivery personnel, including without limitation, the right to refuse access unless Tenant is available to accept delivery. In no event shall Landlord or Landlord's agents accept any delivery on behalf of Tenant unless Landlord has consented to the same and arrangements satisfactory to Landlord have been made in advance. Landlord and its agents shall in no case be liable for damages arising from admission to or exclusion from the Building of any messenger or delivery personnel.

Tenant and its invitees shall comply with all speed limit, curb markings and directional and other signage located in or about the driveways and parking areas. All parking spaces are unreserved and unassigned unless otherwise designated. All parking spaces shall be used only for parking of vehicles no larger than full size passenger automobiles, sports utility vehicles, pickup trucks and other non-commercial vehicles. The parking and drive areas of the Property shall be used only for parking and vehicle access for which they are intended, and shall be used exclusively by Tenant's patients, customers, invitees, and visitors only during the hours of 8:00am to 5pm, Monday through Friday. Tenant's employees shall not use the parking areas of the Property. No vehicle shall be left standing overnight, parked in any fire lane, walkway, or areas designated as "no parking." Landlord shall have the right to place violation stickers upon any vehicle that is in violation and/or have the vehicle towed at the owner's expense.

Tenant shall keep the public areas of the Building and the Property free of all debris, trash and rubbish generated by Tenant's use of the Premises.

Landlord does not provide any security services for the Building or the Property. Tenant shall provide all security services and devices deemed appropriate by Tenant for the safety of Tenant, Tenant's Parties and the Premises.

No birds or animals shall be brought into the Building or kept in or about the Premises except for service animals. No bicycles or shopping carts shall be brought into the Building or kept in or about the Premises.

Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything in or about the Premises, which shall in any way increase the rate of any insurance on the Premises, the Building or any other tenant's premises in the Building, or conflict with the regulations of the Fire Department or fire laws, or with any insurance policy upon the Building, or any part thereof.

No hand trucks or vehicles, other than a wheel chair for an individual, shall be used in the elevator without Landlord's prior approval. Any hand trucks permitted in the Building must be equipped with soft rubber tires and rubber side guards.

In the event any demonstration, picketing, or other event or commotion is directed primarily at Tenant, Landlord may, but shall not be obligated to, charge directly to Tenant any additional direct or indirect costs occasioned thereby.

Canvassing, soliciting and peddling in the Building or on the Property is prohibited except from within the Premises.

Landlord shall have no liability to any tenant by reason of the non-compliance with or violation of these rules and regulations by any tenant.

These rules and regulations are in addition to, and shall not be construed in any manner to modify or amend, in whole or in part, the covenants and agreements contained in any lease of a premises in the Building.

Tenant shall be liable for all damage and injury to persons and property resulting from any non-compliance or violation of these rules and regulations by Tenant or any of Tenant's Parties.

Tenant shall not install or display any sign outside of the Premises. Landlord shall obtain, install and remove Building standard directory and suite signs, and exterior signs, if any, all at Tenant's cost and expense.

Tenant and Tenant's Parties shall not go upon the roof of the Building.

Landlord will provide Tenant with one set of keys consisting of one key for the exterior doors of the Building, one key for the public restrooms in the Building and one key to the Premises. If Tenant requires additional keys for the exterior doors of the Building or for the public restrooms, Landlord will have duplicate keys made at Tenant's expenses. Keys to the exterior doors of the Building or to the public restrooms are not to be duplicated by Tenant. Tenant shall be responsible for the safekeeping of all keys. If Tenant or any of Tenant's Parties loses any key to the exterior doors of the Building, Tenant shall immediately notify Landlord, and Tenant shall be responsible for any loss or damage resulting such loss including, but not limited to, the cost of rekeying the exterior doors of the Building and providing new keys to Tenant and the other tenants of the Building. Upon expiration or termination of this Lease, Tenant shall return to Landlord all keys (including duplicate keys).

The trash dumpsters and bins provided by Landlord for the use of the tenants of the Building shall be used only for the disposal of normal office trash. Trash and debris resulting from moving (including wooden pallets and boxes), construction, medical procedures (including any biologically hazardous material, needles, drugs, chemicals or human wastes) and other activities other than office activities shall be properly stored in the Premises and disposed of separately by Tenant at Tenant's cost.

Landlord reserves the right to amend or modify these rules and regulations and to make such other and further rules and regulations in its judgment may from time to time be necessary for the safety, cleanliness, and preservation of good order in the Building and on the Property.

Landlord may waive any one or more of these rules and regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other lessee or lessees, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Building.

## Finance Committee Board Paper

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Agenda Item: **Consider Recommendation for Approval of Agreements Necessary for the Transition of Salinas Family Practice Medical Clinic, Inc. to Salinas Valley Medical Clinic**

Executive Sponsor: Allen Radner, MD, CEO/SVMC, CMO/SVMHS  
Clint Hoffman, COO/SVMC, CAO Physician Integration & Business Development/SVMHS

Date: January 15, 2021

### Executive Summary

Following several months of discussion and planning, the executive team at Salinas Valley Memorial Healthcare System (SVMHS) and the physicians of Salinas Family Practice Medical Clinic, Inc. (SFP) have reached agreement on terms for a transition of their medical practice into Salinas Valley Medical Clinic (SVMC). The transaction will be completed through the execution of four types of agreements:

1. **Purchase Agreement** with Salinas Family Practice Medical Clinic, Inc. and CHM Leasing for the acquisition of assets used in the current medical practice.
2. **Lease** with CHM Leasing for 1328 Natividad Road, the facility where the clinic is currently operating.
3. Fair market value, work RVU productivity based, **Professional Services Agreements (PSA)** with terms and conditions substantially similar to the attached PSAs with Douglas Cambier, MD and Mark Adame, MD.
4. **Sublease and Services Agreement** with Salinas Family Practice Medical Clinic, Inc. to support the continued independent practice of James Hoffman, MD at the current practice location post transition to SVMC.

### Timeline

**January 25, 2021:** Request Board Finance Committee recommendation for approval of agreements

**January 28, 2021:** Board consideration of approval of documents related to the proposed transaction

**April 1, 2021:** Projected Effective Date/Closing Date for documents related to proposed transaction

### Meeting our Mission, Vision, Goals

#### Strategic Plan Alignment:

As part of our recent strategic planning, there were four key areas of focus identified:

1. Population Health Management
2. Sustainable Cost Structure and All Payor Strategy
3. Quality and Efficiency Improvement
4. Transforming Patient and Member Experience

The expansion of SVMC Primary Care access into North Salinas was identified as a priority for the SVMHS Board and is aligned with our strategic plan. This investment in expanding access to primary care services within SVMC can be tied back to elements of each of these key areas, but is most closely aligned with our desire to further develop population health management capabilities and the development of a sustainable cost structure and all payor strategy. Population health management requires expansion of services beyond the walls of SVMHS and this new practice location will serve as a key access point for primary care services in our community and allow for expansion and growth in the services we offer the residents of our healthcare district in a cost effective setting of care.

Pillar/Goal Alignment:

- Service    People    Quality    Finance    Growth    Community

Financial/Quality/Safety/Regulatory Implications

1. **Purchase Agreement** with Salinas Family Practice Medical Clinic, Inc. and CHM Leasing for the acquisition of assets used in the current medical practice.
  - One hundred fifty thousand dollars (\$150,000.00) purchase price
  - Twenty two thousand eight hundred thirty three dollars (\$22,833.00) in inventory
  - Total Purchase Agreement Value of one hundred seventy two thousand eight hundred thirty three dollars (\$172,833.00)
2. **Lease** with CHM Leasing for 1328 Natividad Road, the facility where the clinic is currently operating.

1. Proposed Effective Date	April 1, 2021
2. Term of agreement	Five years
3. Renewal terms	Five (5) year option with 90 days prior written notice
5. Termination provision(s)	90 days prior written notice after two (2) years
6. Payment Terms	Monthly, in advance
7. Building Operating & Tax Expenses	\$55,860 annually (annual tax, CAM, ground lease)
8. Annual Rent Cost	\$82,176 (\$1.40/psf/monthly/NNN)
9. Annual Increases	CPI not to exceed 3%
10. Cost Over Initial Term	\$715,583 (inclusive of tax, CAM, ground lease, increases)

3. Fair market value, work RVU productivity based, **Professional Services Agreements (PSA)** with terms and conditions substantially similar to the attached PSAs with Douglas Cambier, MD and Mark Adame, MD.
  - Standard SVMC PSA terms for primary care
  - Two (2) year term
  - Work RVU based professional services agreement with compensation of \$57.65 per Work RVU
  - Participation in Annual Incentive Plan tied to Aspire empanelment and quality metric performance
  - Standard benefits for SVMC physicians including health plan, annual CME allowance of \$2,000 and access to SVMHS 403b and 457 plans with 5% contribution to 403b
4. **Sublease and Services Agreement** with Salinas Family Practice Medical Clinic, Inc. to support the continued independent practice of James Hoffman, MD at the current practice location post transition to SVMC.
  - Occupancy in the office of two (2) days per week, covers space and staffing of clinic
  - Compensation to SVMC of eleven thousand nine hundred ninety dollars (\$11,990.00) per month
  - Excludes payer credentialing, contracting, billing services
  - Requires use of SVMHS Epic electronic medical record under a separate agreement

Recommendation

Administration requests that the Board Finance Committee make a recommendation to the Board of Directors for approval of the following agreements:

1. **Clinic Professional Services Agreements with Mark Adame, MD and Douglas Cambier, MD**
2. **Agreement for Purchase and Sale of Assets between Salinas Valley Memorial Healthcare System and Salinas Family Practice Medical Clinic, Inc. and CHM Leasing**
3. **Lease Agreement between CHM Leasing and Salinas Valley Memorial Healthcare System**
4. **Sublease and Services Agreement between Salinas Valley Memorial Healthcare System and Salinas Family Practice Medical Clinic, Inc.**

## Attachments

1. Clinic Professional Services Agreements with Mark Adame, MD and Douglas Cambier, MD
2. Agreement for Purchase and Sale of Assets between Salinas Valley Memorial Healthcare System and Salinas Family Practice Medical Clinic, Inc. and CHM Leasing
3. Lease Agreement between CHM Leasing and Salinas Valley Memorial Healthcare System
4. Sublease and Services Agreement between Salinas Valley Memorial Healthcare System and Salinas Family Practice Medical Clinic, Inc.

# SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM

## CLINIC PROFESSIONAL SERVICES AGREEMENT

**Mark Adame, M.D.**

**(Specialty: Family Medicine)**

This Professional Services Agreement (“Agreement”) is entered into and effective **April 1, 2021** (“Effective Date”), by and between **Salinas Valley Memorial Healthcare System**, a local health care district organized and operating pursuant to Division 23 of the California Health and Safety Code (“SVMHS”), and **Mark Adame, M.D.** (“Physician”). SVMHS and Physician may be referred to in this Agreement as a “Party” or collectively, as the “Parties.” Standard Terms and Conditions to this Agreement are attached to this Agreement and incorporated by this reference.

### RECITALS

- A. SVMHS owns and operates Salinas Valley Memorial Hospital, a general acute care hospital at 450 East Romie Lane, Salinas, California (“Hospital”).
- B. SVMHS operates a community clinic under the name “Salinas Valley Medical Clinic” (“SVMC” or “Clinic”) pursuant to section 1206(b) of the California Health and Safety Code.
- C. Physician is duly licensed to practice medicine in the State of California, and is qualified to provide professional services in Physician’s specialty in the Clinic.
- D. SVMHS desires that Physician provide professional services in Physician’s specialty in the Clinic to patients who need such services, and Physician has agreed to do so in accordance with the terms and conditions of this Agreement.

The Parties agree as follows:

### ARTICLE I. PHYSICIAN RESPONSIBILITIES

- 1.1 **Physician Services.** Physician shall personally provide the following services (“Physician Services”), consistent with the policies and procedures of Clinic, to the Clinic and patients of the Clinic, provided that Physician’s obligations under this Agreement are limited to the provision of services within Physician’s professional capabilities.
  - 1.1.1 **Medical Services.** Physician shall personally provide professional health care services, described in Exhibit A, in Physician’s medical specialty, to patients at the Clinic. Professional health care services include Medicare services, Medi-Cal services, services pursuant to any other federal health care program or a state health care financial program (“Governmental Programs”), workers’ compensation services, and charity care. Physician shall cooperate with SVMHS to enable the Clinic’s participation in Medicare, Medi-Cal, Governmental Programs, workers’ compensation services and commercial payor programs. Physician shall provide services to all patients, including Medicare, Medi-Cal, Governmental Program and workers’ compensation beneficiaries, in a non-discriminatory manner and in accordance with all applicable laws and SVMHS policies and procedures, as developed and implemented in collaboration with physician leadership of Clinic.
  - 1.1.2 **Allied Health Professionals.** If one or more allied health professionals shall be engaged to provide services to Clinic patients, Physician shall provide professional supervision of allied health professionals employed by SVMHS in the Clinic.
  - 1.1.3 **Research Activities.** Physician shall participate, from time to time, in the medical research activities of SVMHS, as reasonably requested by SVMHS, or as initiated by Physician with the approval of SVMHS,



in either case to the extent such participation is consistent with the efficient and medically appropriate provision of Physician Services to patients of the Clinics.

- 1.1.4 **Community Medical Education Activities.** Physician shall participate in community and patient medical education activities as may be reasonably requested by SVMHS from time to time.
- 1.1.5 **Schedule.** Physician will provide Physician Services for the number of hours per week and number of weeks per year as set forth in Exhibit A, except as otherwise approved by the Clinic Administrator.
- 1.1.6 **Clinic Call Coverage.** Physician shall participate on the Clinic call panel. Call panel coverage requirements shall be equitably divided amongst physicians of similar scope and specialty. Physician shall be available by telephone, or through answering service to the physician taking call for the Clinic in order to respond to questions regarding Physician's patients, without additional compensation by SVMHS.
- 1.2 **No Substitutions.** Physician shall personally perform the services required of Physician under this Agreement. Physician shall not engage a substitute or subcontractor to provide these services. Any discontinuation of service by Physician, or any attempted substitution of Physician or any attempted delegation of Physician's obligations under this Agreement, without SVMHS's approval and consent, shall be deemed a material breach of Physician's obligations.
- 1.3 **Absences.** In the event Physician is unable to perform the obligations under this Agreement due to illness, continuing education responsibilities, leave or other justifiable cause, SVMHS shall designate a qualified replacement. SVMHS shall have the right to approve the length of Physician's absence, and any unapproved absence shall constitute a breach of this Agreement. Physician shall be entitled to vacations and other leaves of absence, if any, in accordance with Exhibit A to this Agreement. Physician must provide SVMHS with forty-five (45) days' prior written notice in advance of any absence, when practicable.
- 1.4 **Credentialing.** Physician shall cooperate with SVMHS with respect to its credentialing and recredentialing requirements for professionals providing services to patients of the Clinic and shall submit applications and supporting documentation timely and completely in order to comply with the requirements of SVMHS's credentialing program for the Clinic.
- 1.5 **Code of Conduct.** Physician shall comply with the SVMC Policy and Procedure Manual, as such document shall exist from time to time.
- 1.6 **Limitation on Use.** All items and services provided by SVMHS to Physician pursuant to the terms of this Agreement shall be used by Physician exclusively to satisfy Physician's contractual obligations under this Agreement. Without limiting the foregoing, such items, including SVMHS premises, shall not be used by Physician in the operation of a private practice of medicine or any activity unrelated to the treatment of SVMHS patients.
- 1.7 **Notification of Certain Events and Noncompliance.** Physician shall notify SVMHS in writing as soon as possible, and within a maximum of twenty-four (24) hours, after Physician becomes aware: (a) that Physician has become the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by any state or federal health care program, any state's medical board or professional board, or any agency responsible for professional licensing, standards or behavior; (b) that Physician has become the subject of any legal action or legal proceeding arising out of the provision of services under this Agreement; or (c) of any event occurring that would materially alter the status or ability of Physician's compliance with this Article 1 (Physician Responsibilities), including, without limitation, the imposition of any integrity agreement, consent decree or settlement agreement with any state or federal agency having jurisdiction over Physician.
- 1.8 **Financial Conflict of Interest.** Physician shall immediately report to SVMHS any financial conflict or potential financial conflict of interest of Physician or Physician's spouse or dependent children with the interests of SVMHS and shall give full disclosure of the facts pertaining to any relationship, transaction or other activity of Physician, or Physician's spouse or dependent children, that may be reasonably construed to involve a financial conflict of interest with SVMHS or that would have an adverse effect on Physician's satisfactory performance of Physician's

obligations under this Agreement. Except with the approval of SVMHS, Physician shall not solicit or accept any financial benefit, in cash or in kind, from a current or potential vendor of goods or services to SVMHS, a pharmaceutical or medical device manufacturer or any provider of medical services.

- 1.9 **Education and Training**. On request, Physician shall participate in education and training sessions provided, sponsored or paid for by SVMHS that relate to quality improvement, patient safety, Clinic operations and other matters pertinent to Physician's performance of Physician responsibilities under this Agreement, not to exceed four (4) hours per quarter.

## **ARTICLE II. PROFESSIONAL STANDARDS**

- 2.1 **Licensure and Standards**. Physician shall: (i) be licensed to practice medicine in the State of California without restriction; (ii) be certified as a participating physician in the Medicare and Medi-Cal programs; and (iii) maintain an unrestricted Drug Enforcement Administration ("DEA") registration.

## **ARTICLE III. COMPENSATION**

- 3.1 **Compensation for Physician Services**. Physician shall be entitled to fair market value compensation as set forth in Exhibit A to this Agreement.
- 3.2 **Benefits**. In addition to compensation set forth in Section 3.1 (Compensation for Physician Services), Physician shall receive the benefits, if any, as described in Exhibit A to this Agreement.
- 3.3 **Practice Guidelines/Best Quality Practices**. Physician shall participate in the accepted practice guidelines and best quality practices described in Exhibit A to this Agreement.
- 3.4 **Continuing Medical Education**. Physician shall be entitled to reimbursement for continuing medical education expense as provided in Exhibit A to this Agreement.
- 3.5 **Recordkeeping**. Physician shall furnish to the Clinic Administrator a report of daily direct patient care. This report will include appropriate documentation of patient services provided by Physician to enable SVMHS to timely and accurately bill and collect for such services, including preparation and submission of charge sheets to responsible parties.
- 3.6 **Limitations**. Except as specifically set forth in this Section, Physician shall have no claims under this Agreement or otherwise against SVMHS for any compensation, benefits or reimbursement of expenses or costs incurred in connection with this Agreement, Physician Services, or Physician's performance obligations under this Agreement.

## **ARTICLE IV. STANDARD TERMS AND CONDITIONS**

- 4.1 **Additional Terms and Conditions**. Physician acknowledges the Standard Terms and Conditions attached to and incorporated into this Agreement and agrees to abide and be bound by each and every provision of the Standard Terms and Conditions. Physician acknowledges having read the Representations and Warranties provisions in Section 1, and confirms the accuracy of the Representations and Warranties, and the Term and Termination provisions in Section 3, and understands the circumstances under which this Agreement may be terminated.

The Parties have executed this Agreement to be effective as of the Effective Date first set forth above.

**SVMHS**  
Salinas Valley Memorial Healthcare System

**PHYSICIAN**  
Mark Adame, MD

By: \_\_\_\_\_  
Pete Delgado, President/CEO

\_\_\_\_\_  
Mark Adame, MD

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notices:**

President/Chief Executive Officer  
Salinas Valley Memorial Healthcare System  
450 E. Romie Lane  
Salinas, CA 93901

**Address for Notices:**

SVMC \_\_\_\_\_  
Attn: \_\_\_\_\_, MD  
\_\_\_\_\_  
Salinas, CA 93901

**With Copy to:**

Gary R. Ray  
Ottone Leach & Ray LLP  
295 Main Street, Suite 600  
Salinas, CA 93901

## EXHIBIT A

### VARIABLE TERMS AND CONDITIONS

#### A.1 **Further Description of Medical Services.**

A.1.1 **Standard Locations.** Physician shall provide professional medical services in Physician's specialty at locations specified by SVMHS, which will be within the SVMHS healthcare district boundaries or within thirty (30) miles of the SVMHS Hospital.

A.1.2 **Physician Additional Locations.** Physician is approved to provide medical services (i.e., "clinical work" pursuant to Section A.4.8.2) at:

➤None as of the Effective Date of this Agreement.

Physician shall provide documentation of medical services provided at these locations to Clinic administrator so such services may be billed and collected by SVMHS and credited to Physician in the determination of Productivity Compensation under this Agreement

A.1.3 **Changes to Locations.** Physician is responsible for notifying SVMHS of any proposed or actual changes to service locations.

A.2 **Schedule.** Physician shall provide Physician Services to Clinic patients on a full-time basis thirty-six (36) hours per week, forty-seven (47) weeks per year in a clinic setting; one (1) week of which can be allocated to continuing medical education. There shall be no reduction for any weekday that Physician is scheduled to cover the Clinic but the Clinic is otherwise closed due to a Clinic designated observed holiday, recognizing that if a holiday falls on a weekend day, it is usually observed on the preceding Friday or the following Monday. SVMHS will announce holiday observance in advance. In the event Physician covers a Clinic shift on a Clinic designated observed holiday, then Physician shall be entitled to one weekday off for each shift(s) so covered and that weekday off shall count toward the forty-seven (47) weeks of coverage.

A.3 **Absences.** Physician shall be entitled to the following time off based upon Physician's full-time status: five (5) weeks per year, accruing equally throughout the contract year. Physician must provide forty-five (45) days' notice for vacations and/or desired schedule changes that would leave a gap in any coverage area. SVMHS will honor those requests should acceptable coverage be secured. Physician is responsible for negotiating/scheduling coverage changes. Physician will report days off to the Clinic's practice manager for purposes of tracking actual annual days off.

#### A.4 **Compensation.**

A.4.1 **Compensation Methodology Compliance.** In order to maintain continuity in the Compensation Methodology under this Agreement and to ensure commercial reasonableness and fair market value compensation to Physician for Services provided under this Agreement in compliance with Stark Law and Anti-Kickback regulations, SVMHS and Physician agree that SVMHS retains the right to continue, for the term of this Agreement, application of the compensation formula in this Agreement using the wRVU Conversion Factor set forth in this Agreement and the wRVU values in the 2020 CMS Physician Fee Schedule .

A. **WRVU and WRVU Conversion Factors.** In general, Work RVU values per unit of service performed are determined based on the wRVU value for that service assigned by the Centers for Medicare and Medicaid Services (CMS). For CPT codes without wRVU values assigned by CMS, the wRVU value shall be set by SVMHS consistent with current Clinic policies and procedures and fair market value standards. SVMHS shall provide Physician with monthly reports of Physician's actual wRVU production.

- B. **Changes by CMS.** In the event CMS modifies wRVU values and/or wRVU conversion factors, SVMHS is not obligated to modify the wRVU values and/or wRVU conversion factors used in the compensation formula for Services provided by Physician under this Agreement. SVMHS shall have sole discretion regarding whether or how to incorporate any such CMS changes.
- C. **Compensation Formula.** SVMHS and Physician agree that the wRVU Conversion Factor set forth in the Agreement and the wRVU values in effect as of the Effective Date of this Agreement shall continue to be used in the compensation formula for determining Physician compensation under this Agreement until the termination or expiration of this Agreement, or as otherwise mutually agreed to by SVMHS and Physician in writing. The compensation formula set forth in the SVMC Physician Compensation Manual may be modified by SVMHS from time to time upon prior notice to Physician.
- A.4.2 **Productivity Compensation for Work RVUs.** Physician shall be paid Productivity Compensation based on the number of Work RVUs billed by Physician for his or her personally performed services under this Agreement multiplied by Fifty-Seven Dollars and Sixty-Five Cents (\$57.65) (“wRVU Conversion Factor”). Payment of Productivity Compensation shall be in accordance with SVMHS policies and, as applicable, prorated for any partial month of the Agreement. SVMHS shall provide Physician with monthly reports of the Physician’s actual wRVU production.
- A.4.3 **Work RVUs, Initial Draw and Draw.**
- A. **Initial Draw.** The Initial Draw will be equal to twenty five thousand dollars (\$25,000.00) per month paid semi monthly on the 5<sup>th</sup> and 20<sup>th</sup> of each month. Following six (6) months of actual Work RVU productivity experience, Physician shall be paid Draw monthly based on eighty-five percent (85%) of the calculated monthly average of work RVUs times the wRVU Conversion Factor. Thereafter Draw will be reset in accordance with Section A.4.3 D.
- B. **Draw Less Than Actual Productivity Compensation.** After each quarter, if Physician’s Draw was less than Physician’s actual Productivity Compensation calculated under Section A.4.2 of Exhibit A of this Agreement, SVMHS shall pay Physician the difference in the next monthly payment of Productivity Compensation.
- C. **Draw More Than Actual Productivity Compensation.** After each quarter, if Physician’s Draw was more than Physician’s actual Productivity Compensation calculated under Section A.4.2 of Exhibit A of this Agreement, SVMHS shall deduct the difference in the next monthly payment of Productivity Compensation.
- D. **Resetting Draw.** At the end of each calendar year ending December 31, Physician’s Draw will be reset to eighty-five percent (85%) of Physician’s actual wRVU production for the previous twelve (12) months times the wRVU Conversion Factor. This will allow Physician’s Draw amount to be adjusted on an annual basis up or down based on Physician’s actual wRVU production for the prior twelve (12) month period.
- A.4.4 **Annual Incentive Plan.** An annual incentive plan shall be available to Physician who meets the eligibility requirements outlined in this Section A.4.4 and further described in Exhibit C to this Agreement. Incentive payments are based on performance metrics measure on a Calendar Year basis, January 1 through December 31 (“Measurement Period”), and carry an eligibility requirement of at least one thousand (1,000) hours worked during the Measurement Period and a current Professional Services Agreement with Physician in place and in effect at the time of payment of the incentive in order to qualify. Payments of any earned incentive shall be made by SVMHS within ninety (90) days of the end of the Measurement Period.
- A.4.5 **Supervision of Allied Health Professionals.** Physician shall be paid for professional services performed by Physician in the supervision of Allied Health Professionals. A credit of fifteen percent (15%) of the

Allied Health Professional's Work RVUs for services directly overseen and supervised by Physician will be added to Physician's Productivity Compensation and multiplied by Physician's wRVU Conversion Factor. The credit for supervision of Allied Health Professionals does not apply to services an Allied Health Professional provides as an assistant surgeon.

A.4.6 **Payment on Termination.** On termination of this Agreement, which is not extended, renewed or superseded by another agreement, SVMHS shall pay to Physician the amount of any Productivity Compensation in excess of Draw or Base Compensation, as applicable due to Physician within twenty (20) days after the termination of this Agreement.

A.4.7 **Agreement Includes All Compensation from SVMHS and Hospital.** Incorporated into compensation under the Agreement, unless specifically excluded, are all the Physician's sources of practice revenues and income, including Hospital Call coverage stipends, other hospital on-call fees, hospital stipends, and reading fees; provided, however, that services as a medical director within the SVMHS system, service on medical staff or SVMHS positions such as department chair or chief of staff, call panels which are not currently in effect, or other items specifically excluded by written agreement between Physician and SVMHS shall be independently compensated to Physician by SVMHS and are not subject to the terms of this Agreement.

A.4.8 **Physician Services Revenue from Other Facilities.** Physician may provide services at facilities not operated by SVMHS (including professional medical, administrative, and panel/call services) as set forth in Exhibit B ("Other Facilities"). Services provided at Other Facilities are acknowledged and excluded from Sections 6.1.1 and 6.1.2 of the Standard Terms and Conditions of this Agreement through reference in Exhibit B. Except as noted in Section A.4.8.2, Physician shall receive compensation for services provided to Other Facilities as agreed to by Physician and the facility and this compensation shall be independent of this Agreement.

A.4.8.1 **Insurance/Administrative Overhead.** For administrative and panel/call services at Other Facilities, Physician shall pay to SVMHS five percent (5%) of the compensation received by Physician for such services, as reimbursement to SVMHS for the cost of insurance and for other administrative overhead costs which may be incurred by SVMHS in connection with such services. Physician shall provide to SVMHS annually each Form 1099 received by Physician for payment in connection with such services together with payment to SVMHS of the amount due to it under this Section as determined based on the income reported in the Form 1099.

A.4.8.2 **Work RVUs at Other Facilities.** Clinical work at any such facility which is defined and categorized within wRVUs, other than for interpretive readings or services which are billed by Other Facilities, shall be billed and collected by SVMHS and credited to Physician in the determination of Productivity Compensation under this Agreement.

A.4.8.3 **Compensation Paid to Physician.** In the event compensation due to Physician from Other Facilities is paid directly to Physician, then Physician shall follow the methodology set forth in A.4.8.1 and pay to SVMHS five percent (5%) of the compensation received by Physician for such services, as reimbursement to SVMHS for the cost of insurance and for other administrative overhead costs which may be incurred by SVMHS in connection with such services.

A.4.8.4 **Compensation Paid to SVMHS.** In the event compensation due to Physician from Other Facilities is paid to SVMHS, then SVMHS shall: (i) retain five percent (5%) of the compensation for such services as reimbursement to SVMHS for the cost of insurance for other administrative overhead costs which may be incurred by SVMHS in connection with such services; and (ii) include ninety-five percent (95%) of the revenue for such services in the gross compensation paid by SVMHS to Physician.

A.5 **Benefits.** Physician shall be eligible for standard physician benefits offered by SVMC to physicians contracted by SVMHS for the Clinic.

- A.5.1 **Health/Dental Insurance.** Physician is eligible for group health and dental insurance offered by SVMC for Physician and Physician Dependents at a cost to Physician of fifteen percent (15%) of the monthly premium of the selected coverage.
- A.5.2 **Retirement Benefits.** Physician shall have access to a 403(b) retirement plan and a 457 retirement plan offered by SVMHS. SVMHS will make contributions in the amount of five percent (5%) of Physician's compensation, up to the limits allowed by law, to Physician's 403(b) retirement plan. SVMHS contributions are subject to SVMHS retirement plan policies, including a three (3) year vesting period that begins on the effective date of this Agreement.
- A.6 **Continuing Medical Education.** For each contract year during the term of this Agreement, Physician shall be entitled reimbursement for continuing medical education (CME) expenses incurred during the contract year up to a maximum of two thousand dollars (\$2,000). Unused CME expense reimbursement funds do not roll over to the following year. Payment for reimbursable CME expenses shall be made in accordance with applicable Clinic policies.
- A.7 **Practice Expense Reimbursement:** SVMHS shall pay all board certification expenses that are required by the certifying body, licensure expenses including medical board, x-ray license, DEA license and other certificates which are required or necessary for Physician's performance of professional services under this Agreement for which Physician is credentialed to perform (collectively, "Practice Expenses"). Only Practice Expenses incurred on or after the effective date of the Original PSA may be reimbursed under this Section A.7.
- A.8 **Services and Activities in Support of SVMHS/Clinic.** SVMHS and Physician acknowledge and agree that certain services and activities may be required of Physician in support of SVMHS and Clinic to ensure a continuing high level of patient care. To that end, Physician shall participate in an annual SVMC Meeting/Dinner and other functions/events from time to time, in support of the SVMC Clinics and the SVMHS facilities. In addition, to assist in the recruitment and retention of highly skilled practitioners, upon SVMHS's request, Physician shall participate in recruitment meetings with SVMC physician candidates. SVMHS shall reimburse Physician for reasonable meal expenses incurred as part of meeting with physician candidates hosted at the request of SVMHS.
- A.9 **Practice Guidelines/Best Quality Practices.** Physician shall demonstrate cooperative work arrangements with the Medical Staff, Quality and Safety Leadership and SVMHS/SVMC Administration to achieve mutually accepted practice guidelines and the best quality practices. These practices will be evidenced based, and include at minimum the following:
- A.9.1 Attendance at regular monthly meetings with SVMHS and management services organization representatives when requested to review any operational or quality issues.
- A.9.2 Completion of all office visit notes within seven (7) days of visit. A penalty of ten dollars (\$10.00) applies per record, per day in excess of seven (7) that a visit note remains incomplete. Penalty shall be deducted from Physician's Productivity Compensation.
- A.9.3 Commitment to use of SVMHS supported electronic health/medical record platforms.
- A.9.4 Compliance with all governmental and SVMHS quality reporting initiatives including Meaningful Use, Physician Quality Reporting System and others that may come into effect from time to time.
- A.9.5 Timely arrival at Clinic for scheduled visits.
- A.10 **Deposition/Court Appearance Fees.** In the event Physician is subpoenaed or requested to appear at a deposition or court proceeding to provide expert testimony unrelated to services provided under this Agreement, SVMHS may at its option and at Physician's request, assist Physician with the management and coordination of such appearance as follows:

- A.10.1 Clinic staff shall assist Physician with the management, coordination, scheduling and follow up pertaining to the appearance by Physician.
- A.10.2 To assist Physician with payment for Physician's appearance, SVMHS shall collect all fees due to Physician for the appearance.
- A.10.3 As a service fee for providing the management, coordination, scheduling and follow up pertaining to the appearance by Physician, SVMHS shall retain fifty percent (50%) of the fees paid for the appearance by Physician. The remaining fifty percent (50%) of the fees paid for the appearance by Physician shall be paid to Physician by SVMHS as a pass-through payment and reported under standard payroll processing procedures.

A.11 **Physician Modifications and Exceptions to Standard Terms and Conditions.**

- A.11.1 SVMHS acknowledges and excludes Physician ownership interest in Monterey Bay Independent Physician Association from Section 1.1 of the Standard Terms and Conditions of this Agreement.



**EXHIBIT B**

**Other Facilities**

The following are services performed at Other Facilities which are independent of SVMHS are listed pursuant to Section A.4.8 of Exhibit A, and for which physician compensation is in accordance with Section A.4.8.

List facility name and specific activity:

➤ **None as of the Effective Date of this Agreement.**

**EXHIBIT C**

**ANNUAL INCENTIVE PLAN**

Per the terms outlined in Exhibit A and in this Exhibit C, Physician may be eligible to participate in an Annual Incentive Plan. Aspire Health Plan (“AHP”) is an SVMHS affiliated Health Plan that offers Medicare Advantage health plan options to eligible seniors in Monterey County. For each AHP Medicare Advantage member attributed to a Physician by AHP as the designated Primary Care provider, Five Dollars (\$5.00) per member, per month (“PMPM”) shall be allocated into an Annual Incentive Plan for Physician. Physician is eligible for payment based on achievement of the Performance Targets outlined below for each Metric. SVMHS and Physician may update these metrics annually through mutual agreement. If a metric becomes unreportable based on limitations or circumstances outside the control of SVMHS and Physician, Physician shall receive full points for that metric.

<b>Metric</b>	<b>Source</b>	<b>Weight</b>	<b>Performance Targets</b>	
Patient Satisfaction w/Provider (for the 12 months ending December 31)	POS	40%	< 90% No Points	≥ 90% Full Points
Quality Metric: •Diabetes Hemoglobin A1c (HbA1c) Poor Control (>9%) 4th Decile	CMS	30%	< Decile 4 No Points	≥ Decile 4 Full Points
Attributed Member Aspire Quality/HCC Gap Closure Percent (Baseline is SVMC PrimeCare HCC Gap Closure for CY18; reporting period is calendar year)	Aspire	25%	< 72% No Points	≥ 72% Full Points
Aspire MLR Benchmark Medical Loss Ratio (MLR) for all SVMC PrimeCare assigned patients relative to AHP CMS Bid for the plan year (reporting period is calendar year) SVMC- PrimeCare MLR is calculated for the year by applying the incurred but not received (INBR) calculation utilized for Aspire Health Plan financial reporting to claims activity recorded for SVMC-PrimeCare through December 31 of each calendar year.	Aspire	5%	> CMS Bid MLR % No Points	≤ CMS Bid MLR % Full Points

## **PHYSICIAN SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions are incorporated into and made part of the Salinas Valley Memorial Healthcare System Professional Services Agreement.

1. **Physician Representation and Warranty.** Physician represents and warrants to SVMHS that, as of the Effective Date and the Commencement Date, except as set forth or disclosed in Exhibit A of the Clinic Professional Services Agreement, the following shall be true and correct:
  - 1.1 Physician has no direct or indirect stock or other equity or ownership interest (whether controlling or not) in any corporation, association, partnership, joint venture or other entity, excluding any publicly traded corporations, that provides health care goods or services;
  - 1.2 There is no action, order, writ, injunction, judgment or decree outstanding or any claim, suit, litigation, proceeding, labor dispute, arbitration, governmental audit or investigation (“Action”) pending, threatened or anticipated against, relating to or affecting Physician. There are no court orders or agreements with, or liens by, any governmental authority that obligate, bind or in any way affect Physician;
  - 1.3 Physician has not violated and is in compliance with all laws, statutes, regulations, rules, notice requirements, guidelines and orders relating to Physician, including without limitation law and regulations regarding billing for services (collectively “Regulations”). Physician has not received any notice to the effect that, or otherwise been advised that, Physician is not in compliance with any such Regulations or court order;
  - 1.4 Physician has timely filed with the appropriate taxing authorities all returns (including information returns and other material information) in respect of taxes required to be filed through the Effective Date and will timely file any such returns required to be filed on or prior to the commencement date of services under this Agreement. All taxes have been timely paid, or will be timely paid. Physician does not have any material liability for taxes in excess of the amounts so paid, or to be so paid. There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other Actions for or relating to any liability for taxes. Physician has not waived any statute of limitations in respect of any taxes or agreed to any extension of time with respect to a tax assessment or deficiency;
  - 1.5 Physician satisfies, and at all times has satisfied, all performance standards and/or conditions of participation under any Governmental Program in which Physician participates or has participated with respect to goods provided or services rendered in connection with Physician’s medical practice. All bills and claims submitted to Governmental Programs or any of their respective fiscal intermediaries or contractors (collectively, “Program Claims”) by or on behalf of Physician or Physician’s medical practice, will represent bona fide claims for items, services or goods provided to Governmental Program beneficiaries in accordance with applicable Regulations; Physician has not been the subject of any investigation, audit or action, including pending or threatened investigations, audits or actions, arising out of or related to Physician’s professional medical service;
  - 1.6 Physician’s license to practice medicine in any state has never been suspended, revoked or restricted and Physician has never been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board;
  - 1.7 Physician has never been denied membership and/or reappointment to the medical staff of any hospital and has never had Physician’s medical staff membership or clinical privileges at any hospital suspended, limited or revoked for a medical disciplinary cause or reason; Physician is not a “Sanctioned Individual” as defined under the Social Security Act as anyone (i) who has been convicted of a criminal offense related to the delivery of an item of service under the Social Security Act or any state health care program; (ii) who has been convicted, under federal or state law, of a criminal offense relating to neglect or abuse of patients; (iii) who has been convicted after 1996, under federal or state law, in connection with the delivery

of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any federal, state, or local government agency; (iv) who has been convicted of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; (v) against whom a civil monetary penalty has been assessed under Sections 1128A or 1129 of the Social Security Act; or (vi) who has been excluded from Medicare participation or a state health care program;

- 1.8 Physician is under no obligations (whether contractual or otherwise) to any former employer or third party that would prevent Physician from performing the services contemplated under this Agreement and otherwise to satisfy all of Physician's duties and obligations hereunder. Physician agrees to defend and indemnify SVMHS for all costs, expenses, demands and judgments that may occur as a result of Physician's breach of Section 1.8 of the Standard Terms and Conditions; and
- 1.9 Physician has disclosed to SVMHS any agreement to which Physician is or has been a party regarding the confidential information or trade secrets of others and Physician understands that Physician's performance of services under this Agreement will not require Physician to breach any such agreement. Physician shall not disclose protected confidential information or trade secrets of third parties to SVMHS nor induce SVMHS to use any such protected confidential information or trade secrets received from another under an agreement or understanding prohibiting such use or disclosure.

## **2. SVMHS Responsibilities.**

### **2.1 SVMHS Services.**

2.1.1 Space. SVMHS shall make available to Physician reasonably necessary facilities for the operation of Clinic. Such space shall include an office furnished with a desk, which may be shared with other physicians.

2.1.2 Equipment and Software. SVMHS maintains authority to select and acquire equipment and software. SVMHS shall provide equipment and software consistent with SVMHS's budget and operations.

2.2 General Services. SVMHS shall furnish ordinary janitorial services, maintenance services, and utilities, including telephone service, as may be required for the proper operation and conduct of Clinic.

2.3 Supplies. SVMHS maintains authority to purchase and provide supplies. SVMHS shall provide supplies reasonably required for the proper treatment of Clinic patients, including prescription pads or tamper-resistant EMR forms or paper printed with Physician's name (unless Clinic practice and applicable regulations allow for paperless transmission of prescriptions). Physician shall inform SVMHS of supply needs in a timely manner and shall manage the use of supplies in an efficient manner that promotes quality and cost-effective patient care.

2.4 Business Operations. SVMHS shall be responsible for, or shall arrange for, all business operations related to operation of the Clinic, including personnel management, billing and payroll functions.

2.5 Chart Storage and Retrieval. Upon Physician's request, SVMHS shall store and retrieve non-Clinic records owned by Physicians in accordance with Clinic policies and procedures.

2.6 SVMHS Performance. The responsibilities of SVMHS under this Section 2 of the Standard Terms and Conditions shall be subject to SVMHS's discretion and its usual purchasing practices, budget limitations and applicable laws and regulations.

2.7 Professional Liability Insurance. Except as otherwise provided in Exhibit A, SVMHS shall maintain professional liability insurance that provides coverage for any act of Physician that may have occurred during the term of this Agreement while providing the services contemplated under this Agreement, including services provided at Other Facilities listed in Exhibit B, notwithstanding the termination or expiration of the term of this Agreement. Such policies must have limits of liability of at least two million

dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) annual aggregate. Upon termination of this Agreement, either in the event that this Agreement is terminated pursuant to Section 3.2 or in the event that the term of this Agreement expires and is not renewed, SVMHS shall continue the current policy, obtain prior acts coverage or “extended discovery period,” “extended reporting period,” or “tail” coverage, or otherwise take steps to insure that no lapse of coverage occurs for claims not asserted as of the termination or expiration of Agreement for occurrences prior to the termination or expiration date.

2.8 **Prior Acts.** Except as provided in Exhibit A, SVMHS shall obtain and maintain prior acts coverage with respect to claims not asserted as of the Effective Date for occurrences prior to the Effective Date. Such insurance must have a limit of liability of at least one million dollars (\$1,000,000.00) per claim and three million dollars (\$3,000,000.00) annual aggregate. The prior act coverage shall be retroactive only to the date of \_\_\_\_\_.

2.9 **Workers’ Compensation.** Physician shall be afforded coverage under SVMHS’s workers compensation program.

### **3. Term and Termination.**

3.1 **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through and until the second (2nd) anniversary of the Effective Date, unless earlier terminated as provided in this Agreement.

3.2 **Termination.** Notwithstanding the provisions of Section 3.1 of these Standard Terms and Conditions, this Agreement may be terminated:

3.2.1 By either Party, at any time upon ninety (90) days’ prior written notice to the other Party, without stating a cause or reason and without cause or penalty.

3.2.2 By SVMHS, in its sole discretion, immediately, if Physician fails to maintain any of the Professional Standards described in Section 2.1 of the Agreement;

3.2.3 By SVMHS, upon thirty (30) days’ prior written notice to Physician, upon the first occurrence of any one (1) or more of the following events, providing Physician the opportunity to cure the same during such thirty (30) day period:

(a) Physician violates, or causes any other person or entity to violate, the Standards of Conduct, SVMHS’s corporate integrity program or any corporate integrity agreement applicable to SVMHS;

(b) Physician engages in conduct that, in SVMHS’s good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of SVMHS;

(c) Physician engages in inappropriate interaction with, inappropriate behavior towards, and/or harassment of SVMHS personnel, or any other actions or conduct which might be construed to constitute a hostile working environment; or

(d) Physician’s Board certification is denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto.

3.2.4 By SVMHS, upon ten (10) days’ prior written notice upon the occurrence of any one (1) or more of the following events:

- (a) a material breach of this Agreement by Physician, except for a breach otherwise described in this section, that is not cured to the reasonable satisfaction of SVMHS within thirty (30) days after written notice of such breach is provided to Physician;
- (b) Physician has his or her medical staff membership or clinical privileges at any hospital terminated, suspended or revoked for any reason, or Physician relinquishes his or her medical staff membership or clinical privileges at any hospital under threat or during the pendency of any medical staff investigation or disciplinary action, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto; Physician is the subject of an investigation or proceedings that could lead to disciplinary action by any organized medical staff; or Physician's clinical privileges at any hospital are restricted for a period of longer than thirty (30) days;
- (c) Physician is convicted or charged with a felony or a misdemeanor involving fraud, dishonesty, controlled substances or moral turpitude, or any crime relevant to the provision of Physician Services or the practice of medicine;
- (d) Physician is excluded or suspended from participation in any Governmental Program;
- (e) A private payor refuses to credential, re-credential, or include Physician in payor's provider agreement with SVMHS or the Clinic;
- (f) Physician fails to be covered by the professional liability insurance required to be maintained under this Agreement for any reason other than the termination of such insurance;
- (g) Physician fails to comply with any SVMHS rules after being given written notice of that failure and such failure continues for more than five (5) days after written notice thereof is provided to Physician;
- (h) Physician fails or refuses to provide SVMHS within thirty (30) days of receipt of a request therefor with any information reasonably requested by SVMHS and necessary to evaluate whether Physician is in violation of this Agreement or has committed any other act or omission that might constitute grounds for termination of this Agreement by SVMHS;
- (i) Physician is determined by SVMHS to be abusing drugs and/or alcohol;
- (j) Physician is the subject of two (2) or more medical malpractice judgments or settlements within any twelve (12) month period involving in each case a payment to or for the benefit of the plaintiff in excess of thirty thousand dollars (\$30,000); or
- (k) Any event described in Section 3.2.3 of the Standard Terms and Conditions shall be repeated one (1) or more times.

3.2.5 By either Party upon written notice to the other Party in the event that any federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect that prohibits, restricts, limits or in any way substantially changes the arrangement contemplated herein or which otherwise significantly affects either Party's rights or obligations under this Agreement.

3.3 Effect of Termination. Upon any termination or expiration of this Agreement:

3.3.1 All rights and obligations of the Parties shall cease except (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration, and (ii) those rights and obligations that expressly survive termination or expiration of this Agreement;

- 3.3.2 Physician shall vacate the Clinic premises as soon as practicable, no later than seven (7) business days after the effective date of termination, removing Physician's personal property, and SVMHS may remove and store, at Physician's expense, any personal property that Physician has not so removed;
  - 3.3.3 Physician shall immediately return to SVMHS all of SVMHS's property, including equipment, supplies, furniture, furnishings and patient records (subject to Section 11 of the Standard Terms and Conditions [Records]), in Physician's possession or under Physician's control; and
  - 3.3.4 Physician shall not do anything or cause any other person to do anything that interferes with SVMHS's efforts to engage any other person or entity for the provision of professional medical services, or interferes in any way with any relationship between SVMHS and any other person or entity who may be engaged to provide services to SVMHS.
- 3.4 Suspension. SVMHS may suspend Physician on written notice to Physician from performance of this Agreement if any matter or event described in Section 3.2.3 of the Standard Terms and Conditions has occurred and is continuing, such suspension to extend only for such time as SVMHS may reasonably require to investigate such matter or event and determine whether it constitutes a basis for termination of this Agreement.
  - 3.5 No Hearing Rights. Expiration or termination of this Agreement for any reason shall not provide Physician with the right to a "fair hearing" or any other similar rights or procedures. Notwithstanding the foregoing, Physician shall be entitled to hearing rights in accordance with Clinic policies and procedures in the event that any expiration or termination of this Agreement should result in a report being made concerning such Physician to the Medical Board of California or the National Practitioner Data Bank.
  - 3.6 Non-Renewal. In the event that this Agreement is terminated pursuant to Section 3.2 of the Standard Terms and Conditions (Termination) prior to the expiration of the term or any renewal term, the Parties shall not enter into any agreement between them for the same or substantially the same services for one (1) year after the termination.
  - 3.7 Rights Upon Termination. Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive termination. Notwithstanding the foregoing, SVMHS may offset against accrued compensation any payments due to SVMHS, but only as authorized by law. Physician shall be released from any continuing obligation under this Agreement.

#### **4. Program Administration.**

- 4.1 Compliance Policies and Procedures. SVMHS shall develop policies and procedures to ensure compliance with all applicable limitations imposed by California Business and Professions Code §§ 2052 and 2400 (commonly referred to as "the prohibition on the corporate practice of medicine") (the "Prohibition"). On request of SVMHS, Physician shall attend meetings and participate in activities related to operations and quality.
- 4.2 Clinic Operational Guidelines. The Clinic shall be operated according to current policies, procedures and guidelines.
- 4.3 Clinic Policy and Procedure Manual. Physician shall abide by SVMC policies and procedures including the SVMC Policy and Procedure Manual as may be adopted or amended from time to time per the SVMC Physician Leadership and Clinical Integration Committee.
- 4.4 Clinic Administrator. A Clinic Administrator shall be designated by SVMHS.
- 4.5 Chief Medical Officer. A Chief Medical Officer shall be designated by SVMHS.

#### **5. HIPAA/State Patient Privacy Law Compliance; Confidential Information; Clinic Compliance Program.**

5.1 Compliance with Privacy Standards. SVMHS and Physician are each Covered Entities as defined under the Health Insurance Portability and Accountability Act (“HIPAA”). The Parties will use and disclose confidential patient information, including “protected health information,” as defined in HIPAA, as amended, and the regulations thereunder, and confidential patient information otherwise rendered under state law, exclusively for treatment, payment, Clinic health care operations, and as otherwise authorized by HIPAA and state law. Physician shall take all reasonable steps to use and disclose protected health information obtained in the course of providing services to Clinic patients in a manner such that the security and privacy of such information will be maintained and use appropriate safeguards to prevent use or disclosure of the information other than as described herein. Specifically, Physician shall:

- 5.1.1 Use and disclose protected health information solely for the benefit of SVMHS or for SVMHS’s internal administration or management, and shall not use or disclose any such information for purposes unrelated to providing services to Clinic patients or disclose any such information to third parties except as required by law or as authorized by SVMHS;
- 5.1.2 Ensure that all of Physician’s agents, employees, subcontractors or affiliates to whom Physician provides protected health information or confidential patient information agree to the same restrictions and conditions for use and disclosure of protected health information that apply to Physician;
- 5.1.3 Amend records, account for disclosures by Physician of protected health information, and make records available so that the individual to whom the protected health information pertains may review, access and obtain a copy of such record, consistent with the policies and procedures of SVMHS;
- 5.1.4 Abide by SVMHS’s policies and procedures for patient information privacy and security and notify SVMHS promptly in the event Physician becomes aware that any confidential patient information or protected health information has been compromised or accessed in an impermissible or unauthorized manner;
- 5.1.5 On request, participate in education and training sessions provided, sponsored or paid for by SVMHS that relate to patient information privacy and security; and
- 5.1.6 Immediately inform SVMHS of a data breach or other unlawful disclosure, if and when Physician becomes aware of such breach or disclosure.

Physician shall provide to SVMHS on request a statement of assurance from Physician that Physician will manage all protected health information and confidential patient information related to Clinic patients in a manner such that the security and privacy of such information will be maintained. Failure to abide by the provisions of this section is a material breach of this Agreement.

5.2 Confidential Information. Confidential Information shall be and remain the sole property of SVMHS, as applicable. “Confidential Information” includes any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of SVMHS, any and all know-how, processes, trade secrets, manuals, confidential reports, any SVMHS patient’s individually identifiable health information (as defined under HIPAA), and any information, records and proceedings of SVMHS and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes confidential information of any third party that may be in SVMHS possession.

5.2.1 Use of Confidential Information. Physician shall not use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose Confidential Information to any person or entity without the prior written consent of SVMHS. Physician shall protect Confidential Information from unauthorized use, access, or disclosure.



5.2.2 Return of Confidential Information. Physician shall return to SVMHS all Confidential Information and all copies thereof in Physician's possession or control, and permanently erase all electronic copies of such Confidential Information promptly upon the written request of SVMHS or the termination or expiration of this Agreement. Physician shall not copy, duplicate or reproduce any Confidential Information without the prior written consent of SVMHS, as applicable.

5.3 Clinic Compliance Program. Physician acknowledges that SVMHS has implemented a Compliance Program for the purpose of ensuring that the provision of, and billing for, care provided to Clinic patients is in compliance with applicable federal and state laws ("Compliance Program"). Physician acknowledges that Physician has received information relating to the Compliance Program, including SVMHS's Code of Ethics. Physician shall adhere to, abide by and support the Compliance Program. Physician shall participate in training and education sessions relating to the Compliance Program as requested by SVMHS.

## 6. Exclusivity; Non-Solicitation.

6.1 Exclusivity. During the term of this Agreement:

6.1.1 Physician shall give first priority to performing all professional medical services to Clinic patients consistent with the terms of this Agreement and Physician shall not undertake to perform any activities if they would interfere with Physician's performance of Physician's obligations under this Agreement. Except as provided in Exhibit A of this Agreement, Physician may only engage in a non-Clinic activity during the Clinic's business hours with the prior written consent of a responsible representative of SVMHS, who may condition such consent upon requiring assignment and remittance to SVMHS of any compensation received by Physician in connection with such activity.

6.1.2 Physician shall not, without the written consent of SVMHS, directly or indirectly render professional medical, teaching, research or other administrative services to or for any person or firm, other than SVMHS. Physician shall not (i) enter into negotiations, contracts, or other arrangements with any other provider of health care services regarding outside appointments to be held during the term of this Agreement or financial arrangements generating professional income during the term of this Agreement (ii) or own, manage, join, be employed by, act in the capacity of an officer, director, trustee, shareholder or member or otherwise participate in the ownership, management, operation or control of any business or person providing health care services, without SVMHS' prior written approval except as set forth in Exhibit A of this Agreement; provided, however that Physician may purchase and maintain ownership in publicly traded corporations without approval of SVMHS.

6.2 Non-Solicitation. During the term of this Agreement and for a period of one (1) year after the termination or expiration of this Agreement, Physician shall not solicit the employment of, or refer to others for employment, or urge or encourage any physicians or other personnel employed or contracted by SVMHS to seek alternative employment or to terminate existing employment or contracting relationships with either entity. Upon termination of this Agreement, Physician may notify his or her patients in accordance with such procedures regarding patient notification as SVMHS may adopt from time to time, consistent with legal requirements and ethical guidelines applicable to the practice of medicine. The primary interest of the parties with respect to patient notifications and transfers of patient records is to insure that each patient's choice is respected and implemented and there are no gaps in care.

6.3 Corporate Name, Logo, Identity. Physician shall not use the name, logo or corporate identity, or any part thereof, of Salinas Valley Memorial Healthcare System or its Clinics without the prior written consent of the entity whose name, logo or corporate identity is proposed to be used, except to solely identify such Physician's status as a current member of the medical staff of such entity.

6.4 Physician Development. Physician shall immediately notify SVMHS of any research, development activities or invention that Physician has developed or is developing entirely on his or her own time

without using any SVMHS equipment, supplies, facilities or trade secret information (“Physician Development”). Physician hereby assigns to SVMHS all of his or her right title and interest in any development or invention of the Physician that is not a Physician Development, that relates, at the time of conception or reduction to practice, to the Clinic’s business activities or the actual or demonstrably anticipated research or development activities of SVMHS and that results from the practice of medicine by Physician pursuant to this Agreement.

6.5 On request of SVMHS, not more often than quarterly, Physician shall attest in writing that Physician is in full compliance with this section.

6.6 The Parties recognize that if any provision of this section is breached, in whole or in part, by Physician, then SVMHS will be irreparably harmed thereby. In the event of such breach, SVMHS shall be entitled, upon application to any court of proper jurisdiction, to a temporary restraining order or preliminary injunction to restrain and enjoin Physician from such violation without prejudice as to any other remedies SVMHS may have at law or in equity. If any restriction contained in this section is held by any court to be unenforceable, or unreasonable, as to time, geographic area or business limitation, then such provisions shall be and are hereby reformed to the maximum time, geographic area or business limitation permitted by applicable laws.

**7. Meaningful Use; Other Incentive Programs.**

7.1 EHR Incentive Programs. Physician shall use best efforts to participate in, and qualify for the maximum payments under, the Medicare EHR Incentive Program, and if applicable the Medicaid EHR Incentive Program as described in 42 Code of Federal Regulations Part 495, in part by becoming proficient in use of Clinic’s EHR system and participating in EHR training programs.

7.2 Other Incentive Programs. At the request of SVMHS, Physician shall participate in a program sponsored by the federal or state governments, commercial third party payors and other parties which provide incentives to SVMHS and Physician to improve quality of services, utilize appropriate technology, or otherwise enhance services provided at the Clinic.

**8. Billing for Professional Services.**

8.1 Assignment. Physician hereby assigns to SVMHS all claims, demands and rights of Physician to bill and collect for all Physician Services rendered to Clinic patients, regardless of site of service. Physician shall not bill or collect for any services rendered to Clinic patients, and all Clinic receivables and billings shall be the sole and exclusive property of SVMHS. Any payments made pursuant to a payor agreement (including co-payments made by patients) shall constitute revenue of SVMHS. In the event any payment is made to Physician pursuant to any payor agreement, Physician shall promptly remit such payment directly to SVMHS. Physician shall timely complete any documents or forms necessary to document the assignment set forth in this section.

8.2 SVMHS Responsibility. SVMHS shall be solely responsible for providing or arranging for billing and collecting for all Physician Services provided to Clinic patients, and for managing all Clinic receivables and payables, including those related to Medicare and Medi-Cal beneficiaries.

**9. Non-Physician Personnel.** All non-physician personnel required for the proper operation and conduct of Clinic shall be employed and paid by SVMHS or its designee. SVMHS or its designee shall establish and classify all non-physician positions and shall designate the persons assigned to each non-physician position. Decision-making authority for non-physician clinical staffing and responsibilities will be made in accordance with policies established in collaboration between SVMHS and physician leadership of Clinic. Relating to the performance of non-key administrative or non-physician personnel, SVMHS or its designee shall have Exclusive Decision-Making Authority to control, select, schedule and discharge such employees, and to take any direct disciplinary measures as needed.

**10. Relationship Between the Parties.**

- 10.1 No Control Over Methods, Medical Decision-Making. It is the intent of the Parties to comply with all applicable limitations imposed by the Prohibition. SVMHS shall not have or exercise control or direction over the methods by which Physician performs professional medical services pursuant to this Agreement or Physician's medical decision-making and, notwithstanding any other provision of this Agreement or otherwise, SVMHS shall cooperate with Physician to enable them to exert appropriate control over such methods and carryout such decision-making. All work performed pursuant to this Agreement shall be in strict accordance with currently approved methods and practices in Physician's professional specialty and in accordance with the standards set forth in this Agreement. The sole interest of SVMHS is to insure that such services are performed and rendered in a competent and cost effective manner.
- 10.2 No Control over Referrals. Nothing in this Agreement limits (1) Physician's ability to make referrals to the provider of his or her choice; or (2) where Physician provides his or her services; provided, however, that Physician will comply with all applicable requirements with SVMHS's agreements with third-party payors for health care services including, but not limited to, agreements with recipients of referrals. This Agreement does not create any obligation or requirement that SVMHS shall make any referral of patients to Physician and/or Physician shall make any referral of patients to SVMHS. The payment of compensation is not based or conditioned in any way on referrals of patients to SVMHS, Hospital, Clinic or any other entity.
- 10.3 Indemnification. Except to the extent that any such loss or liability is covered by applicable insurance maintained by a Party, each Party shall indemnify, hold harmless and defend the other Party and its officers, agents and employees, against any loss or liability arising out of or resulting in any way from the acts or omissions of such Party or its own officers, employees or agents in breach of this Agreement, except (a) that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory acts or omissions of the indemnified Party and its owners, employees or agents, and (b) to the extent such indemnification would void insurance or coverage otherwise available with regard to such loss or liability. This obligation shall not be qualified or eliminated by an allegation or finding that the other Party or any of its personnel is responsible for a passively negligent act or omission. This section shall survive the termination of this Agreement.

**11. Records.** All files, charts and records, medical or otherwise, generated by Physician or any other medical professional in connection with services furnished pursuant to this Agreement are the property of Clinic. Physician shall maintain medical records according to Clinic policies and procedures and in accordance with community standards, provided that, through such policies and procedures, SVMHS exercises no control or direction over Physician's clinical decisions. Each Party shall retain the confidentiality of all records and materials in accordance with all applicable state and federal laws. SVMHS shall permit Physician to have access during or after the term of this Agreement to medical records generated by Physician as necessary in connection with claims, litigation, investigations or treatment of patients. Such obligation shall only extend for the period of time that SVMHS normally retains such records. Physician shall be entitled to maintain and utilize such medical records in Physician's provision of patient care to those patients of the Clinic who authorize SVMHS to provide a copy to Physician. Clinic shall provide such copies on receipt of written authorization in accordance with Clinic's applicable procedures and upon receipt of payment, all in accordance with Civil Code Section 123110.

- 11.1 Access to Records. To the extent required by Section 1861(v)(I)(I) of the Social Security Act, as amended, and by valid regulation which is directly applicable to that section, Physician agrees to make available upon valid written request from the Secretary of HHS, the Comptroller General, or any other duly authorized representatives, this Agreement and the books, documents and records of Physician to the extent that such books, documents and records are necessary to certify the nature and extent of SVMHS's costs for services provided by Physician.

Physician shall also make available such subcontract and the books, documents, and records of any subcontractor if that subcontractor performs any of Physician's duties under this Agreement at a cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, and if that subcontractor is related to Physician. Such books, documents, and records shall be preserved and available for four (4) years after the furnishing of services by Physician pursuant to this Agreement. If Physician is requested to disclose books, documents or records pursuant to this Section 11.1 of the Standard Terms and Conditions (Access

to Records) for purposes of an audit, Physician shall notify SVMHS of the nature and scope of such request, and shall make available, upon written request of SVMHS, all such books, documents or records.

- 11.2 This section is intended to assure compliance with Section 1861 of the Social Security Act, as amended, and regulations directly pertinent to that Act. The obligations of Physician under this section are strictly limited to compliance with those provisions, and shall be given effect only to the extent necessary to insure compliance with those provisions. In the event that the requirements of those provisions are reduced or eliminated, the obligations of the Parties under this section shall likewise be reduced or eliminated.

## **12. Dispute Resolution.**

- 12.1 Non-Medical Disagreements. In the event questions or disagreements arise between the Parties concerning performance of responsibilities under this Agreement, or regarding other non-medical matters, such disagreements will be discussed between Physician and the Clinic Administrator and resolved if possible. If no resolution is reached, the matter in dispute shall be referred to the SVMC Chief Executive Officer, or his/her designee, for further action.
- 12.2 Medical Disagreements. In the event questions or disagreements arise concerning quality metrics, standards of professional practice, or Physician conduct in the Clinic, such questions or disagreements shall be resolved by the SVMHS Chief Medical Officer or his/her designee.

## **13. Miscellaneous.**

- 13.1 Assignment. Physician shall not assign, sell, transfer or delegate any of Physician's rights or duties, including by hiring or otherwise retaining additional physicians to perform services pursuant to this Agreement, without the prior written consent of SVMHS.
- 13.2 Captions. The captions used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 13.3 Choice of Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be Monterey County, California.
- 13.4 Exhibits. All Exhibits attached and referred to are fully incorporated by this reference.
- 13.5 Notices. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given (i) on the date of personal service on the parties, (ii) on the third business day after mailing, if the document is mailed by registered or certified mail, (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier, or (iv) on the date of transmission if sent by telegram, telex, telecopy or other means of electronic transmission resulting in written copies, with receipt confirmed. Any such notice shall be delivered or addressed to the parties at the addresses set forth in this Agreement or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.
- 13.6 Entire Agreement. This Agreement represents the entire understanding and agreement of the Parties as to those matters contained in it. No other oral or written understanding shall be of any force or effect with respect to the matters contained in this Agreement, unless attached to this Agreement as an exhibit or subsequent amendment.
- 13.7 Other Agreements. This Agreement may be one of other agreements between SVMHS and Physician or an immediate family member of Physician. SVMHS maintains a master list of such agreements, together with true and complete copies of the Agreement, that is available for review by the Secretary of the Department of Health and Human Services in accordance with 42 CFR § 411.357(d)(1)(ii).

- 13.8 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and the remaining provisions shall remain enforceable between the Parties.
- 13.9 Waiver. No waiver of any provision of this Agreement shall be effective against either Party unless it is in writing and signed by the Party granting the waiver. The failure by either Party to exercise any rights under this section shall not operate as a waiver of such rights.
- 13.10 Authority and Execution. Each Party represents that it has the authority to execute this Agreement and does hereby bind the Party on whose behalf the execution is made.
- 13.11 Independent Representation. Each Party has had the opportunity to be represented by and to have this Agreement reviewed by its own separate legal, accounting, and tax counsel. The Parties to this Agreement have been represented by separate independent legal, accounting and tax counsel. Each Party has looked to such independent counsel representing that Party for advice regarding this Agreement. No Party makes or represents to the other any representation of law or fact except as specifically provided in this Agreement.
- 13.12 Counterparts. This Agreement may be executed in multiple counterparts, all of which together shall be deemed one and the same instrument.
- 13.13 Amendment. This Agreement may be amended at any time by mutual agreement of the Parties, but any such amendment must be in writing, dated, signed by the Parties and attached hereto. Notwithstanding the foregoing, in the event SVMHS intends to seek tax-exempt financing, Physician agrees to amend this Agreement as may be necessary for SVMHS to obtain such financing.
- 13.14 Survival. The provisions of Sections 1.8 (No Existing Obligations), 2.7 (Professional Liability Insurance), 3.5 (No Hearing Rights), 5.1 (Compliance with Privacy Standards), 5.2 (Confidential Information), 6.3 (Corporate Name, Logo, Identity), 8.1 (Claims Assignment and Cooperation), 10.3 (Indemnification), 11 (Records), 12 (Dispute Resolution), 13.1 (Assignment), 13.3 (Choice of Law), and 13.5 (Notices) shall survive the termination of this Agreement.

# SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM

## CLINIC PROFESSIONAL SERVICES AGREEMENT

**Douglas Cambier, M.D.**

**(Specialty: Family Medicine)**

This Professional Services Agreement (“Agreement”) is entered into and effective **April 1, 2021** (“Effective Date”), by and between **Salinas Valley Memorial Healthcare System**, a local health care district organized and operating pursuant to Division 23 of the California Health and Safety Code (“SVMHS”), and **Douglas Cambier, M.D.** (“Physician”). SVMHS and Physician may be referred to in this Agreement as a “Party” or collectively, as the “Parties.” Standard Terms and Conditions to this Agreement are attached to this Agreement and incorporated by this reference.

### RECITALS

- A. SVMHS owns and operates Salinas Valley Memorial Hospital, a general acute care hospital at 450 East Romie Lane, Salinas, California (“Hospital”).
- B. SVMHS operates a community clinic under the name “Salinas Valley Medical Clinic” (“SVMC” or “Clinic”) pursuant to section 1206(b) of the California Health and Safety Code.
- C. Physician is duly licensed to practice medicine in the State of California, and is qualified to provide professional services in Physician’s specialty in the Clinic.
- D. SVMHS desires that Physician provide professional services in Physician’s specialty in the Clinic to patients who need such services, and Physician has agreed to do so in accordance with the terms and conditions of this Agreement.

The Parties agree as follows:

### ARTICLE I. PHYSICIAN RESPONSIBILITIES

- 1.1 **Physician Services.** Physician shall personally provide the following services (“Physician Services”), consistent with the policies and procedures of Clinic, to the Clinic and patients of the Clinic, provided that Physician’s obligations under this Agreement are limited to the provision of services within Physician’s professional capabilities.
  - 1.1.1 **Medical Services.** Physician shall personally provide professional health care services, described in Exhibit A, in Physician’s medical specialty, to patients at the Clinic. Professional health care services include Medicare services, Medi-Cal services, services pursuant to any other federal health care program or a state health care financial program (“Governmental Programs”), workers’ compensation services, and charity care. Physician shall cooperate with SVMHS to enable the Clinic’s participation in Medicare, Medi-Cal, Governmental Programs, workers’ compensation services and commercial payor programs. Physician shall provide services to all patients, including Medicare, Medi-Cal, Governmental Program and workers’ compensation beneficiaries, in a non-discriminatory manner and in accordance with all applicable laws and SVMHS policies and procedures, as developed and implemented in collaboration with physician leadership of Clinic.
  - 1.1.2 **Allied Health Professionals.** If one or more allied health professionals shall be engaged to provide services to Clinic patients, Physician shall provide professional supervision of allied health professionals employed by SVMHS in the Clinic.
  - 1.1.3 **Research Activities.** Physician shall participate, from time to time, in the medical research activities of SVMHS, as reasonably requested by SVMHS, or as initiated by Physician with the approval of SVMHS,

in either case to the extent such participation is consistent with the efficient and medically appropriate provision of Physician Services to patients of the Clinics.

- 1.1.4 **Community Medical Education Activities.** Physician shall participate in community and patient medical education activities as may be reasonably requested by SVMHS from time to time.
- 1.1.5 **Schedule.** Physician will provide Physician Services for the number of hours per week and number of weeks per year as set forth in Exhibit A, except as otherwise approved by the Clinic Administrator.
- 1.1.6 **Clinic Call Coverage.** Physician shall participate on the Clinic call panel. Call panel coverage requirements shall be equitably divided amongst physicians of similar scope and specialty. Physician shall be available by telephone, or through answering service to the physician taking call for the Clinic in order to respond to questions regarding Physician's patients, without additional compensation by SVMHS.
- 1.2 **No Substitutions.** Physician shall personally perform the services required of Physician under this Agreement. Physician shall not engage a substitute or subcontractor to provide these services. Any discontinuation of service by Physician, or any attempted substitution of Physician or any attempted delegation of Physician's obligations under this Agreement, without SVMHS's approval and consent, shall be deemed a material breach of Physician's obligations.
- 1.3 **Absences.** In the event Physician is unable to perform the obligations under this Agreement due to illness, continuing education responsibilities, leave or other justifiable cause, SVMHS shall designate a qualified replacement. SVMHS shall have the right to approve the length of Physician's absence, and any unapproved absence shall constitute a breach of this Agreement. Physician shall be entitled to vacations and other leaves of absence, if any, in accordance with Exhibit A to this Agreement. Physician must provide SVMHS with forty-five (45) days' prior written notice in advance of any absence, when practicable.
- 1.4 **Credentialing.** Physician shall cooperate with SVMHS with respect to its credentialing and recredentialing requirements for professionals providing services to patients of the Clinic and shall submit applications and supporting documentation timely and completely in order to comply with the requirements of SVMHS's credentialing program for the Clinic.
- 1.5 **Code of Conduct.** Physician shall comply with the SVMC Policy and Procedure Manual, as such document shall exist from time to time.
- 1.6 **Limitation on Use.** All items and services provided by SVMHS to Physician pursuant to the terms of this Agreement shall be used by Physician exclusively to satisfy Physician's contractual obligations under this Agreement. Without limiting the foregoing, such items, including SVMHS premises, shall not be used by Physician in the operation of a private practice of medicine or any activity unrelated to the treatment of SVMHS patients.
- 1.7 **Notification of Certain Events and Noncompliance.** Physician shall notify SVMHS in writing as soon as possible, and within a maximum of twenty-four (24) hours, after Physician becomes aware: (a) that Physician has become the subject of, or materially involved in, any investigation, proceeding, or disciplinary action by any state or federal health care program, any state's medical board or professional board, or any agency responsible for professional licensing, standards or behavior; (b) that Physician has become the subject of any legal action or legal proceeding arising out of the provision of services under this Agreement; or (c) of any event occurring that would materially alter the status or ability of Physician's compliance with this Article 1 (Physician Responsibilities), including, without limitation, the imposition of any integrity agreement, consent decree or settlement agreement with any state or federal agency having jurisdiction over Physician.
- 1.8 **Financial Conflict of Interest.** Physician shall immediately report to SVMHS any financial conflict or potential financial conflict of interest of Physician or Physician's spouse or dependent children with the interests of SVMHS and shall give full disclosure of the facts pertaining to any relationship, transaction or other activity of Physician, or Physician's spouse or dependent children, that may be reasonably construed to involve a financial conflict of interest with SVMHS or that would have an adverse effect on Physician's satisfactory performance of Physician's

obligations under this Agreement. Except with the approval of SVMHS, Physician shall not solicit or accept any financial benefit, in cash or in kind, from a current or potential vendor of goods or services to SVMHS, a pharmaceutical or medical device manufacturer or any provider of medical services.

- 1.9 **Education and Training**. On request, Physician shall participate in education and training sessions provided, sponsored or paid for by SVMHS that relate to quality improvement, patient safety, Clinic operations and other matters pertinent to Physician's performance of Physician responsibilities under this Agreement, not to exceed four (4) hours per quarter.

## **ARTICLE II. PROFESSIONAL STANDARDS**

- 2.1 **Licensure and Standards**. Physician shall: (i) be licensed to practice medicine in the State of California without restriction; (ii) be certified as a participating physician in the Medicare and Medi-Cal programs; and (iii) maintain an unrestricted Drug Enforcement Administration ("DEA") registration.

## **ARTICLE III. COMPENSATION**

- 3.1 **Compensation for Physician Services**. Physician shall be entitled to fair market value compensation as set forth in Exhibit A to this Agreement.
- 3.2 **Benefits**. In addition to compensation set forth in Section 3.1 (Compensation for Physician Services), Physician shall receive the benefits, if any, as described in Exhibit A to this Agreement.
- 3.3 **Practice Guidelines/Best Quality Practices**. Physician shall participate in the accepted practice guidelines and best quality practices described in Exhibit A to this Agreement.
- 3.4 **Continuing Medical Education**. Physician shall be entitled to reimbursement for continuing medical education expense as provided in Exhibit A to this Agreement.
- 3.5 **Recordkeeping**. Physician shall furnish to the Clinic Administrator a report of daily direct patient care. This report will include appropriate documentation of patient services provided by Physician to enable SVMHS to timely and accurately bill and collect for such services, including preparation and submission of charge sheets to responsible parties.
- 3.6 **Limitations**. Except as specifically set forth in this Section, Physician shall have no claims under this Agreement or otherwise against SVMHS for any compensation, benefits or reimbursement of expenses or costs incurred in connection with this Agreement, Physician Services, or Physician's performance obligations under this Agreement.

## **ARTICLE IV. STANDARD TERMS AND CONDITIONS**

- 4.1 **Additional Terms and Conditions**. Physician acknowledges the Standard Terms and Conditions attached to and incorporated into this Agreement and agrees to abide and be bound by each and every provision of the Standard Terms and Conditions. Physician acknowledges having read the Representations and Warranties provisions in Section 1, and confirms the accuracy of the Representations and Warranties, and the Term and Termination provisions in Section 3, and understands the circumstances under which this Agreement may be terminated.

The Parties have executed this Agreement to be effective as of the Effective Date first set forth above.

**SVMHS**  
Salinas Valley Memorial Healthcare System

**PHYSICIAN**  
Douglas Cambier, MD



By: \_\_\_\_\_  
Pete Delgado, President/CEO

\_\_\_\_\_  
Douglas Cambier, MD

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Address for Notices:**

President/Chief Executive Officer  
Salinas Valley Memorial Healthcare System  
450 E. Romie Lane  
Salinas, CA 93901

**Address for Notices:**

SVMC \_\_\_\_\_  
Attn: \_\_\_\_\_, MD  
\_\_\_\_\_  
Salinas, CA 93901

**With Copy to:**

Gary R. Ray  
Ottone Leach & Ray LLP  
295 Main Street, Suite 600  
Salinas, CA 93901

## EXHIBIT A

### VARIABLE TERMS AND CONDITIONS

#### A.1 **Further Description of Medical Services.**

A.1.1 **Standard Locations.** Physician shall provide professional medical services in Physician's specialty at locations specified by SVMHS, which will be within the SVMHS healthcare district boundaries or within thirty (30) miles of the SVMHS Hospital.

A.1.2 **Physician Additional Locations.** Physician is approved to provide medical services (i.e., "clinical work" pursuant to Section A.4.8.2) at:

➤None as of the Effective Date of this Agreement.

Physician shall provide documentation of medical services provided at these locations to Clinic administrator so such services may be billed and collected by SVMHS and credited to Physician in the determination of Productivity Compensation under this Agreement

A.1.3 **Changes to Locations.** Physician is responsible for notifying SVMHS of any proposed or actual changes to service locations.

A.2 **Schedule.** Physician shall provide Physician Services to Clinic patients on a full-time basis thirty-six (36) hours per week, forty-seven (47) weeks per year in a clinic setting; one (1) week of which can be allocated to continuing medical education. There shall be no reduction for any weekday that Physician is scheduled to cover the Clinic but the Clinic is otherwise closed due to a Clinic designated observed holiday, recognizing that if a holiday falls on a weekend day, it is usually observed on the preceding Friday or the following Monday. SVMHS will announce holiday observance in advance. In the event Physician covers a Clinic shift on a Clinic designated observed holiday, then Physician shall be entitled to one weekday off for each shift(s) so covered and that weekday off shall count toward the forty-seven (47) weeks of coverage.

A.3 **Absences.** Physician shall be entitled to the following time off based upon Physician's full-time status: five (5) weeks per year, accruing equally throughout the contract year. Physician must provide forty-five (45) days' notice for vacations and/or desired schedule changes that would leave a gap in any coverage area. SVMHS will honor those requests should acceptable coverage be secured. Physician is responsible for negotiating/scheduling coverage changes. Physician will report days off to the Clinic's practice manager for purposes of tracking actual annual days off.

#### A.4 **Compensation.**

A.4.1 **Compensation Methodology Compliance.** In order to maintain continuity in the Compensation Methodology under this Agreement and to ensure commercial reasonableness and fair market value compensation to Physician for Services provided under this Agreement in compliance with Stark Law and Anti-Kickback regulations, SVMHS and Physician agree that SVMHS retains the right to continue, for the term of this Agreement, application of the compensation formula in this Agreement using the wRVU Conversion Factor set forth in this Agreement and the wRVU values in the 2020 CMS Physician Fee Schedule .

A. **WRVU and WRVU Conversion Factors.** In general, Work RVU values per unit of service performed are determined based on the wRVU value for that service assigned by the Centers for Medicare and Medicaid Services (CMS). For CPT codes without wRVU values assigned by CMS, the wRVU value shall be set by SVMHS consistent with current Clinic policies and procedures and fair market value standards. SVMHS shall provide Physician with monthly reports of Physician's actual wRVU production.

- B. **Changes by CMS.** In the event CMS modifies wRVU values and/or wRVU conversion factors, SVMHS is not obligated to modify the wRVU values and/or wRVU conversion factors used in the compensation formula for Services provided by Physician under this Agreement. SVMHS shall have sole discretion regarding whether or how to incorporate any such CMS changes.
- C. **Compensation Formula.** SVMHS and Physician agree that the wRVU Conversion Factor set forth in the Agreement and the wRVU values in effect as of the Effective Date of this Agreement shall continue to be used in the compensation formula for determining Physician compensation under this Agreement until the termination or expiration of this Agreement, or as otherwise mutually agreed to by SVMHS and Physician in writing. The compensation formula set forth in the SVMC Physician Compensation Manual may be modified by SVMHS from time to time upon prior notice to Physician.
- A.4.2 **Productivity Compensation for Work RVUs.** Physician shall be paid Productivity Compensation based on the number of Work RVUs billed by Physician for his or her personally performed services under this Agreement multiplied by Fifty-Seven Dollars and Sixty-Five Cents (\$57.65) (“wRVU Conversion Factor”). Payment of Productivity Compensation shall be in accordance with SVMHS policies and, as applicable, prorated for any partial month of the Agreement. SVMHS shall provide Physician with monthly reports of the Physician’s actual wRVU production.
- A.4.3 **Work RVUs, Initial Draw and Draw.**
- A. **Initial Draw.** The Initial Draw will be equal to twenty five thousand dollars (\$25,000.00) per month paid semi monthly on the 5<sup>th</sup> and 20<sup>th</sup> of each month. Following six (6) months of actual Work RVU productivity experience, Physician shall be paid Draw monthly based on eighty-five percent (85%) of the calculated monthly average of work RVUs times the wRVU Conversion Factor. Thereafter Draw will be reset in accordance with Section A.4.3 D.
- B. **Draw Less Than Actual Productivity Compensation.** After each quarter, if Physician’s Draw was less than Physician’s actual Productivity Compensation calculated under Section A.4.2 of Exhibit A of this Agreement, SVMHS shall pay Physician the difference in the next monthly payment of Productivity Compensation.
- C. **Draw More Than Actual Productivity Compensation.** After each quarter, if Physician’s Draw was more than Physician’s actual Productivity Compensation calculated under Section A.4.2 of Exhibit A of this Agreement, SVMHS shall deduct the difference in the next monthly payment of Productivity Compensation.
- D. **Resetting Draw.** At the end of each calendar year ending December 31, Physician’s Draw will be reset to eighty-five percent (85%) of Physician’s actual wRVU production for the previous twelve (12) months times the wRVU Conversion Factor. This will allow Physician’s Draw amount to be adjusted on an annual basis up or down based on Physician’s actual wRVU production for the prior twelve (12) month period.
- A.4.4 **Annual Incentive Plan.** An annual incentive plan shall be available to Physician who meets the eligibility requirements outlined in this Section A.4.4 and further described in Exhibit C to this Agreement. Incentive payments are based on performance metrics measure on a Calendar Year basis, January 1 through December 31 (“Measurement Period”), and carry an eligibility requirement of at least one thousand (1,000) hours worked during the Measurement Period and a current Professional Services Agreement with Physician in place and in effect at the time of payment of the incentive in order to qualify. Payments of any earned incentive shall be made by SVMHS within ninety (90) days of the end of the Measurement Period.
- A.4.5 **Supervision of Allied Health Professionals.** Physician shall be paid for professional services performed by Physician in the supervision of Allied Health Professionals. A credit of fifteen percent (15%) of the

Allied Health Professional's Work RVUs for services directly overseen and supervised by Physician will be added to Physician's Productivity Compensation and multiplied by Physician's wRVU Conversion Factor. The credit for supervision of Allied Health Professionals does not apply to services an Allied Health Professional provides as an assistant surgeon.

A.4.6 **Payment on Termination.** On termination of this Agreement, which is not extended, renewed or superseded by another agreement, SVMHS shall pay to Physician the amount of any Productivity Compensation in excess of Draw or Base Compensation, as applicable due to Physician within twenty (20) days after the termination of this Agreement.

A.4.7 **Agreement Includes All Compensation from SVMHS and Hospital.** Incorporated into compensation under the Agreement, unless specifically excluded, are all the Physician's sources of practice revenues and income, including Hospital Call coverage stipends, other hospital on-call fees, hospital stipends, and reading fees; provided, however, that services as a medical director within the SVMHS system, service on medical staff or SVMHS positions such as department chair or chief of staff, call panels which are not currently in effect, or other items specifically excluded by written agreement between Physician and SVMHS shall be independently compensated to Physician by SVMHS and are not subject to the terms of this Agreement.

A.4.8 **Physician Services Revenue from Other Facilities.** Physician may provide services at facilities not operated by SVMHS (including professional medical, administrative, and panel/call services) as set forth in Exhibit B ("Other Facilities"). Services provided at Other Facilities are acknowledged and excluded from Sections 6.1.1 and 6.1.2 of the Standard Terms and Conditions of this Agreement through reference in Exhibit B. Except as noted in Section A.4.8.2, Physician shall receive compensation for services provided to Other Facilities as agreed to by Physician and the facility and this compensation shall be independent of this Agreement.

A.4.8.1 **Insurance/Administrative Overhead.** For administrative and panel/call services at Other Facilities, Physician shall pay to SVMHS five percent (5%) of the compensation received by Physician for such services, as reimbursement to SVMHS for the cost of insurance and for other administrative overhead costs which may be incurred by SVMHS in connection with such services. Physician shall provide to SVMHS annually each Form 1099 received by Physician for payment in connection with such services together with payment to SVMHS of the amount due to it under this Section as determined based on the income reported in the Form 1099.

A.4.8.2 **Work RVUs at Other Facilities.** Clinical work at any such facility which is defined and categorized within wRVUs, other than for interpretive readings or services which are billed by Other Facilities, shall be billed and collected by SVMHS and credited to Physician in the determination of Productivity Compensation under this Agreement.

A.4.8.3 **Compensation Paid to Physician.** In the event compensation due to Physician from Other Facilities is paid directly to Physician, then Physician shall follow the methodology set forth in A.4.8.1 and pay to SVMHS five percent (5%) of the compensation received by Physician for such services, as reimbursement to SVMHS for the cost of insurance and for other administrative overhead costs which may be incurred by SVMHS in connection with such services.

A.4.8.4 **Compensation Paid to SVMHS.** In the event compensation due to Physician from Other Facilities is paid to SVMHS, then SVMHS shall: (i) retain five percent (5%) of the compensation for such services as reimbursement to SVMHS for the cost of insurance for other administrative overhead costs which may be incurred by SVMHS in connection with such services; and (ii) include ninety-five percent (95%) of the revenue for such services in the gross compensation paid by SVMHS to Physician.

A.5 **Benefits.** Physician shall be eligible for standard physician benefits offered by SVMC to physicians contracted by SVMHS for the Clinic.

- A.5.1 **Health/Dental Insurance.** Physician is eligible for group health and dental insurance offered by SVMC for Physician and Physician Dependents at a cost to Physician of fifteen percent (15%) of the monthly premium of the selected coverage.
- A.5.2 **Retirement Benefits.** Physician shall have access to a 403(b) retirement plan and a 457 retirement plan offered by SVMHS. SVMHS will make contributions in the amount of five percent (5%) of Physician's compensation, up to the limits allowed by law, to Physician's 403(b) retirement plan. SVMHS contributions are subject to SVMHS retirement plan policies, including a three (3) year vesting period that begins on the effective date of this Agreement.
- A.6 **Continuing Medical Education.** For each contract year during the term of this Agreement, Physician shall be entitled reimbursement for continuing medical education (CME) expenses incurred during the contract year up to a maximum of two thousand dollars (\$2,000). Unused CME expense reimbursement funds do not roll over to the following year. Payment for reimbursable CME expenses shall be made in accordance with applicable Clinic policies.
- A.7 **Practice Expense Reimbursement:** SVMHS shall pay all board certification expenses that are required by the certifying body, licensure expenses including medical board, x-ray license, DEA license and other certificates which are required or necessary for Physician's performance of professional services under this Agreement for which Physician is credentialed to perform (collectively, "Practice Expenses"). Only Practice Expenses incurred on or after the effective date of the Original PSA may be reimbursed under this Section A.7.
- A.8 **Services and Activities in Support of SVMHS/Clinic.** SVMHS and Physician acknowledge and agree that certain services and activities may be required of Physician in support of SVMHS and Clinic to ensure a continuing high level of patient care. To that end, Physician shall participate in an annual SVMC Meeting/Dinner and other functions/events from time to time, in support of the SVMC Clinics and the SVMHS facilities. In addition, to assist in the recruitment and retention of highly skilled practitioners, upon SVMHS's request, Physician shall participate in recruitment meetings with SVMC physician candidates. SVMHS shall reimburse Physician for reasonable meal expenses incurred as part of meeting with physician candidates hosted at the request of SVMHS.
- A.9 **Practice Guidelines/Best Quality Practices.** Physician shall demonstrate cooperative work arrangements with the Medical Staff, Quality and Safety Leadership and SVMHS/SVMC Administration to achieve mutually accepted practice guidelines and the best quality practices. These practices will be evidenced based, and include at minimum the following:
- A.9.1 Attendance at regular monthly meetings with SVMHS and management services organization representatives when requested to review any operational or quality issues.
- A.9.2 Completion of all office visit notes within seven (7) days of visit. A penalty of ten dollars (\$10.00) applies per record, per day in excess of seven (7) that a visit note remains incomplete. Penalty shall be deducted from Physician's Productivity Compensation.
- A.9.3 Commitment to use of SVMHS supported electronic health/medical record platforms.
- A.9.4 Compliance with all governmental and SVMHS quality reporting initiatives including Meaningful Use, Physician Quality Reporting System and others that may come into effect from time to time.
- A.9.5 Timely arrival at Clinic for scheduled visits.
- A.10 **Deposition/Court Appearance Fees.** In the event Physician is subpoenaed or requested to appear at a deposition or court proceeding to provide expert testimony unrelated to services provided under this Agreement, SVMHS may at its option and at Physician's request, assist Physician with the management and coordination of such appearance as follows:

- A.10.1 Clinic staff shall assist Physician with the management, coordination, scheduling and follow up pertaining to the appearance by Physician.
- A.10.2 To assist Physician with payment for Physician's appearance, SVMHS shall collect all fees due to Physician for the appearance.
- A.10.3 As a service fee for providing the management, coordination, scheduling and follow up pertaining to the appearance by Physician, SVMHS shall retain fifty percent (50%) of the fees paid for the appearance by Physician. The remaining fifty percent (50%) of the fees paid for the appearance by Physician shall be paid to Physician by SVMHS as a pass-through payment and reported under standard payroll processing procedures.

A.11 **Physician Modifications and Exceptions to Standard Terms and Conditions.**

- A.11.1 SVMHS acknowledges and excludes Physician ownership interest in Monterey Bay Independent Physician Association from Section 1.1 of the Standard Terms and Conditions of this Agreement.

**EXHIBIT B**

**Other Facilities**

The following are services performed at Other Facilities which are independent of SVMHS are listed pursuant to Section A.4.8 of Exhibit A, and for which physician compensation is in accordance with Section A.4.8.

List facility name and specific activity:

➤ **None as of the Effective Date of this Agreement.**

**EXHIBIT C**

**ANNUAL INCENTIVE PLAN**

Per the terms outlined in Exhibit A and in this Exhibit C, Physician may be eligible to participate in an Annual Incentive Plan. Aspire Health Plan (“AHP”) is an SVMHS affiliated Health Plan that offers Medicare Advantage health plan options to eligible seniors in Monterey County. For each AHP Medicare Advantage member attributed to a Physician by AHP as the designated Primary Care provider, Five Dollars (\$5.00) per member, per month (“PMPM”) shall be allocated into an Annual Incentive Plan for Physician. Physician is eligible for payment based on achievement of the Performance Targets outlined below for each Metric. SVMHS and Physician may update these metrics annually through mutual agreement. If a metric becomes unreportable based on limitations or circumstances outside the control of SVMHS and Physician, Physician shall receive full points for that metric.

<b>Metric</b>	<b>Source</b>	<b>Weight</b>	<b>Performance Targets</b>	
Patient Satisfaction w/Provider (for the 12 months ending December 31)	POS	40%	< 90% No Points	≥ 90% Full Points
Quality Metric: •Diabetes Hemoglobin A1c (HbA1c) Poor Control (>9%) 4th Decile	CMS	30%	< Decile 4 No Points	≥ Decile 4 Full Points
Attributed Member Aspire Quality/HCC Gap Closure Percent (Baseline is SVMC PrimeCare HCC Gap Closure for CY18; reporting period is calendar year)	Aspire	25%	< 72% No Points	≥ 72% Full Points
Aspire MLR Benchmark Medical Loss Ratio (MLR) for all SVMC PrimeCare assigned patients relative to AHP CMS Bid for the plan year (reporting period is calendar year) SVMC- PrimeCare MLR is calculated for the year by applying the incurred but not received (INBR) calculation utilized for Aspire Health Plan financial reporting to claims activity recorded for SVMC-PrimeCare through December 31 of each calendar year.	Aspire	5%	> CMS Bid MLR % No Points	≤ CMS Bid MLR % Full Points



## **PHYSICIAN SERVICES AGREEMENT STANDARD TERMS AND CONDITIONS**

These Standard Terms and Conditions are incorporated into and made part of the Salinas Valley Memorial Healthcare System Professional Services Agreement.

1. **Physician Representation and Warranty.** Physician represents and warrants to SVMHS that, as of the Effective Date and the Commencement Date, except as set forth or disclosed in Exhibit A of the Clinic Professional Services Agreement, the following shall be true and correct:
  - 1.1 Physician has no direct or indirect stock or other equity or ownership interest (whether controlling or not) in any corporation, association, partnership, joint venture or other entity, excluding any publicly traded corporations, that provides health care goods or services;
  - 1.2 There is no action, order, writ, injunction, judgment or decree outstanding or any claim, suit, litigation, proceeding, labor dispute, arbitration, governmental audit or investigation (“Action”) pending, threatened or anticipated against, relating to or affecting Physician. There are no court orders or agreements with, or liens by, any governmental authority that obligate, bind or in any way affect Physician;
  - 1.3 Physician has not violated and is in compliance with all laws, statutes, regulations, rules, notice requirements, guidelines and orders relating to Physician, including without limitation law and regulations regarding billing for services (collectively “Regulations”). Physician has not received any notice to the effect that, or otherwise been advised that, Physician is not in compliance with any such Regulations or court order;
  - 1.4 Physician has timely filed with the appropriate taxing authorities all returns (including information returns and other material information) in respect of taxes required to be filed through the Effective Date and will timely file any such returns required to be filed on or prior to the commencement date of services under this Agreement. All taxes have been timely paid, or will be timely paid. Physician does not have any material liability for taxes in excess of the amounts so paid, or to be so paid. There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other Actions for or relating to any liability for taxes. Physician has not waived any statute of limitations in respect of any taxes or agreed to any extension of time with respect to a tax assessment or deficiency;
  - 1.5 Physician satisfies, and at all times has satisfied, all performance standards and/or conditions of participation under any Governmental Program in which Physician participates or has participated with respect to goods provided or services rendered in connection with Physician’s medical practice. All bills and claims submitted to Governmental Programs or any of their respective fiscal intermediaries or contractors (collectively, “Program Claims”) by or on behalf of Physician or Physician’s medical practice, will represent bona fide claims for items, services or goods provided to Governmental Program beneficiaries in accordance with applicable Regulations; Physician has not been the subject of any investigation, audit or action, including pending or threatened investigations, audits or actions, arising out of or related to Physician’s professional medical service;
  - 1.6 Physician’s license to practice medicine in any state has never been suspended, revoked or restricted and Physician has never been reprimanded, sanctioned or disciplined by any licensing board or medical specialty board;
  - 1.7 Physician has never been denied membership and/or reappointment to the medical staff of any hospital and has never had Physician’s medical staff membership or clinical privileges at any hospital suspended, limited or revoked for a medical disciplinary cause or reason; Physician is not a “Sanctioned Individual” as defined under the Social Security Act as anyone (i) who has been convicted of a criminal offense related to the delivery of an item of service under the Social Security Act or any state health care program; (ii) who has been convicted, under federal or state law, of a criminal offense relating to neglect or abuse of patients; (iii) who has been convicted after 1996, under federal or state law, in connection with the delivery

of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any federal, state, or local government agency; (iv) who has been convicted of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; (v) against whom a civil monetary penalty has been assessed under Sections 1128A or 1129 of the Social Security Act; or (vi) who has been excluded from Medicare participation or a state health care program;

- 1.8 Physician is under no obligations (whether contractual or otherwise) to any former employer or third party that would prevent Physician from performing the services contemplated under this Agreement and otherwise to satisfy all of Physician's duties and obligations hereunder. Physician agrees to defend and indemnify SVMHS for all costs, expenses, demands and judgments that may occur as a result of Physician's breach of Section 1.8 of the Standard Terms and Conditions; and
- 1.9 Physician has disclosed to SVMHS any agreement to which Physician is or has been a party regarding the confidential information or trade secrets of others and Physician understands that Physician's performance of services under this Agreement will not require Physician to breach any such agreement. Physician shall not disclose protected confidential information or trade secrets of third parties to SVMHS nor induce SVMHS to use any such protected confidential information or trade secrets received from another under an agreement or understanding prohibiting such use or disclosure.

## **2. SVMHS Responsibilities.**

### 2.1 SVMHS Services.

2.1.1 Space. SVMHS shall make available to Physician reasonably necessary facilities for the operation of Clinic. Such space shall include an office furnished with a desk, which may be shared with other physicians.

2.1.2 Equipment and Software. SVMHS maintains authority to select and acquire equipment and software. SVMHS shall provide equipment and software consistent with SVMHS's budget and operations.

2.2 General Services. SVMHS shall furnish ordinary janitorial services, maintenance services, and utilities, including telephone service, as may be required for the proper operation and conduct of Clinic.

2.3 Supplies. SVMHS maintains authority to purchase and provide supplies. SVMHS shall provide supplies reasonably required for the proper treatment of Clinic patients, including prescription pads or tamper-resistant EMR forms or paper printed with Physician's name (unless Clinic practice and applicable regulations allow for paperless transmission of prescriptions). Physician shall inform SVMHS of supply needs in a timely manner and shall manage the use of supplies in an efficient manner that promotes quality and cost-effective patient care.

2.4 Business Operations. SVMHS shall be responsible for, or shall arrange for, all business operations related to operation of the Clinic, including personnel management, billing and payroll functions.

2.5 Chart Storage and Retrieval. Upon Physician's request, SVMHS shall store and retrieve non-Clinic records owned by Physicians in accordance with Clinic policies and procedures.

2.6 SVMHS Performance. The responsibilities of SVMHS under this Section 2 of the Standard Terms and Conditions shall be subject to SVMHS's discretion and its usual purchasing practices, budget limitations and applicable laws and regulations.

2.7 Professional Liability Insurance. Except as otherwise provided in Exhibit A, SVMHS shall maintain professional liability insurance that provides coverage for any act of Physician that may have occurred during the term of this Agreement while providing the services contemplated under this Agreement, including services provided at Other Facilities listed in Exhibit B, notwithstanding the termination or expiration of the term of this Agreement. Such policies must have limits of liability of at least two million

dollars (\$2,000,000) per claim and four million dollars (\$4,000,000) annual aggregate. Upon termination of this Agreement, either in the event that this Agreement is terminated pursuant to Section 3.2 or in the event that the term of this Agreement expires and is not renewed, SVMHS shall continue the current policy, obtain prior acts coverage or “extended discovery period,” “extended reporting period,” or “tail” coverage, or otherwise take steps to insure that no lapse of coverage occurs for claims not asserted as of the termination or expiration of Agreement for occurrences prior to the termination or expiration date.

2.8 **Prior Acts.** Except as provided in Exhibit A, SVMHS shall obtain and maintain prior acts coverage with respect to claims not asserted as of the Effective Date for occurrences prior to the Effective Date. Such insurance must have a limit of liability of at least one million dollars (\$1,000,000.00) per claim and three million dollars (\$3,000,000.00) annual aggregate. The prior act coverage shall be retroactive only to the date of \_\_\_\_\_.

2.9 **Workers’ Compensation.** Physician shall be afforded coverage under SVMHS’s workers compensation program.

### **3. Term and Termination.**

3.1 **Term.** The term of this Agreement shall begin on the Effective Date and shall continue through and until the second (2nd) anniversary of the Effective Date, unless earlier terminated as provided in this Agreement.

3.2 **Termination.** Notwithstanding the provisions of Section 3.1 of these Standard Terms and Conditions, this Agreement may be terminated:

3.2.1 By either Party, at any time upon ninety (90) days’ prior written notice to the other Party, without stating a cause or reason and without cause or penalty.

3.2.2 By SVMHS, in its sole discretion, immediately, if Physician fails to maintain any of the Professional Standards described in Section 2.1 of the Agreement;

3.2.3 By SVMHS, upon thirty (30) days’ prior written notice to Physician, upon the first occurrence of any one (1) or more of the following events, providing Physician the opportunity to cure the same during such thirty (30) day period:

(a) Physician violates, or causes any other person or entity to violate, the Standards of Conduct, SVMHS’s corporate integrity program or any corporate integrity agreement applicable to SVMHS;

(b) Physician engages in conduct that, in SVMHS’s good faith determination, jeopardizes the mental or physical health, safety or well-being of any person or damages the reputation of SVMHS;

(c) Physician engages in inappropriate interaction with, inappropriate behavior towards, and/or harassment of SVMHS personnel, or any other actions or conduct which might be construed to constitute a hostile working environment; or

(d) Physician’s Board certification is denied, suspended, restricted, terminated, revoked or relinquished for any reason, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto.

3.2.4 By SVMHS, upon ten (10) days’ prior written notice upon the occurrence of any one (1) or more of the following events:

- (a) a material breach of this Agreement by Physician, except for a breach otherwise described in this section, that is not cured to the reasonable satisfaction of SVMHS within thirty (30) days after written notice of such breach is provided to Physician;
- (b) Physician has his or her medical staff membership or clinical privileges at any hospital terminated, suspended or revoked for any reason, or Physician relinquishes his or her medical staff membership or clinical privileges at any hospital under threat or during the pendency of any medical staff investigation or disciplinary action, whether voluntarily or involuntarily, temporarily or permanently, regardless of the availability of civil or administrative hearing rights or judicial review with respect thereto; Physician is the subject of an investigation or proceedings that could lead to disciplinary action by any organized medical staff; or Physician's clinical privileges at any hospital are restricted for a period of longer than thirty (30) days;
- (c) Physician is convicted or charged with a felony or a misdemeanor involving fraud, dishonesty, controlled substances or moral turpitude, or any crime relevant to the provision of Physician Services or the practice of medicine;
- (d) Physician is excluded or suspended from participation in any Governmental Program;
- (e) A private payor refuses to credential, re-credential, or include Physician in payor's provider agreement with SVMHS or the Clinic;
- (f) Physician fails to be covered by the professional liability insurance required to be maintained under this Agreement for any reason other than the termination of such insurance;
- (g) Physician fails to comply with any SVMHS rules after being given written notice of that failure and such failure continues for more than five (5) days after written notice thereof is provided to Physician;
- (h) Physician fails or refuses to provide SVMHS within thirty (30) days of receipt of a request therefor with any information reasonably requested by SVMHS and necessary to evaluate whether Physician is in violation of this Agreement or has committed any other act or omission that might constitute grounds for termination of this Agreement by SVMHS;
- (i) Physician is determined by SVMHS to be abusing drugs and/or alcohol;
- (j) Physician is the subject of two (2) or more medical malpractice judgments or settlements within any twelve (12) month period involving in each case a payment to or for the benefit of the plaintiff in excess of thirty thousand dollars (\$30,000); or
- (k) Any event described in Section 3.2.3 of the Standard Terms and Conditions shall be repeated one (1) or more times.

3.2.5 By either Party upon written notice to the other Party in the event that any federal, state or local government or agency passes, issues or promulgates any law, rule, regulation, standard or interpretation at any time while this Agreement is in effect that prohibits, restricts, limits or in any way substantially changes the arrangement contemplated herein or which otherwise significantly affects either Party's rights or obligations under this Agreement.

3.3 Effect of Termination. Upon any termination or expiration of this Agreement:

3.3.1 All rights and obligations of the Parties shall cease except (i) those rights and obligations that have accrued and remain unsatisfied prior to the termination or expiration, and (ii) those rights and obligations that expressly survive termination or expiration of this Agreement;

- 3.3.2 Physician shall vacate the Clinic premises as soon as practicable, no later than seven (7) business days after the effective date of termination, removing Physician's personal property, and SVMHS may remove and store, at Physician's expense, any personal property that Physician has not so removed;
  - 3.3.3 Physician shall immediately return to SVMHS all of SVMHS's property, including equipment, supplies, furniture, furnishings and patient records (subject to Section 11 of the Standard Terms and Conditions [Records]), in Physician's possession or under Physician's control; and
  - 3.3.4 Physician shall not do anything or cause any other person to do anything that interferes with SVMHS's efforts to engage any other person or entity for the provision of professional medical services, or interferes in any way with any relationship between SVMHS and any other person or entity who may be engaged to provide services to SVMHS.
- 3.4 Suspension. SVMHS may suspend Physician on written notice to Physician from performance of this Agreement if any matter or event described in Section 3.2.3 of the Standard Terms and Conditions has occurred and is continuing, such suspension to extend only for such time as SVMHS may reasonably require to investigate such matter or event and determine whether it constitutes a basis for termination of this Agreement.
- 3.5 No Hearing Rights. Expiration or termination of this Agreement for any reason shall not provide Physician with the right to a "fair hearing" or any other similar rights or procedures. Notwithstanding the foregoing, Physician shall be entitled to hearing rights in accordance with Clinic policies and procedures in the event that any expiration or termination of this Agreement should result in a report being made concerning such Physician to the Medical Board of California or the National Practitioner Data Bank.
- 3.6 Non-Renewal. In the event that this Agreement is terminated pursuant to Section 3.2 of the Standard Terms and Conditions (Termination) prior to the expiration of the term or any renewal term, the Parties shall not enter into any agreement between them for the same or substantially the same services for one (1) year after the termination.
- 3.7 Rights Upon Termination. Upon any termination or expiration of this Agreement, all rights and obligations of the Parties shall cease except those rights and obligations that have accrued or expressly survive termination. Notwithstanding the foregoing, SVMHS may offset against accrued compensation any payments due to SVMHS, but only as authorized by law. Physician shall be released from any continuing obligation under this Agreement.

#### **4. Program Administration.**

- 4.1 Compliance Policies and Procedures. SVMHS shall develop policies and procedures to ensure compliance with all applicable limitations imposed by California Business and Professions Code §§ 2052 and 2400 (commonly referred to as "the prohibition on the corporate practice of medicine") (the "Prohibition"). On request of SVMHS, Physician shall attend meetings and participate in activities related to operations and quality.
- 4.2 Clinic Operational Guidelines. The Clinic shall be operated according to current policies, procedures and guidelines.
- 4.3 Clinic Policy and Procedure Manual. Physician shall abide by SVMC policies and procedures including the SVMC Policy and Procedure Manual as may be adopted or amended from time to time per the SVMC Physician Leadership and Clinical Integration Committee.
- 4.4 Clinic Administrator. A Clinic Administrator shall be designated by SVMHS.
- 4.5 Chief Medical Officer. A Chief Medical Officer shall be designated by SVMHS.

#### **5. HIPAA/State Patient Privacy Law Compliance; Confidential Information; Clinic Compliance Program.**

5.1 Compliance with Privacy Standards. SVMHS and Physician are each Covered Entities as defined under the Health Insurance Portability and Accountability Act (“HIPAA”). The Parties will use and disclose confidential patient information, including “protected health information,” as defined in HIPAA, as amended, and the regulations thereunder, and confidential patient information otherwise rendered under state law, exclusively for treatment, payment, Clinic health care operations, and as otherwise authorized by HIPAA and state law. Physician shall take all reasonable steps to use and disclose protected health information obtained in the course of providing services to Clinic patients in a manner such that the security and privacy of such information will be maintained and use appropriate safeguards to prevent use or disclosure of the information other than as described herein. Specifically, Physician shall:

- 5.1.1 Use and disclose protected health information solely for the benefit of SVMHS or for SVMHS’s internal administration or management, and shall not use or disclose any such information for purposes unrelated to providing services to Clinic patients or disclose any such information to third parties except as required by law or as authorized by SVMHS;
- 5.1.2 Ensure that all of Physician’s agents, employees, subcontractors or affiliates to whom Physician provides protected health information or confidential patient information agree to the same restrictions and conditions for use and disclosure of protected health information that apply to Physician;
- 5.1.3 Amend records, account for disclosures by Physician of protected health information, and make records available so that the individual to whom the protected health information pertains may review, access and obtain a copy of such record, consistent with the policies and procedures of SVMHS;
- 5.1.4 Abide by SVMHS’s policies and procedures for patient information privacy and security and notify SVMHS promptly in the event Physician becomes aware that any confidential patient information or protected health information has been compromised or accessed in an impermissible or unauthorized manner;
- 5.1.5 On request, participate in education and training sessions provided, sponsored or paid for by SVMHS that relate to patient information privacy and security; and
- 5.1.6 Immediately inform SVMHS of a data breach or other unlawful disclosure, if and when Physician becomes aware of such breach or disclosure.

Physician shall provide to SVMHS on request a statement of assurance from Physician that Physician will manage all protected health information and confidential patient information related to Clinic patients in a manner such that the security and privacy of such information will be maintained. Failure to abide by the provisions of this section is a material breach of this Agreement.

5.2 Confidential Information. Confidential Information shall be and remain the sole property of SVMHS, as applicable. “Confidential Information” includes any information related to the past, current or proposed operations, business or strategic plans, financial statements or reports, technology or services of SVMHS, any and all know-how, processes, trade secrets, manuals, confidential reports, any SVMHS patient’s individually identifiable health information (as defined under HIPAA), and any information, records and proceedings of SVMHS and/or Medical Staff committees, peer review bodies, quality committees and other committees or bodies charged with the evaluation and improvement of the quality of care. Confidential Information also includes confidential information of any third party that may be in SVMHS possession.

5.2.1 Use of Confidential Information. Physician shall not use any Confidential Information for any purpose not expressly permitted by this Agreement, or disclose Confidential Information to any person or entity without the prior written consent of SVMHS. Physician shall protect Confidential Information from unauthorized use, access, or disclosure.

5.2.2 Return of Confidential Information. Physician shall return to SVMHS all Confidential Information and all copies thereof in Physician's possession or control, and permanently erase all electronic copies of such Confidential Information promptly upon the written request of SVMHS or the termination or expiration of this Agreement. Physician shall not copy, duplicate or reproduce any Confidential Information without the prior written consent of SVMHS, as applicable.

5.3 Clinic Compliance Program. Physician acknowledges that SVMHS has implemented a Compliance Program for the purpose of ensuring that the provision of, and billing for, care provided to Clinic patients is in compliance with applicable federal and state laws ("Compliance Program"). Physician acknowledges that Physician has received information relating to the Compliance Program, including SVMHS's Code of Ethics. Physician shall adhere to, abide by and support the Compliance Program. Physician shall participate in training and education sessions relating to the Compliance Program as requested by SVMHS.

## **6. Exclusivity; Non-Solicitation.**

6.1 Exclusivity. During the term of this Agreement:

6.1.1 Physician shall give first priority to performing all professional medical services to Clinic patients consistent with the terms of this Agreement and Physician shall not undertake to perform any activities if they would interfere with Physician's performance of Physician's obligations under this Agreement. Except as provided in Exhibit A of this Agreement, Physician may only engage in a non-Clinic activity during the Clinic's business hours with the prior written consent of a responsible representative of SVMHS, who may condition such consent upon requiring assignment and remittance to SVMHS of any compensation received by Physician in connection with such activity.

6.1.2 Physician shall not, without the written consent of SVMHS, directly or indirectly render professional medical, teaching, research or other administrative services to or for any person or firm, other than SVMHS. Physician shall not (i) enter into negotiations, contracts, or other arrangements with any other provider of health care services regarding outside appointments to be held during the term of this Agreement or financial arrangements generating professional income during the term of this Agreement (ii) or own, manage, join, be employed by, act in the capacity of an officer, director, trustee, shareholder or member or otherwise participate in the ownership, management, operation or control of any business or person providing health care services, without SVMHS' prior written approval except as set forth in Exhibit A of this Agreement; provided, however that Physician may purchase and maintain ownership in publicly traded corporations without approval of SVMHS.

6.2 Non-Solicitation. During the term of this Agreement and for a period of one (1) year after the termination or expiration of this Agreement, Physician shall not solicit the employment of, or refer to others for employment, or urge or encourage any physicians or other personnel employed or contracted by SVMHS to seek alternative employment or to terminate existing employment or contracting relationships with either entity. Upon termination of this Agreement, Physician may notify his or her patients in accordance with such procedures regarding patient notification as SVMHS may adopt from time to time, consistent with legal requirements and ethical guidelines applicable to the practice of medicine. The primary interest of the parties with respect to patient notifications and transfers of patient records is to insure that each patient's choice is respected and implemented and there are no gaps in care.

6.3 Corporate Name, Logo, Identity. Physician shall not use the name, logo or corporate identity, or any part thereof, of Salinas Valley Memorial Healthcare System or its Clinics without the prior written consent of the entity whose name, logo or corporate identity is proposed to be used, except to solely identify such Physician's status as a current member of the medical staff of such entity.

6.4 Physician Development. Physician shall immediately notify SVMHS of any research, development activities or invention that Physician has developed or is developing entirely on his or her own time

without using any SVMHS equipment, supplies, facilities or trade secret information (“Physician Development”). Physician hereby assigns to SVMHS all of his or her right title and interest in any development or invention of the Physician that is not a Physician Development, that relates, at the time of conception or reduction to practice, to the Clinic’s business activities or the actual or demonstrably anticipated research or development activities of SVMHS and that results from the practice of medicine by Physician pursuant to this Agreement.

6.5 On request of SVMHS, not more often than quarterly, Physician shall attest in writing that Physician is in full compliance with this section.

6.6 The Parties recognize that if any provision of this section is breached, in whole or in part, by Physician, then SVMHS will be irreparably harmed thereby. In the event of such breach, SVMHS shall be entitled, upon application to any court of proper jurisdiction, to a temporary restraining order or preliminary injunction to restrain and enjoin Physician from such violation without prejudice as to any other remedies SVMHS may have at law or in equity. If any restriction contained in this section is held by any court to be unenforceable, or unreasonable, as to time, geographic area or business limitation, then such provisions shall be and are hereby reformed to the maximum time, geographic area or business limitation permitted by applicable laws.

**7. Meaningful Use; Other Incentive Programs.**

7.1 EHR Incentive Programs. Physician shall use best efforts to participate in, and qualify for the maximum payments under, the Medicare EHR Incentive Program, and if applicable the Medicaid EHR Incentive Program as described in 42 Code of Federal Regulations Part 495, in part by becoming proficient in use of Clinic’s EHR system and participating in EHR training programs.

7.2 Other Incentive Programs. At the request of SVMHS, Physician shall participate in a program sponsored by the federal or state governments, commercial third party payors and other parties which provide incentives to SVMHS and Physician to improve quality of services, utilize appropriate technology, or otherwise enhance services provided at the Clinic.

**8. Billing for Professional Services.**

8.1 Assignment. Physician hereby assigns to SVMHS all claims, demands and rights of Physician to bill and collect for all Physician Services rendered to Clinic patients, regardless of site of service. Physician shall not bill or collect for any services rendered to Clinic patients, and all Clinic receivables and billings shall be the sole and exclusive property of SVMHS. Any payments made pursuant to a payor agreement (including co-payments made by patients) shall constitute revenue of SVMHS. In the event any payment is made to Physician pursuant to any payor agreement, Physician shall promptly remit such payment directly to SVMHS. Physician shall timely complete any documents or forms necessary to document the assignment set forth in this section.

8.2 SVMHS Responsibility. SVMHS shall be solely responsible for providing or arranging for billing and collecting for all Physician Services provided to Clinic patients, and for managing all Clinic receivables and payables, including those related to Medicare and Medi-Cal beneficiaries.

9. **Non-Physician Personnel.** All non-physician personnel required for the proper operation and conduct of Clinic shall be employed and paid by SVMHS or its designee. SVMHS or its designee shall establish and classify all non-physician positions and shall designate the persons assigned to each non-physician position. Decision-making authority for non-physician clinical staffing and responsibilities will be made in accordance with policies established in collaboration between SVMHS and physician leadership of Clinic. Relating to the performance of non-key administrative or non-physician personnel, SVMHS or its designee shall have Exclusive Decision-Making Authority to control, select, schedule and discharge such employees, and to take any direct disciplinary measures as needed.

**10. Relationship Between the Parties.**



- 10.1 No Control Over Methods, Medical Decision-Making. It is the intent of the Parties to comply with all applicable limitations imposed by the Prohibition. SVMHS shall not have or exercise control or direction over the methods by which Physician performs professional medical services pursuant to this Agreement or Physician's medical decision-making and, notwithstanding any other provision of this Agreement or otherwise, SVMHS shall cooperate with Physician to enable them to exert appropriate control over such methods and carryout such decision-making. All work performed pursuant to this Agreement shall be in strict accordance with currently approved methods and practices in Physician's professional specialty and in accordance with the standards set forth in this Agreement. The sole interest of SVMHS is to insure that such services are performed and rendered in a competent and cost effective manner.
- 10.2 No Control over Referrals. Nothing in this Agreement limits (1) Physician's ability to make referrals to the provider of his or her choice; or (2) where Physician provides his or her services; provided, however, that Physician will comply with all applicable requirements with SVMHS's agreements with third-party payors for health care services including, but not limited to, agreements with recipients of referrals. This Agreement does not create any obligation or requirement that SVMHS shall make any referral of patients to Physician and/or Physician shall make any referral of patients to SVMHS. The payment of compensation is not based or conditioned in any way on referrals of patients to SVMHS, Hospital, Clinic or any other entity.
- 10.3 Indemnification. Except to the extent that any such loss or liability is covered by applicable insurance maintained by a Party, each Party shall indemnify, hold harmless and defend the other Party and its officers, agents and employees, against any loss or liability arising out of or resulting in any way from the acts or omissions of such Party or its own officers, employees or agents in breach of this Agreement, except (a) that any such obligation to indemnify and hold harmless shall be reduced by any amount of such loss or liability arising from the contributory acts or omissions of the indemnified Party and its owners, employees or agents, and (b) to the extent such indemnification would void insurance or coverage otherwise available with regard to such loss or liability. This obligation shall not be qualified or eliminated by an allegation or finding that the other Party or any of its personnel is responsible for a passively negligent act or omission. This section shall survive the termination of this Agreement.

**11. Records.** All files, charts and records, medical or otherwise, generated by Physician or any other medical professional in connection with services furnished pursuant to this Agreement are the property of Clinic. Physician shall maintain medical records according to Clinic policies and procedures and in accordance with community standards, provided that, through such policies and procedures, SVMHS exercises no control or direction over Physician's clinical decisions. Each Party shall retain the confidentiality of all records and materials in accordance with all applicable state and federal laws. SVMHS shall permit Physician to have access during or after the term of this Agreement to medical records generated by Physician as necessary in connection with claims, litigation, investigations or treatment of patients. Such obligation shall only extend for the period of time that SVMHS normally retains such records. Physician shall be entitled to maintain and utilize such medical records in Physician's provision of patient care to those patients of the Clinic who authorize SVMHS to provide a copy to Physician. Clinic shall provide such copies on receipt of written authorization in accordance with Clinic's applicable procedures and upon receipt of payment, all in accordance with Civil Code Section 123110.

- 11.1 Access to Records. To the extent required by Section 1861(v)(I)(I) of the Social Security Act, as amended, and by valid regulation which is directly applicable to that section, Physician agrees to make available upon valid written request from the Secretary of HHS, the Comptroller General, or any other duly authorized representatives, this Agreement and the books, documents and records of Physician to the extent that such books, documents and records are necessary to certify the nature and extent of SVMHS's costs for services provided by Physician.

Physician shall also make available such subcontract and the books, documents, and records of any subcontractor if that subcontractor performs any of Physician's duties under this Agreement at a cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, and if that subcontractor is related to Physician. Such books, documents, and records shall be preserved and available for four (4) years after the furnishing of services by Physician pursuant to this Agreement. If Physician is requested to disclose books, documents or records pursuant to this Section 11.1 of the Standard Terms and Conditions (Access

to Records) for purposes of an audit, Physician shall notify SVMHS of the nature and scope of such request, and shall make available, upon written request of SVMHS, all such books, documents or records.

- 11.2 This section is intended to assure compliance with Section 1861 of the Social Security Act, as amended, and regulations directly pertinent to that Act. The obligations of Physician under this section are strictly limited to compliance with those provisions, and shall be given effect only to the extent necessary to insure compliance with those provisions. In the event that the requirements of those provisions are reduced or eliminated, the obligations of the Parties under this section shall likewise be reduced or eliminated.

## **12. Dispute Resolution.**

- 12.1 Non-Medical Disagreements. In the event questions or disagreements arise between the Parties concerning performance of responsibilities under this Agreement, or regarding other non-medical matters, such disagreements will be discussed between Physician and the Clinic Administrator and resolved if possible. If no resolution is reached, the matter in dispute shall be referred to the SVMC Chief Executive Officer, or his/her designee, for further action.
- 12.2 Medical Disagreements. In the event questions or disagreements arise concerning quality metrics, standards of professional practice, or Physician conduct in the Clinic, such questions or disagreements shall be resolved by the SVMHS Chief Medical Officer or his/her designee.

## **13. Miscellaneous.**

- 13.1 Assignment. Physician shall not assign, sell, transfer or delegate any of Physician's rights or duties, including by hiring or otherwise retaining additional physicians to perform services pursuant to this Agreement, without the prior written consent of SVMHS.
- 13.2 Captions. The captions used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 13.3 Choice of Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be Monterey County, California.
- 13.4 Exhibits. All Exhibits attached and referred to are fully incorporated by this reference.
- 13.5 Notices. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given (i) on the date of personal service on the parties, (ii) on the third business day after mailing, if the document is mailed by registered or certified mail, (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier, or (iv) on the date of transmission if sent by telegram, telex, telecopy or other means of electronic transmission resulting in written copies, with receipt confirmed. Any such notice shall be delivered or addressed to the parties at the addresses set forth in this Agreement or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.
- 13.6 Entire Agreement. This Agreement represents the entire understanding and agreement of the Parties as to those matters contained in it. No other oral or written understanding shall be of any force or effect with respect to the matters contained in this Agreement, unless attached to this Agreement as an exhibit or subsequent amendment.
- 13.7 Other Agreements. This Agreement may be one of other agreements between SVMHS and Physician or an immediate family member of Physician. SVMHS maintains a master list of such agreements, together with true and complete copies of the Agreement, that is available for review by the Secretary of the Department of Health and Human Services in accordance with 42 CFR § 411.357(d)(1)(ii).

- 13.8 Severability. If any provision of this Agreement is determined to be illegal or unenforceable, that provision shall be severed from this Agreement, and the remaining provisions shall remain enforceable between the Parties.
- 13.9 Waiver. No waiver of any provision of this Agreement shall be effective against either Party unless it is in writing and signed by the Party granting the waiver. The failure by either Party to exercise any rights under this section shall not operate as a waiver of such rights.
- 13.10 Authority and Execution. Each Party represents that it has the authority to execute this Agreement and does hereby bind the Party on whose behalf the execution is made.
- 13.11 Independent Representation. Each Party has had the opportunity to be represented by and to have this Agreement reviewed by its own separate legal, accounting, and tax counsel. The Parties to this Agreement have been represented by separate independent legal, accounting and tax counsel. Each Party has looked to such independent counsel representing that Party for advice regarding this Agreement. No Party makes or represents to the other any representation of law or fact except as specifically provided in this Agreement.
- 13.12 Counterparts. This Agreement may be executed in multiple counterparts, all of which together shall be deemed one and the same instrument.
- 13.13 Amendment. This Agreement may be amended at any time by mutual agreement of the Parties, but any such amendment must be in writing, dated, signed by the Parties and attached hereto. Notwithstanding the foregoing, in the event SVMHS intends to seek tax-exempt financing, Physician agrees to amend this Agreement as may be necessary for SVMHS to obtain such financing.
- 13.14 Survival. The provisions of Sections 1.8 (No Existing Obligations), 2.7 (Professional Liability Insurance), 3.5 (No Hearing Rights), 5.1 (Compliance with Privacy Standards), 5.2 (Confidential Information), 6.3 (Corporate Name, Logo, Identity), 8.1 (Claims Assignment and Cooperation), 10.3 (Indemnification), 11 (Records), 12 (Dispute Resolution), 13.1 (Assignment), 13.3 (Choice of Law), and 13.5 (Notices) shall survive the termination of this Agreement.

**AGREEMENT FOR PURCHASE AND SALE OF ASSETS BETWEEN  
SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM AND  
SALINAS FAMILY PRACTICE MEDICAL CLINIC, INC. AND CHM LEASING**

This Agreement for Purchase and Sale of Assets (“Agreement”) is entered into and effective on **February 1, 2021** (“Effective Date”), by and between **Salinas Valley Memorial Healthcare System**, a local health care district organized and operated pursuant to Division 23 of the California Health & Safety Code (“SVMHS”), **Salinas Family Practice Medical Clinic, Inc.**, a California professional corporation (“SFP”), and CHM Leasing, a California partnership (“CHM”), individually a “Party” or collectively the “Parties.”

RECITALS

- A. SVMHS owns and operates Salinas Valley Memorial Hospital, an acute care facility, and Salinas Valley Medical Clinics (“SVMC), a system of clinics providing outpatient medical and health care services within the SVMHS service area.
- B. SFP owns and operates a medical clinic located at 1328 Natividad Road in Salinas, California which provides primary care and family practice medical services (“SFP Clinic”).
- C. CHM owns certain assets used in the SFP Clinic.
- D. Pursuant to the terms and conditions of this Agreement, SVMHS desires to purchase from SFP and CHM, and SFP and CHM desires to sell to SVMHS, certain assets owned by SFP and CHM and used in connection with the healthcare services provided at SFP Clinic (“Assets”).
- E. The Parties acknowledge and agree that the transactions described in this Agreement are expressly limited to the purchase of the Assets as defined in this Agreement. The Parties further acknowledge and agree that SVMHS shall not assume any liability of any nature of SFP or CHM arising prior to the Closing.

SVMHS, SFP and CHM hereby agree as follows:

**ARTICLE 1. PURCHASE/SALE OF ASSETS**

- 1.1 Purchase and Sale. SVMHS agrees to purchase from SFP and CHM and SFP and CHM agrees to sell to SVMHS the Assets listed on Exhibit A to this Agreement at the fair market consideration set forth in Section 1.2 of this Agreement. The sale and transfer of Assets to SVMHS and payment to SFP and CHM shall occur and be effective on **April 1, 2021**.
  - 1.1.1 AS IS Purchase/Warranties on Assets. SVMHS has had the opportunity to inspect the Assets. SVMHS is purchasing the Assets on an AS IS basis, in reliance on its own investigation and determination. Documentation of warranties or service agreements, if any, pertaining to the Assets shall be provided by SFP and CHM to SVMHS at the Closing.
  - 1.1.2 Patient Medical Records and Films/Electronic Media. SVMHS and SFP agree that all SFP patient medical records including all records whether in film, electronic, or other media format (collectively, “Medical Records”) are to be considered Assets under this Agreement. Medical Records shall be transferred to and maintain by SVMHS pursuant terms mutually agreed to by the Parties.
  - 1.1.3 Transfer of Phone and Fax Numbers and Internet Connection. SFP agrees to facilitate the transfer to SVMHS of the phone and facsimile numbers and the internet connection for the SFP Clinic.
  - 1.1.4 Fair Market Value/Taxes. The Parties agree that to the best of their knowledge, the purchase amount set forth in this Agreement for the Assets on Exhibit A represents the fair market value of the Assets. SVMHS shall pay taxes, if any, that may be owed as a result of this transaction.
  - 1.1.5 Assumed Contracts. SVMHS shall accept assignment and assume responsibility for the contracts listed in Exhibit D attached to this Agreement. Any contract that is not disclosed on Exhibit D that is rejected by SVMHS shall be the full and sole responsibility of SFP or CHM, respectively.

- 1.1.6 Excluded Liabilities. The Parties expressly agree the transaction pursuant to this Agreement is strictly limited to the purchase of the Assets, and that SVMHS does not and shall not assume or be liable for any claim, liability, or obligation of or against SFP or CHM, whether known or unknown, fixed or contingent, accrued or unaccrued, related to the Assets or to SFP's medical practice or operations of the SFP Clinic, which is in existence on or before the Closing Date.
- 1.2 Purchase Amount. As full payment for the purchase by SVMHS of the Assets listed on Exhibit A to this Agreement, SVMHS shall (i) pay the amount of **one hundred seven thousand dollars (\$107,000.00)** to SFP, (ii) pay the amount of **forty-three thousand dollars (\$43,000.00)** to CHM, and (ii) assume all debt or other financing obligations of SFP or CHM on the Assets. In addition, SVMHS shall pay SFP **twenty-two thousand eight hundred thirty-three dollars (\$22,833.00)** for inventory on hand at the SFP Clinic as of the Closing Date. If any Asset acquired by SVMHS under this Agreement is financed through a lease, SVMHS will either assume the obligations under the lease, or terminate the lease and pay any penalties or amounts due as a result of such termination; provided, however, that the obligations of SVMHS to acquire Assets subject to debt, financing arrangements, or leases is limited to those items disclosed in Exhibit B to this Agreement. If there are items in Exhibit A that have undisclosed lease or loan obligations not listed in Exhibit B, SVMHS may, at its sole discretion, determine whether or not it will accept the terms of any applicable loan or lease obligation. Any obligation that is not disclosed on Exhibit B that is rejected by SVMHS shall be the full and sole responsibility of SFP or CHM, respectively.
- 1.3 Payment. Any of the Assets currently subject to a financing arrangement entered into by SFP and disclosed to SVMHS in Exhibit B as part of this transaction will be transferred to SVMHS, and SVMHS shall either (i) assume all disclosed financial obligations of which SVMHS has been informed of and is aware of under such financing arrangements on the Assets, or (ii) pay off any balances remaining on loans where the Asset is currently held as collateral directly to the financial institution holding the loan. The amounts described in Section 1.2 of this Agreement shall be paid by SVMHS to SFP and CHM at the time of the Closing.
- 1.4 Representations and Warranties by SFP and CHM.
- 1.4.1 Status. SFP is a duly organized professional medical corporation, validly existing and in good and active status under the laws of the State of California and CHM is a California partnership with all requisite corporate power and authority to own its assets and properties, operate its business as it is now being conducted, enter into this Agreement, and consummate the transactions contemplated by this Agreement.
- 1.4.2 Authorization. SFP and CHM have all requisite corporate power and authority to execute and enter into this Agreement and all other agreements and instruments contemplated by this Agreement, and to perform its obligations under this Agreement. The execution, delivery and performance by SFP and CHM of this Agreement has been duly authorized by all necessary corporate action, and when this Agreement has been duly executed and delivered it shall be the legal, valid and binding agreement of SFP and CHM enforceable against SFP and CHM in accordance with its terms, and is sufficient to transfer to and vest in SVMHS good title to the Assets, subject to all assumed and disclosed financial arrangements and obligations.
- 1.4.3 Clear Title. SFP and CHM agrees and warrants to SVMHS that upon Closing and payment by SVMHS to the Assets lienholder, SFP and CHM will execute all documents necessary to remove any liens on the Assets and to transfer of clear title to the Assets to SVMHS.
- 1.4.4 No Conflict. The execution, delivery and performance of this Agreement by SFP and CHM does not (i) violate any provision of SFP or CHM's Articles of Incorporation or Bylaws; (ii) violate, conflict, result in a termination of or create rights of acceleration with any agreements, obligations or other instrument under which SFP or CHM is bound; (iii) violate or conflict with any provision of law, statute, rule or regulation to which SFP or CHM is bound; or (iv) violate or conflict with any judgment, order, writ or decree of any court applicable to SFP or CHM.
- 1.4.5 Disclosure of Obligations. SFP and CHM represents and warrants to SVMHS that prior to the Closing, SFP and CHM has disclosed to SVMHS all of its contracts, obligations, and responsibilities connected with or related the Assets being purchased by SVMHS under this Agreement.
- 1.5 Conditions to Closing. The respective obligations of the Parties to consummate the transactions set forth in this Agreement shall be subject to the fulfillment at or before the Closing of each of the following conditions, except to the extent any such condition is waived or modified:

- 1.5.1 Representations. Each of the representations and warranties made by a Party in connection with this Agreement shall be true and correct as of Closing in all material respects.
  - 1.5.2 No Litigation. No action by any governmental authority or other person or entity shall have been instituted or threatened that questions the validity or legality of the transactions described in this Agreement.
  - 1.5.3 Consents and Terminations. All consents and waivers necessary to consummate the transactions described in this Agreement shall have been obtained.
  - 1.5.4 SVMHS Board Approval. This transaction and all Contingent Agreements as set forth in Section 1.6 of this Agreement are approved by the SVMHS Board of Directors.
- 1.6 Contingent Agreements. In addition to the requirements of Section 1.5 Conditions to Closing and Section 1.7 Closing of this Agreement, the completion of this transaction and the Closing are contingent on all of the following agreements being completed, approved by the SVMHS Board of Directors, and executed by the respective parties to the agreements:
- a. This Agreement for Purchase and Sale of Assets between Salinas Valley Memorial Healthcare System and Salinas Family Practice Medical Clinic, Inc.;
  - b. Professional Services Agreements finalized between SVMHS and Salinas Family Practice Medical Clinic, Inc. physicians who choose to practice with SVMC; and
  - c. Lease Agreement with CHM Leasing for the SFP Clinic space located at 1328 Natividad Road, Salinas, California.
- 1.7 Closing. The Closing of the sale of the Assets to SVMHS by SFP and CHM pursuant to this Agreement shall take place at SVMHS (whether in person or through the delivery of original or pdf executed documents) at 10:00 a.m. (PST) on **April 1, 2021**, or at such other date, time and/or place as may be mutually agreed upon by the Parties (“Closing Date”), provided that all conditions precedent and contingencies required to be completed as of the Closing Date have been or will be completed on such date. The closing shall be deemed to have occurred and be effective between the Parties as of 12:01 a.m. on April 1, 2021.
- 1.8 Further Assurances. Each Party, both before and after the Closing Date, shall: (i) use all reasonable efforts to take all actions proper or advisable to complete the transaction described in this Agreement; (ii) execute any documents that may be reasonably necessary to carry out the transaction described in this Agreement; and (iii) cooperate with each other in connection with the foregoing.

## **ARTICLE 2. GENERAL PROVISIONS**

- 2.1 No Payment for Referrals. This Agreement shall not be construed to require SVMHS or SFP to make referrals of patients to one another. No payment is made under this Agreement in return for the referral of patients or in return for the ordering, purchasing or leasing of products or services from SVMHS.
- 2.2 Termination. This Agreement may be terminated prior to the Closing Date: (i) in the event of a material breach of this Agreement by a Party that is not cured within ten (10) days of delivery of written notice to the breaching Party of the breach; or (ii) upon the mutual written consent of SFP and SVMHS.
- 2.3 Records Access and Cooperation. The Parties shall cooperate with and make available to each other during normal business hours, all books and records remaining in existence after the Closing Date that are necessary or useful in connection with any tax inquiry, audit, investigation, dispute, or litigation, or any other matter requiring any such books and records for any reasonable business purpose.
- 2.4 Governing Law/Venue. This Agreement shall be governed, construed, interpreted and the rights of the Parties determined in accordance with the laws of the State of California. Venue shall be in Monterey County, California.
- 2.5 No Third-Party Beneficiaries. This Agreement shall not be construed to confer any rights or benefits to any person, firm, group, corporation or entity other than the Parties.
- 2.6 Waiver. Waiver of any term or condition in this Agreement must be in writing and signed by the Parties. Waiver of any term or condition shall not be construed as a waiver of any other terms or conditions in this Agreement.

- 2.7 Partial Invalidity. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
- 2.8 Expenses. Each Party shall bear its own expenses in connection with the preparation and execution of this Agreement and in connection with the transactions contemplated by this Agreement.
- 2.9 Amendments. Except as specifically provided in this Agreement, neither this Agreement nor any term of this Agreement may be amended, waived, discharged or terminated orally or by any act or failure to act, but only by a written instrument signed by the Party against whom enforcement of any such amendment, waiver, discharge or termination is sought.
- 2.10 Assignment. Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned by either Party without the prior written consent of the other Party.
- 2.11 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been given when personally delivered, transmitted by telecopy, electronic or digital transmission subject to acknowledgement of receipt by the receiving Party or if mailed, on the third (3rd) day after mailing by first-class mail, postage prepaid, addressed to each Party at the respective addresses set forth in this Agreement.
- 2.12 Entire Agreement. This Agreement and the exhibits and schedules attached to this Agreement constitute the full and entire understanding between the Parties with regard to the subject matter of this Agreement, and supersede all prior and contemporaneous agreements and representations of the Parties.

The Parties have executed this Agreement as of the Effective Date first set forth above.

**SVMHS**  
Salinas Valley Memorial Healthcare System

**SFP**  
Salinas Family Practice Medical Clinic, Inc.

By: \_\_\_\_\_  
Pete Delgado, President/CEO

By: \_\_\_\_\_  
Douglas C. Cambier, MD, President/CEO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark J. Adame, MD, CFO

Date: \_\_\_\_\_

Address for Notice:  
Salinas Valley Memorial Healthcare System  
Attn: Office of the President/CEO  
450 East Romie Lane  
Salinas, CA 93901

Address for Notice:  
Salinas Family Practice Medical Clinic, Inc.  
Attn: Group President  
\_\_\_\_\_  
\_\_\_\_\_

**CHM**  
CHM Leasing

By: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Address for Notice:  
CHM Leasing  
Attn: General Partner  
\_\_\_\_\_  
\_\_\_\_\_

## Exhibit A

### Assets

**DATA/PHONE-FAX LINES.** Included in Assets under this Agreement are the following phone, fax lines, and data services to SVMC which SVMHS shall acquire directly from SFP or SFP shall transition to SVMHS.

#### Data:

##### Phone Lines

<u>Phone #</u>	<u>Purpose</u>
(831) 757-8081	Main Line
(831) 757-4668	Postage
(831) 757-8019	Phone Tree
(831) 757-8007	Modem

##### Fax lines

<u>Fax #</u>
(831) 757-0625
(831) 757-3180
(831) 757-8135
(831) 757-0625

<u>Location</u>
Main Fax Line

#### Assets

FILING CABINETS	HEWLETI PACKARD EKG	MEDICAL MANAGER SERVER
FILING CABINETS	SPIROMETER	NEW BLINDS
AUSONIO CONSTRUCTION	BUDGET-PATTYS CREDEN	2 NEW COMPUTERS
CABINETS	LIQUID NITRO CYLIND	MAGIC CONSULTING PURCH
CABINET AND CHAIR	TAB-PROD TRACK FILES	MAGIC CONSULTING PURCH
FISH TANK	3 2DR HON FILING CAB	MONTEREY BAY OFFICE PROD
#315 CHAIRS	CRYOCAUTERY UNIT	HARD DRIVE PROCESSOR
MCW ROLLTOP DESK	CHARGER DESK/OTOSCOP	PHONE TREE
NEWPORT END TABLES	CAST SAW - DURR	MOBILE BP UNIT
NEWPORT COCKTAIL TAB	HON LATERAL FILE - PBI	6 DELL OPTIPLEX PC
DESK CHARGER	HON LATERAL FILE - PBI	MURATEC FAX F525
FETAL DOPPLER	PBI - 2 HON FILE PUTTY	SAGE MEDICAL MANAGER UPGR
OPHTHALMOSCOPES	PBI - 2 HON 42" LAT FILE	VINYL TILE FOR LOBBY
PEDI SCALE	HEMOCUE PHOTOMETER	CARPET FOR RECEP & OFFICE
EXAM TABLES	HYFRECTRA PLUS	CFC CUSTOM FLOORING
#207 BENCHES	EKG MACHINE	JAMES SHOOK FURNITURE
WHEEL CHAIR	1328 B-1 NATIVIDAD BUILDING	DESK TOP HARDDRIVE
EXAM STOOLS	SURGICAL TABLE	NAT BUS FURN CHAIRS
MAYO STANDS	OAK MILL SINGLE PED DESK	COMM SPECIALIST EQUIP
OTOSCOPES	OAK MILL HUTCH/COMBODESK	PINNACLE MONITOR/OPTI PLEX
WALL EXAM LIGHTS	COAST LASER HP2100 TN	MICHAEL EWING COFFEETABLE
WALL BLOOD PRESSURE	AUTOCLAVE ULTRA STERIL	PHONE SYSTEM
DESK & CHAIR	TAB PRODUCTS FILE SYSTEM	PINNACLE TECH WORKSTATI ON
COMMERCIAL CHAIR	15" CTI< LCD ANALOG DISPLY	DELL OPTIPLEX FOR NURSE
MEDICAL EQUIPMENT	AUTOCLAVE ULTRCLAV PRI	PINNACLE TECH COMPUTER
DESK	TAB PRODUCTS FILING SYS	4 VX 520 TERMINALS
FILE CABINET	SPOT V BP SIGN MACHINE	KONICA MINOLTA BH4050
WALL UNIT	SEARS REFRIG 21 CF	DELL OPTIPLEX 7040
FILE CABINET	15" FLAT PANEL VIDEO	KONICA MINOLTA BIZHUB MFP
MEDICAL EQUIPMENT	HUNT-FD2 DOPPLER FETAL	DELL OPTIPLEX 5040 PC
MIDMARK EXAM TABLES	RENAISSANCE IISP	CISCO SMALL BUS DESKTOP S
BERGEN EXAM TABLE	7 SYS P4 2.2 GHZ COMPUTER	DELL 7050 SFF TOWER PC
PBI FILE CABINETS	8 LAMP WALL EXAM LIGHT	EKG MACHINE MID VALLEY SU
ANDERSON OFFICE SAFE	1SYS P4 2.2 GHZ LCD 17"	PINNACLE TINAS PC
KECKLER MICROTYMP	MEDICAL MANAGER	CFC CUSTOM FLOORING PATIE
MICROSCOPE BINOCULAR	HARDWARE	PINNACLE NURSES PC
FETAL DOPPLEX	COMMUNICATION EXPANSION	DEVEERA COMPUTERS



**Exhibit B**

**Assumed Liabilities for Loans and Leases**

**None**

**Exhibit C**

**Bill of Sale**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, **Salinas Family Practice Medical Clinic, Inc.** (“SFP”) and **CHM Leasing** (“CHM”), hereby transfers, sells, assigns and delivers to **Salinas Valley Memorial Healthcare System**, a California local health care district (“SVMHS”), all right, title and interest of SFP and CHM in and to the Assets, as defined and set forth in the Agreement for Purchase of Assets with an effective date of February 1, 2021, between SFP, CHM and SVMHS (“Agreement”) which provides for a **Closing Date of April 1, 2021.**

SFP and CHM hereby covenants and agrees that SFP and CHM will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such further acts, deeds, assignments, transfers, conveyances and assurances as may be necessary in order to assign, transfer, convey, assure and confirm unto and vest in SVMHS, its successors and assigns, title to the Assets sold, conveyed, transferred and delivered by this Bill of Sale.

This Bill of Sale is executed as of the date below and effective as of April 1, 2021.

**SVMHS/BUYER**

Salinas Valley Memorial Healthcare System

**SFP/SELLER**

Salinas Family Practice Medical Clinic, Inc.

By: \_\_\_\_\_  
Pete Delgado, President/CEO

By: \_\_\_\_\_  
Douglas C. Cambier, MD, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CHM/SELLER**

CHM Leasing

By: \_\_\_\_\_  
James K. Hoffman, MD, President

Date: \_\_\_\_\_

## **Exhibit D**

### **Assumed Contracts**

- Clean King Janitorial Service Agreement dated June 24, 2020
- Monterey Transfer & Storage Inc. Record Management Services Agreement
- MBS Managed Print Services Agreement dated June 7, 2016
- Pitney Bowes Lease #G531049010

**LEASE AGREEMENT BETWEEN  
CHM LEASING AND  
SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM**

This Lease Agreement (“Lease”) is entered into effective **April 1, 2021** (“Effective Date”) by and between **CHM Leasing**, a California partnership (“Landlord”), and **Salinas Valley Memorial Healthcare System**, a California local health care district (“Tenant”).

- A. Landlord is the owner of certain property located at **1328 Natividad Road, Salinas, California 93906**. The property is more particularly described in Exhibit A attached to this Lease. The property, medical clinic, parking area, and other improvements located on the property constitute the “Premises.”
- B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the entirety of the Premises on the terms and conditions set forth in this Lease.
- C. Landlord is a Tenant under a Ground Lease with the County of Monterey, dated May 26, 1981, as amended, with a termination date of December 31, 2038. Landlord’s duties and responsibilities are administratively managed by Valle Verde Condominium Association which assesses Landlord with costs pursuant to the Trust on a proportional basis, including rent, associated with the Ground Lease.

In consideration of the mutual terms, covenants and conditions contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **Lease.** Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions set forth in this Lease.
- 2. **Term of Lease/Delivery of Possession.** The term of this Lease (“Term”) shall be for a period of five (5) years commencing on April 1, 2021 (“Commencement Date”), and ending on March 31, 2026, unless sooner terminated pursuant to the terms of this Lease (“Termination Date”). Landlord shall deliver physical possession of the Premises to Tenant on the Commencement Date.
- 3. **Option to Extend Term.** Tenant shall have one (1) option to extend the Term of this Lease for a period of five (5) years beyond the initial Term of the Lease. Should Tenant elect to exercise this option to extend the Lease Term, Tenant shall provide notice to Landlord at least ninety (90) days prior to the Termination Date of the Lease. Upon Tenant’s notice to Landlord of the exercise of Tenant’s option to extend the Lease, the parties shall mutually agree on a fair market rent for the extended Term.
- 4. **Early Termination by Tenant.** Tenant shall have the right to terminate this Lease without stating a cause or reason and without cost or penalty after the second (2<sup>nd</sup>) anniversary of the Effective Date of this Lease upon ninety (90) days prior written notice to Landlord.
- 5. **Monthly Rent.** Rent shall be paid by Tenant to Landlord as follows:
  - 5.1 For the first twelve (12) months of the Term, the monthly rent shall be in the amount of **Six Thousand Eight Hundred Forty Eight Dollars (\$6,848.00)** (“Initial Monthly Rent” and, as adjusted from time to time, “Monthly Rent”). Monthly Rent shall be payable in advance on the first (1<sup>st</sup>) day of each month at the address set forth in Section 31 or such other address as Landlord may from time to time designate by written notice to Tenant.
  - 5.2 On each anniversary of the Commencement Date during the Term of the Lease (each an “Adjustment Date”), Monthly Rent shall be adjusted to an amount equal to the greater of:
    - (a) Monthly Rent in effect immediately prior to the Adjustment Date (without regard to temporary abatement of rent then or previously in effect pursuant to the provisions of this Lease), or
    - (b) The product obtained by multiplying the Initial Monthly Rent by a fraction, the numerator of which is the Index, as defined below, published nearest but prior to the Adjustment Date and the denominator of which is the Index published nearest but prior to the Commencement Date.

In no event shall the adjustment in the Monthly Rent at the Adjustment Date exceed three percent (3.0%) above the Monthly Rent for the year prior to the Adjustment Date.

5.3 The term “Index” as used in this Lease shall mean the Consumer Price Index for All Urban Consumers, San Francisco - Oakland - San Jose Metropolitan Area published by the Bureau of Labor Statistics of the United States Department of Labor.

If the Index is changed so that the base year differs from that used as of the date immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

6. **Use.** Tenant shall occupy and use the Premises as a medical clinic primarily providing primary care medical services, including exam rooms, physician offices, and administrative space and all other operations incident to the conduct of that business.

6.1 Tenant shall not commit any acts on the Premises, or use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy carried by Landlord insuring the Premises or the improvements on the Premises. Tenant shall, at Tenant’s own cost and expense, comply with all requirements of Landlord’s insurance carriers necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Premises.

6.2 Tenant shall not commit any waste or any public or private nuisance upon the Premises. Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to use of the Premises. Tenant agrees not to use the Premises for any unlawful purpose.

7. **Hazardous Materials.**

7.1 Tenant shall comply with all environmental laws, regulations, and ordinances and shall not, except as hereinafter provided, cause or permit substances or materials defined as hazardous, toxic, or environmentally unsafe under the law, regulation, or ordinance to be brought upon, kept or used in, on, or about the Premises, without the written consent of Landlord, except that Landlord’s consent shall be unnecessary for those items constituting Hazardous Materials, stored, sold or used by Tenant in the ordinary course of Tenant’s business as a health care provider. Tenant shall cause the use and storage of such Hazardous Materials brought upon, kept or used by tenant in or about the Premises to comply with all environmental laws, regulations and ordinances. Without limiting the foregoing, if the presence of any Hazardous Materials brought upon, kept or used by Tenant results in any contamination of the Premises, Tenant shall take all actions, at Tenant’s sole expense, that are necessary to comply with all environmental laws, regulations and ordinances. Tenant shall give immediate written notice to Landlord of (i) any action, proceeding or inquiry by any governmental authority or any third party with respect to the presence of any Hazardous Material on the Premises, or (ii) any spill, release or discharge of Hazardous Materials that occurs with respect to the Premises.

7.2 Tenant shall be responsible, at Tenant’s sole cost and expense, for the proper handling, storage and removal of potentially infectious medical waste generated in the Premises, and Tenant shall provide disposal of such waste. Tenant’s failure to properly dispose of such waste or failure to comply with environmental laws, regulations and ordinances shall be deemed a default of this Lease.

7.3 Tenant shall indemnify and hold harmless Landlord, and its respective members, partners, directors, officers, employees, agents, successors and assigns (“Landlord Parties”) from and against any and all actions, suits, demands or judgments, losses, damages, penalties, expenses, fees, claims, costs, and liabilities, arising out of or connected with (i) the violation of any environmental law, rule or regulation with respect to the Premises during the term of this Lease (including any period of holding over, occupancy or possession by Tenant or any subtenant or assignee of Tenant after the expiration of the Lease Term); or (ii) the “release” or “threatened release” of or failure to remove Hazardous Materials from the Premises, any portion or portions thereof or any adjacent or surrounding areas. The indemnity shall include all costs, fines, penalties, judgments, losses, attorney’s fees, expenses and liabilities incurred by Landlord Parties for any such claim or any action or proceeding brought thereon. This indemnity shall survive the expiration or termination of this Lease. In any action or proceeding brought against Landlord Parties by reason of any such claim, Landlord Parties shall promptly notify Tenant of the same, and upon notice from Landlord, Tenant shall defend the same at Tenant’s expense by counsel reasonably satisfactory to Landlord.

- 7.4 The term “Hazardous Material” shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property, including all of those materials and substances designated as hazardous or toxic by the city in which the Premises are located, the U.S. Environmental Protection Agency, the Food and Drug Administration, the California Water Resources Control Board, the Regional Water Quality Control Board, Central Coast Region, the California Air Resources Board, CAL/OSHA Standards Board, Division of Occupational Safety and Health, the California Department of Health Services, and any federal agencies that have overlapping jurisdiction with such California agencies, or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term “Hazardous Material” shall include all of those materials and substances defined as “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” in the Hazardous Waste Control Act as the same shall be amended from time to time.
8. **Utilities/Common Area Expenses.** During the Term, Tenant shall pay, before delinquency, all charges or assessments for internet, telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used by Tenant on the Premises. Tenant acknowledges that certain expenses will be in the form of an assessment by the Val Verde Condominium Associations for costs apportioned to Landlord by virtue of its membership in said Association related to its status as an owner of a Leasehold interest in the Premises and/or Association’s obligations pursuant to the Ground Lease between Landlord and the County of Monterey. It is the intent of the parties that all such costs and expenses incurred by Landlord are the obligation of, and shall be paid by Tenant, pursuant to this Section.
9. **Taxes.**
- 9.1 Subject to Section 9.4, Tenant shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, as additional rent, all taxes, permit, inspection, and license fees, and other public charges of whatever nature that are assessed against the Premises or arise because of Tenant’s occupancy, use, or possession of the Premises (including but not limited to taxes on Tenant’s personal property), subsequent to the commencement of the Term, and all installments of assessments that are due during the Term.
- 9.2 Landlord agrees to give appropriate written instructions to public authorities for taxes, assessments, and public charges payable by Tenant to make sure that statements and billings will be mailed directly by public authorities to Tenant at the address set forth in Section 30. Tenant shall deliver to Landlord, on demand, original receipts or photocopies evidencing payment of all taxes, assessments, and public charges payable by Tenant. Provided that Tenant has received notice of the levying of a tax, assessment or charge, if Tenant fails to pay taxes, assessments, and charges on or before the last day on which payment may be made without penalty or interest, other than as provided for in this Section 9, Landlord may, but shall not be obligated to, pay those taxes, assessments, or charges, together with interest and penalties. Any amounts that Landlord may pay pursuant to this provision, together with interest at the rate of ten percent (10%) per annum, shall be repaid to Landlord by Tenant on demand as additional rent.
- 9.3 All real estate taxes levied on the Premises for the tax year in which the Commencement Date falls shall be appropriately prorated between Landlord and Tenant, so that Tenant’s share will reflect the portion of that tax year in which Tenant had possession of the Premises under this Lease. Tenant shall pay Tenant’s share of the taxes directly to Landlord and not to the public authorities charged with the collection. That payment shall constitute full performance by Tenant, and Landlord shall pay from those funds and Landlord’s own funds all of the taxes for that tax year. Taxes levied on the Premises for the tax year in which the Termination Date occurs shall be similarly prorated between Landlord and Tenant to reflect the period of Tenant’s possession of the Premises during that tax year. Tenant shall pay Tenant’s share of those taxes to Landlord directly rather than to the public authorities, and that payment shall constitute full performance under this Lease with respect to this tax liability.
- 9.4 Tenant shall not be required to pay, discharge, or remove any tax (including penalties and interest), assessment, tax lien, forfeiture, or other imposition or charge against the Premises or any part of the Premises or any improvements, so long as Tenant diligently and in good faith contests the validity or the legality of the assessment, levy, or charge by appropriate legal proceedings, which should prevent the collection of the tax, assessment, imposition, or charge contested; provided however, that Tenant, prior to the date that the tax, assessment, imposition, or charge is due and payable, shall either have paid it under protest or shall

have, (i) in the case of real estate taxes, posted a bond with Landlord sufficient to cover the amount of the taxes and penalties and interest and, (ii) in the case of taxes other than real estate taxes, given to Landlord a letter executed by an officer of Tenant assuring Landlord that the tax, assessment, imposition, or charge will be paid when and to the extent that the legal proceedings conclude in a final determination that the tax, assessment, imposition, or charge is valid, legal and owing. Upon such final determination, Tenant agrees to immediately pay the contested tax, assessment, imposition, or charge, together with all interest and penalties, if any, and remove and discharge any lien or forfeiture arising from the prior nonpayment. Tenant's right to contest taxes as provided in this Lease shall not extend beyond the point where Landlord's title to the Premises could be lost. Tenant shall notify Landlord in advance of any tax contest proceedings that Tenant intends to initiate and shall then inform Landlord of all significant developments in the proceedings as they may occur.

- 9.5 If Tenant has not paid any tax, assessment, or public charge required by this Lease to be paid by Tenant before its delinquency, or if a tax, assessment, or public charge is contested by Tenant and that tax, assessment, or public charge has not been paid within thirty (30) days after a final determination of the validity, legality, or amount of the tax, assessment or public charge, then Landlord may, but shall not be required to, pay and discharge the tax, assessment, or public charge. If a tax, assessment, or public charge, including penalties and interest, are paid by Landlord, the amount of that payment shall be due and payable to Landlord by Tenant with the next succeeding installment of rent, and shall bear interest at the rate of ten percent (10%) per annum from the date of the payment by Landlord until repayment by Tenant.
- 9.6 If any assessments for local improvements become a lien after the Commencement Date, Tenant shall pay only the installments of the assessments that become due and payable during the Term. On the request of Tenant, Landlord shall cooperate or join with Tenant in any application that may be necessary to permit the payment of the assessments in installments.
- 9.7 The covenants to pay taxes by Tenant in this Section 9 shall not be deemed to include the payment of any inheritance, estate, succession, transfer, gift, franchise, corporation, income, or profit tax, or capital levy that is or may be imposed on Landlord.
10. **Condition of Premises.** Except as otherwise expressly provided herein, Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty of any kind whatsoever with respect to fitness for use or purpose, design, value, quality of material or workmanship, merchantability, or the condition of the Premises, or any part thereof, or with respect to the suitability for the conduct of Tenant's business. This Lease is being entered into after full investigation of the Premises by Tenant and Tenant is relying solely upon the results of Tenant's own inspections. Tenant acknowledges that the Premises and improvements are in good order, repair and condition and Tenant accepts the condition of the Premises in its "as is, with all faults" condition.
11. **Repairs and Maintenance.**
- 11.1 Landlord's Repairs and Services. Landlord shall at Landlord's expense maintain the structural soundness of the structural beams of the roof, foundation and exterior walls of the Premises in good repair, reasonable wear and tear and casually damaged excepted. The term "exterior walls" shall not include windows, glass or plate glass, doors, storefronts of office entries. Landlord shall perform on behalf of Tenant the maintenance, repair or replacement (as determined by Landlord in its sole discretion) of the roof and roof membrane. Any damage caused by or repairs necessitate by any act or omission of Tenant or Tenant's Parties may be repaired by Landlord at Landlord's option and at Tenant's expense, and the costs incurred by Landlord, together with interest at the Applicable Interest Rate from the date incurred, shall be paid to Landlord by Tenant as Additional Rent upon demand. Tenant shall immediately give Landlord written notice of any defect or need for repairs after which Landlord shall have a reasonable time within which to repair the same. Landlord's liability with respect to defects, repairs, or maintenance for which Landlord is responsible under this Lease shall be limited to the cost of such repairs or maintenance.
- 11.2 Tenant's Repairs and Maintenance. Tenant shall, at Tenant's expense, promptly make all necessary repairs, and use diligence to keep in good and safe condition, the entire Premises, including without limitation to personal property, windows, mirrors, glass panels, doors, walls and wall finishes, fixtures and hardware, floor covering, heating and air conditioning systems, plumbing and electrical systems and fixtures, light fixtures, alarm system and fire sprinklers, excluding only those items of maintenance or repair which are the responsibility of Landlord under Section 11.1. Tenant shall be responsible for the cost of all consumable

items used within the Premises, including but not limited to toilet tissue, Kleenex, paper towels and light bulbs. Tenant shall at Tenant's expense also perform regular removal of trash and debris except as provided by routine service provided by Landlord. Tenant shall not damage the integrity of any wall in the premises.

## 12. **Alterations.**

12.1 Tenant shall have the right to make alterations to the building and improvements on the Premises only with the prior written consent of the Landlord, which shall not be unreasonably withheld. Tenant shall provide to Landlord of a set of plans and specifications for the alterations no later than forty-five (45) days prior to the scheduled construction. The plans and specifications shall be deemed approved if Landlord does not provide written objection to Tenant on or before thirty (30) days after receipt of Tenant's plans and specifications. Tenant shall construct the alterations and improvements solely in accordance with the plans and specifications which are approved by Landlord. All improvements, additions, and alterations shall be made using only contractors licensed to perform such work in the State of California, in accordance with applicable laws, and at Tenant's own expense. Tenant shall indemnify and defend Landlord for all liens, claims, or damages caused by remodeling, improvements, additions or alterations.

12.2 All alterations and improvements made to the Premises shall become the property of Landlord and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease, including any renewals or extensions.

12.3 At least ten (10) days before any construction commences or materials are delivered for any alterations that Tenant is making to the Premises, Tenant shall give written notice to Landlord as to when the construction is to commence or the materials are to be delivered. Landlord shall then have the right to post and maintain on the Premises any notices that are required to protect Landlord and Landlord's interest in the Premises from any liens for work and labor performed or materials furnished in making the alterations; provided, however, that it shall be Tenant's duty to keep the Premises free and clear of all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the request of Tenant.

12.4 Tenant will not at any time permit any mechanics', laborers', or materialmen's liens to stand against the Premises for any labor or material furnished to Tenant or claimed to have been furnished to Tenant or Tenant's agents, contractors, or subtenants, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of Tenant; provided, however, that Tenant shall have the right to contest the validity or amount of any lien or claimed lien, upon giving to Landlord a letter executed by Tenant assuring that the lien or claimed lien will be paid, when and to the extent that the lien is finally determined to be valid and owing. Tenant's right, however, to contest these liens shall not extend beyond the point where Landlord's title to the Premises could be lost. On final determination of the lien or claim of lien, Tenant will immediately pay any final judgment rendered, with all property costs and charges, and shall have the lien released or judgment satisfied at Tenant's own expense. If Tenant fails to pay the judgment promptly or otherwise fails to prevent any sale, foreclosure, or forfeiture of the Premises because of a lien, Landlord shall have the right, upon five (5) days' written notice to Tenant, to pay or prevent this action, and the amount paid by Landlord shall be immediately due and payable to Landlord, and shall bear interest at the rate of ten percent (10%) per annum from the date of payment by Landlord until repayment by Tenant.

13. **Entry.** Tenant shall permit Landlord or Landlord's agents, representatives, and employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease.

14. **Surrender of Premises; Holding Over.** On the Termination Date or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they are now at the date of this Lease, reasonable wear and tear excepted.

15. **Indemnity.** Tenant agrees to indemnify, defend and hold Landlord harmless from and against any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on the Premises that arise out of or are connected with Tenant's use or occupancy of the Premises or the condition of the Premises during the Term. Tenant's obligations under this Section shall survive termination of this Lease.



## 16. Insurance.

- 16.1 At all times during the Term, Landlord shall maintain in full force and effect insurance on the building and improvements that may be built or placed on the Premises, against the hazard of fire, with all standard extended coverage, in an amount equal to their full insurable value, with a replacement cost endorsement, excluding the cost of excavation and of foundation below the level of the ground and such other insurance as Landlord considers necessary or appropriate. Tenant shall pay to Landlord as additional rent the insurance premium costs for the insurance which Landlord maintains under this Section 16. Tenant shall pay Landlord for the insurance premium cost that Tenant is obligated to pay under this Section 16 in one of the following ways. The selection of a method described below shall be the method by which Tenant shall pay shall be in the sole discretion of Landlord and may be changed by Landlord from time to time throughout the Term.
- (a) Landlord may estimate and bill to Tenant the amount to be paid by Tenant on account of the insurance premium cost hereunder, and Tenant shall make monthly payments to Landlord, in the same manner that Tenant pays the Monthly Rent.
  - (b) In the alternative, Landlord may bill Tenant, and Tenant shall pay, as follows. At the commencement of each policy period for each such policy of insurance, Landlord shall notify Tenant of the insurance premium costs for that policy of insurance and that policy period. Tenant shall pay to Landlord the insurance premium costs within thirty (30) days after written notice from Landlord to Tenant of the amount of the required premium payment.
- 16.2 Tenant shall procure and maintain commercial general liability insurance designating Landlord as a named insured against any and all claims for bodily injury and property damage occurring in, or about the Premises (including without limitation damage or injury to vehicles or persons in the parking lot located on the Premises) or arising out of Tenant's use or occupancy of the Premises. Such insurance shall have a combined single limit of not less than two million dollars (\$2,000,000) per occurrence with a five million dollar (\$5,000,000) aggregate limit. Such liability insurance shall be primary and not contributing to any insurance available to Landlord and any insurance maintained by Landlord shall be excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Tenant under this Lease.
- 16.3 Each policy of insurance shall be issued by a responsible insurance company authorized to do business in California, and shall be issued in the names of Landlord, Tenant, and any beneficiary under any deed of trust covering the Premises, if required by the deed of trust, as their respective interests may appear. Tenant shall deliver a certificate for each insurance policy to Landlord with all relevant endorsements. Each policy of insurance shall be primary and noncontributory with any policies carried by Landlord and, to the extent obtainable, any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in forfeiture of insurance. Each insurance policy shall provide that a thirty (30) day notice of cancellation and of any material modification of coverage shall be given to all named insureds. The insurance coverage required under this Section may be carried by Tenant under a blanket policy insuring other locations of Tenant's business, provided that the Premises covered by this Lease are specifically identified as included under that policy.
- 16.4 Tenant shall, during the Term and any renewals or extensions, maintain at Tenant's own cost and expense, an insurance policy insuring against damage or destruction by fire, theft, or elements for their full insurable value all fixtures and equipment on the Premises at any time during the Term or any renewal or extension.
- 16.5 At all times during the Term and any extensions or renewals, Tenant agrees to keep and maintain, or cause Tenant's agents, contractors, or subcontractors to keep and maintain, workers' compensation insurance and other forms of insurance as may from time to time be required by law or may otherwise be necessary to protect Landlord and the Premises from claims of any person who may at any time work on the Premises, whether as a servant, agent, or employee of Tenant or otherwise.
- 16.6 Landlord agrees that it will tender and turn over to Tenant or to Tenant's insurers the defense of any claims, demands, or suits instituted, made, or brought against Landlord or against Landlord and Tenant jointly, within the scope of this Section. However, Landlord shall have the right to approve the selection of legal counsel, to the extent that selection is within Tenant's control, which approval shall not be unreasonably withheld. In addition, Landlord shall retain the right at Landlord's election to have Landlord's legal counsel participate as co-counsel, to the extent that claims are made that may not be covered by Tenant's insurers.

- 16.7 Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss of, or damage to, either parties' property, to the extent that such loss or damage is insured by an insurance policy required to be in effect at the time of such loss or damage. Each party shall obtain any special endorsements, if required, whereby insurer waives its rights of subrogation against the other party.
17. **Trade Fixtures.** Tenant shall have the right, at any time and from time to time during the Term and any renewals or extensions, at Tenant's sole cost and expense, to install and affix on the Premises items for use in Tenant's trade or business, which Tenant deems advisable (collectively "Trade Fixtures"). Trade Fixtures installed in the Premises by Tenant shall remain the property of Tenant and may be removed at the expiration of the Term or any extension, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and provided that if Tenant elects to abandon any Trade Fixtures, Landlord shall have the right to either keep any abandoned Trade Fixtures or require Tenant to remove the Trade Fixtures that Tenant has otherwise elected to abandon. Any Trade Fixtures that are not removed from the Premises by Tenant within thirty (30) days after the Termination Date shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed.
18. **Signs.** Tenant shall not place, maintain, or permit on any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the express written consent of Landlord. For purposes of this Agreement, Landlord shall be deemed to have consented to signage to be displayed near the main entrance of the Premises indicating the Premises as the location of "Salinas Valley Medical Clinic." If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall maintain it in good appearance and repair at all times during this Lease.
19. **Damage and Destruction.**
- 19.1 If the Premises are damaged or destroyed by any casualty then Landlord may, but shall have no obligation to, elect to repair, reconstruct or restore the Premises after any such damage or destruction thereto, by giving notice of such election in writing to Tenant within sixty (60) days after the occurrence of the event causing the damage or destruction. If Landlord elects to repair, reconstruct or restore in accordance with this Section 19.1, this Lease shall continue in full force and effect and Landlord shall proceed with due diligence to complete the repair, reconstruction or restoration so far as practicable and allowed by applicable law. If Landlord elects not to repair, reconstruct or restore the Premises after any such damage or destruction, Landlord shall have the right to terminate this Lease. If Landlord shall not elect to terminate this Lease, this Lease shall remain in full force and effect; provided, however, that if the damage or destruction of the Premises is such that the Premises have been rendered untenable (and Landlord has not elected to repair, reconstruct or restore), Tenant shall have the right to terminate this Lease by written notice to Landlord given within thirty (30) days following the expiration of such sixty (60)-day period. If this Lease shall be terminated as provided herein, all amounts paid or payable by Tenant to Landlord shall, where applicable, be prorated between Landlord and Tenant as of the date of such damage or destruction; provided, that if Tenant remains open for business following the date of such damage or destruction this Lease shall continue in effect until the date actual notice of termination is given as provided herein and all amounts hereunder shall be prorated as of the date of such notice.
- 19.2 If Landlord elects under Section 19.1 to repair, reconstruct or restore the Premises after any damage or destruction thereto, Tenant shall, at its own expense, as soon as reasonably practicable replace or fully repair, reconstruct or restore its fixtures, improvements, furniture, equipment, signs and all other property to the condition existing immediately prior to the damage or destruction, to the extent practicable and permitted by applicable law.
- 19.3 Tenant shall have no interest in or any claim to any portion of the proceeds of any insurance maintained pursuant to Section 16.1.
- 19.4 If damage to the Premises or repair or rebuilding of the Premises after such damage renders the Premises untenable in whole or in part, and Landlord repairs such damage pursuant to the provisions of Section 19.1, then a proportionate abatement of the Monthly Rent shall be allowed from the date on which such damage occurs until the date the damage is repaired by Landlord under Section 19.1. The proportionate abatement shall be computed on the basis of the relation which the gross square foot area of space rendered untenable bears to the total square footage of the Premises.

20. **Condemnation.**

20.1 If, during the Term or any renewal or extension, the whole of the Premises shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Premises is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

20.2 If, during the Term or any renewal or extension, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Premises prior to the taking, or if the Premises should become unsuitable or inadequate for those purposes by reason of the taking of any other property adjacent to the Premises pursuant to any condemnation proceeding, or if by reason of any law or ordinance the use of the Premises for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of the other described events, Tenant shall have the option to terminate this Lease. The option can be exercised only after the taking or after the occurrence of the described events by Tenant giving ten (10) days' written notice to Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises.

20.3 If only a part of the Premises is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Premises to a self-contained architectural unit, and the Monthly Rent payable shall be reduced effective as of the date of the taking to an amount that shall be in the same proportion to Monthly Rent payable prior to the taking, as the number of square feet of floor area within the building remaining after the taking bears to the number of square feet of floor area within the building immediately prior to the taking.

20.4 If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to Tenant's unsalvageable Trade Fixtures.

21. **Assignment and Subletting.** Tenant shall not assign this Lease or sublet any portion of the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld. Subsequent to any approved assignment, Tenant shall remain primarily liable for the rent to be paid under this Lease and the performance of all terms and conditions of this Lease.

22. **Default.** Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default ("Event of Default"):

22.1 The failure by Tenant to pay any amount in full when it is due under the Lease or failure by Tenant to perform any obligation under this Lease, which Tenant has no capacity to cure;

22.2 The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10)-day period and thereafter diligently completing the cure;

22.3 A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent;

22.4 The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant of a petition to have Tenant declared bankrupt, or a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

22.5 The abandonment of the Premises by Tenant.

23. **Remedies.** Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to

23.1 Terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated, in which case Landlord may recover from Tenant the aggregate sum of

- (a) the worth at the time of award of any unpaid rent that had been earned at the time of termination;
- (b) the worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of the rental loss, if any, as Tenant affirmatively proves could have been reasonably avoided;
- (c) the worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, as Tenant affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate Landlord for all the detriment caused by Tenant's failure to perform Tenant's obligations or that, in the ordinary course of things, would be likely to result from Tenant's failure; and
- (e) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California law.

As used in clauses (i) and (ii) of Section 23.1, the worth at the time of award is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of Section 23(a), the worth at the time of award is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used in this Section, the term rent shall include Monthly Rent and any other payments required by Tenant under this Lease.

23.2 Continue this Lease, and from time to time, without terminating this Lease, either (i) recover all rent and other amounts payable as they become due or (ii) relet the Premises or any part on behalf of Tenant on terms and at the rent that Landlord, in Landlord's sole discretion, may deem advisable, all with the right to make alterations and repairs to the Premises, at Tenant's cost, and apply the proceeds of reletting to the rent and other amounts payable by Tenant. To the extent that the rent and other amounts payable by Tenant under this Lease exceed the amount of the proceeds from reletting, the Landlord may recover the excess from Tenant as and when due.

23.3 Upon the occurrence of an Event of Default, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises. Landlord may store the property removed from the Premises in a public warehouse or elsewhere at the expense and for the account of Tenant.

23.4 None of the following remedial actions, alone or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated or unless a court of competent jurisdiction decrees termination of this Lease: any act by Landlord to maintain or preserve the Premises; any efforts by Landlord to relet the Premises; any re-entry, repossession, or reletting of the Premises; or any re-entry, repossession, or reletting of the Premises by Landlord pursuant to this Section.

23.5 If Landlord relets the Premises, Landlord shall apply the revenue from the reletting as follows: first, to the payment of any indebtedness other than rent due from Tenant to Landlord; second, to the payment of any cost of reletting, including without limitation finder's fees and leasing commissions; third, to the payment of the cost of any maintenance and repairs to the Premises; and fourth, to the payment of rent and other amounts due and unpaid under this Lease. Landlord shall hold and apply the residue, if any, to payment of future amounts payable under this Lease as the same may become due and shall be entitled to retain the eventual balance with no liability to Tenant. If the revenue from reletting during any month, after application pursuant to the previous provisions, is less than the sum of (i) Landlord's expenditures for the Premises during that month and (ii) the amounts due from Tenant during that month, Tenant shall pay the deficiency to Landlord immediately upon demand.

- 23.6 After the occurrence of an Event of Default, Landlord, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Tenant. However, Landlord must by prior notice first allow Tenant a reasonable opportunity to cure, except in cases of emergency, where Landlord may proceed without prior notice to Tenant. Tenant shall, upon demand, immediately reimburse Landlord for all costs, including costs of settlements, defense, court costs, and attorneys' fees that Landlord may incur in the course of any cure.
- 23.7 No security or guaranty for the performance of Tenant's obligations that Landlord may now or later hold shall in any way constitute a bar or defense to any action initiated by Landlord for unlawful detainer or for the recovery of the Premises, for enforcement of any obligation of Tenant, or for the recovery of damages caused by a breach of this Lease by Tenant or by an Event of Default.
- 23.8 Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.
24. **Late Charge.** Tenant acknowledges that Tenant's failure to pay any installment of the Monthly Rent or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of the Monthly Rent or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to five percent (5.0%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.
25. **Default Interest.** If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at ten percent (10.0%) per annum from the due date until paid.
26. **Waiver of Breach.** Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.
27. **Estoppel Certificates.** At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying:
- (a) Commencement Date and Term; Amount of the Monthly Rent; and Dates to which rent and other charges have been paid;
  - (d) That this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification;
  - (e) That no notice has been received by Tenant of any default by Tenant that has not been cured except, if any exist, those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease;
  - (f) That no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate; and
  - (g) Other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it.

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- 28. **Attorneys' Fees.** If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered. Each party shall bear its own attorneys' fees and costs incurred in the negotiation and implementation of this Lease.
- 29. **Authority.** Each person signing this Lease on behalf of a party expressly represents and warrants that he or she has received full and complete authority to sign this Lease on behalf of that party, whether the party is an individual or an entity, by the exercise of any necessary powers governing the execution of contracts by that party and that no further approval of any kind is necessary to bind that party to this Lease.
- 30. **Notices.** Notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to:

Tenant at: Salinas Valley Memorial Healthcare System  
 Attn: Office of the President/CEO  
 450 East Romie Lane  
 Salinas, California 93901

Landlord at:

Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

- 31. **Successors and Assigns.** Without waiver of the provisions of this Lease concerning assignment, each and all of the rights, benefits, duties, liabilities, and obligations of the parties under this Lease shall inure to the benefit of, and be binding upon, their respective successors and permitted assigns.
- 32. **Partial Invalidity.** Whenever possible, each provision of this Lease shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Lease held to be void or unenforceable under applicable law shall be deemed stricken and all remaining provisions of this Lease shall continue to be valid and binding upon the parties.
- 33. **Entire Agreement/Amendment.** This instrument constitutes the sole agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. Any agreement or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are void. No addition, alteration, amendment, change, or modification to this Lease shall be binding upon the parties, or any of them, unless reduced to writing and signed by each and all of the parties.
- 34. **Time of Essence.** The time limits stated in this Lease are of the essence of this Lease. The performance of the obligations of the parties within the times set forth in this Lease is a material term of this Lease. All time periods expiring on a specified date or period in this Lease shall be deemed to expire at 5:00 p.m. Pacific Time on such specified date or period.
- 35. **Subordination.**
  - 35.1 This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Premises and to any advances made on the security of it or Landlord's interest in it, and to all renewals, modifications, consolidations, replacements, and extensions of it. However, if any mortgagee, trustee, or ground landlord elects to have this Lease prior to the lien of its mortgage or deed of trust or prior to its ground lease, and gives notice of that to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording of it. If any mortgage or

deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground landlord. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to for the subordination, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

- 35.2 If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rent and other sums due under this Lease or otherwise in default under the terms of this Lease.
36. **Third-Party Rights.** This Lease has been made and is made solely for the benefit of the parties and their respective permitted successors and assigns. Nothing in this Lease, express or implied, is intended to confer upon any individual or entity, other than the parties and their respective permitted successors and assigns, any rights or remedies, nor is anything in this Lease intended to relieve or discharge the obligation or liability of any third persons to any party to this Lease, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Lease.
37. **Governing Law.** This Lease shall be governed by and construed in accordance with California law.
38. **Cooperation.** Each of the parties agrees to use reasonable and good faith efforts to take, or cause to be taken, all action to do, or cause to be done, and to assist and cooperate with any and all other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Lease including signing, acknowledging, and delivering any instruments and documents as may be necessary, expedient, or proper, to carry out the intent and purpose of this Lease. Each party agrees to exercise good faith and fair dealing in the performance of its obligations under this Lease.
39. **Drafting of Lease/Interpretation.** It is understood and agreed by the parties that this Lease has been arrived at through negotiation and deliberation by the parties, with each party having had the opportunity to review and revise this Lease and to discuss the terms and effect of this Lease with counsel of its choice. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. This Lease shall be construed as a whole and in accordance with its fair meaning. The organization and format of this Lease (including the numbering of, or the captions, headings, or titles to, any sections or paragraphs of this Lease) are intended solely for convenience of reference and shall not be used to construe the scope, meaning, intent, or interpretation of any part of this Lease.
40. **Counterparts.** This Lease may be signed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same complete instrument. The signature page of each counterpart may be detached from such counterpart and attached to a single document which shall for all purposes be treated as an original.
41. **Approval by SVMHS Board of Directors.** This Lease is contingent upon approval by the Salinas Valley Memorial Healthcare System's Board of Directors. Should this contingency not be satisfied or waived in writing by Lessee within thirty (30) days of Lease execution, either party may terminate this Lease.

The parties have executed this Lease to be effective on the Effective Date first set forth above.

**TENANT**  
Salinas Valley Memorial Healthcare System,  
A California local health care district

**LANDLORD**  
CHM Leasing,  
A California partnership

By: \_\_\_\_\_  
Pete Delgado, President/CEO

\_\_\_\_\_  
James K. Hoffman, MD

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

Legal Description of the Premises



## SUBLEASE AND SERVICES AGREEMENT

### (SVMC and Salinas Family Practice Medical Clinic)

This Sublease and Services Agreement (“**Agreement**”) is made and entered into effective as of **April 1, 2021** (“**Effective Date**”) by and between **Salinas Valley Memorial Healthcare System**, a California local health care district (“**SVMHS**”) operating as Salinas Valley Medical Clinic (“**SVMC**”), and **Salinas Family Practice Medical Clinic, Inc.**, a California professional medical corporation, (“**Group**”).

#### RECITALS

- A. SVMC provides multi-specialty medical services in multiple locations. SVMC provides family medicine services at 1328 Natividad Road, Salinas, California (“**SVMC Office**”). SVMC leases the SVMC Office (“**Master Lease**”) from **CHM Leasing**, a California partnership (“**Master Landlord**”).
- B. Group employs **James K. Hoffman, M.D.**, (“**Physician**”) and desires to sublease office space, and obtain equipment and certain services, in order to establish a part-time clinic location (“**Clinic**”) within the SVMC Office.

The parties agree as follows:

- 1. **Sublease and Services**. The parties agree that Group may operate the Clinic in the SVMC Office in accordance with the terms and conditions of this Agreement for up to two (2) days per week. The parties shall collaborate and agree on the days and times that Group operates the Clinic.
  - 1.1 **Office Space**. SVMC, subject to the written consent of Landlord set forth below in this Agreement, hereby subleases to Group a physician’s office, use of examination rooms, and access to common areas of SVMC Office (collectively, “**Subleased Premises**”). Group shall use the Subleased Premises solely for Clinic services. The physician’s office may be subject to occupancy only by Physician and no other physicians or assignees. Group shall not make any alterations or additions to the Subleased Premises without the prior written consent of SVMC. Repairs, maintenance, utilities and services shall be provided or arranged by SVMC at no cost to Group. SVMC shall maintain a policy or policies of insurance for the Subleased Premises in accordance with the Master Lease. SVMC shall be responsible for insuring the SVMC Office, providing utility services and payment of taxes, all of which shall be included in the compensation paid to SVMC under Section 2 below.
  - 1.2 **Fixtures, Furniture and Equipment**.
    - 1.2.1 SVMC shall furnish to Group certain medical equipment, office equipment, fixtures and furniture (“**Equipment**”) as may be reasonably necessary for the Clinic and the Subleased Premises, which shall be consistent with the equipment in other offices and examination rooms in the SVMC Office. Subject to its inspection of the Equipment, Group accepts the use of the Equipment, without representation from SVMC as to its fitness of purpose.
    - 1.2.2 SVMC shall maintain the Equipment in good repair, condition and working order, and provide preventive and routine maintenance as may be necessary and appropriate to maintain the Equipment in a proper state of repair and serviceability. SVMC, at its cost, shall insure the Equipment against loss, theft or damage, and public liability and property damage insurance covering the Equipment.
    - 1.2.3 The Equipment shall at all times be and remain the sole property of SVMC, and shall not be removed from the SVMC Office by Group at any time.
    - 1.2.4 SVMC shall pay fees, assessments, charges, sales, use, and other taxes imposed upon the purchase, delivery, ownership, leasing, possession, or use of the Equipment. The cost of all such fees and taxes shall be considered part of the compensation paid to SVMC under Section 2 below.
  - 1.3 **Personnel**. SVMC shall provide non-physician personnel (“**SVMC Personnel**”) as reasonably necessary for Group to provide Clinic services in the Subleased Premises. The parties shall collaborate on the types and scheduling of the SVMC Personnel, who shall include the part-time services of a medical assistant, receptionist services, and other support staff.

- 1.3.1 SVMC shall be the sole employer of the SVMC Personnel, and shall (i) manage and supervise all SVMC Personnel providing non-clinical support services; and (ii) hire, discipline, and fire, as solely determined by SVMC, and (iii) determine the salaries, fringe benefits, bonuses, health and disability insurance, workers' compensation insurance and any other benefits for all SVMC Personnel.
    - 1.3.2 Group shall supervise all clinical SVMC Personnel when they are providing clinical services under this Agreement.
  - 1.4 **Support Services.** SVMC shall provide the following support services for the Clinic during the term of the Agreement:
    - 1.4.1 **Maintenance/Utilities.** SVMC shall arrange and pay for all utilities necessary for the effective operation of the Clinic, including gas, electricity, water, telephone, trash and hazardous waste disposal and janitorial services.
    - 1.4.2 **Supplies.** SVMC shall furnish certain supplies reasonably necessary for the operation of the Clinic. The parties shall collaborate as to their respective obligations to provide supplies for the Clinic.
    - 1.4.3 **Medical Records.** All medical records for Clinic patients shall be maintained separately and secured from medical records of SVMC. Subject to the Business Associate Agreement attached as **Exhibit A** to this Agreement, SVMC shall assist Group with the maintenance of the Clinic medical records. Group is required to utilize SVMC's Epic electronic medical record software provided under an Electronic Medical Record Technology Services Agreement between Group and SVMHS.
    - 1.4.4 **Patient Registration.** SVMC shall assist Group with registration of all Clinic patients, using forms and documents provided by Group and identifying Group as the provider of all services rendered in the Clinic.
    - 1.4.5 **Other Services.** SVMC shall provide other services as the parties may mutually agree from time to time as may be necessary for the Clinic.
  - 1.5 **Practice Obligations.** SVMC and Group, and their respective physicians providing services in the SVMC Office and the Clinic, shall each be solely and exclusively in control of all aspects of their respective services for their respective patients. Neither party shall have nor exercise any control or discretion over the methods by which the other party shall practice medicine or provide services.
  - 1.6 **Independent Parties.** In the performance of the work, duties and obligations devolving upon them under this Agreement, it is mutually understood and agreed that SVMC and Group are at all times acting and performing as independent contractors, and nothing in this Agreement is intended nor shall be construed to create between SVMC and Group/Physician an employer/employee or a joint venture relationship.
  - 1.7 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, rules, regulations and restrictions in the conduct of their respective businesses located in the SVMC Office. The parties acknowledge that this Agreement does not contemplate, and is not made in consideration of, the referral of any business between them, their shareholders, employees, members or shareholders. Any decisions with regard to any referrals shall be made solely by physicians according to their independent professional judgment and in the best interests of their patient.
2. **Compensation.** In consideration of the Subleased Premises, Equipment, and services provided by SVMC under this Agreement, Group shall pay to SVMC the amount of **Eleven Thousand Nine Hundred Ninety Dollars (\$11,990.00)** per month.
  3. **Billing and Collection.** Group shall be responsible for billing and collecting all claims for Clinic services.
  4. **Patient Records.** All medical records for Clinic patients are the property of Group, subject to the terms of the Electronic Medical Record Technology Services Agreement between Group and SVMHS. SVMC shall have access to such records as necessary for the provision of services to Group, subject to applicable federal and state laws. The parties shall maintain and safeguard confidentiality of all records, charts and other information generated in connection with the professional medical services provided under this Agreement in accordance with applicable federal and state laws, and with the provisions of **Exhibit A** attached to and incorporated into this Agreement.

5. **Insurance.** During the term of this Agreement, each party shall maintain professional liability insurance for claims against them arising from the performance of their respective services in the SVMC Office, with limits of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate.
6. **Indemnification.** Provided it does not otherwise invalidate insurance coverage that would otherwise apply because of excluded contractual indemnity, each party shall indemnify and hold harmless the other party from any and all liability, loss, claim, lawsuit, injury, cost, damage or expense whatsoever (including reasonable attorneys' fees and court costs) arising out of, incident to, or in any manner occasioned by, the performance or nonperformance of any duty or responsibility under this Agreement by such indemnifying party, or any of their employees, agents, or subcontractors.
7. **Term and Termination.**
  - 7.1 **Term.** Subject to Section 7.2, the term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year. This Agreement shall automatically renew on each anniversary of the Effective Date for an additional one (1) year term, unless either party gives notice of non-renewal to the other party at least ninety (90) days prior to the expiration of the then-current term.
  - 7.2 **Termination.** The parties may terminate this Agreement as follows:
    - 7.2.1 If either party commits a material breach of this Agreement, the other party shall provide written notice to the defaulting party specifying the nature of the breach. In the event such breach is not cured within thirty (30) days after service of the notice, this Agreement shall terminate at the election of the non-defaulting party upon the expiration of such 30-day period.
    - 7.2.2 Either party may terminate this Agreement with or without stating a cause or reason and without cost or penalty upon thirty (30) days' prior written notice to the other party.
  - 7.3 **Survival.** Sections 4 (Patient Records), 5 (Insurance), and 6 (Indemnification), and the parties' accrued rights and obligations under this Agreement, shall survive termination of this Agreement.
8. **Assignment.** Neither party shall assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns.
9. **Miscellaneous Provisions.**
  - 9.1 **Notices.** Any notice or other communication required or permitted under this Agreement shall be deemed to have been given if delivered personally to the party to whom directed or, if mailed, by registered or certified mail, postage and charges prepaid, addressed as set forth after each party's signature below. Notice is deemed to be given when personally delivered or, if mailed, two (2) business days after the date of mailing.
  - 9.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with California law.
  - 9.3 **Amendment.** This Agreement may be modified or amended only by mutual written agreement of the parties, dated and signed by the parties and attached to this Agreement.
  - 9.4 **Validity.** If any clause or provision of this Agreement, or the application of any such clause or provision in a particular context or to a particular situation, circumstance or person, should be held unenforceable, invalid or in violation of law by any court or other tribunal, then the application of such clause or provision in contexts or to situations, circumstances or persons other than that in or to which it is held unenforceable, invalid or in violation of law shall not be affected thereby, and the remaining clauses and provisions hereof shall nevertheless remain in full force and effect.
  - 9.5 **Headings.** The headings in this Agreement are inserted for convenience only and shall not affect the interpretation of this Agreement.
  - 9.6 **Waiver.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and shall apply solely to the specific instance expressly stated.

- 9.7 **Force Majeure.** Neither party shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment deemed resulting, directly or indirectly, from Acts of God, civil or military authority, acts of public enemy, terrorism, bioterrorism, bomb threats, computer virus, epidemic, power outage, acts of war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes, or other work interruptions by either party's employees or any similar or dissimilar cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstance.
- 9.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- 9.9 **Costs and Attorneys' Fees.** In the event of any action to enforce this Agreement or for a default under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
- 9.10 **Third-Party Beneficiaries.** There are no beneficiaries of this agreement other than the parties named above.
- 9.11 **Entire Agreement.** This Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions between the parties.

The parties have executed this Agreement effective as of the Effective Date first written above.

**SVMHS**

Salinas Valley Memorial Healthcare System  
 450 E. Romie Lane  
 Salinas, California 93901-4029

By: \_\_\_\_\_  
 Pete Delgado, President/CEO

Date: \_\_\_\_\_

**GROUP**

Salinas Family Practice Medical Clinic, Inc.  
 1328 Natividad Road  
 Salinas, CA 93906

By: \_\_\_\_\_  
 Douglas C. Cambier, President

Date: \_\_\_\_\_

**Master Landlord's Consent to the Subleased Premises:**

CHM Leasing, a California partnership

\_\_\_\_\_  
 By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## EXHIBIT A

### Business Associate Agreement

This Business Associate Agreement is entered into by and between **Salinas Valley Memorial Healthcare System** (“Business Associate”) and **Salinas Family Practice Medical Clinic, Inc.** (“Covered Entity”), which is a covered entity under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The parties are entering into this agreement to assist the Covered Entity in complying with HIPAA, and to set forth Business Associate’s obligations under the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH Act”), and 45 CFR Parts 160 and 164, Subpart C (“Security Rule”), Subpart D (“Data Breach Notification Rule”), and Subpart E (“Privacy Rule”) (collectively, “HIPAA Regulations”). Terms used in this Agreement have the meanings given them in the HIPAA Regulations. This agreement applies to any protected health information Business Associate receives from Covered Entity, or creates, receives or maintains on behalf of Covered Entity, under its Sublease and Services Agreement with Covered Entity, and any other agreement between it and Covered Entity (collectively the “Principal Agreements”).

#### AGREEMENT

1. Business Associate may use and disclose Covered Entity’s protected health information to provide Covered Entity with the goods and services contemplated by the Principal Agreements. Except as expressly provided below, this agreement does not authorize Business Associate to make any use or disclosure of protected health information that Covered Entity would not be permitted to make.

2. Business Associate will:

(a) Not use or further disclose Covered Entity’s protected health information except as permitted by the Principal Agreements or this Agreement, or as required by law;

(b) Use appropriate safeguards, and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information, to prevent use or disclosure of Covered Entity’s protected health information other than as provided for by the Principal Agreements or this Agreement;

(c) Report to Covered Entity within two business days of discovery any use or disclosure of Covered Entity’s protected health information not provided for by the Principal Agreements or this Agreement of which it becomes aware, including breaches of unsecured protected health information as required by the Data Breach Notification Rule (45 CFR § 164.410), and any security incident of which Business Associate becomes aware.

(d) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of protected health information by Business Associate in violation of this Agreement or the HIPAA Regulations.

(e) Ensure that any of Business Associate’s subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions and

conditions that apply to Business Associate with respect to such information, including compliance with the HIPAA Security Rule with respect to electronic protected health information;

(f) Make any protected health information in a designated record set available to Covered Entity to enable Covered Entity to meet its obligation to provide access to the information in accordance with 45 CFR § 164.524;

(g) Make any protected health information in a designated record set available for amendment and incorporate any amendments to protected health information as directed by Covered Entity pursuant to 45 CFR § 164.526;

(h) Make available to Covered Entity the information concerning disclosures that Business Associate makes of Covered Entity’s protected health information required to enable Covered Entity to provide an accounting of disclosures in accordance with 45 CFR § 164.528;

(i) To the extent that Business Associate carries out Covered Entity’s obligations under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligations;

(j) Make Business Associate’s internal practices, books, and records relating to Business Associate’s use and disclosure of protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity’s compliance with the HIPAA Regulations, and to the Covered Entity for purposes of determining Business Associate’s compliance with this Agreement;

(k) Limit its requests for and uses and disclosures of Covered Entity's protected health information to the minimum necessary, and comply with any minimum necessary policies and procedures that covered entity provides to Business Associate;

(l) Upon termination of the Principal Agreements, return or destroy all Covered Entity's protected health information that Business Associate still maintains in any form and retain no copies of such information or, if return or destruction is not feasible, extend the protections of this agreement to that information and limit further use and disclosure to those purposes that make the return or destruction of the information infeasible.

3. Business Associate may use Covered Entity's protected health information for the management and administration of Business Associate's company and to carry out Business Associate's own legal responsibilities, and Business Associate may disclose the information for these purposes if Business Associate is required to do so by law, or if Business Associate obtains reasonable assurances from the recipient of the information (1) that it will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (2) that the

recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the information is breached.

4. If Covered Entity determines that Business Associate has violated a material term of this agreement, and if Business Associate fails to cure such violation within ten (10) days of delivery of written notice thereof, Covered Entity may immediately terminate the Principal Agreements. This Agreement shall remain in effect as long as Business Associate maintains or has access to Covered Entity's protected health information, regardless of the termination of the Principal Agreements.

5. Each party to this Agreement shall defend, indemnify and hold the other harmless against any claim, cost or liability arising from the negligence or willful misconduct of the indemnifying party in connection with the performance of its obligations under this Agreement, or its breach of any provision of this Agreement.

6. This Agreement shall be interpreted in accordance with HIPAA, the HITECH Act, and the regulations promulgated thereunder, as amended from time to time.

**Business Associate**

Salinas Valley Memorial Healthcare System

**Covered Entity**

Salinas Family Practice Medical Clinic, Inc.

\_\_\_\_\_  
Signature

Pete Delgado, President/CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Douglas C. Cambier, President

\_\_\_\_\_  
Date

# Finance Committee Board Paper

Agenda Item: **Consider Recommendation for Board Approval of Epic Community Connect Project and Program Budget**

Executive Sponsor: Allen Radner, MD, Chief Medical Officer  
Augustine Lopez, Chief Financial Officer  
Clint Hoffman, Chief Administrative Officer, Physician Integration & Business Development  
Audrey Parks, Chief Information Officer  
Josh Rivera, Director Ambulatory Informatics

Date: January 13, 2021

## Executive Summary

In April of 2020, Salinas Valley Medical Clinic (SVMC) and Taylor Farms Family Health & Wellness Center (TFFHWC) implemented Epic electronic medical record (EMR) software. Through this significant investment in a consolidated EMR system, we now have the ability to extend our EMR system to community practices affiliated with SVMHS. Our initial expansion of Epic will include thirty-four (34) providers in the following practices: Doctors on Duty, CSUMB Student Health Center, James Dacus, MD and James Hoffman, MD.

Adoption of Epic by these practices is made possible, in part, through a Stark Law exception and Anti-Kickback Statute safe harbor that allows for hospitals and health systems to subsidize up to eighty-five (85%) of the costs of implementing an interoperable EMR system. This exception has been in place since 2006 and is currently scheduled to expire on December 31, 2021; however, historically there have been extensions of this exception when it has expired in the past, and we are hopeful it will continue.

In order to identify and allocate appropriate expenses related to our expansion of Epic and to ensure that community practices cover at least fifteen percent (15%) of the costs related to their use of Epic, SVMHS commissioned Impact Advisors to create a detailed budget and pricing model for our Epic Connect offering. The total project budget for these practices is four million one hundred sixty thousand two hundred sixty-five dollars (\$4,160,265) over five (5) years, inclusive of Epic software licensing fees, necessary third-party software licensing fees, hardware costs and incremental staffing for the project inclusive of training, implementation and ongoing support. Revenues related to the practice share of expenses for Epic, which include an up-front payment of six thousand three hundred seventy-two dollars (\$6,372) and monthly payments of three hundred three dollars (\$303), is budgeted at seven hundred seventy-three thousand eight hundred twenty three dollars (\$773,823) over five (5) years.

## Timeline/Review Process to Date:

April 2020:	Epic Go-Live for SVMC and TFFHWC
January 2021:	Epic Team Develops and Creates Epic Community Connect Cost Model with Impact Advisors
January 2021:	Community Connect Project is presented to the SVMHS Board for approval
April 2021:	James Hoffman, MD Go-live Date
July 2021:	Doctors on Duty/CSUMB Student Health Center Go-live Date
October 2021:	James Dacus, MD Go-live Date

Meeting our Mission, Vision, Goals

## Strategic Plan Alignment:

Implementation of the Epic Community Connect Project provides a unified platform for integrating the care of patients across our region. This implementation will also provide significant enhancements to population health management capability, critical to our future financial success.

Pillar/Goal Alignment

- Service  
  People  
  Quality  
  Finance  
  Growth  
  Community

Financial/Quality/Safety/Regulatory Implications:

SVMHS Community Connect 5 Year Cost Model		SVMHS Cost Summary		
		Year 1 One-Time	Annual 5-Year Total	5 Year Total All Costs
Net New Costs	Epic Software	\$ 459,361	\$ 596,845	\$ 1,056,207
	Third Party Software	\$ 62,220	\$ 201,018	\$ 263,238
	Interfaces and Data Conversion	\$ 15,455	\$ 11,148	\$ 26,603
	Epic Hardware and Data Center	\$ 15,476	\$ 1,675,637	\$ 1,691,113
	Implementation and Support Services	\$ 578,165	\$ 11,246	\$ 589,410
	Training Costs	\$ 3,869	\$ -	\$ 3,869
	Security and Privacy Monitoring	\$ -	\$ 53,091	\$ 53,091
	Program Costs	\$ 250,318	\$ 13,273	\$ 263,591
	5% Contingency	\$ 72,901	\$ 140,240	\$ 213,142
Total Net New Costs		\$ 1,457,765	\$ 2,702,499	\$ 4,160,265
Provider Revenue		\$ 216,662	\$ 557,161	\$ 773,823
Incremental Cost Net of Provider Revenue		\$ 1,241,103	\$ 2,145,338	\$ 3,386,442
SVMHS Share of DOD Costs		\$ 162,496	\$ 417,871	\$ 580,367
Total Incremental Expense to SVMHS		\$ 1,403,600	\$ 2,563,209	\$ 3,966,809

Recommendation

Consider Recommendation for Board Approval of Epic Community Connect Project and Program Budget of four million one hundred sixty thousand two hundred sixty-five dollars (\$4,160,265) over five (5) years



*TRANSFORMATION, STRATEGIC PLANNING,  
AND GOVERNANCE COMMITTEE*

*Minutes from the January 26, 2021 meeting  
of the Transformation, Strategic Planning,  
and Governance Committee will be  
distributed at the Board Meeting*

*(VICTOR REY, JR.)*



**Medical Executive Committee Summary  
January 14, 2021**

The following items from the meeting of the Medical Executive Committee (MEC) are presented to the Board of Directors and recommended for approval or as informational as indicated:

**Items for Board Approval:**

**Credentials Committee**

**Initial Appointments:**

APPLICANT	SPECIALTY	DEPT	PRIVILEGES
Edwards, Cheryl, MD	Ob/Gyn	Ob/Gyn	Ob Hospitalist: Core
Winter, Amy, MD	Pediatrics	Pediatrics	Pediatric

**Reappointments:**

APPLICANT	SPECIALTY	DEPT	PRIVILEGES
Dhillon, Jaspreet, MD	Internal Medicine	Medicine	Medicine – Active Community
Hu, Johnny, MD	Pathology	Surgery	Pathology
Inlow, Brian, DPM	Podiatry	Surgery	Podiatry
Kurtzman, Steven, MD	Radiation Oncology	Medicine	Radiation Oncology
Mittal, Vikrant, MD	Psychiatry	Medicine	Tele-Psychiatry
Morwood, David, MD	Plastic Surgery	Surgery	Plastic & Reconstructive Surgery
Rodriguez, Orlando, MD	Family Medicine	Family Medicine	Family Medicine
Sanfilipo, Michael, MD	Psychiatry	Medicine	Tele-Psychiatry
Shen, Wayne, MD	Neurology	Medicine	Neurology
Singh, Rakesh, MD	Emergency Medicine	Emergency Medicine	Emergency Medicine
Vegesna, Neelima, MD	Ob Hospitalist	Ob/Gyn	OB Hospitalist:
Wu, Jeffrey, MD	Radiation Oncology	Medicine	Radiation Oncology
Bagga, Pavandeep, MD	Anesthesiology	Anesthesiology	Recommend granting full TEE privileges until November 30, 2022.
Freeman, Heidi, MD	Ob Hospitalist	Ob/Gyn	Recommend granting full reappointment until November 30, 2022.

**Staff Status Modifications:**

NAME	SPECIALTY	RECOMMENDATION
Holcombe, Travis, MD	Plastic & Reconstructive Surgery	Provisional to Active Staff
Gantes, Oscar, MD	Family Medicine	Resignation effective December 23, 2020.
Lin, Jeffrey, MD	Gyn Oncology	Resignation effective December 18, 2020.
Liu, Yu Chan, MD	Cardiology	Resignation effective December 31, 2020
Ly, Justin, MD	Radiology	Resignation effective November 29, 2020.

**Modification of Privileges:**

NAME	SPECIALTY	PRIVILEGE	RECOMMENDATION
Dickey, James W., MD	General Surgery	General Surgery core privileges at Taylor Farms Family Health and Wellness Center	Physician requested voluntary relinquishment of privileges at Taylor Farms Family Health and Wellness Center. Recommend relinquishment as requested.

**Temporary/Locum Tenens Privileges:**

<b>PHYSICIAN</b>	<b>SPECIALTY</b>	<b>DATES</b>	<b>COMMENTS</b>
Bradley, Thomas, MD	Oncology	12/15/2020 – 01/13/2021	Emergency temporary privileges
Radner, Allen, MD	Infectious Diseases	12/18/2020 – 01/16/2021	Emergency temporary privileges for Ventilator Management due to COVID-19 for coverage of the ICU.

**Interdisciplinary Practice Committee****Initial Appointment:**

<b>APPLICANT</b>	<b>SPECIALTY</b>	<b>DEPT</b>	<b>PRIVILEGES</b>
Tran, Katherine, PA-C	Physician Assistant	Surgery	Physician Assistant

**Reappointment**

<b>APPLICANT</b>	<b>SPECIALTY</b>	<b>DEPT</b>	<b>PRIVILEGES</b>
Austin, Heather, PA-C	Physician Assistant	Surgery	Physician Assistant

## **Informational Items:**

The following items were reported to the Medical Executive Committee and approved/accepted as appropriate:

### **I. Committee Reports:**

- a. Quality and Safety Committee – No January Meeting
- b. Medical Staff Excellence Committee

### **II. Other Reports:**

- a. Financial Update – November 2020
- b. Executive Update
- c. Summary of Executive Operations Committee Meetings
- d. Summary of Medical Staff Department/Committee Meetings
- e. Health Information Management Update
- f. Medical Staff Treasury
- g. Medical Staff Statistics

### **III. Informational/Educational Items:**

- a. HCAHPS Update – January 8, 2021
- b. SVMH Foundation Update – January 2021

### **IV. Order Sets:**

- a. Deferoxamine (Desferal 1000 mg IM
- b. Deferoxamine (Desferal) 10000 mg IV

*EXTENDED CLOSED SESSION*  
*(if necessary)*

*(VICTOR REY, JR.)*

*ADJOURNMENT – THE NEXT  
REGULAR MEETING OF THE  
BOARD OF DIRECTORS IS  
SCHEDULED FOR THURSDAY,  
FEBRUARY 25, 2021, AT 4:00 P.M.*