



P. O. Box 95
San Andreas, CA 95249
(209) 754-4468 Phone
(209) 754-2537 Fax

**Special Meeting of the Board of Directors
Wednesday October 23, 2019
7:30 am
Mark Twain Medical Center Classroom 2
768 Mountain Ranch Rd,
San Andreas, CA**

Agenda

Mark Twain Health Care District Mission Statement

“Through community collaboration, we serve as the stewards of a community health system that ensures our residents have the dignity of access to care that provides high quality, professional and compassionate health care”.

1. **Call to order:**
2. **Roll Call:**
3. **Approval of Agenda:** Action
4. **Public Comment on matters not listed on the Agenda:**

The purpose of this section of the agenda is to allow comments and input from the public on matters within the jurisdiction of the Mark Twain Health Care District not listed on the Agenda. (The public may also comment on any item listed on the Agenda prior to Board action on such item.) **Limit of 3 minutes per speaker.** The Board appreciates your comments however it will not discuss and cannot act on items not on the agenda.

5. **Consent Agenda:** Public Comment - Action

All Consent items are considered routine and may be approved by the District Board without any discussion by a single roll-call vote. Any Board Member or member of the public may remove any item from the Consent list. If an item is removed, it will be discussed separately following approval of the remainder of the Consent items.

This Institution is an Equal Opportunity Provider and Employer

Agenda –October 23, 2019 MTHCD Board Meeting

A. Un-Approved Minutes:

- Finance Committee Meeting Minutes for September 11, 2019
- Un-Approved Special Board Meeting Minutes for September 20, 2019

B. Correspondence:

- Michael Rourke Thank You for Scholarship (9-24-2019)
- MTMC Foundation Thank You for Donation (9-12-2019)

6. MTHCD Reports:

A. President’s Report:.....Ms. Reed

- Association of California Health Care Districts (ACHD):
 - ACHD Annual Meeting:
 - SVC Presentation:

B. Community Board Report:.....Ms. Al-Rafiq

C. MTMC Board of Directors.....Ms. Reed

D. Chief Executive Officer’s Report:Dr. Smart

- Pharmacy Lease: Public Comment - **Action**

E. Ad Hoc Real Estate:Ms. Reed / Ms. Al-Rafiq

- **Update on the Valley Springs Health & Wellness Center:.....Dr. Smart**
 - Construction:.....Dr. Smart
 - Project Manager:.....Pat Van Lieshout
 - USDA Form 271 Oct. 2019:.....Dr. Smart
 - Operations and Development:.....Dr. Smart
- **Update on Valley Springs Property - Phase II:.....Ms. Reed / Ms. Al-Rafiq**

F. Stay Vertical Calaveras:.....Steve Shetzline

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Agenda –October 23, 2019 MTHCD Board Meeting

7. Committee Reports:

A. Finance Committee:.....Ms. Atkinson / Ms. Radford

- Financial Statements (Sept. 2019): Public Comment - **Action**.....Ms. Atkinson
- 30-yr. Dignity Lease Donation from MTHCD to MTMC Foundation – **Action**.....Dr. Smart

B. Ad Hoc Policy Committee:Ms. Atkinson / Ms. Al-Rafiq

C. Personnel Committee:Ms. Reed / Ms. Al-Rafiq

D. Golden Health Community Grants Committee:Ms. Sellick / Ms. Radford

8. VS H&W Center – Draft Policies and Forms: Public Comment - **Action**Dr. Smart

Punctuation & Grammar Changes – Please Submit to District Office Staff.

1. Draft Quality Assurance Guidelines
2. Draft Medication Management Storage of Multi-Use Containers 090719
3. Draft Abnormal Vital Signs 091419
4. Draft Audiogram - Threshold 091419
5. Draft Cardiopulmonary Resuscitation-Code Blue 091419
6. Draft Elder Dependent Adult Abuse Reporting 100119
7. Draft Flu Shots 091119

9. Board Comment and Request for Future Agenda Items:

A. Announcements of Interest to the Board or the Public:

10. Next Meeting:

A. Due to the November Holidays the Meeting will be Wednesday November 20, 2019

B. Due to the December Holidays the Meeting will be Wednesday December 18, 2019

11. Closed Session:

- Public Employee Performance Evaluation, CEO, Pursuant to Gov. Code Section 54957:

12. Adjournment: Public Comment – **Action**

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Agenda –October 23, 2019 MTHCD Board Meeting



P. O. Box 95
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**Finance Committee Meeting
Mark Twain Medical Center Education Center – Classroom 5
768 Mountain Ranch Rd
San Andreas, CA 95249
9:00am
Wednesday September 11, 2019**

Un- Approved Minutes

Mark Twain Health Care District Mission Statement

“Through community collaboration, we serve as the stewards of a community health system that ensures our residents have the dignity of access to care that provides high quality, professional and compassionate health care”.

1. Call to order:

The meeting was called to order at 9:00am by Treasurer, Susan Atkinson.

2. Roll Call:

Present for roll call was Ms. Atkinson Ms. Radford and Ms. Hack.

3. Approval of Agenda: Public Comment **Action:**

Ms. Radford moved to approve the Agenda. Ms. Hack provided her second. The motion passed 3-0.

4. Public Comment On Matters Not Listed On The Agenda:

Hearing none.

5. Consent Agenda: Public Comment **Action**

This Institution is an Equal Opportunity Provider and Employer
Minutes September 11, 2019 MTHCD Finance Committee Meeting

A. Un-Approved Minutes:

- Finance Committee Meeting Minutes for August 16, 2019:
- Special Finance Committee Meeting Minutes for August 28, 2019:

Ms. Radford moved to approve the Consent Agenda. Ms. Hack provided her second and the motion passed 3-0

6. Chief Executive Officer's Report:

USDA (SF 271) Outlay Report for September:

Dr. Smart: Went over the 13th request of the USDA Loan which is very healthy and on track; he has a solid proposal from a pharmacist that wants to lease the shelved space so has been meeting with Aspen Street Architects; he has a bid for a generator that will be paid out of the Contingency funds; .

7. Accountant's Report: Public Comment **Action**

- August Financials Will Be Presented to The Committee:

Mr. Wood: Called attention to (pkt pg.11) where the utilities are being paid by the District due to the 30-year lease; the Medical Office Building (MOB) Community Area Maintenance (CAM) is being questioned by the lessor and will have to be resolved; he will bring information on the reserve accounts to the Oct. Finance Committee mtg. and accounting information for the grant funds described in the lease agreement to the Nov. Finance Committee mtg.

Dr. Smart: Entertained ideas on how to manage the lease grant funds since it isn't really a Community Grants event but was an element of the lease that closed May 31, 2019. The MTMC Foundation grant process will entail a more robust discussion between parties, with significant input from District accounting and finance. It will also require some confirmation that the District grants are, in fact, being matched by Dignity Health. As such, the committee's collective opinion was that the process should fall under the Finance Committee as opposed to the ad hoc Grants Committee. Director Radford was involved in the discussion, and she is the chair for the Grants committee. She agreed with shifting the process to the Finance committee. The committee agreed to forward this new strategy to the full board for discussion.

Ms. Radford moved to approve the August Financials. Ms. Hack provided her second. The motion passed 3-0.

8. Treasurer's Report:

Ms. Atkinson: Umpqua Bank representatives will be paying the District a visit after today's meeting.

9. Comments and Future Agenda Items:

- November Finance Committee Meeting will be November 13, 2019.

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Minutes September 11, 2019 MTHCD Finance Committee Meeting

- Due to the November Holidays the November Board meeting will be November 20, 2019.
- December Finance Committee Meeting will be December 11, 2019.
- Due to the December Holidays the December Board meeting will be December 18, 2019.

10. Next Meeting:

- The next Finance Committee Meeting was changed to October 11, 2019.

11. Adjournment: Action

Ms. Radford moved to adjourn the meeting at 9:54. Mr. Hack provided her second. The motion passed 3-0.



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**Special Meeting of the Board of Directors
Friday September 20, 2019
7:30 am
Mark Twain Medical Center Classroom 2
768 Mountain Ranch Rd,
San Andreas, CA**

Un- Approved Minutes

Mark Twain Health Care District Mission Statement

“Through community collaboration, we serve as the stewards of a community health system that ensures our residents have the dignity of access to care that provides high quality, professional and compassionate health care”.

1. Call to order:

The meeting was called to order at 7:34 am by President Lin Reed.

2. Roll Call:

Present for roll call was Lin Reed, MBA OTR/L: Ann Radford, FNP: Susan Atkinson, MSW; Debbie Sellick CMP and Talibah Al-Rafiq.

3. Approval of Agenda: Action

Ms. Radford moved to approve the agenda. Ms. Sellick provided her second. The motion passed 5-0.

4. Public Comment on matters not listed on the Agenda:

Hearing None.

5. Consent Agenda: Public Comment – Action

A. Un-Approved Minutes:

- Special Finance Committee Meeting Minutes for August 16, 2019
- Special Finance Committee Meeting Minutes for August 28, 2019
- Un-Approved Board Meeting Minutes for August 28, 2019

Public Comment: Hearing None.

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Minutes –September 20, 2019 MTHCD Board Meeting

Ms. Al-Rafiq moved to approve the Consent Agenda. Ms. Radford provided her second and the motion passed 5-0.

6. MTHCD Reports:

A. President's Report:

- Association of California Health Care Districts (ACHD):

Ms. Reed: Will be attending the ACHD Board meeting and Ms. Sellick will be doing a Stay Vertical Calaveras presentation at the annual meeting.

B. Community Board Report:

Ms. Al-Rafiq: Community Board will meet later today.

C. MTMC Board of Directors:

Ms. Reed: Board of Directors will meet on Tues.

D. Chief Executive Officer's Report:

Dr. Smart: Three years ago (+/-) wrote a \$100k Sierra Nevada Memorial Hospital Foundation telehealth grant which was shared 50/50 with MTMC. He just received \$13k (+/-) for telehealth equipment. He doesn't know how MTMC will use their funds.

- **MTMC Foundation Grants:**

The 30-year Lease with Dignity Health closed May 31st allowing for a \$1m grant to the MTMC Foundation. That donation will be matched by Dignity Health. Due to the timing of the lease being signed there will only be 30 budget-days to decide the outcome of \$500k. The Ad Hoc Committee is most prepared to review the donation options is the Finance Committee.

- **Tour – VSHWC:**

Dr. Smart: Will need an early Oct. Special Board meeting to recommend the credentialing of the VS H&W Center staff. Oct. 7th seems likely. The Clinic furniture and equipment has or will arrive soon; temporary occupancy is expected Sept 30th and he and Pat Van Lieshout are preparing a punch list. the Board is invited to tour the Clinic immediately after the meeting.

Dr. Smart: In Nov. there will be a VSH&W center disaster preparedness program and the Dist. will collaborate with MTMC.

E. Ad Hoc Real Estate:

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Minutes –September 20, 2019 MTHCD Board Meeting

- **Update on the Valley Springs Health & Wellness Center:**

- **USDA Form 271 August 2019:**

Dr. Smart: Payment request (line 25) is in progress at \$956,564.65. With the Clinic project drawing to a close the next decisions will be made regarding the contingency fund (\$634,895k (+/-)). A generator has been considered and taking a higher priority with PG&E scheduling extensive power outages.

- **Operations and Development:**

Dr. Smart: Staff will start training Sept 23rd compliments of Kristin Stranger offering the HHS lab for VS H&W Clinic training. The Clinic is planning a soft opening the week of Oct. 14th and will move forward on how best to utilize the shelled space.

- **Update on Valley Springs Property - Phase II:**

Ms. Al-Rafiq: Nothing new to report.

F. Stay Vertical Calaveras:

Mr. Shetzline: Prepared a PowerPoint for Ms. Sellick to take and present at the ACHD meeting; he's trying to figure out why some start the class but don't finish; Sept 23rd is Fall Prevention Day. There will be a tai chi class and potluck in Murphys park to spark awareness.

7. Committee Reports:

A. Finance Committee:

- **Financial Statements (Aug 2019): Public Comment – Action**

Mr. Wood: Has consolidated the financial statements; due to the 30-year lease of the hospital to Dignity the District will pay \$53k (+/-) month for hospital utilities; likewise, due to the lease the District gets one percent of the Minority Interest Account (pkt. pg. 26); Aug. Investment and Reserves Report (pkt. pg. 27) shows a solid return of investment income.

Public Comment: Hearing None

Ms. Radford moved to approve the Aug. Financials. Ms. Al-Rafiq provided her second and the motion passed 5-0.

B. Ad Hoc Policy Committee:

Ms. Atkinson: All District polices are current. The Committee will meet after the Clinic is open and staff is available.

8. VS H&W Center – Draft Policies and Forms: Public Comment - Action

Punctuation & Grammar Changes – Please Submit to District Office Staff.

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Minutes –September 20, 2019 MTHCD Board Meeting

1. Draft - Credit Card on File 081519
2. Draft - Emergency Codes
3. Draft - Alternate Communications in Emergency Situations
4. Draft - Bioterrorism Threat 111918
5. Draft - Active Shooter 083019
6. Draft - Bomb Scare 083019
7. Draft - Earthquake or Weather Emergency 083019
8. Draft - Mass Casualty Response 083019
9. Draft - Medication Management Storage of Multi-Use Containers 090719
10. Draft - Shelter in Place for Patients and Staff 083019
11. Draft - Fire Safety 083019
12. Draft - Employee Dress Code
13. Draft - X-Ray Orders 090819
14. Draft - Eye Irrigation 091119
15. Draft - Emergency Situation Unresponsive Patient 091119
16. Draft - Flu Shots 091119
17. Draft - Drug Samples 112118
18. Draft - Eye Medication - Dispensing 091119
19. Draft - Emergency Ambulance Transfer 111218
20. Draft - Medical Staff Credentialing and Governance 113018
21. Draft - Disruption of Electrical Service 111918-
22. Draft - External Hazmat Incident 083019
23. Draft - Emergency Medications and Supplies 091119
24. Draft - Extreme Temperatures 083019
25. Draft - Universal Precautions 112018
26. Draft - Medication Management Response to Power Failure (08-30-2019) (9-7-2019)
27. Draft - Mark Twain Policy Manual Signature Page 091019
28. Draft - Standardized Procedure for Mid-Level Practitioner 090819
29. Draft - Temperature - All Modalities 072419
30. Draft - Medical Staff Credentialing and Governance 113018

1. Form - Outpatient Medicine

Public Comment: Hearing None.

Ms. Al-Rafiq moved to approve the policies as presented. Ms. Radford provided her second and the motion passed 5-0

9. Board Comment and Request for Future Agenda Items:

A. Announcements of Interest to the Board or the Public:

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Minutes –September 20, 2019 MTHCD Board Meeting

10. Next Meeting:

- A. The next meeting will be Wednesday October 23, 2019:
- B. Due to the November Holidays the Meeting will be Wednesday November 20, 2019
- C. Due to the December Holidays the Meeting will be Wednesday December 18, 2019

11. Adjournment: Public Comment – Action

Public Comment: Hearing none.

Ms. Radford moved to adjourn the meeting at 8:27am. Ms. Atkinson provided her second and the motion passed 5-0.

Dear Mark Twain Health Care District Scholarship Committee,

Thank you so much for the generous scholarship you have awarded me. I am so glad that you chose me for this award, and it is a great honor to have been selected by the committee. I am greatly appreciative of your contribution, because it has helped to give me the opportunity to become a better, more successful person in life. Because of what you gave me, I am now even closer to achieving my life goals and furthering myself as a person and as a productive member of society. Once again, thank you from the bottom of my heart.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Rourke". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Rourke

9/12/2019

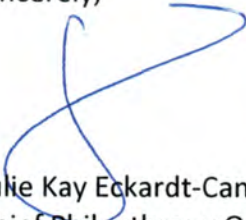
Mark Twain Health Care District
768 Mountain Ranch Road
San Andreas, CA 95249

Dear Friends:

Thank you for your donation of \$5,000.00 to the Mark Twain Medical Center Foundation. Your donation will help to support Mark Twain Medical Center Foundation give life and hope to others by providing education, equipment, health care services, to our community. Your continued friendship, dedication, and support are greatly appreciated.

The Foundation acknowledges your generous donation.

Sincerely,



Julie Kay Eckardt-Cantrall
Chief Philanthropy Officer
Mark Twain Medical Center Foundation

Thank
You!

*No goods or services were received in exchange for this donation.
Please consult your tax preparer or attorney for applicability of this donation. Tax ID #68-0023507 501(c)3*

In This Breast Cancer Awareness Special Edition:

- From the Desk of Ken Cohen, CEO
- Legislative Update
- Report from the CSDA Annual Conference
- Upcoming Events



From the Desk of Ken Cohen, CEO

As I reflect on ACHD's 67th Annual Meeting in La Jolla, I'm proud to say it was truly one of our best conferences to date. I'm grateful many of you had the opportunity to hear from experts like the internationally known author, consultant and futurist Ian Morrison, networking with colleagues and sharing best practices that will help your District navigate the future landscape of health care in 2020 and beyond. If you were not able to join us, I hope you'll be able to join us next year; we've truly taken Members' feedback to heart in planning our events to deliver outstanding value to Districts. Be sure to watch our recap video of the event [here](#) and view the gallery of photos [here](#).



At the Annual Meeting, ACHD elected officers for 2019-2020. Congratulations to Howard Salmon, Trustee from Fallbrook Regional Health District, who was re-elected to his third term as ACHD's Board Chair; Harry Weis, CEO of Tahoe Forest Health System, who was elected as ACHD's Vice-Chair/Chair Elect; Michelle

Bholat, MD., Trustee from Beach Cities Health District, who was re-elected as ACHD's Secretary; Karin Hennings, CEO of Del Puerto Health Care District, who was appointed as ACHD's Treasurer; and Linda Rubin, Trustee of Pioneers Memorial Healthcare District, as ACHD's At-Large Member.

We also recognized ACHD Member Healthcare Districts, CEOs, and Trustees whose efforts, leadership and achievements have positively affected their District and community. ACHD named Tom Bakaly, Beach Cities Health District, as CEO of the Year, Northern Inyo Healthcare District as District of the Year, and Elece Hempel, Petaluma Health Care District as Trustee of the Year. The hard work you put in daily to benefit your community's health and wellness does not go unnoticed. Thank you to all our great nominees this year.

During our State of the Association we introduced our new user-friendly and convenient ACHD member portal "My ACHD." Join us for an [informational webinar on October 31, 2019 at 10AM](#) to learn more about the portal, how it works and what it can do for your District.

Lastly, on a personal note, I announced my upcoming retirement from ACHD in early 2020. The last five years at ACHD have been truly remarkable in no small part to all of our Healthcare Districts, CEOs, Trustees and their staff. I am inspired by the personal and professional investment you each make to your communities and our shared goals for Californians' health. To each of you, I am truly grateful for your partnership, trust, and leadership. I also want to take this time to thank the outstanding ACHD staff that I am truly grateful to for their exceptional work. To ensure the work of the Association will continue without disruption, a formal search process has begun for my replacement. If you have any questions, please feel free to contact me at ken.cohen@achd.org.

Legislative Update

Sunday, October 13, marked the final day for Governor Gavin Newsom to sign or veto bills. Of the 1,042 bills that made it to the Governor's desk, 870 were signed into law and 172 were vetoed. Below we have highlighted some of ACHD's high priority bills and their outcomes:

[AB 1184 \(Gloria\): Public Records Email Retention - VETOED](#)

Assembly Bill 1184 would have required all agencies subject to the California Public Records Act to retain and preserve all email communications for at least two years. The Governor vetoed this measure, indicating that the bill failed to strike a balance between transparency and dramatic increases to records retention. ACHD opposed AB 1184 throughout the process.

[AB 1486 \(Ting\): Surplus Land - SIGNED](#)

Assembly Bill 1486 was among the bills to receive the Governor's signature. Amendments negotiated by ACHD's Advocacy Team will continue to allow Districts to sell land that further their purpose without the additional requirements of the bill.

SB 227 (Leyva): Nurse Patient Ratios - SIGNED

Senate Bill 227 also received signature. The measure requires the California Department of Public Health to ensure that periodic inspections verifying compliance with nurse-to-patient ratio regulations are not announced in advance and establish administrative penalties specific to violations of these ratios. The measure does include language to exempt hospitals from penalty for meeting the following conditions: unforeseeable or uncontrollable staffing changes, prompt efforts were made to maintain required staffing levels, and that the hospital exhausted the on-call list of nurses. ACHD opposed this measure throughout the process but recognizes that the exception language and penalties included in the bill have been significantly reduced from earlier versions of the bill.

The 870 bills signed will take effect January 1, 2020 unless otherwise stated. ACHD's Advocacy Team will be hosting a webinar December 11th, 2019, [New Laws for 2020](#), to update Members on laws going into effect that may impact your District. You can register for the webinar [here](#). The Legislature will reconvene on January 6, 2020 to begin the second year of a two-year session.

ACHD's Advocacy Team, Amber King and Sarah Bridge also partnered with CSDA on and attended the Special District Capitol Tours this week. The tours are attended by Capitol staff, allowing them to get a better understanding of the various ways that special district provide specialized services to their community. This year, the tour visited Districts in Yolo, Tehama and Butte County. Below are some photos taken during the tours. ACHD looks forward to partnering with CSDA next year to continue educating the Legislature on special districts.



Report from the CSDA Annual Conference

I had the privilege of attending the California Special Districts Association's 50th Annual Conference last month in Anaheim, CA. It was great to see what other special districts throughout the state are up to, and learn about the biggest challenges they are facing right now. While I was there I was proud to watch one of our very own ACHD Board Members, Kara Ralston, accept the award for Innovative Program of the Year - Small District on behalf of the Camarillo Healthcare District. Congratulations to Camarillo Healthcare District for the award, and to CSDA for their 50th Anniversary!



-Marina Servantez, ACHD, Member Services Specialist

Upcoming Events

New My ACHD and Certification Training October 31, 2019 at 10:00AM

Join us for an informational webinar to learn more about our new user-friendly and convenient member portal “My ACHD,” how it works and what it can do for your District. In addition, ACHD staff will be showcasing our new and easier web page for submitting Certification applications.

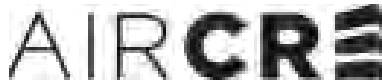
[Register Here](#)

The Association of California Healthcare Districts (ACHD) represents Healthcare Districts throughout the state's urban, suburban and rural areas. California is home to 79 Healthcare Districts that play a profound role in responding to the specialized health needs of local communities by providing access to essential health services to tens of millions of Californians while also having direct accountability to the communities that Districts serve. In many areas, Healthcare Districts are the sole source of health, medical and well-being services in their communities.

Learn more at www.achd.org.

Association of California Healthcare Districts
www.achd.org





STANDARD MULTI-TENANT OFFICE LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("Lease"), dated for reference purposes only September 3, 2019, is made by and between Mark Twain Health Care District, a public agency ("Lessor") and Sunrise Pharmacy, Inc., a California S Corporation ("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), commonly known as (street address, suite, city, state): 51 Wellness Way, Suite 110, Valley Springs, CA 95252 ("Premises"). The Premises are located in the County of Calaveras, and consist of approximately 900 rentable square feet and approximately -- useable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 10,000 rentable square feet. (See also Paragraph 2)

1.2(b) Parking: 4 unreserved and -- reserved vehicle parking spaces at a monthly cost of N/A per unreserved space and N/A per reserved space. (See Paragraph 2.6)

1.3 Term: 5 years and 0 months ("Original Term") commencing 3 months after full lease execution ("Commencement Date") and ending 5 years later ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing immediately following full lease execution ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$1,800.00 per month ("Base Rent"), payable on the 1st day of each month commencing upon lease commencement. (See also Paragraph 4)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 Lessee's Share of Operating Expenses: Nine percent (9%) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$1,800.00 for the period of the first month of the lease term.

(b) Operating Expenses: TBD for the period of the first month of the lease term.

(c) Security Deposit: \$1,800.00 ("Security Deposit"). (See also Paragraph 5)

(d) Parking: N/A for the period --.

(e) Other: -- for --.

(f) Total Due Upon Execution of this Lease: TBD.

1.8 Agreed Use: Pharmacy. (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 Real Estate Brokers. (See also Paragraph 15 and 25)

(a) Representation: Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"): Lessor's Brokerage Firm License No. Is the broker of (check one): [] the Lessor; or [] both the Lessee and Lessor (dual agent).

Lessor's Agent License No. is (check one): [] the Lessor's Agent (salesperson or broker associate); or [] both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Cornish & Carey Commercial dba Newmark Knight Frank License No. 00832933 Is the broker of (check one): [X] the Lessee; or [] both the Lessee and Lessor (dual agent).

Lessee's Agent Sue Nelson License No. 01413052 is (check one): [X] the Lessee's Agent (salesperson or broker associate); or [] both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) Payment to Brokers. Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of -- or 2.5% of the total Base Rent) for the brokerage services rendered by the Brokers. Commission shall be paid one-half (50%) upon lease execution and one-half (50%) upon lease commencement.

1.11 Guarantor. The obligations of the Lessee under this Lease shall be guaranteed by ("Guarantor"). (See also Paragraph 37)

1.12 Business Hours for the Building: a.m. to p.m., Mondays through Fridays (except Building Holidays) and a.m. to p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and.

1.13 Lessor Supplied Services. Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- [X] Janitorial services
[X] Electricity

INITIALS

INITIALS

Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs _____ through _____ ;
- a plot plan depicting the Premises;
- a current set of the Rules and Regulations;
- a Work Letter;
- a janitorial schedule;
- other (specify): _____ .

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

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2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expenses) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of all Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "**Operating Expenses**" include all costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, including, but not limited to, the following:

(i) The operation, repair, and maintenance in neat, clean, safe, good order and condition, of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking

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areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, lessees or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) The Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost to replace equipment or capital components such as the roof, foundations, or exterior walls, the cost to replace a Common Area capital improvement, such as the parking lot paving, elevators or fences, and/or the cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3. Provided however, that if such equipment or capital component has a useful life for accounting purposes of 5 years or more that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(b) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 Use. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building,

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and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into

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Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 Lessee's Obligations. Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any improvements within the Premises.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the Premises, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

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8.1 **Insurance Premiums.** The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (a)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by

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reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "**Insured Loss**" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "**Replacement Cost**" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "**Hazardous Substance Condition**" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage

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in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 **Definitions.** As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "**Real Property Taxes**" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Notwithstanding the provision of paragraph 11.1, Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

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12. Assignment and Subletting.

12.1 Lessor's Consent Required.

- (a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.
- (b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.
- (c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.
- (d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.
- (e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.
- (f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.
- (g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

- (a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.
- (b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.
- (c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.
- (d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.
- (e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)
- (f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.
- (g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

- (a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.
- (b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.
- (c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.
- (d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.
- (e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default, Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

- (a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential

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vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent 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 which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

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13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to

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provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessee's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts

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known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on a monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently

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commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee. In addition, Lessor shall have the right to retain keys to the Premises and to unlock all doors in or upon the Premises other than to files, vaults and safes, and in the case of emergency to enter the Premises by any reasonably appropriate means, and any such entry shall not be deemed a forcible or unlawful entry or detainer of the Premises or an eviction. Lessee waives any charges for damages or injuries or interference with Lessee's property or business in connection therewith.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published BY AIR CRE.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary,

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(ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any Lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on pole signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific

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use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

50. Base Rent. The base rent during the term of the Lease shall be as follows:

<u>Months</u>	<u>Base Rent Per SF</u>	<u>Base Rent Per Month*</u>
01 – 12	\$2.00	\$1,800.00
13 – 24	\$2.04	\$1,836.00
25 – 36	\$2.08	\$1,872.00
37 – 48	\$2.12	\$1,908.00
49 – 60	\$2.16	\$1,944.00

*Note: Lessee shall pay Operating Expenses for the property in addition to Base Rent per paragraph 4.2 of this Lease. Base rent does not include costs for utilities, janitorial services, phone or internet services to the Premises.

51. Options to Renew. By providing Lessor with a minimum of three (3) months' advance written notice, Lessee shall have the option to renew the existing lease for four (4) five year (5-year) periods. The rental rate during the renewal periods shall be mutually agreed upon by Lessee and Lessor.

52. Pharmacy Law. Lessor agrees to comply with Business and Professionals Code 4116 and Title 16, Section 1714(d) of the California Code of Regulations.

53. Leasehold Improvements. Lessor shall deliver the Premises to Lessee in "warm shell" condition, as defined in the attached Exhibit B. Lessor shall also provide Lessee with a Leasehold Improvement Allowance not to exceed Forty-Five Thousand and no/100's Dollars (\$45,000.00). Said allowance shall be used by Lessee's contractor to improve the Premises for use as a pharmacy. See Exhibit C for more details.

54. Option to Terminate. Lessee shall have the right to terminate this lease, at no penalty to Lessee, upon the death or permanent disability of Kim Pham.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

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The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: _____

Executed at: _____
On: _____

By LESSOR:
Mark Twain Health Care District, a public agency

By LESSEE:
Sunrise Pharmacy, Inc., a California S Corporation

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: Kim Pham
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

Address: _____
Federal ID No.: _____

BROKER

BROKER

Cornish & Carey Commercial dba Newmark Knight Frank

Attn: _____
Title: _____

Attn: Sue Nelson
Title: Director

Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker DRE License #: _____
Agent DRE License #: _____

Address: 3005 Douglas Boulevard #130 Roseville, CA 95661
Phone: 916-367-7000
Fax: _____
Email: snelson@ngkf.com
Federal ID No.: 94-2797443
Broker DRE License #: 00832933
Agent DRE License #: 01413052

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EXHIBIT B

Warm Shell Description

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EXHIBIT C

LEASEHOLD IMPROVEMENTS – LESSEE TO CONSTRUCT

This Leasehold Improvement Exhibit shall set forth the terms and conditions relating to the construction of the leasehold improvements in the Premises. All references in this Leasehold Improvement Exhibit to Articles, Paragraphs or Sections of “this Lease” shall mean the relevant portion of the Multi-Tenant Industrial/Commercial Lease (Net) to which this Leasehold Improvement Agreement is attached as Exhibit C. All capitalized terms used but not defined herein shall have the meanings given such terms in the Lease.

SECTION 1

LESSOR’S INITIAL CONSTRUCTION IN THE PREMISES

1.1 Base, Warm Shell and Core of the Premises as Constructed by Lessor. Lessor or its predecessor-in-interest has constructed, at its sole cost and expense, the base, warm shell (as described in Exhibit B), and core of the Premises (the “**Base, Shell, and Core**”). The Base, Warm Shell and Core shall consist of those portions of the Premises which were in existence prior to the construction of the leasehold improvements in the Premises. Lessee shall accept the Base, Warm Shell and Core in their “AS IS” condition, without representation, warranty or any improvements by Lessor except as specifically set forth in this Lease or this Leasehold Improvement Exhibit.

SECTION 2

LEASEHOLD IMPROVEMENTS

2.1 Leasehold Improvement Allowance. Lessee shall be entitled to a one-time leasehold improvement allowance (the “**Leasehold Improvement Allowance**”) of up to Forty-Five Thousand and No/100 (\$45,000.00) for the costs relating to the initial design and construction of Lessee’s improvements which are permanently affixed to the Premises (the “**Leasehold Improvements**”). In no event shall Lessor be obligated to make disbursements pursuant to this Leasehold Improvement Exhibit in a total amount which exceeds the Leasehold Improvement Allowance. In the event that the actual cost of the Leasehold Improvements is less than the Leasehold Improvement Allowance, Lessee shall not be entitled to such excess or any credit, deduction or offset against rent or any other amounts due under the terms of the Lease. All Leasehold Improvements for which the Leasehold Improvement Allowance has been made available shall be deemed Lessor’s property under the terms of the Lease. All costs of the Leasehold Improvements in excess of the Leasehold Improvement Allowance (“**Excess Cost**”) shall be paid by Lessee at Lessee’s sold cost and expense. Lessee shall pay for all Excess Cost prior to disbursement by Lessor of any Leasehold Improvement Allowance.

2.2 Disbursement of the Leasehold Improvement Allowance.

2.2.1 Leasehold Improvement Allowance Items. Except as otherwise set forth in this Leasehold Improvement Exhibit, the Leasehold Improvement Allowance shall be disbursed by Lessor for costs related to the construction of the Leasehold Improvements and for the following items and costs (collectively, the “**Leasehold Improvement Allowance Items**”): (i) payment of the fees of the “Architect” and the “Engineers,” as those terms are defined in Section 3.1 of this Leasehold Improvement Exhibit, and payment of the reasonable fees incurred by, and the cost of documents and materials supplied by, Lessor and Lessor’s consultants in connection with the preparation and review of the “Construction Drawings,” as that term is defined in Section 3.1 of this Leasehold Improvement Exhibit; (ii) the cost of any changes in the Base, Shell and Core when such changes are required by the Construction Drawings; and (iii) the cost of any changes to the Construction Drawings or Leasehold Improvements required by all applicable building codes (the “**Code**”).

2.2.2 Disbursements. Lessee shall deliver to Lessor: (i) a request for payment; (ii) paid receipts evidencing the labor rendered and materials delivered to the Premises; and (iii) executed unconditional mechanics’ lien releases from those “Lessee’s Agents”, as that term is hereinafter defined, who have performed the Leasehold Improvements for which payment is requested, which releases shall comply with the appropriate provisions, as reasonably determined by Lessor, of applicable laws. Thereafter, Lessor shall deliver a check to Lessee made payable to Lessee’s Agent(s) in payment of the lessor of: (A) the amounts so requested by Lessee, as set forth in this Section 2.2.2, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the “Final Retention”), and (B) the balance of any remaining available portion of the Leasehold Improvement Allowance (not including the Final Retention), provided that Lessor does not dispute any request for payment based on non-compliance of any work with the “Approved Working Drawings”, as that term is defined in Section 3.4 below, or due to any substandard work. Lessor’s payment of such amounts shall not be deemed Lessor’s approval or acceptance of the work furnished or materials supplied as set forth in Lessee’s payment request.

2.2.3 Requests for Payment; Final Retention. Lessee agrees that the Leasehold Improvement Allowance shall be disbursed pursuant to a request for payment made [not more often than monthly OR not less than \$10,000.00 of the Leasehold Improvement Allowance (meaning that there shall be a maximum of 5 disbursements)]. Subject to the provisions of this Leasehold Improvement Exhibit, a check for the Final Retention payable to Lessee shall be delivered by Lessor to Lessee following Lessee’s receipt of paid receipts as defined in Section 2.2.2 above, totaling the amount of the Leasehold Improvement Allowance, provided that with respect to work for which the Leasehold Improvement Allowance is paid (i) Lessee delivers to Lessor properly executed unconditional mechanics’ lien releases in compliance with applicable laws; (ii) Lessee has satisfied its obligations under Section 4.5 below, and (iii) Lessor has determined that no substandard work exists which adversely affects the mechanical,

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electrical, plumbing, heating, ventilating and air conditioning, life safety or other systems of the Building, the curtain wall of the Building, or the structure of the Building. Notwithstanding the foregoing, Lessee shall deliver final lien releases in compliance with applicable laws for all Leasehold Improvements promptly upon completion of the Leasehold Improvements.

SECTION 3 CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Lessee shall retain an architect/space planner, subject to Lessor's prior approval, which approval shall not be unreasonably withheld or delayed (the "**Architect**") to prepare the "Construction Drawings," as that term is defined in this Section 3.1. Lessee shall retain the engineering consultants designated by Lessor (the "**Engineers**") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, lifesafety, and sprinkler work of the Leasehold Improvements. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications as reasonably determined by Lessor, and shall be subject to Lessor's and Lessee's approval. Lessee and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base Building plans, and Lessee and Architect shall be solely responsible for the same, and Lessor shall have no responsibility in connection therewith. Lessor's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Lessor's review of the same, or obligate Lessor to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are prepared or reviewed by Lessor or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Lessee by Lessor or Lessor's space planner, architect, engineers, and consultants, Lessor shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Lessee's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 Final Space Plan. Lessee shall supply Lessor with two (2) copies signed by Lessee of its final space plan for the Leasehold Improvements before any architectural working drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Lessor may request clarification or more specific drawings for special use items not included in the Final Space Plan. Lessor shall advise Lessee within ten (10) business days after Lessor's receipt of the Final Space Plan for the Premises if the same is unsatisfactory or incomplete in any respect. If Lessee is so advised, Lessee shall promptly cause the Final Space Plan to be revised to correct any deficiencies or other matters Lessor may reasonably require.

3.3 Final Working Drawings. Upon the approval of the Final Space Plan by Lessor, Lessee shall promptly, and in any event within ten (10) business days after such approval, cause the Architect and the Engineers to complete the architectural and engineering drawings for the Leasehold Improvements, and the final architectural working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Lessor for Lessor's approval. Lessee shall supply Lessor with two (2) copies signed by Lessee of such Final Working Drawings. Lessor shall advise Lessee within ten (10) business days after Lessor's receipt of the Final Working Drawings if the same is unsatisfactory or incomplete in any respect. If Lessee is so advised, Lessee shall immediately revise the Final Working Drawings in accordance with such review and any disapproval of Lessor in connection therewith.

3.4 Permits. Promptly after approval by Lessor of the Final Working Drawings (the "**Approved Working Drawings**"), Lessee shall immediately submit the Approved Working Drawings to the appropriate municipal authorities for all applicable building permits necessary to allow "Contractor," as that term is defined in Section 4.1, below, to commence and fully complete the construction of the Leasehold Improvements (the "Permits"), and, in connection therewith, Lessee shall coordinate with Lessor in order to allow Lessor, at its option, to take part in all phases of the permitting process and shall supply Lessor, as soon as possible, with all plan check numbers and dates of submittal and obtain the Permits in a timely manner. Notwithstanding anything to the contrary set forth in this Section 3.4, Lessee hereby agrees that neither Lessor nor Lessor's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that the obtaining of the same shall be Lessee's responsibility; provided however that Lessor shall, in any event, cooperate with Lessee in executing permit applications and performing other ministerial acts reasonably necessary to enable Lessee to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Lessor.

3.5 Time Deadlines. Lessee shall use its best, good faith, efforts and all due diligence to cause the Architect and the Engineers to complete all phases of the Construction Drawings and the permitting process and to receive the permits as soon as possible after the execution of the Lease, and, in that regard, shall meet with Lessor on a scheduled basis to be determined by Lessor, to discuss Lessee's progress in connection with the same.

SECTION 4 CONSTRUCTION OF THE LEASEHOLD IMPROVEMENTS

4.1 Contractor. A general contractor shall be retained by Lessee to construct the Leasehold Improvements. Such general contractor ("**Contractor**") shall be approved in writing by Lessor, such approval not to be unreasonably withheld or delayed. Promptly after approval by Lessor of the Contractor, Lessee shall cause the Contractor to prepare a construction schedule and Lessee shall submit the same to Lessor for Lessor's approval.

4.2 Lessee's Agents. All subcontractors used by Lessee (such subcontractors and the Contractor to be known collectively as "**Lessee's Agents**") must be approved by Lessor, which approval shall not be unreasonably withheld or delayed. If Lessor does not approve any of Lessee's

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proposed subcontractors, Lessee shall submit other proposed subcontractors for Lessor's written approval.

4.3 Construction of Leasehold Improvements.

4.3.1 Lessee's Agents.

4.3.1.1 Lessor's General Conditions for Lessee's Agents and Leasehold Improvement Work. The Leasehold Improvements shall be constructed substantially in accordance with the Approved Working Drawings.

4.3.1.2 Indemnity. Lessee's indemnity of Lessor as set forth in this Lease shall also apply with respect to any and all costs, losses, damages, injuries and liabilities related in any way to any act or omission of Lessee or Lessee's Agents, or anyone directly or indirectly employed by any of them, or in connection with Lessee's non-payment of any amount arising out of the Leasehold Improvements and/or any disapproval of all or any portion of any request for payment. Such indemnity by Lessee, as set forth in this Lease, shall also apply with respect to any cost of the Leasehold Improvements in excess of the Leasehold Improvement Allowance, and all costs, losses, damages, injuries and liabilities related in any way to Lessor's performance of any ministerial acts reasonably necessary (i) to permit Lessee to complete the Leasehold Improvements, or (ii) to enable Lessee to obtain any building permit or certificate of occupancy for the Premises.

4.3.1.3 Requirements of Contractor. The Contractor shall guarantee to Lessee and for the benefit of Lessor that the Leasehold Improvements shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. The Contractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract and any of its subcontracts that shall become defective within one (1) year after the completion of the work. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Leasehold Improvements, and/or the Premises that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Leasehold Improvements shall be contained in the Contract shall be written such that such guarantees or warranties shall inure to the benefit of both Lessor and Lessee, as their respective interests may appear, and can be directly enforced by either. Lessee covenants to give to Lessor any assignment or other assurances which may be necessary to effect such right of direct enforcement.

4.3.1.4 Insurance Requirements.

4.3.1.4.1 General Coverages. The Contractor shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required by be carried by Lessee as set forth in this Lease. The Contractor shall submit to Lessor a Certificate of Insurance naming Lessor as additional insured.

4.3.1.4.2 Special Coverages. Lessee shall carry "Builder's All Risk" insurance in an amount to be approved by Lessor covering the construction of the Leasehold Improvements, and such other insurance as Lessor may require, it being understood and agreed that the Leasehold Improvements shall be insured by Lessee pursuant to this Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Lessor including, but not limited to, the requirement that all of Lessee's Agents shall carry excess liability and Products and Completed Operation Coverage insurance, in amounts, in form and with companies as are required to be carried by Lessee as set forth in this Lease.

4.3.1.4.3 General Terms. Certificates for all insurance carried pursuant to this Section 4.3.1.4 shall be delivered to Lessor before the commencement of construction of the Leasehold Improvements and before the Contractor's equipment is moved onto the site. All such policies of insurance must contain a provision that the company writing said policy will give Lessor thirty (30) days prior written notice of any cancellation or lapse of the effective date or any reduction in the amounts of such insurance. In the event that the Leasehold Improvements are damaged by any cause during the course of the construction thereof, Lessee shall immediately repair the same at Lessee's sole cost and expense. The Contractor shall maintain all of the foregoing insurance coverage in force until the Leasehold Improvements are fully completed and accepted by Lessor, except for any Products and Completed Operation Coverage insurance required by Lessor, which is to be maintained for ten (10) years following completion of the work and acceptance by Lessor and Lessee. All policies carried under this Section 4.3.1.4 shall insure Lessor and Lessee, as their interests may appear as well as Contractor and Lessee's Agents. All insurance, except Worker's Compensation, maintained by Lessee's Agents shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder. The requirements for the foregoing insurance shall not derogate from the provisions for indemnification of Lessor by Lessee under Section 4.3.1.2 of this Leasehold Improvement Exhibit.

4.3.2 Governmental Compliance. The Leasehold Improvements shall comply in all respects with the following: (i) state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.3.3 Inspection by Lessor. Lessor shall have the right to inspect the Leasehold Improvements at all times during construction,

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provided however, that Lessor's failure to inspect the Leasehold Improvements shall in no event constitute a waiver of any of Lessor's rights hereunder nor shall Lessor's inspection of the Leasehold Improvements constitute Lessor's approval of the same. Should Lessor disapprove any portion of the Leasehold Improvements, Lessor shall notify Lessee in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Lessor of, the Leasehold Improvements shall be rectified by Lessee at no expense to Lessor, provided however, that in the event Lessor determines that a defect or deviation exists or disapproves of any matter in connection with any portion of the Leasehold Improvements and such defect, deviation or matter might adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Premises or the Building if Lessee shall fail to promptly correct the same, Lessor may take such action as Lessor deems necessary, at Lessee's expense and without incurring any liability on Lessor's part, to correct any such defect, deviation and/or matter, including, without limitation, causing the cessation of performance of the construction of the Leasehold Improvements until such time as the defect, deviation and/or matter is corrected to Lessor's satisfaction.

4.4 Notice of Completion; Copy of Record Set of Plans. Within ten (10) days after completion of construction of the Leasehold Improvements, Lessee shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with applicable laws, and shall furnish a copy thereof to Lessor upon such recordation. If Lessee fails to do so within two (2) days after notice from Lessor, Lessor may execute and file the same on behalf of Lessee as Lessee's agent for such purpose, at Lessee's sole cost and expense. At the conclusion of construction, (i) Lessee shall cause the Architect and Contractor (A) to update the Approved Working Drawings as necessary to reflect all changes made to the Approved Working Drawings during the course of construction, (B) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of this Lease, and (C) to deliver to Lessor two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, (ii) Lessee shall deliver to Lessor a copy of all warranties, guaranties, and operating manuals and information relating to the improvements, equipment, and systems in the Premises, and (iii) Lessee shall deliver to Lessor the original signed permit card, indicating final approval by all applicable departments.

SECTION 5 MISCELLANEOUS

5.1 Lessee's Representative. Lessee has designated _____ as its sole representative with respect to the matters set forth in this Leasehold Improvement Exhibit, who, until further notice to Lessor, shall have full authority and responsibility to act on behalf of the Lessee as required in this Leasehold Improvement Exhibit.

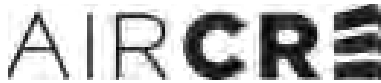
5.2 Lessor's Representative. Prior to the commencement of construction of the Leasehold Improvements, Lessor shall designate a representative with respect to the matters set forth in this Leasehold Improvement Exhibit, who, until further notice to Lessee, shall have full authority and responsibility to act on behalf of the Lessor as required in this Leasehold Improvement Exhibit.

5.3 Time of the Essence in This Leasehold Improvement Exhibit. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. In all instances where Lessee is required to approve or deliver an item, if no written notice of approval is given or the item is not delivered within the stated time period, at Lessor's sole option, at the end of such period the item shall automatically be deemed approved or delivered by Lessee and the next succeeding time period shall commence.

5.4 Lessee's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if a Default as described in the Lease, or a default by Lessee under this Leasehold Improvement Exhibit, has occurred at any time on or before the substantial completion of the Leasehold Improvements, then (i) in addition to all other rights and remedies granted to Lessor pursuant to the Lease, Lessor shall have the right to withhold payment of all or any portion of the Leasehold Improvement Allowance, and (ii) all other obligations of Lessor under the terms of this Leasehold Improvement Exhibit shall be forgiven until such time as such default is cured pursuant to the terms of the Lease.

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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

Buyer Seller Lessor Lessee _____ Date: _____
 Buyer Seller Lessor Lessee _____ Date: _____

Sunrise Pharmacy, Inc., a California S Corporation

Agent: Cornish & Carey Commercial dba Newmark Knight Frank DRE Lic. #: 00832933
Real Estate Broker (Firm)

By: Sue Nelson DRE Lic. #: 01413052 Date: 9/3/19
(Salesperson or Broker-Associate) **Sue Nelson**

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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(C) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): the seller; or both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): the Seller's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): the buyer; or both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): the Buyer's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

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MARK TWAIN HEALTH CARE DISTRICT

P. O. Box 95
San Andreas, CA 95249
(209) 754-4468 Phone
(209) 754-2537 Fax

Agenda Item: Financial Reports (as of September, 2019)
Item Type: Action
Submitted By: Rick Wood, Accountant
Presented By: Rick Wood, Accountant

BACKGROUND:

The September 30, 2019 financial statements are attached for your review and approval.

- The Auditor, Rick Jackson, has sent over a list of items he needs to start the annual audit, and we are currently working to provide those items.
- We have used Calaveras County's projected property tax number to accrue the District's revenue for the coming fiscal year, \$1,105,029 which is slightly higher than the budget number.
- The expense side of the new clinic has begun to see lots of activity, as can be seen in the VSHWC P&L statement.
- The Balance Sheet shows a strong cash position, and also shows the expected growing debt related to the new clinic.
- The Investment & Reserves Report looks great! CalTRUST and Five Star Bank had a good September.

**Mark Twain Health Care District
Annual Budget Recap**

	09/30/19		BUDGET			
	Total District	Actual Y-T-D	Clinic	Rental	Projects	Admin
Non-Cash rent revenue	1,200,000	274,105	0	1,200,000	0	0
Revenues	3,676,864	412,812	2,080,234	232,958	0	1,363,672
Total Revenue	4,876,864	686,917	2,080,234	1,432,958	0	1,363,672
Non-Cash depr expense	(384,665)		(346,120)	(36,045)	0	(2,500)
Expenses	(4,686,939)	(1,081,819)	(2,271,601)	(924,024)	(652,000)	(839,314)
Total Expenses	(5,071,604)	(1,081,819)	(2,617,721)	(960,069)	(652,000)	(841,814)
Surplus(Deficit)	(194,740)	(394,902)	(537,487)	472,889	652,000	521,858

Mark Twain Health Care District
Direct Clinic Financial Projections

15 Rooms

VSHWC

1

	2019/2020 Budget	Actual Month	Actual Y-T-D	Actual vs Budget
4083.49 Urgent care Gross Revenues	2,097,973		0	0.00%
4083.60 Contractual Adjustments	34,637			
Net Patient revenue	2,063,337	0	0	0.00%
4083.90 Flu shot, Lab income, physicals	765			0.00%
4083.91 Medical Records copy fees	383			0.00%
4083.92 Other - Plan Incentives	15,750			0.00%
Total Other Revenue	16,898	0	0	0.00%
	2,080,235	0	0	0.00%
7083.09 Other salaries and wages	(650,053)	(21,091)	(44,045)	6.78%
7083.10 Payroll taxes	(42,278)	(1,583)	(3,410)	8.07%
7083.12 Vacation, Holiday and Sick Leave	(9,751)			0.00%
7083.13 Group Health & Welfare Insurance	(107,259)			0.00%
7083.14 Group Life Insurance	(1,040)			0.00%
7083.15 Pension and Retirement	(16,251)			0.00%
7083.16 Workers Compensation insurance	(13,001)			0.00%
7083.18 Other payroll related benefits	(975)			0.00%
Total taxes and benefits	(190,555)	(1,583)	(3,410)	1.79%
Labor related costs	(840,608)	(22,675)	(47,455)	5.65%
7083.20 Medical - Physicians	(549,564)	(12,184)	(37,184)	6.77%
7083.22 Consulting and Management fees	(101,250)	(29,552)	(67,663)	66.83%
7083.23 Legal - Clinic	0	0	(9,844)	0.00%
7083.25 Registry Nursing personnel	(1,875)			0.00%
7083.26 Other contracted services	(84,563)			0.00%
7083.29 Other Professional fees	(5,625)	(220)	(220)	3.91%
7083.36 Oxygen and Other Medical Gases	(1,599)			0.00%
7083.38 Pharmaceuticals	(68,513)			0.00%
7083.41 Other Medical Care Materials and Supplies	(10,240)	(8,005)	(8,005)	78.17%
7083.44 Linens	(2,048)			0.00%
7083.48 Instruments and Minor Medical Equipment	(11,878)			0.00%
7083.74 Depreciation - Equipment	(112,857)			0.00%
7083.45 Cleaning supplies	(9,896)			0.00%
7083.62 Repairs and Maintenance Grounds	(5,900)			0.00%
7083.72 Depreciation - Bldgs & Improvements	(233,263)			0.00%
7083.80 Utilities - Electrical, Gas, Water, other	(93,253)	(1,445)	(1,445)	1.55%
8870.00 Interest on Debt Service	(269,494)	(60,469)	(60,469)	22.44%
7083.43 Food	(819)			0.00%
7083.46 Office and Administrative supplies	(8,601)	(1,606)	(2,760)	32.09%
7083.69 Other purchased services	(134,280)	(12,817)	(15,057)	11.21%
7083.81 Insurance - Malpractice	(30,265)		(3,000)	9.91%
7083.82 Other Insurance - Clinic			(23,332)	0.00%
7083.85 Telephone and Communications	(10,240)			0.00%
7083.86 Dues and Subscriptions	(1,903)	(586)	(586)	30.79%
7083.87 Outside Training	(4,915)		(199)	4.05%
7083.88 Travel costs	(4,096)			0.00%
7083.89 Recruiting	(20,177)	(6,023)	(9,529)	47.23%
Non labor expenses	(1,777,114)	(132,907)	(239,294)	13.47%
Total Expenses	(2,617,722)	(155,582)	(286,749)	10.95%
Net Expenses over Revenues	(537,487)	(155,582)	(286,749)	53.35%

**Mark Twain Health Care District
Rental Financial Projections**

Rental

		2019/2020 Budget	Actual Month	Actual Y-T-D	Actual vs Budget
9260.01	Rent Hospital Asset amortized	1,200,000	91,334	274,105	22.84%
		0			
	Rent Revenues	1,200,000	91,334	274,105	22.84%
9520.62	Repairs and Maintenance Grounds	0			
9520.80	Utilities - Electrical, Gas, Water, other, Phone	(684,000)	(55,694)	(160,890)	23.52%
9520.72	Depreciation	(36,045)	(10,241)	(30,826)	85.52%
9520.82	Insurance	(2,000)			0.00%
	Total Costs	(722,045)	(65,935)	(191,716)	26.55%
	Net	477,955	25,399	82,389	49.39%
9260.02	MOB Rents Revenue	227,181	16,673	59,701	26.28%
9521.75	MOB rent expenses	(233,024)	(19,825)	(59,475)	25.52%
	Net	(5,843)	(3,152)	226	-3.87%
9260.03	Child Advocacy Rent revenue	5,777	750	2,250	38.95%
9522.75	Child Advocacy Expenses	(5,000)	(158)	(297)	5.95%
	Net	777	592	1,953	251.31%
		1,432,958	108,757	336,056	23.45%
		(960,069)	(85,918)	(251,488)	26.19%
	Summary Net	472,889	22,839	84,568	17.88%

**Mark Twain Health Care District
Projects, Grants and Support
9/30/2019**

	2019/2020 Budget	Actual Month	Actual Y-T-D	Actual vs Budget
Project grants and support	652,000	(409,000)	(409,000)	-62.73%
8890.00 Foundation	500,000	0	(372,000)	-74.40%
8890.00 Stay Vertical	52,000	(5,000)	(42,000)	-80.77%
8890.00 Golden Health Grant Awards	100,000			0.00%
Project grants and support	<u>652,000</u>	<u>(5,000)</u>	<u>(414,000)</u>	<u>-63.50%</u>

Mark Twain Health Care District
General Administration Financial Projections

Admin

9/30/2019

	2016/2017	2017/2018	2019/2020 Budget	Actual Month	Actual Y-T-D	Actual vs Budget
9060.00 Income, Gains and losses from investments	4,423	5,045	250,000	26,197	88,389	35.36%
9160.00 Property Tax Revenues	935,421	999,443	1,098,672	92,086	276,257	25.14%
9010.00 Gain on Sale of Asset						
9400.00 Miscellaneous Income (1% Minority Interest)	0	0	15,000	(705)	(13,786)	-91.91%
Summary Revenues	939,844	1,004,488	1,363,672	117,577	350,861	25.73%
8610.09 Other salaries and wages	(33,587)	(235,531)	(362,024)	(17,492)	(52,654)	14.54%
8610.10 Payroll taxes			(22,225)	(1,241)	(4,049)	18.22%
8610.12 Vacation, Holiday and Sick Leave			(5,430)			0.00%
8610.13 Group Health & Welfare Insurance		(663)	(59,734)	(1,788)	(7,150)	11.97%
8610.14 Group Life Insurance			(579)			0.00%
8610.15 Pension and Retirement			(9,051)		(1,000)	11.05%
8610.16 Workers Compensation insurance			(7,240)	(73)	(1,226)	16.93%
8610.18 Other payroll related benefits			(543)			0.00%
Benefits and taxes	0	(663)	(104,802)	(3,102)	(13,425)	12.81%
Labor Costs	(33,587)	(236,194)	(466,826)	(20,593)	(66,079)	14.15%
8610.22 Consulting and Management Fees	(392,908)	(332,287)	(61,500)	(243)	(11,521)	18.73%
8610.23 Legal	(15,195)	(20,179)	(30,000)		(3,793)	12.64%
8610.24 Accounting /Audit Fees	(15,249)	(19,231)	(123,000)	(5,028)	(9,757)	7.93%
8610.43 Food			(1,538)	(124)	(372)	24.20%
8610.46 Office and Administrative Supplies	(4,310)	(19,685)	(20,000)	(1,554)	(3,573)	17.86%
8610.62 Repairs and Maintenance Grounds			0			
8610.69 Other				(340)	(1,238)	
8610.74 Depreciation - Equipment	(35,556)	(26,582)	(2,500)			0.00%
8610.75 Rental/lease equipment	(11,198)	(57,593)	(9,200)			0.00%
8610.80 Utilities			0			
8610.82 Insurance	(16,578)	(17,043)	(35,000)		(16,304)	46.58%
8610.83 Licenses and Taxes			0			
8610.85 Telephone and communications			0			
8610.86 Dues and Subscriptions	(12,554)	(14,731)	(19,475)	(120)	(8,315)	42.70%
8610.87 Outside Trainings	(1,920)	(3,030)	(15,375)			0.00%
8610.88 Travel	(6,758)	(17,363)	(15,375)	(486)	(1,138)	7.40%
8610.89 Recruiting			(10,250)			0.00%
8610.90 Other Direct Expenses	(76,490)	(34,233)	(31,775)	(2,253)	(7,492)	23.58%
Non-Labor costs	(588,716)	(561,957)	(374,988)	(10,147)	(63,503)	16.93%
Total Costs	(622,303)	(798,151)	(841,814)	(30,740)	(129,582)	15.39%
Net	317,541	206,337	521,859	86,837	221,279	42.40%

**Investment & Reserves Report
30-Sep-19**

Reserve Funds	Minimum Target	12/31/2018 Balance	2019 Allocated	2019 Interest	9/30/2019 Balance	Annual Funding Goal
Valley Springs HWC - Operational Reserve Fund	2,200,000	0	0	0	0	0
Capital Improvement Fund	12,000,000	0	0	0	0	0
Technology Reserve Fund	1,000,000	0	0	0	0	0
Lease & Contract Reserve Fund	3,000,000	0	0	0	0	0
Loan Reserve Fund	1,300,000	0	0	0	0	0
Reserves & Contingencies	19,500,000	0	0	0	0	0

CalTRUST	2019 - 2020		Annualized Rates	Duration
	9/30/2019	Interest Earned		
Valley Springs HWC - Operational Reserve Fund	0	0		
Capital Improvement Fund	0	0		
Technology Reserve Fund	0	0		
Lease & Contract Reserve Fund	0	0		
Loan Reserve Fund	0	0		
Total CalTRUST	10,323,958	61,332	2.4% - 2.5%	1 Year or Less
Five Star				
General Operating Fund	135,235	116.29		
Money Market Account	3,702,723	26,021.91		
Valley Springs - Checking	36,259	22.03		
Total Five Star	3,874,218	26,160.23	2.30%	1 Year or Less
Umpqua Bank				
Checking	47,839	0.00		
Money Market Account	4,899	13.71		
Investments	496,716	883.43	1.60%	
Total Savings & CD's	549,454	897.14		
Bank of Stockton	251,807	0	0.00%	1 Year or Less
Total in interest earning accounts	14,999,437	88,389		
Potential Unrealized Loss		0		
Total Without Unrealized Loss		88,389		

Mark Twain Health Care District's (District) Investment Policy No. 22 describes the District's commitment to managing risk by selecting investment products based on safety, liquidity and yield. Per California Government Code Section 53600 et. seq., specifically section 53646 and section 53607, this investment report details all investment-related activity in the current period. District investable funds are currently invested in Umpqua Bank, Five Star Bank, and the CalTRUST investment pool, all of which meet those standards; the individual investment transactions of the CalTRUST Pool are not reportable under the government code. That being said, the District's Investment Policy remains a prudent investment course, and is in compliance with the "Prudent Investor's Policy" designed to protect public funds. The report for this period does reflect any deviation from the District's Investment Policy.

Mark Twain Healthcare District

JOURNAL September 2019

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT #	ACCOUNT	DEBIT	CREDIT
09/03/2019	Journal Entry	11511		USDA Loan Number 02 Payment withdraw	100.50	100.50 Stockton Bank of		\$12,658.75
				USDA Loan Number 02 Payment withdraw	2210	2210 USDA Loan - VS Clinic	\$12,000.00	
				USDA Loan Number 02 Payment withdraw	8870	8870 Debt Financing Costs	\$658.75	
				USDA Loan Number 01 Payment withdraw	100.50	100.50 Stockton Bank of		\$180,163.58
				USDA Loan Number 01 Payment withdraw	2210	2210 USDA Loan - VS Clinic	\$121,000.00	
				USDA Loan Number 01 Payment withdraw	8870	8870 Debt Financing Costs	\$59,163.58	
							\$192,822.33	\$192,822.33
09/13/2019	Journal Entry	11508		Wages - District	8610.09	8610.09 Other salaries and wages - Admin.	\$8,989.90	
				Wages - Clinic	7083.09	7083.09 Other salaries and wages - Clinic	\$8,493.00	
				Employer Tax Expense (Medicare) District	8610.10	8610.10 Payroll taxes - Admin.	\$130.35	
				Employer Tax Expense (Medicare) Clinic	7083.10	7083.10 Payroll taxes - Clinic	\$123.15	
				Employer Tax Expense (SoSec) District	8610.10	8610.10 Payroll taxes - Admin.	\$557.37	
				Employer Tax Expense (SoSec) Clinic	7083.10	7083.10 Payroll taxes - Clinic	\$526.57	
				Medicare - ER & EE	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$507.00
				SocSec - ER & EE	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$2,167.88
				Federal W/H	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$3,213.61
				State W/H	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$1,201.68
				Payroll People Invoice Processing Charges	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$319.80
				Payroll People Expense - District	8610.22	8610.22 Consulting and Management Fees - District	\$199.87	
				Payroll People Expense - Clinic	7083.22	7083.22 Consulting and Management fees - Clinic	\$119.93	
				Payroll Liabilities	2110.00	2110.00 Payroll Liabilities - New Account for 2019	\$7,090.17	
				Payroll deduction payments	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$7,090.17
				Direct Deposit - VSHWC Checking Acct	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$11,730.17
							\$26,230.31	\$26,230.31
09/16/2019	Journal Entry	11512		Amount due via PAD for USDA loan	100.50	100.50 Stockton Bank of		\$646.85
				Amount due via PAD for USDA loan	8870	8870 Debt Financing Costs	\$646.85	
							\$646.85	\$646.85
09/26/2019	Journal Entry	11513		Wages - District	8610.09	8610.09 Other salaries and wages - Admin.	\$8,501.61	
				Wages - Clinic	7083.09	7083.09 Other salaries and wages - Clinic	\$12,598.46	
				Employer Tax Expense (Medicare) District	8610.10	8610.10 Payroll taxes - Admin.	\$123.27	
				Employer Tax Expense (Medicare) Clinic	7083.10	7083.10 Payroll taxes - Clinic	\$182.67	
				Employer Tax Expense (SocSec) District	8610.10	8610.10 Payroll taxes - Admin.	\$430.14	

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT #	ACCOUNT	DEBIT	CREDIT
				Employer Tax Expense (SocSec) Clinic	7083.10	7083.10 Payroll taxes - Clinic	\$684.16	
				Employer Tax Expense (SUI & Employment Training) Clinic	7083.10	7083.10 Payroll taxes - Clinic	\$66.53	
				Medicare - ER & EE	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$611.88
				SocSec - ER & EE	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$2,228.60
				Federal W/H	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$3,547.38
				State W/H	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$1,372.86
				State SUI & CA Employment Training	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$66.53
				Payroll People Service fees	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$230.33
				Payroll People Expense - District	8610.22	8610.22 Consulting and Management Fees - District	\$43.00	
				Payroll People Expense - VS Clinic	7083.22	7083.22 Consulting and Management fees - Clinic	\$43.00	
				Labor Laws Supplies from Payroll People for VS Clinic	7083.46	7083.46 Office and Administrative supplies - Clinic	\$144.33	
				Payroll Liabilities	2110.00	2110.00 Payroll Liabilities - New Account for 2019	\$7,827.25	
				Payroll Liabilities Bank Withdraw	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$7,827.25
				Checks Issued	2110.00	2110.00 Payroll Liabilities - New Account for 2019		\$1,976.53
				Direct Deposit Payroll for Employees	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$12,783.06
							\$30,644.42	\$30,644.42
09/27/2019	Journal Entry	11514		To Record Cleared Payroll checks	2110.00	2110.00 Payroll Liabilities - New Account for 2019	\$1,976.53	
				To Record Cleared Payroll checks	100.80	100.80 Five Star Bank - Valley Springs Health & WC Checking		\$1,976.53
							\$1,976.53	\$1,976.53
09/30/2019	Journal Entry	11509		Rent - Resource Connection	9260.03	9260.03 Child Advocacy Rent Revenue		\$750.00
				Rent - Resource Connection	100.30	100.30 Umpqua Bank Checking	\$750.00	
							\$750.00	\$750.00
09/30/2019	Journal Entry	11515		September 2019 Rent for San Andreas Medial & Professional Offices - Bldg E	9260.02	9260.02 MOB Rents Revenue		\$12,627.30
				September 2019 Rent for San Andreas Medial & Professional Offices - Bldg E	100.30	100.30 Umpqua Bank Checking	\$12,627.30	
							\$12,627.30	\$12,627.30
09/30/2019	Journal Entry	11516		September 2019 Monthly Amortization Schedule	2128.01	2128.01 Deferred Capital Lease	\$35,506.59	
				September 2019 Monthly Amortization Schedule	9260.01	9260.01 Deferred Lease Income		\$26,840.80
				September 2019 Monthly Amortization Schedule	2219	2219 Capital Lease		\$8,665.79
				September 2019 Monthly Amortization Schedule	2128.02	2128.02 Deferred Utilities Reimbursement	\$64,493.41	
				September 2019 Monthly Amortization Schedule	9260.01	9260.01 Deferred Lease Income		\$64,493.41
							\$100,000.00	\$100,000.00
09/30/2019	Journal Entry	11517		Sept 2019 Additional Monthly Amortization Schedule	9520.72	9520.72 Depreciation	\$10,241.21	
				Sept 2019 Additional Monthly Amortization Schedule	2219	2219 Capital Lease		\$10,241.21
							\$10,241.21	\$10,241.21

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT #	ACCOUNT	DEBIT	CREDIT
09/30/2019	Journal Entry	11518		September 2019 Accrual Deferred Reimbursement Calaveras County	2129	2129 Other Third Party Reimbursement - Calaveras County	\$92,085.75	
				September 2019 Accrual Deferred Reimbursement Calaveras County	9160.00	9160.00 Property Tax Revenues - District		\$92,085.75
							\$92,085.75	\$92,085.75
09/30/2019	Journal Entry	11519		Minority Interest MTMC OPS	750.03	750.03 Minority Interest MTSJ Ops	\$1,440.14	
				Minority Interest MTMC INVEST	750.04	750.04 Minority Interest MTSJ Invest		\$734.70
				Minority Interest MTMC	170.00	170.00 Minority Interest in MTMC		\$705.44
						\$1,440.14	\$1,440.14	
09/30/2019	Journal Entry	SVCCHRG		Service Charge	101.00	101.00 Umpqua Investments		\$65.00
				Service Charge	8610.86	8610.86 Dues & Subscriptions - District	\$65.00	
							\$65.00	\$65.00
TOTAL							\$469,529.84	\$469,529.84

Mark Twain Healthcare District

BILL PAYMENT LIST

September 2019

DATE	NUM	VENDOR	AMOUNT
100.60 Five Star Bank			
09/04/2019	15615	Donna Koplen	-2,864.16
09/04/2019	15616	Cheryl Duncan Consulting	-23,704.05
09/04/2019	15617	City of Angels	-170.40
09/04/2019	15618	MTMC Nutritional Services	-124.00
09/04/2019	15619	PG&E 46578486352 VS Clinic # 10	0.00
09/04/2019	15620	PG&E 46995152991 VS Clinic # 9	-334.21
09/04/2019	15621	Arnaudo Bros., L.P.	-19,825.05
09/04/2019	15622	Dr. Randall Smart	-85.84
09/04/2019	15623	Van Lieshout, Patrick	-12,000.00
09/04/2019	15624	Helen & Company Advertising Inc.	-247.50
09/04/2019	15625	Mark Twain Medical Ctr	-5,000.00
09/04/2019	15626	Streamline	-200.00
09/04/2019	15627	PG&E 46578486352 VS Clinic # 10	-354.27
09/05/2019	15628	Your Type Graphic Design	-1,295.99
09/06/2019	15629	PG&E 74021406306 SAFMC	-769.64
09/06/2019	15630	Calaveras Telephone	-478.59
09/06/2019	15631	Dr. Joana Motiu	-3,676.25
09/06/2019	15632	TouchPoint Medical	-13,425.50
09/10/2019	15633	Hstar, Inc.	-310.97
09/10/2019	15634	Outlet Tek	-40.50
09/10/2019	15635	Aspen Street Architects	-3,809.39
09/10/2019	15636	McKesson Medical Surgical	-4,455.21
09/10/2019	15637	AT&T 248 134-7000	-37.36
09/10/2019	15638	AT&T 457-7	-4.64
09/10/2019	15639	AT&T OneNet	-1,169.16
09/10/2019	15640	PG&E 39918320076 Cancer	-345.23
09/10/2019	15641	PG&E 71068388090 Pain Mgmt	-816.48
09/10/2019	15642	PG&E 89195984003 Cancer/Infusion	-899.08
09/10/2019	15643	Anthem Blue Cross	-1,787.52
09/10/2019	15644	PG&E 11152462708 SOMO	-2,532.58
09/10/2019	15645	Calaveras Power Agency	-28,959.05
09/10/2019	15646	JWT & Associates, LLP	-3,935.00
09/10/2019	15647	Henry Schein Dental	-134,491.72
09/11/2019	15648	Dignity Health Central Verification Unit	-200.00
09/12/2019	ACH 11	Umpqua Bank Credit Card	-6,533.46
09/18/2019	15649	Condor Earth Technologies, Inc.	-1,519.94
09/18/2019	15650	AT&T 754-9362	-1,046.05
09/18/2019	15651	BETA Healthcare Group	-73.00
09/18/2019	15652	PG&E 07532672789-5 James Dalton(Angels Camp)	-163.19
09/18/2019	15653	PG&E 2306121143-1 ortho	-1,273.02
09/18/2019	15654	Campora Propane	-20.84
09/18/2019	15655	PG&E 42630399709 Hospital	-5,491.49
09/18/2019	15656	Mobile Modular	-383.84

DATE	NUM	VENDOR	AMOUNT
09/18/2019	15657	Kirk Stout	-83.13
09/18/2019	15658	Peggy Stout	-586.00
09/18/2019	15659	RJ Pro Innovative I.T. Services	-99.00
09/18/2019	15660	Harvard M. Robbins, M.D.	-8,507.94
09/23/2019	15661	J.M. Keckler Medical Sales, Inc.	-6,563.70
09/23/2019	15662	Calaveras County Water District	-198.90
09/23/2019	15663	East Bay Restaurant Supply Inc	-1,232.48
09/23/2019	15664	RJ Pro Innovative I.T. Services	-600.00
09/23/2019	15665	City Signs	-6,468.42
09/23/2019	15666	Gateway Press	-132.35
09/23/2019	15667	Seats & Stations	-3,249.03
09/23/2019	15668	MTMC Nutritional Services	-124.00
09/23/2019	15669	J.M. Keckler Medical Sales, Inc.	-9,091.45
09/26/2019	15670	Cejka Search	-6,000.00
09/26/2019	15671	Condor Earth Technologies, Inc.	-1,307.50
09/26/2019	15672	Kirk Stout	-75.00
09/26/2019	15673	Alpine Natural Gas	-9.18
09/26/2019	15674	Ann Radford	-100.00
09/26/2019	15675	Debbie Sellick	-100.00
09/26/2019	15676	Lin Reed	-100.00
09/26/2019	15677	Susan Atkinson	-100.00
09/26/2019	15678	Talibah Al-Rafiq	-100.00
09/26/2019	15679	RJ Pro Innovative I.T. Services	-7,389.69
09/26/2019	15680	Gasper's Electric	-795.91
Total for 100.60 Five Star Bank			\$ -337,867.85

Mark Twain Healthcare District

TRANSACTION REPORT

August 2019

DATE	TRANSACTION TYPE	NUM	NAME	MEMO/DESCRIPTION	ACCOUNT	SPLIT	AMOUNT	BALANCE
08/30/2019	Bill	August 2019	Umpqua Bank Credit Card	Meeting Registrations and Hotel stays for various Conferences	8610.90 Other Direct Expenses - Stipends, Community Ed & Marketing, Misc. -District	2000 Accounts Payable	3,475.00	3,475.00
08/30/2019	Bill	August 2019	Umpqua Bank Credit Card	IT purchase from Costco for VSHWC	7083.69 Other purchased services - Clinic	2000 Accounts Payable	2,035.84	5,510.84
08/30/2019	Bill	August 2019	Umpqua Bank Credit Card	Hiring / Recruiting for VSHWC	7083.89 Recruiting - Clinic	2000 Accounts Payable	189.79	5,700.63
08/30/2019	Bill	August 2019	Umpqua Bank Credit Card	Storage for VSHWC	7083.46 Office and Administrative supplies - Clinic	2000 Accounts Payable	140.00	5,840.63
08/30/2019	Bill	August 2019	Umpqua Bank Credit Card	Office Supplies for District office	8610.46 Office and Administrative Supplies - District	2000 Accounts Payable	692.83	6,533.46
TOTAL							\$6,533.46	

Mark Twain Healthcare District

BALANCE SHEET

As of September 30, 2019

	TOTAL	
	AS OF SEP 30, 2019	AS OF SEP 30, 2018 (PY)
ASSETS		
Current Assets		
Bank Accounts		
100.30 Umpqua Bank Checking	47,838.63	101,756.04
100.40 Money Market - Umpqua	4,899.27	521,889.67
100.50 Stockton Bank of	251,807.20	384,706.92
100.60 Five Star Bank	121,455.98	
100.70 Five Star Bank - MMA	3,702,723.35	
100.80 Five Star Bank - Valley Springs Health & WC Checking	36,258.77	
Total Bank Accounts	\$4,164,983.20	\$1,008,352.63
Accounts Receivable		
1200 Accounts Receivable	31,398.15	93,256.13
Total Accounts Receivable	\$31,398.15	\$93,256.13
Other Current Assets		
101.00 Umpqua Investments	496,716.35	711,959.21
103.00 CalTRUST	10,323,958.48	
1069 Due from Calaveras County - New GL#	1,105,029.00	
115.05 Due From Calaveras County	-55,651.96	248,001.00
115.20 Accrued Lease Revenue	11,994.27	0.00
130.00 Prepaid Expenses		
130.20 Prepaid Malpractice	0.00	11,644.61
130.40 Prepaid Valley Springs Clinic	613,263.39	
Total 130.00 Prepaid Expenses	613,263.39	11,644.61
1499 Undeposited Funds	0.00	-3,873.22
Total Other Current Assets	\$12,495,309.53	\$967,731.60
Total Current Assets	\$16,691,690.88	\$2,069,340.36
Fixed Assets		
150.00 Land and Land Improvements		
150.10 Land	1,189,256.50	1,189,256.50
150.20 Land Improvements	150,307.79	150,307.79
Total 150.00 Land and Land Improvements	1,339,564.29	1,339,564.29
151.00 Buildings and Improvements		
151.10 Building	2,123,677.81	2,123,677.81
151.20 Building Improvements	2,276,955.79	2,276,955.79
151.30 Building Service Equipment	168,095.20	168,095.20
Total 151.00 Buildings and Improvements	4,568,728.80	4,568,728.80
152 CIP		
152.1 CIP Consulting Services	4,646.25	
152.10 Fixed Equipment	698,156.25	698,156.25
152.15 Furniture & Furnishings	7,813.00	0.00
152.92 CIP - VS Clinic Land Costs	1,223,259.79	984,233.37

	TOTAL	
	AS OF SEP 30, 2019	AS OF SEP 30, 2018 (PY)
160.00 Accumulated Depreciation	-5,342,143.00	-5,324,701.00
Total Fixed Assets	\$7,176,781.93	\$2,265,981.71
Other Assets		
170.00 Minority Interest in MTMC	247,554.57	14,510,261.00
180.00 Bond Issue Costs		
180.10 Bond Issue Costs	141,088.00	141,088.00
180.20 Accumulated Amortization	-141,088.00	-141,088.00
Total 180.00 Bond Issue Costs	0.00	0.00
180.30 Intangible Assets	0.00	0.00
180.50 Land Lease Legal Fees	28,081.11	28,081.11
180.55 Accumulated Amortization-LLLF	-28,081.11	-26,312.11
180.60 Capitalized Lease Negotiations	357,567.49	356,177.62
Total 180.30 Intangible Assets	357,567.49	357,946.62
2219 Capital Lease	6,731,000.00	
Total Other Assets	\$7,336,122.06	\$14,868,207.62
TOTAL ASSETS	\$31,204,594.87	\$19,203,529.69
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable		
2000 Accounts Payable	1,031,070.54	0.00
Total Accounts Payable	\$1,031,070.54	\$0.00
Other Current Liabilities		
200.00 Accts Payable & Accrued Expenses		
200.10 Other Accounts Payable	5,692.34	11,747.50
200.40 Accrued Utilities	38,218.30	41,022.07
Total 200.00 Accts Payable & Accrued Expenses	43,910.64	52,769.57
210.00 Deide Security Deposit	2,275.00	2,275.00
211.00 Valley Springs Security Deposit	1,000.00	1,000.00
220.10 Due to MTMC - Rental Clearing	0.00	39,548.43
226 Deferred Rental Revenue	38,393.35	-152.07
24000 Payroll Liabilities	5,892.81	12,102.39
Total Other Current Liabilities	\$91,471.80	\$107,543.32
Total Current Liabilities	\$1,122,542.34	\$107,543.32
Long-Term Liabilities		
2128.01 Deferred Capital Lease	1,988,369.64	
2128.02 Deferred Utilities Reimbursement	3,611,630.36	
2129 Other Third Party Reimbursement - Calaveras County	828,771.75	
2210 USDA Loan - VS Clinic	4,643,839.02	384,591.92
Total Long-Term Liabilities	\$11,072,610.77	\$384,591.92
Total Liabilities	\$12,195,153.11	\$492,135.24
Equity		
290.00 Fund Balance	648,149.41	648,149.41
291.00 PY - Minority Interest MTMC	19,720,638.00	19,720,638.00
3000 Opening Bal Equity	0.03	0.03
3900 Retained Earnings	-964,443.19	-1,479,669.97
Net Income	-394,902.49	-177,723.02

	TOTAL	
	AS OF SEP 30, 2019	AS OF SEP 30, 2018 (PY)
Total Equity	\$19,009,441.76	\$18,711,394.45
TOTAL LIABILITIES AND EQUITY	\$31,204,594.87	\$19,203,529.69

**Mark Twain Health Care District
List of Renters and Leases
September 30, 2019**

10/15/2019

Name	Contract Date	Commencement Date	CPI Increase Date	Increase Rate (%)	Lease Term	Expire Date	MOB Suite	Location	District Pays Utilities	Type	Monthly Rent	Sq Ft Rate	CAM	Total	Sq Ft.	Comments	
							First Floor	704 Mountain Ranch Rd, Building E									
<u>Medical Office Building Subleases</u>																	
Stockton Cardiology	8/15/2007	8/14/2017	8/14/2019	2.0	3 years	8/14/2020	101	see above	N	Office	\$ 2,896.09	2.27	\$ 552.50	\$ 3,448.59	1,276	Current thru 9/2019	
Multi-Specialty Clinic	9/1/2012	9/1/2017	9/1/2019	3.0	5 years	9/1/2022	102	see above	Y	Clinic	\$ 2,798.65	2.19	\$ 552.50	\$ 3,351.15	1,276	Current thru 9/2019	
San Andreas FMC	7/1/2014	7/1/2019	6/30/2024	CPI	5 years	7/1/2019	103 / 104	see above	Y	Clinic	\$ 7,456.93	3.24	*	\$ 7,456.93	2,304	Current thru 9/2019	
San Andreas FMC	7/1/2014	7/1/2019	6/30/2024	CPI	5 years	7/1/2019	105	see above	Y	Office	\$ 3,984.84	2.42	\$ 552.50	\$ 4,537.34	1,644	Current thru 9/2019	
Total MOB lease Income											\$17,136.51	\$1,657.50	\$18,794.01	6,500			
<u>Valley Springs Rental</u>																	
Resource Connection	3/1/2018	3/1/2018	2/1/2019		3 years	3/1/2021	N/A	1934 Highway 26	Y	Office	\$ 750.00	N/A	N/A	\$ 750.00		Current thru 9/2019	
<u>Hospital Lease Agreement w/Corporation</u>																	
Mark Twain Medical Center	1/1/1990	1/1/1990			30 years	12/31/2019		768 Mountain Ranch Rd	Reimburse	Hospital	\$ -		N/A	\$ -			
<u>Office Lease</u>																	
San Andreas Medical and Professional Offices (Arnaudo Bros)	3/1/2007	7/1/2019		3.0	5 years	2/28/2027	First Floor	704 Mountain Ranch Rd, Building E	N	Office	\$12,627.30		\$2,314.71	\$14,942.01	6,500	Rent increases 3% each year. CAM IS NOT BEING PAID	
<u>Land Lease</u>																	
Jake Koplen	5/3/1994	5/3/1994			50 years	5/2/2044		Parcel 5, 700 Mountain Ranch Road, MOB Bldgs A,B,C	Y	Land	\$ 481.42		N/A	\$ 481.42	N/A	UNTIL ACCT RECONCILED At term of lease Improvements (buildings) become District property. May terminate lease after 35 years and purchase Improvements.	
San Andreas Medical and Professional Offices (Arnaudo Bros.)	5/20/2004	5/20/2004			50 years	5/19/2054		Parcel 3, Building E (MOB Property)	N	Land	\$1 / Yr.		N/A	\$1 / Yr.	N/A	At term of lease Improvements (buildings) become District property. May terminate lease after 35 years and purchase Improvements.	

* CAM Charges included in rent

**MARK TWAN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Quality Assurance Guidelines	REVIEWED: 2/1/19; 10/15/19
SECTION: Operations	REVISED: 10/15.19
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR:

Subject: Quality Assurance Guidelines

Objective: To define Clinic Quality Assurance Guidelines for application in the development and management of the Quality Assurance/Performance Improvement Program.

Response Rating:

Required Equipment: None

Quality Assurance Definition:

An ongoing process designed to objectively and systematically monitor and evaluate patient services in accordance with established standards, identify and resolve problems and pursue opportunities to improve patient care and outcomes.

Quality Assurance Objectives:

- a. Monitor statistics and the utilization of clinic services
- b. Monitor compliance with criteria established for health maintenance and disease specific categories, as well as the correct documentation in the medical record
- c. Recognize system problems
- d. Review protocols and procedures
- e. Provide a mechanism for staff continuing education
- f. Enhance teamwork
- g. Comply with regulating requirements for internal chart review
- h. Ensure correct and complete documentation

Procedure

1. Quality Assurance/Peer Review general guidelines
 - a. Review and signing by the supervising Medical Director *within 30 days* of medical records for 10% of patients treated by the mid-level practitioner for whom medication or devices are prescribed or dispensed during the first month and 5% every month thereafter.

- b. Medical chart audits, peer review and nursing chart audits will be conducted during the month and will be reported to the QAPI Committee during scheduled meetings.
 - c. Charts will be audited for adherence to criteria for conditions treated frequently in the clinic. Criteria will include standards for historical data, physical exam, laboratory procedures, treatment, patient education and follow-up
 - d. Each audit will consist of at least five charts monthly
2. Audit Process and Forms
- a. A review form will be used for each chart.
 - b. When a significant problem is noted in the review (i.e. failure to follow up an abnormal lab result or acute illness), the Medical Director will be notified and responsible for assuring that follow-up is carried out.
 - c. Charts that do not require active follow-up (i.e. missing historical data) will be given to the Clinic staff for completion.
 - d. All chart reviews, quality issues, problems, changes made and follow-up will be documented in the minutes of the QAPI meetings.
 - e. Nursing audit data will be given to the staff for follow-up and completion.
3. Criteria Development
- a. Criteria for both audits will be based on current medical practice, professional organization recommendations, regulatory standards, and Clinic policy.
 - b. Criteria shall reflect accepted standards for care and cost effective practice.
 - c. Criteria shall be reviewed at least annually by the Medical Director and the Quality Assurance Committee. It will be updated and /or modified as necessary.
4. Staff meetings, missed appointments, pharmacy outdates
- a. To assure that quality care is provided, the Clinic staff members shall participate in staff meetings at least monthly.
 - b. The front office personnel will carry out the policy for missed appointments daily.
 - c. Pharmacy outdates will be checked monthly as outlined.

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Medication Management – Storage of Multi-Use Containers	REVIEWED: 11/21/18; 9/7/19
SECTION: Medication Management	REVISED: 9/7/19
EFFECTIVE: 9/20/19	MEDICAL DIRECTOR:

Subject: Medication management and storage of multi-use containers

Objective: To utilize multiple dose vials appropriately; to store and manage open multiple dose vials in a safe and appropriate manner.

Response Rating: Mandatory

Required Equipment:

Definitions:

Procedure:

1. Upon opening of a multiple dose container/vial (with preservatives), nursing staff shall affix a “vial open” label to the container. Label will include use by date (also known as the beyond use date) for each vial that has been opened and will also state “MDV” to indicate multi-dose vial.
2. For sterile medications: when staff has used aseptic technique, the shelf life of the open vial will be twenty-eight (28) days or the manufacturer’s expiration date, if shorter. The vial will then be discarded regardless of the expiration date of the medication.
 - a. IPOL polio vaccine shall be labeled with a beyond use date one year after date of opening. This variation of the usual process has been confirmed with the manufacturer, Vaccines for Children program, and The Joint Commission.
3. For non-sterile medications, the beyond use date/discard date shall be one year from the date of opening or the manufacturer’s expiration date, if shorter. This policy includes hydrogen peroxide and betadine and over-the-counter type medications (example: Motrin, Tylenol, Mylanta).
4. Single-dose vials (without preservatives) shall be discarded after initial puncture
5. Immuno-compromised patients should not have medications administered from previously used multi-dose vials.
6. If suspected contamination has occurred with any open container/vial of medication, regardless of the documented beyond use date, that container/vial will be discarded immediately.

7. Opened multi-dose vials will remain in the medication room. Opened multi-dose vials removed from the medication room will be disposed of immediately after use.
8. Wasted/discarded vials will be documented in the medication management waste stream, as well as the medication management machine to ensure accurate inventory management and timely replacement of inventory.

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Abnormal Vital Signs	REVIEWED: 11/11/18; 9/14/19
SECTION: Clinical	REVISED: 9/14/19
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR

Subject: Abnormal Vital Signs

Objective: To assess the patient at risk for severe disease or complications.

Response Rating: Minimal to Severe

Required Equipment: Gloves.

Procedure

1. All patients in the Clinic will have a complete set of vital signs.
2. All children should be evaluated for severe respiratory distress as indicated by rapid breathing, retractions, or cyanosis (blue/purple lips) and brought in immediately for evaluation by the practitioner.
 - a. In children under age 3, pulse, respiratory rate, temperature (oral or temporal artery thermometer), weight and pulse oximetry, if indicated.
 - b. In children (3 years and above) and adults, add blood pressure.
 - c. In children (regardless of age) who present as ill or in extremis, ensure all vital signs are taken and recorded in the medical record.
3. For pulse: notify the practitioner if less than 60 or greater than 100 in adults. The normal range for children will vary by age, but generally is faster. Review the pediatric vital signs reference posted in the nurses' workstation for guidance.
4. For respiration: notify the practitioner if the rate is greater than 24 times per minute, or if there is any difficulty breathing. Review the pediatric vital signs reference posted in the nurses' workstation for guidance.
5. For blood pressure: in adults, notify the physician if systolic is >160 or less than 90, or if diastolic is over 100 or under 60.
6. For temperature: notify the practitioner if over 102 degrees.
7. For pulse oximetry: notify the practitioner if less than 95%.

8. In all cases, document the vital signs clearly in the medical record and notate if any are abnormal.
9. All abnormal vital signs and oximetry will be addressed by the practitioner during the visit.

REVISED

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Audiogram-Threshold	REVIEWED: 11/11/18; 9/14/19
SECTION: Patient Care	REVISED: 9/14/19
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR:

Subject: Threshold Audiogram

Objective: To assess auditory status of patient

Response Rating: Minimal

Required Equipment: Audiometer, EMR

Applies to: All Personnel with documented audiometry training

Policy

Hearing screenings are a part of our comprehensive patient services. An audiogram may be required for pediatric physical examinations, pre-employment screening or for complaints of hearing loss, ear infections, trauma to the ear, ringing in the ears.

Procedure

1. As a part of the pediatric patient’s physical examination. Guidelines and frequency of screening to be determined by the provider in conjunction with the American Academy of Pediatrics recommendations for preventive pediatric health care located on the periodicity schedule.
 - A. If the screening is not performed per the recommended periodicity schedule, document in the EMR the reason. Example “patient unable to follow direction.”
 - B. If the screening is attempted and not performed, practitioner notation must be made with a plan for follow-up to rescreen.
2. Assemble the equipment
3. Ensure that the room is quiet and free of distractions (i.e. nearby conversations).
4. Explain the procedure to patient and demonstrate its use.
5. Inform the patient: “I am going to place the earphones over your ears. You will hear a variety of tones. Some will be high, some low, some loud some very soft. Whenever you hear, or think you hear one of

those sounds, raise your hand. Lower your hand when you no longer hear the sound. Remember that though some of the tones will be easier to hear, others will be very faint. Therefore, you should listen very carefully and raise your hand whenever you think you hear the tone.”

6. Place the headset over the patient’s ears.
7. The routine hearing screening will be set at 20 decibels, to be tested at 1000, 2000, and 4000 Hz.
8. If the patient cannot hear at the threshold level on one of the tones, increase the decibel level by 10 and retest the patient to determine their hearing threshold.
9. Document the results in the EMR and the physical form. Include the threshold level required at each tone.
10. Mark hearing screen in EMR.
11. Report abnormal results to the practitioner.
12. Provide follow-up as directed (referrals, treatment plans, etc.), and document.

REVISSED

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Cardiopulmonary Resuscitation/ Basic Life Support	REVIEWED: 11/19/18; 9/14/19
SECTION: Clinical	REVISED: 9/14/19
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR:

Subject: Cardiopulmonary Resuscitation/Basic Life Support

- Objective:**
- A. To maintain competence of clinic staff in the performance of cardiopulmonary resuscitation.
 - B. To initiate CPR efficiently and effectively when needed.
 - C. To maintain CPR until advanced cardiac life support of EMS practitioners arrive at the clinic.
 - D. To provide optimum management of “CODE BLUE” incident which insures that the personnel as well as supplies and drugs required to restore circulatory or respiratory action are immediately available and ready for use.

Acuity Rating: Severe

Required Equipment: Crash cart, AED, oxygen, Code Blue report form

Policy: Cardiopulmonary Resuscitation (CPR) should be initiated by the Clinic staff when a person is assessed to have no pulse or is non-breathing. Notify the practitioner immediately, call 911, and announce CODE BLUE. All staff will maintain current certification in pediatric and infant CPR.

Front Office Staff:

1. Responsible for identifying a patient who presents to the Clinic with serious symptoms may require CPR and to notify the nurse and/or practitioner immediately.
2. Call 911 immediately.
2. Will help maintain calm for the remaining patients.
3. May be called upon for record keeping in the event of cardiac arrest.

Medical Assistants/Nurses:

1. Will have current BLS certification and renew it every two years.
2. Will complete crash cart and AED monthly inspections and document same.
3. Responsible for administering medications as directed, obtaining the crash cart and AED for the

practitioners.

4. When possible, place the patient on the floor or safe hard surface. CPR cannot be effectively administered on a standard exam table

Practitioners:

1. All practitioners must have current BLS certification. It is the responsibility of the practitioner to keep this current and to provide the Medical Staff Coordinator with a current copy of their certificate.
2. All practitioners will be given an orientation to the emergency procedures of the clinic. Mock code drills will be held to assist in maintaining these skills.
3. The practitioner on duty will be in charge of the "Code" until relieved by the Paramedic team.
4. Unresponsive patients will be assessed and treated according the latest AHA guidelines for ACLS.
5. Ensure a staff member calls 911 immediately.
6. Document all care rendered in the EMR.

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Elder Or Dependent Adult Abuse Reporting	REVIEWED: 10/1/19
SECTION: Mandatory Reporting	REVISED:
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR

Subject: Elder and Dependent Adult Abuse Reporting

Objective: To comply with California Law, any health care provider, providing services at the Clinic who suspects, observes, or is told of the abuse of an elder or dependent adult must report to the appropriate law enforcement agency and/or Adult Protective Services.

Acuity Rating: Mandatory

Procedure:

1. Definitions:

- a. Elder-any person residing in the State of California, 65 years of age or older. In addition, an individual with physical conditions or limitations such as that of the senior adult target group but is younger than 65 years of age will also be designated as “elderly” for abuse intervention purposes.
- b. Dependent Adult-any person residing in the State of California, between the ages of 18 and 64, who has physical and/or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to person who has physical or developmental disabilities or whose physical or mental abilities have diminished because of age.
- c. Mandated reporters-include care custodians, health practitioners, employees of Adult Protective Services Agencies, and other employees of local law enforcement agencies.

2. Reporting Contacts:

Adult Protective Services

Calaveras County Department of Human Services

1-209-754-6677 or 1-844-690-5137 (after hours call 911)

509 E. St. Charles St., San Andreas 95249 (for SOC 341 to be completed and mailed within two working days or fax 1-209-754-3293

Calaveras County Sheriffs Department

1054 Jeff Tuttle Drive; San Andreas

3. **Reporting Requirements:**

- a. **Physical or sexual abuse**-mandated reporters are to telephone the appropriate law enforcement agency immediately if physical or sexual abuse is suspected, observed or if they are told of the abuse. A completed Report of Suspected Dependent Adult/Elder Abuse must be sent to Adult Protective Service or the Ombudsman Program as appropriate, using the online reporting form.
- b. **Non-physical abuse**-All reports of non-physical abuse should be submitted by telephone and a completed Report of Suspected Dependent Adult/Elder Abuse must be sent to Adult Protective Service or the Ombudsman Program as appropriate within two (2) working days using the online reporting form.
- c. **Information regarding abuse from a third party**-The report of Suspected Dependent Adult/Elder Abuse Form should also be used to record information received from a third party through a telephoned report of abuse. The shaded sections on the form are to be completed when a third party telephone report of abuse is received.

4. **Failure to Report:**

Any person knowingly failing to report, when required, an instance of elder or dependent adult abuse is guilty of a misdemeanor punishable by imprisonment in the county jail for a maximum of six months

5. **Types of Reportable Abuse:**

Mandated reporters are required to report the following types of physical/sexual abuse as per the California Welfare and Institutions Code Section 15610.63:

- a. Assault as defined in Section 240 of the Penal Code.
- b. Incest, as defined in Sec 285 of the Penal Code.
- c. Battery as defined in Section 242 of the Penal Code.
- d. Sodomy, as defined in Section 286 of the Penal Code.
- e. Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.
- f. Oral copulation as defined in Sec 288a of the Penal Code.
- g. Unreasonable physical restraint or prolonged or continual deprivation of food or water.
- h. Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.
- i. Sexual assault, which means any of the following:
 - i. Sexual battery as defined in Sec 243.4 of Penal Code
 - ii. Rape as defined in Sec 261 of the Penal Code.
 - iii. Rape in concert, as defined in Sec 264.1 of the Penal Code.
 - iv. Use of a physical or chemical restraint or psychotropic medication, without authorization, or for a purpose other than that for which it was ordered, including but not limited to, staff or caretaker convenience, for punishment, or for a period beyond that for which it was ordered.

6. Abuse that is Permissible to Report:

Mandated reporter may report the following types of abuse:

- a. Neglect-Negligent failure of any person having the care or custody of an elder or dependent adult to exercise a “reasonable person” degree of care, including failure to:
 - i. Assist in personal hygiene, or in the provision of food, clothing or shelter.
 - ii. Provide medical care for physical and mental health needs (except that a person/victim who voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment shall not be deemed neglected or abused.
 - iii. Prevent malnutrition.
 - iv. Protect from health and safety hazards.
- b. Intimidation-Deliberately subjecting a person to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior.
- c. Fiduciary Abuse-A situation in which any person who has care or custody of, or who stands in a position of trust to an elder or suspected adult, takes, secretes, or appropriates money or property to any use or purpose not in the due and lawful execution of his or her trust.
- d. Abandonment-Desertion or willful forsaking of an elder or dependent adult by anyone having care or custody under circumstances in which a reasonable person would continue to provide care and custody.
- e. Isolation - Includes intentional acts committed for the purpose of preventing, and that actually serve to prevent, an elder or dependent adult from receiving mail or telephone calls.
 - i. Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller or meet with the visitor where the statement is false or contrary to the wishes of the elder or dependent adult, and is made for the purpose of limiting contact with family, friends, or concerned persons.
 - ii. False imprisonment.
 - iii. Physical restraint for the purpose of preventing the elder of dependent adult from meeting with visitors.

7. Internal Documentation:

A copy of all reporting documents is kept on file in the Clinic-Manager’s office. Do not file reports in patient record.

**MARK TWAIN HEALTH CARE DISTRICT
RURAL HEALTH CLINICS
POLICY AND PROCEDURES**

POLICY: Flu Shots	REVIEWED: 11/12/18; 9/11/19
SECTION: Patient Care	REVISED: 9/11/19
EFFECTIVE: October Board Meeting	MEDICAL DIRECTOR:

Subject: Flu Shots

Objective: To provide flu shots to appropriately screened clinic patients, flu shots will be administered in accordance with current recommendations from the National Institutes of Health and documentation prepared to support submittal with required cost reports.

Response Rating: Mandatory

Required Equipment:

Procedure:

1. The Clinic will obtain flu vaccine from the pharmacy vendor and, where applicable, from Vaccines for Children.
 - a. Staff will perform Vaccines for Children eligibility screening for all patients 18 years and younger prior to administering flu vaccine. Vaccines for Children inventory will be used for qualified children only.
 - b. Vaccines purchased from the pharmacy vendor will be used for children who do not qualify for the Vaccines for Children program and all adults who require a flu shot.
2. Flu shots will not be given prior to the established “start date” which is recommended annually by the National Institutes of Health, unless the patient is deemed “high risk” and meets current high risk criteria established by NIH.
3. Appointments are not required for patients requesting a flu shot.
4. For pediatric patients presenting for a “flu shot only”, staff will complete a flu shot screening form and follow instructions found there, after the parent/guardian has signed the flu shot release form.
5. For adult patients presenting for a “flu shot only”, staff will take patient vital signs and administer the shot only if the patient is afebrile and they have signed the flu shot release form.
6. Current vaccine information sheet (VIS) will be distributed to all patients prior to the patient being asked to sign the flu shot release form.

7. All flu shots for MediCare patients will be recorded on the flu shot log. Follow the directions included on the flu shot log.
8. The practitioner will enter an order in the EMR for the patient's vaccine administration.
9. The staff member administering the vaccine (MD, DO, NP, PA, RN, LVN, MA) will document administration of the vaccination and issuance of the VIS in the EMR.
10. Ordering practitioners are reminded to be vigilant of the CDC recommendations for young patients:

Ages 6 months – 3 years and
Age 3 years – age 8 years

There are specialized recommendations such as: no preservatives and specialized vaccine schedules.

Practitioner is reminded to review the differences and order according to the patient's age-specific needs.

FOR BOARD REVIEW