



**BOARD OF DIRECTORS' MEETING
AGENDA**

THURSDAY, FEBRUARY 4, 2016

CLOSED SESSION 5:00 P.M.

REGULAR SESSION 6:00 P.M.

COMMUNITY MEETING ROOM

177 First Street West, Sonoma, CA

AGENDA ITEM	RECOMMENDATION	
MISSION STATEMENT <i>The mission of SVHCD is to maintain, improve, and restore the health of everyone in our community.</i>		
1. CALL TO ORDER	<i>Hirsch</i>	
2. PUBLIC COMMENT ON CLOSED SESSION	<i>Hirsch</i>	
3. CLOSED SESSION <u>Calif. Government Code § 37606 & Health and Safety Code §32106 Report</u> Involving Trade Secret regarding Business Strategy	<i>Hirsch</i>	
4. REPORT OF CLOSED SESSION	<i>Hirsch</i>	Inform/Action
5. PUBLIC COMMENT SECTION At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Board consideration. At all times please use the microphone.	<i>Hirsch</i>	
6. REPORT OF CLOSED SESSION ON JANUARY 19, 2016	<i>Hirsch</i>	Inform/Action
7. CONSENT CALENDAR A. Regular Board Minutes 1.7.16 B. FC Minutes 11.17.15 C. GC Minutes 12.15.15 D. QC Minutes 11.18.15 E. MEC Credentialing Report	<i>Hirsch</i>	Action
8. CALIFORNIA HOSPITAL ASSOCIATION PRESENTATION ON UPDATES AND PREDICTION OF HEALTHCARE IN THE STATE OF CALIFORNIA	<i>Anne McLeod, Senior VP of Health Policy & Innovation</i>	Inform
9. RESOLUTION No. 327 1206(b) CLINIC FORMATION	<i>Hirsch</i>	Action
10. SATELLITE HEALTHCARE LEASE	<i>Donaldson/ Jensen</i>	Action
11. RESOLUTION No. 326 UNION BANK LINE OF CREDIT EXTENSION	<i>Jensen</i>	Action

12. FY2016 CAPITAL SPENDING	<i>Jensen</i>	Inform
13. FINANCIAL REPORT FOR MONTH ENDING DECMBER 31, 2015	<i>Jensen</i>	Inform
14. ADMINISTRATIVE REPORT FOR JANUARY 2015	<i>Mather</i>	Inform
15. OFFICER & COMMITTEE REPORTS a) <u>Governance Committee</u> <ul style="list-style-type: none"> • Policy Governing Bidding for Facility Contracts (Hohorst) • ACHD Update (Hirsh/Boerum) 	<i>Board</i>	Inform/Action
16. BOARD COMMENTS	<i>Board</i>	Inform
17. ADJOURN The next Regular Board meeting is March 3, 2016	<i>Hirsch</i>	

7.

CONSENT
CALENDAR



**SVHCD BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

Thursday, January 7, 2016

5:00 p.m. Closed Session

6:00 p.m. Regular Session

COMMUNITY MEETING ROOM

177 First Street West, Sonoma

	RECOMMENDATION	
<p>MISSION STATEMENT The mission of SVHCD is to maintain, improve and restore the health of everyone in our community.</p>		
<p>1. CALL TO ORDER Closed Session called to order at 5:00pm</p>	<i>Hirsch</i>	
<p>2. PUBLIC COMMENT ON CLOSED SESSION</p>	<i>Hirsch</i>	
<p>3. CLOSED SESSION <u>Calif. Government Code § 37606 & Health and Safety Code §32106</u> Report Involving Trade Secret regarding Business Strategy</p>	<i>Hirsch</i>	
<p>4. REPORT OF CLOSED SESSION</p> <ul style="list-style-type: none"> • There were no actions or decisions from the Closed Session. • Regular Session called to order at 6:10pm 	<i>Hirsch</i>	
<p>5. PUBLIC COMMENT SECTION At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Board at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Board consideration. At all times please use the microphone.</p>	<i>Hirsch</i>	
<p>6. CONSENT CALENDAR</p> <p>A. Regular Board Minutes 12.3.15 B. No FC Minutes C. No Minutes D. GC Minutes 9.22.15 E. MEC Credentialing Report</p> <p>Consent Item E was held back from the 1st Motion for further discussion. Mr. Boerum does not agree with the new practice of substituting physician names with numbers on Medical Staff Credentialing Reports. He has done research and collected data from other institutions and will present his findings to the Board in a formal letter. After comments, Mr. Boerum motioned to approve the MEC Report and all were in favor.</p>	<i>Hirsch</i>	Action
<p>7. GROWTH AND BUSINESS DEVELOPMENT OVERVIEW</p> <p>Ms. Donaldson gave an overview of the growth and development at the Hospital including challenges, priorities over next 6 months, trends, margins, and analysis of select departments.</p>	<i>Donaldson</i>	Inform
<p>8. MARKETING AND COMMUNICATIONS UPDATE</p>	<i>Kenney</i>	Inform

Mr. Kenney gave an update on marketing and communications including future goals, the continued emphasis on community engagement, challenges, supporting growth, and the 70 th Anniversary Celebration and Open House.		
9. ELECTION OF SPECIAL DISTRICT REPRESENTATIVE TO SONOMA LAFCO	<i>Hirsch</i>	Action
Mr. Boerum motioned to endorse Al Giordano and there was no second from the Board. Ms. Nevins motioned to endorse Ernie Loveless and all were in favor.		MOTION by Nevins to endorse Ernie Loveless and 2 nd by Hohorst. All in favor.
10. BOARD COMMITTEE ASSIGNMENTS	<i>Hirsch</i>	Action
<p>2016 Board Committee assignments are as follows: Finance Committee: Nevins (Chair) and Hohorst Governance Committee: Hohorst (Chair) and Boerum Quality Committee: Hirsch (Chair) and Rymer Audit Committee: Hirsch (Chair) and Nevins</p> <p>The Board praised Mr. Fogg for his service and commitment as Finance Committee Chair. Over the past several years, his service has had direct benefit on the Hospital and Community. The Board looks forward to his future participation as a Community Member on the Finance Committee.</p>		MOTION by Hohorst to approve and 2 nd by Boerum. All in favor.
11. CHIEF OF STAFF REPORT	<i>Chamberlin</i>	Inform
<p>The SVH Medical Staff has instituted a process called <i>Executive Peer Review</i> designed to be a multi-disciplinary process and have an open referral pattern to review issues that rise to an overall hospital level of concern. It is intended to help physicians improve their practice by having diverse sets of physician eyes review case information. Meetings will be held monthly immediately following the general sessions of the Medical Executive Committee. The first meeting of the <i>Executive Peer Review</i> will be January 21, 2016.</p> <p>Dr. Chamberlin believes it is important that the Medical Staff demonstrate value to our Community and believes that SVH can do this by demonstrating its real value by collecting real outcomes and making them public. It is his contention that this concept of results based value will help SVH become more competitive in the marketplace over the next 5-10 years.</p>		
12. FINANCE REPORT FOR MONTH ENDING 11.30.15	<i>Jensen</i>	Inform
After accounting for all income and expenses, but not including Restricted Contributions and GO bond activity, the net loss for November was (\$388,074) vs. a budgeted net loss of (\$287,304). The total net income for November after all activity was \$244,714 vs. a budgeted net loss of (\$102,767).		
13. ADMINISTRATIVE REPORT DECEMBER 2015	<i>Mather</i>	Inform
Ms. Mather shared the Administrative Report for month ending 12.31.15 emphasizing dashboard and trended results. The strategic		

update portion of the report included Hospital volumes, service area optimization, time shares, sleep lab, parcel tax renewal, community opinion and philanthropy.		
14. OFFICER & COMMITTEE REPORT	<i>Board</i>	Inform/Action
<p>A. <u>Governance Committee</u></p> <p>i. Policy on Governing Bidding for Facility Contracts (action)</p> <p>ii. Policy on Appointment of Community Members to Board Committees (inform)</p> <p>B. <u>Finance Committee</u></p> <p>i. Susan Porth was introduced as the newly appointed Community Member of the Finance Committee.</p>		<p>MOTION by Nevins to approve GC Policy (i) and 2nd by Rymer. All in favor.</p> <p>GC Policy (ii) will be brought forward to the Board meeting Feb. 4, 2016 for approval.</p>
15. BOARD COMMENTS	<i>Board</i>	Inform
A Special Closed Board meeting is planned for late January or early February of this year.		
16. ADJOURN	<i>Hirsch</i>	
Meeting was adjourned at 7:45pm.		



**SONOMA VALLEY HEALTH CARE
DISTRICT
FINANCE COMMITTEE MEETING
MINUTES
TUESDAY, November 17, 2015
Schantz Conference Room**

Present	Excused/Absent	Staff	Public
Dick Fogg Stephen Berezin Sharon Nevins S. Mishra, M.D. (by phone) Peter Hohorst Mary Smith	Steve Barclay	Ken Jensen Jeannette Tarver Michelle Donaldson Gigi Betta Sarah Dungan Kelly Mather	Keith Chamberlin, M.D. Susan Porth

AGENDA ITEM	DISCUSSION	ACTIONS	FOLLOW-UP
MISSION AND VISION STATEMENTS	<i>The mission of SVHCD is to maintain, improve and restore the health of everyone in our community. The vision of SVHCD is that SVH will be a nationally recognized, compassionate place of healing known for excellence in clinical quality. We serve as the guide and indispensable link in our community's health care journey.</i>		
1. CALL TO ORDER	<i>Fogg</i>		
	Meeting called to order at 5:00pm. The December 2015 FC meeting has been cancelled but the financial report will still be distributed to Board, Community and Staff.		
2. PUBLIC COMMENT SECTION	<i>Fogg</i>		
	No public comment.		
3. CONSENT CALENDAR	<i>Fogg</i>	Action	

AGENDA ITEM	DISCUSSION	ACTIONS	FOLLOW-UP
	FC Meeting Minutes, 10.27.15	MOTION by Berezin to approve Consent and 2 nd by Hohorst. All in favor.	
4. ADMINISTRATIVE REPORT FOR NOVEMBER 2015	<i>Nevins</i>	Inform	
	<p>Ms. Mather presented the dashboard and trended results and gave strategic updates on outreach, service area optimization, time share, Satellite Health outpatient services, employer direct program, parcel tax renewal 2017, population health, community opinion survey and philanthropy.</p> <p>Ms. Nevins urges that everyone on the Committee make a donation to the Hospital in response to the latest fundraising request.</p> <p>Responding to questions, Ms. Donaldson explained the increased volumes and downturn of margins at Home Health.</p> <p>Ms. Mather will present on the Staff Forums at the Board meeting on January 7, 2016.</p>		
5. FINANCIAL REPORT FOR MONTH ENDING OCT. 31, 2015	<i>Jensen</i>	Inform	
	<p>Mr. Fogg asked that a quarterly proforma on Home Health be included in financials on a quarterly basis. Mr. Jensen shared that SVH experienced a \$300,000 Medi-Cal profit on fully allocated costs last year.</p> <p>Paying down the lines of credit was discussed.</p>		
6. YEAR TO DATE OPERATING PROJECTION	<i>Jensen</i>	Inform/Action	

AGENDA ITEM	DISCUSSION	ACTIONS	FOLLOW-UP
	Mr. Jensen distributed a handout on YTD Operating Projections including actuals through October 2015 and budget numbers for November 2015 to June 2016.	Mr. Jensen will revise the Projection as discussed and distribute to Committee.	
7. ADJOURN	<i>Fogg</i>		
	Meeting adjourned at 6:00pm.		



SONOMA VALLEY HEALTH CARE DISTRICT
GOVERNANCE COMMITTEE MEETING
MINUTES
TUESDAY, DECEMBER 15, 2015
8:30AM

ADMINISTRATION CONFERENCE ROOM
347 ANDRIEUX STREET, SONOMA, CA 95476

AGENDA ITEM	RECOMMENDATION	
MISSION STATEMENT <i>The mission of the SVHCD is to maintain, improve, and restore the health of everyone in our community.</i>		
1. CALL TO ORDER/ANNOUNCEMENTS	<i>Hohorst</i>	
2. PUBLIC COMMENT SECTION <i>At this time, members of the public may comment on any item not appearing on the agenda. It is recommended that you keep your comments to three minutes or less. Under State Law, matters presented under this item cannot be discussed or acted upon by the Committee at this time. For items appearing on the agenda, the public will be invited to make comments at the time the item comes up for Committee consideration.</i>	<i>Hohorst</i>	
3. CONSENT CALENDAR <ul style="list-style-type: none"> • Minutes from 9.22.15 	<i>Hohorst</i>	Action MOTION to approve by Boerum. All in favor.
4. POLICY GOVERNING BIDDING FOR FACILITY CONTRACTS Bring forward to January 7, 2016 Board meeting as action item	<i>Hohorst</i>	Action MOTION to approve by Boerum. All in favor.
5. POLICY ON APPOINTMENT OF COMMITTEE MEMBERS Bring forward to January 7, 2016 Board meeting as action item	<i>Hohorst</i>	Action MOTION to approve by Boerum. All in favor.
6. ADJOURN	<i>Hohorst</i>	



**SONOMA VALLEY HEALTH CARE DISTRICT
QUALITY COMMITTEE
REGULAR MEETING MINUTES
Wednesday, November 18, 2015
Schantz Conference Room**

Committee Members Present	Committee Members Present cont.	Members Not Present	Admin Staff /Other
Jane Hirsch Carol Snyder Michael Mainardi Cathy Webber Ingrid Sheets Susan Idell H. Eisenstark Kelsey Woodward Brian Sebastian, M.D. Keith Chamberlin, MD, MBA		Joshua Rymer	Leslie Lovejoy Robbie Cohen, M.D. Michelle Donaldson Scott Perryman, M.D. Gigi Betta

AGENDA ITEM	DISCUSSION	ACTION
1. CALL TO ORDER/ANNOUNCEMENTS	<i>Hirsch</i>	
The meeting was called to order at 5:00pm		
2. PUBLIC COMMENT	<i>Hirsch</i>	
No public comment.	None	
3. CONSENT CALENDAR	<i>Hirsch</i>	Action
QC Minutes, 10.28.15		MOTION to approve Consent by Idell and 2 nd by Mainardi. All in favor.
4. BARIATRIC SERVICE AT SONOMA VALLEY HOSPITAL	<i>Dr. Scott Perryman</i>	Inform
Dr. Scott Perryman gave an engaging presentation on Bariatric services available at SVH. Topics included the rise of obesity in America, the three Bariatric surgery procedures offered and the benefits of the Destination Care Model.		
5. POLICY & PROCEDURE	<i>Lovejoy</i>	Action
There are no Policies or Procedures for this meeting.		
6. QUALITY REPORT NOVEMBER 2015	<i>Lovejoy</i>	Inform/Action
Ms. Lovejoy reported on the Leapfrog Survey Report results and a		

AGENDA ITEM	DISCUSSION	ACTION
detailed report on areas of opportunity for improvement 2015-16. In the interest of time, Ms. Lovejoy gave an abbreviated Quality Report.		
7. CLOSING COMMENTS	<i>Hirsch</i>	
8. ADJOURN	<i>Hirsch</i>	
9. UPON ADJOURNMENT OF REGULAR OPEN SESSION	<i>Hirsch</i>	
10. CLOSED SESSION	<i>Sebastian</i>	Action
<u>Calif. Health & Safety Code § 32155</u> Medical Staff Credentialing & Peer Review Report		
11. REPORT OF CLOSED SESSION	<i>Hirsch</i>	Inform/Action
There was no credentialing report.		
12. ADJOURN Meeting adjourned at 6:00pm	<i>Hirsch</i>	

8.

CHA PRESENTATION
UPDATES AND PREDICTION
OF
HEALTHCARE IN CALIFORNIA

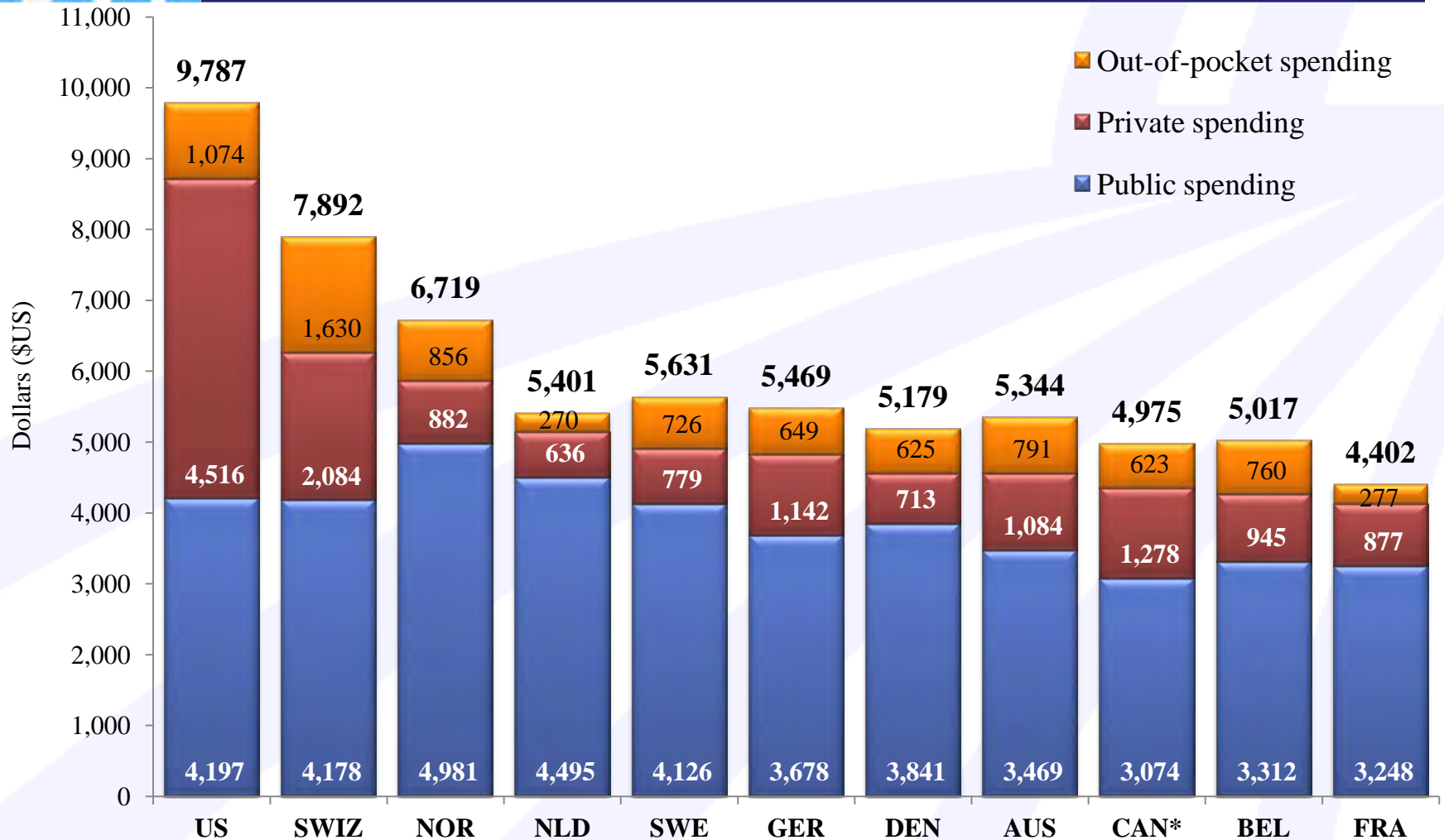


Update on a Rapidly Changing Healthcare Environment

Anne McLeod
Senior Vice President, Health Policy and Innovation

California Hospital Association
February 4, 2016

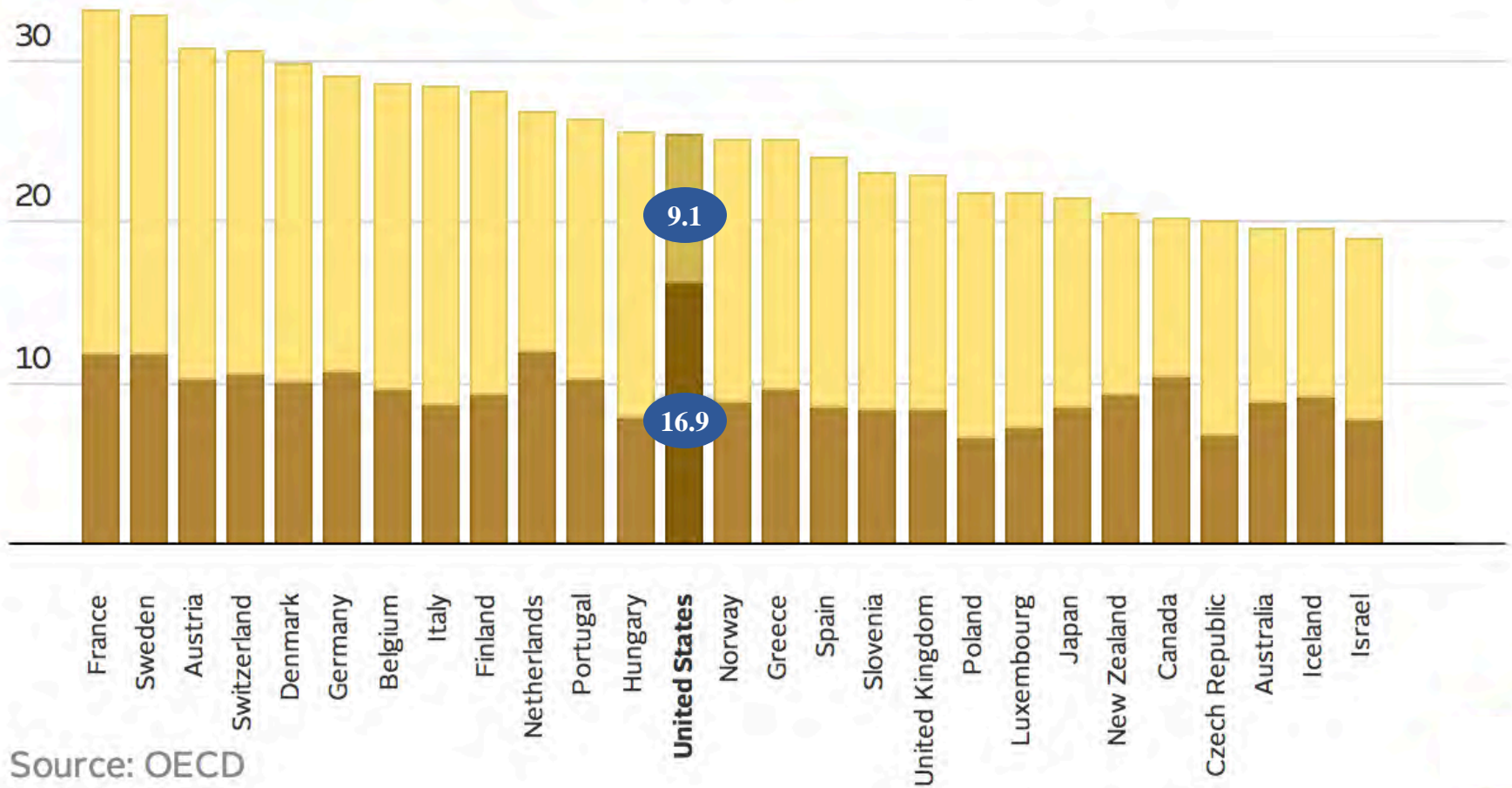
Healthcare Spending – Global (per capita)



Health Spending vs Social Spending

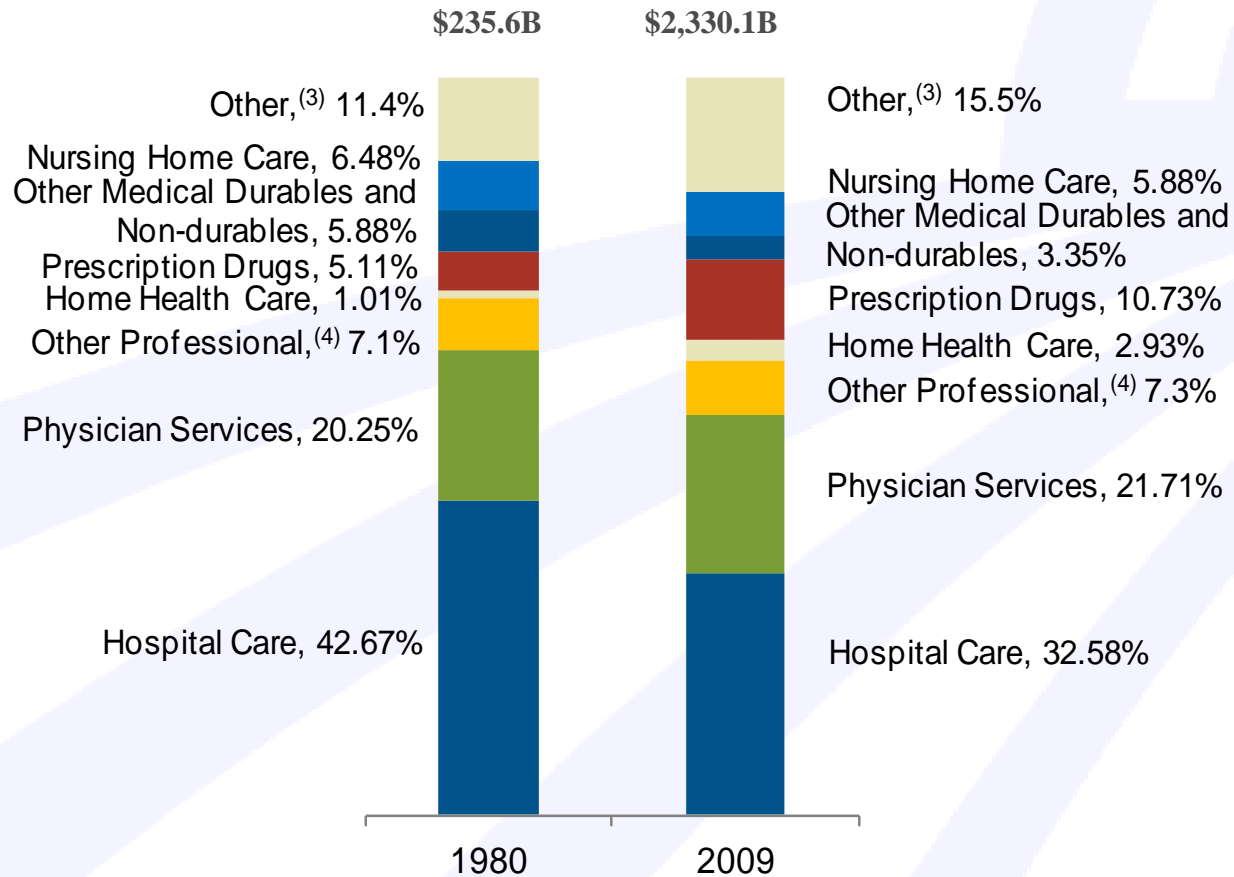
■ Health expenditures as % of GDP

■ Social service expenditures as % of GDP



Source: OECD

National Health Expenditures - By Category



Source: Centers for Medicare & Medicaid Services, Office of the Actuary. Data released January 6, 2011.

(1) Excludes medical research and medical facilities construction.

(2) CMS completed a benchmark revision in 2009, introducing changes in methods, definitions and source data that are applied to the entire time series (back to 1960). For more information on this revision, see <http://www.cms.gov/nationalhealthexpenddata/downloads/benchmark2009.pdf>.

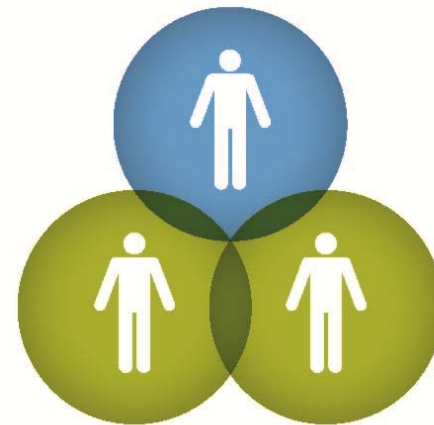
(3) "Other" includes net cost of insurance and administration, government public health activities, and other personal health care.

(4) "Other professional" includes dental and other non-physician professional services.

Source: American Hospital Association

Medi-Cal Coverage Expands (ACA)

- Providing coverage to more than 12 million residents – that's nearly one in three Californians, includes half of all children
- Access barriers are amplified by the Medi-Cal provider rate reductions enacted during California's economic downturn
- Expanding coverage without ensuring access to needed care is a problem
- Facts / backlash



Nearly **1 in 3** Californians
depend upon Medi-Cal



Demand for Services Surges

- The Medi-Cal expansion is driving increased demand for health care services in California's hospitals
- More than 200,000 additional Medi-Cal patients a year are being admitted to hospitals for acute care
- Hospital Medi-Cal outpatient visits have grown by more than 3.6 million a year under the coverage expansion



200,000 +

additional acute care
Medi-Cal patients

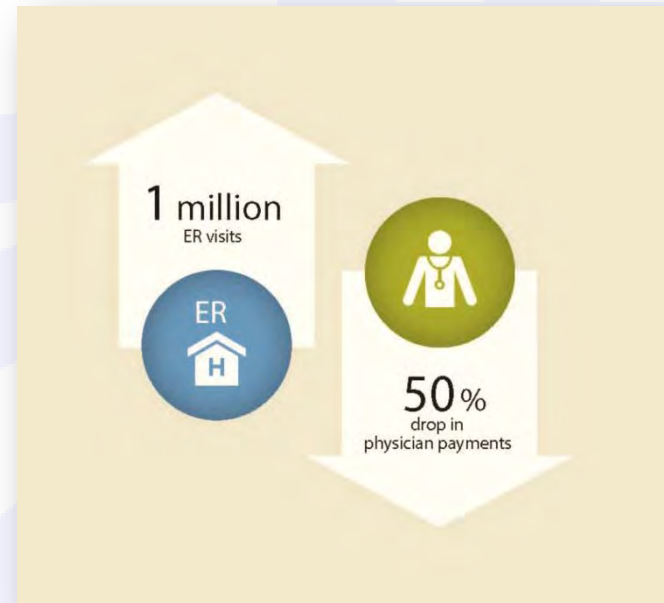


3.6 million +

increase in Hospital Medi-Cal
outpatient visits

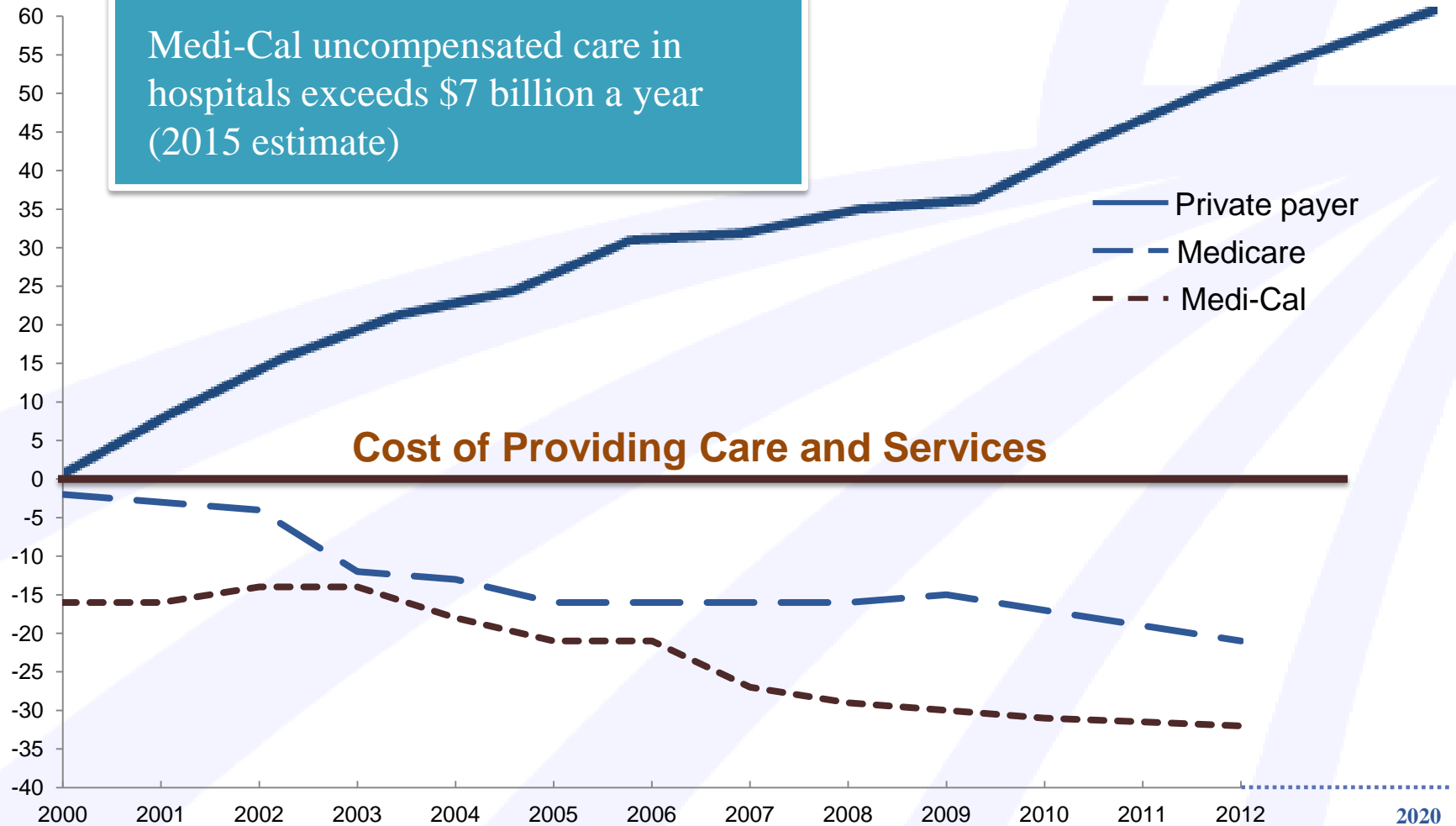
Coverage Does Not Equal Access

- The demand for care is driving an estimated one million more Medi-Cal enrollees to hospital emergency rooms
- Reduced payments to primary care doctors has reduced access to basic medical care
- Many Medi-Cal patients turn to overcrowded hospital emergency rooms



Medi-Cal Under-Funding Crisis/Cost Shift

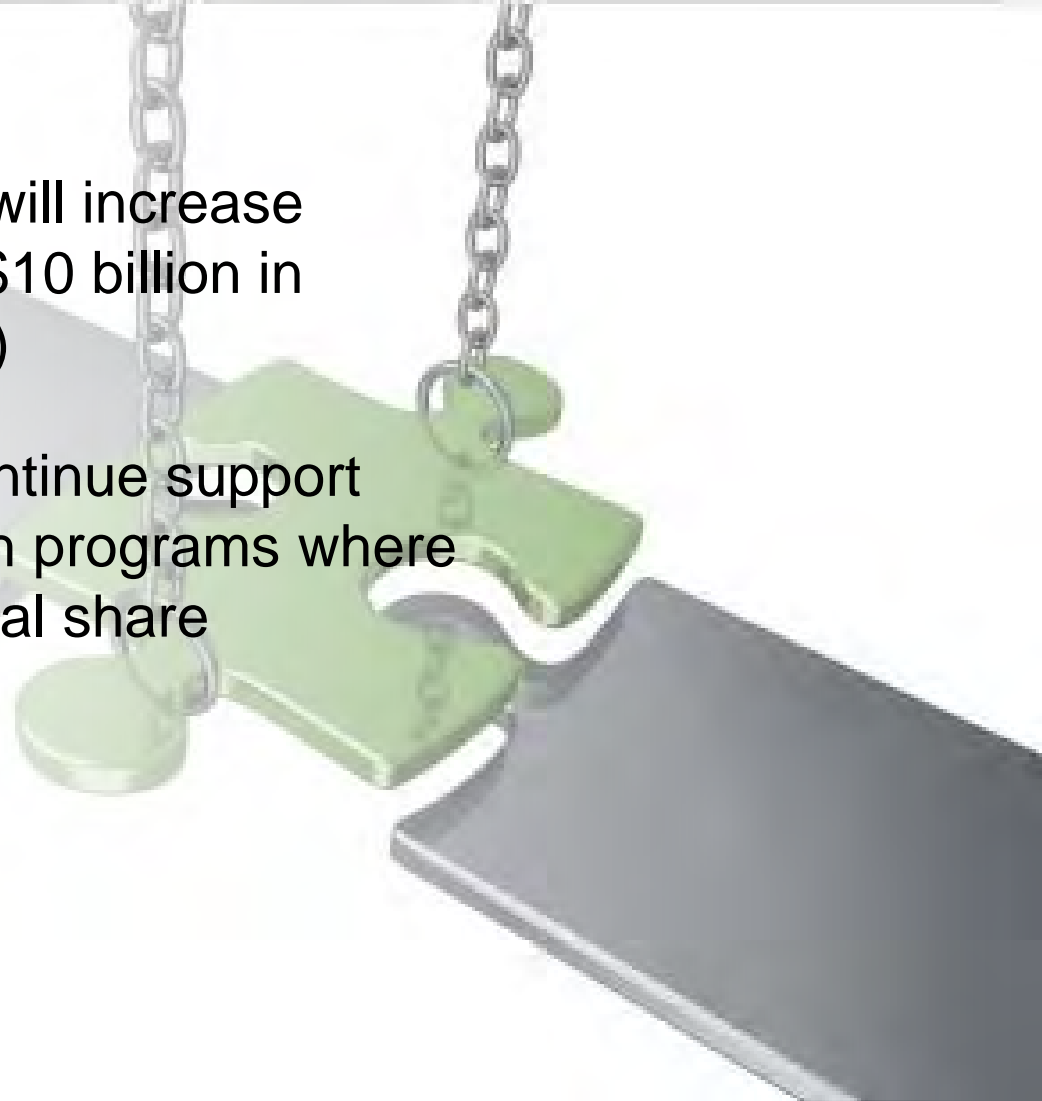
Medi-Cal uncompensated care in hospitals exceeds \$7 billion a year (2015 estimate)





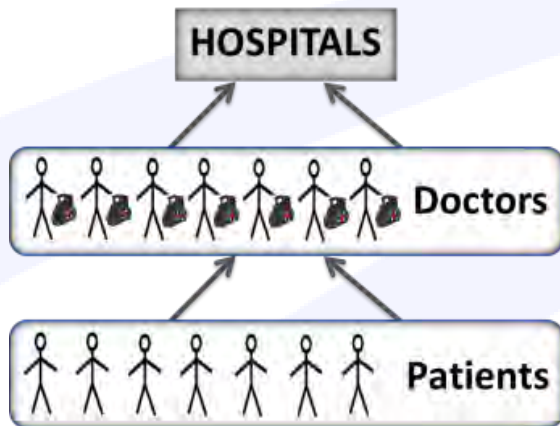
Closing the Gap

- The hospital fee program will increase payments to hospitals by \$10 billion in 2014-2016 (2016 initiative)
- Section 1115 Waiver to continue support for public hospitals through programs where they provide the non-federal share

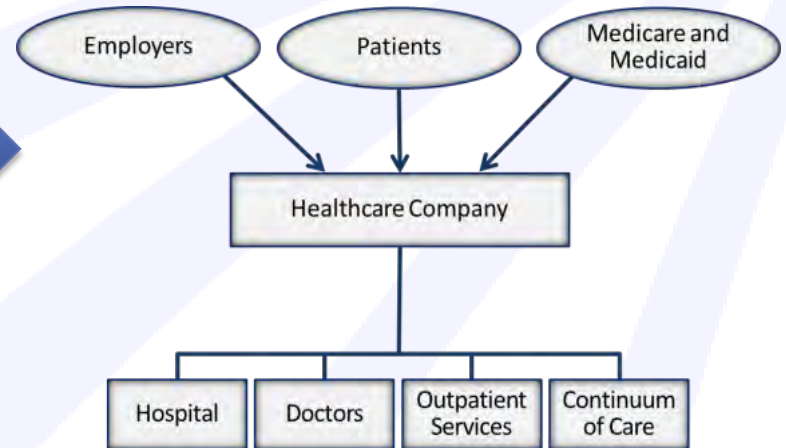


New Business Model Emerges

1946-Today



2016 (and Beyond)

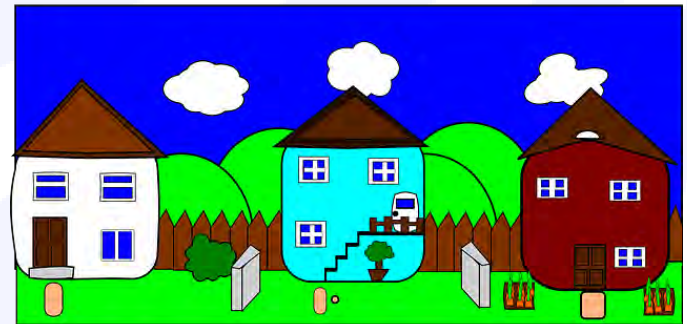


Population Health Management – A Service Delivery Definition

“Population health management occurs when a healthcare system or network of providers works in a coordinated manner to improve the overall health, health outcomes, and well-being of patients across all defined care settings under risk-bearing arrangements.”

The healthcare system or network of providers may work under contractual arrangements with another entity such as an insurer.

Population Health Management is not:



Drivers of Population Health Management



New entrants are redefining care delivery models

Fact: Of the 38 Fortune 50 companies with a major stake in healthcare, 24 are new entrants

New Entrants & Disruptors

Payors are shifting risk to providers & consumers and incentivizing low cost quality care



Fact: By 2018, 50% of health systems are expected to apply for an insurance license

Risk Shifting



Healthcare players are expanding their scope of services to capture additional revenue streams

Fact: Total hospital transaction value increased from \$1.9B in 2012 to \$18.6B in 2013

Convergence

Consolidation & Affiliation

Healthcare players are coming together to achieve scale and maximize efficiencies



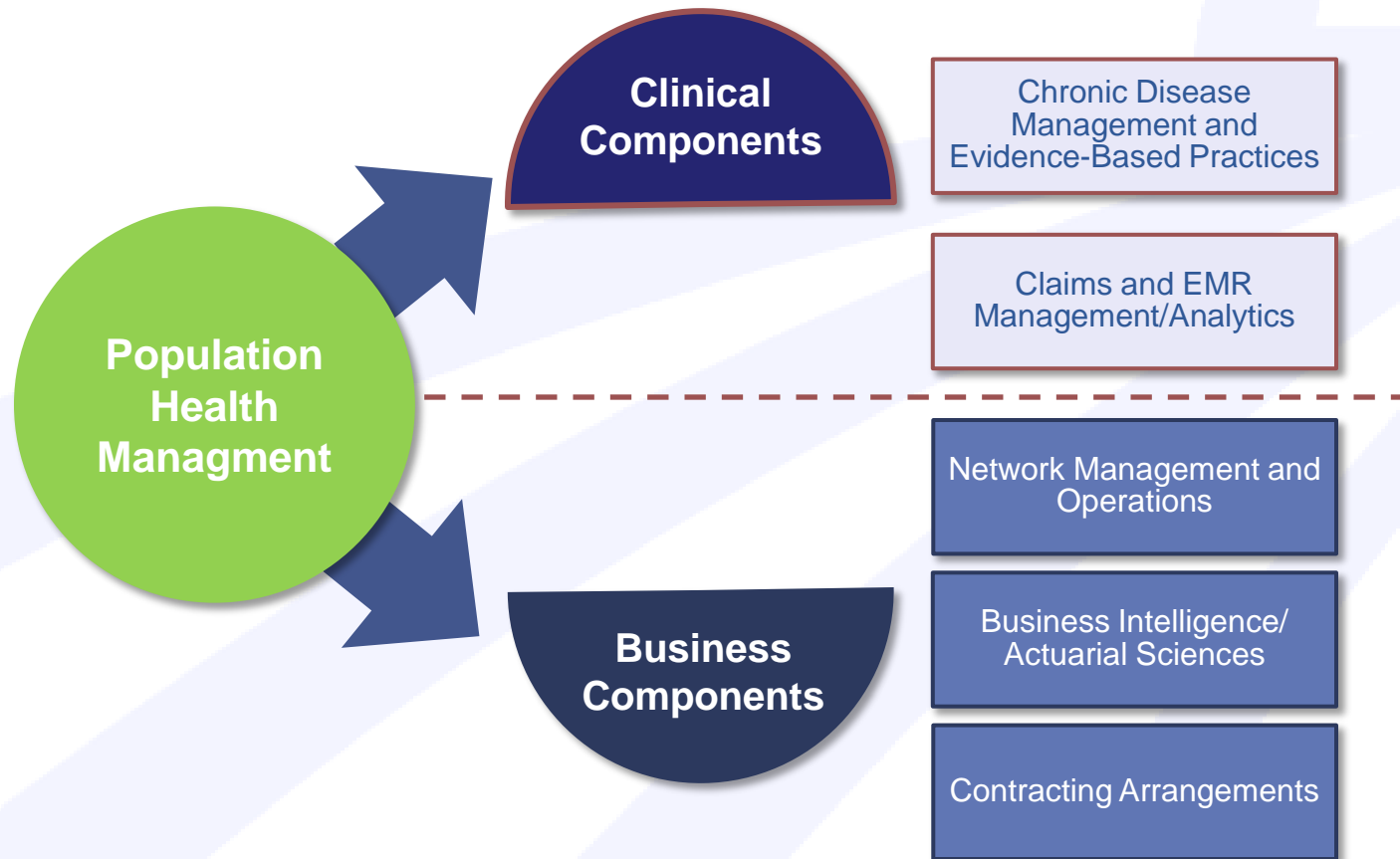
Fact: Consolidation has increased more than 50% since 2009

Health care leaders will need to adjust their strategy to align with the new definitions of success in the New Health Economy

Drivers of Population Health Management

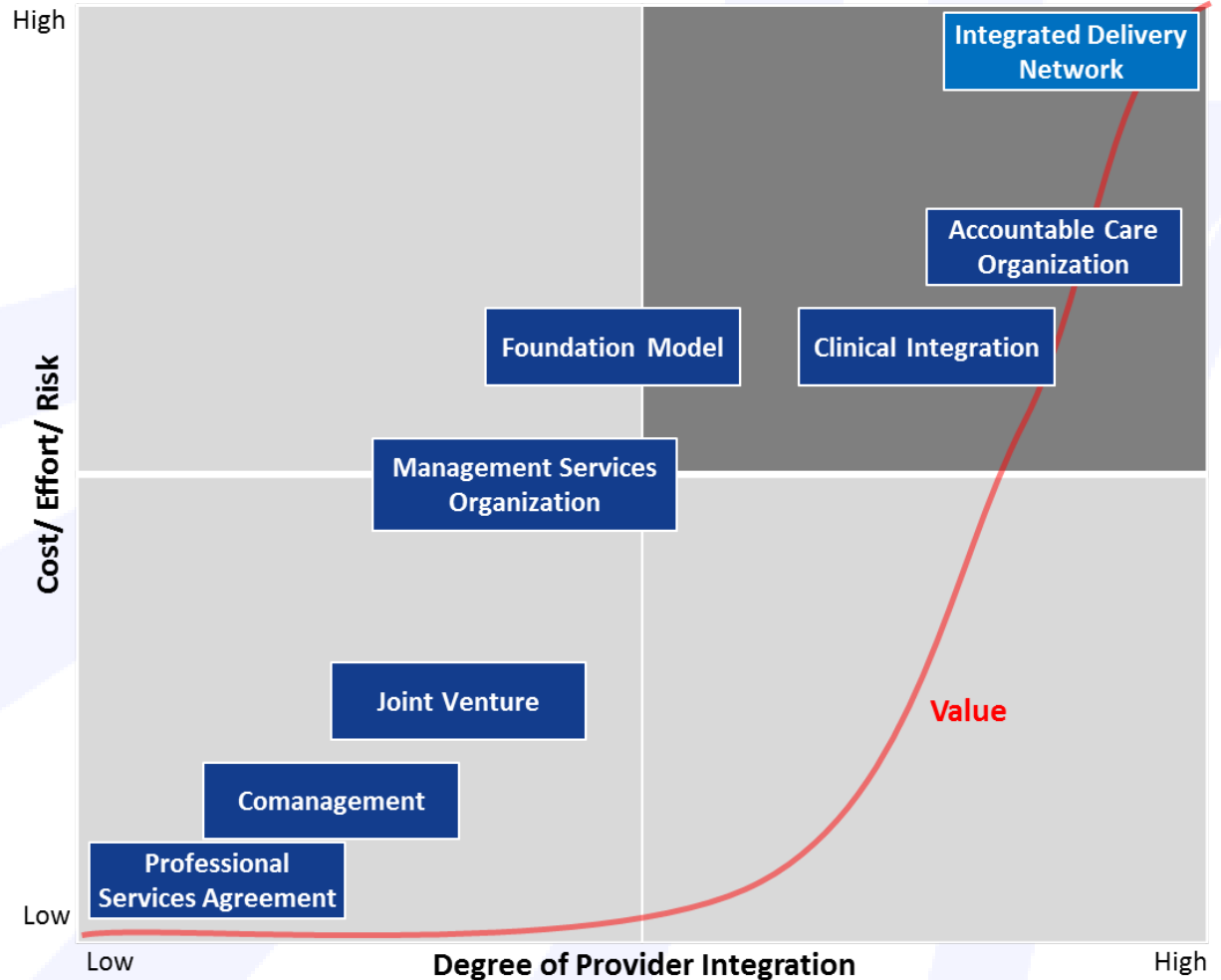


Population Health Management – Clinical and Business Components



Population Health Management – Integration Mechanisms

Realizing the promise of population health management will require the application of the most difficult integration mechanisms





Population Health Management – Segmentation: Identification, Stratification, Prioritization

IDENTIFICATION

What are the population groupings?

STRATIFICATION

Where do patient populations fall on the risk continuum?

PRIORITIZATION

Where are the greatest opportunities for early and continuous intervention?

Population Health Management – Segmentation



Healthy

- Wearable health monitoring technologies, mobile, smartphone-enabled devices
- Reminders for annual wellness check-ups and cancer screening services
- Telehealth services provide easy access and routine interventions
- Patient portals and personal health records – results review and tracking



At-Risk & Stable

- Health risk assessments, targeted calls, emails, text invitations and routinized contact
- Online education, health coaching and group initiatives prediabetes, blood pressure control, weight management, etc.



Chronic Simple & Complex

- Home monitoring
- Extended team care planning, medication compliance, scheduled reviews and tracking of interventions
- Patient and family member contribution to care team notes
- Predictive and prescriptive views of outcomes and cost



Critical

- 24/7 services needed to keep patients in their home, avoid unnecessary hospitalizations, support family caregivers and reduce the burden on family physicians
- Patients and caregivers benefit from electronic communications of Advance Directives and Powers of Attorney, specialized care pathways, pain management protocols, etc.
- New initiatives examining the role of tele-hospice



Clinical Leadership – New Competencies

- **Fostering clinician leadership**
- **Network development and management**
- **PHM and associated risk**
- **Clinical, business and consumer intelligence**
- **Innovation and transformation**
- **Technology**



CERTIFIED



Physician Leadership Imperative

Physician Core Competencies

- Medical knowledge
- Patient care
- Practice-based learning and improvement
- System-based practice
- Professionalism
- Interpersonal and communication skills
- Use of informatics



From Top
Doctor to
Physician
Leader

Next-Generation Core Competencies

- Systems theory and analysis
- Use of information technology
- Cross-disciplinary training and multidisciplinary teams
- Expanded knowledge areas
- Interpersonal and communication skills

The competencies that make an individual a good physician are not the same competencies that make a physician a great leader. However, the heart of being a good physician leader is being a good physician.



Questions?



Thank you!

Anne McLeod

Sr. Vice President

Health Policy/Innovation

amcleod@calhospital.org

916-552-7536

9.

RESOLUTION No. 327
1206(b) CLINIC
FORMATION



To: Sonoma Valley Health Care District Board of Directors

From: Ken Jensen, Chief Financial Officer and Michelle Donaldson, Chief Revenue Officer

Date: February 4, 2016

Re: Resolution No. 327 Action to Establish 1206 (b) Clinic

This letter to the SVHCD Board is to summarize and obtain approval for: Action to Establish a District H&S Code Section 1206 (b) Clinic in furtherance of the District's Community Needs Assessment for Patient Access to Primary and Specialty Care.

Overview

We wish to develop strategic methods to support specific physician practices both new and current to remain in our community and provide our population with access to care.

California Health & Safety Code Section 1206 provides statutory mechanisms for the operation of Hospital or District affiliated primary care services, and non-profit community based primary care and specialty clinics. Leadership proposes a 1206(b) District established clinic for our physicians who wish to work under an alternative to private practice or the 1206 (d) clinic such as Prima Medical Foundation. As seen in our preliminary discussions, the district operated clinic will also serve as a physician recruitment tool for primary physicians, specialists and mid-level providers.

We wish to begin the 1206(b) clinic with Dr. Parinaz Azari, Pain Management Specialist whose Physician Needs Assessment completed with Crimson Market Advantage indicates that there is an unmet demand for services in Sonoma County. This information is conclusive to the issue of accessibility for patients to obtain appointments and much needed services in a timely manner, therefore leaving our area. As we are seeing this in pain management, we also understand this to be happening in other areas such as primary care, OBGYN, and other specialties. Our strategy is to begin with pain management services and expand to primary care and OBGYN within the next 12 months. We have had other specialist who are interested in this model which include Orthopedics and ENT which we will complete the due diligence within the next 12 month timeframe as well. Our model is to establish a closed network of physicians to provide our community with the much needed primary and specialty services without having to leave our area.

A financial proforma will be established for each physician and the collective physician development programs.

Request for approval by the SVHCD Board for the formation and operation of a 1206(b) clinic authorizing SVH Management to:

A. Approve Budget: TBD to encompass the [annual / next fiscal year....] 1206(b) program.

A proforma is being developed for each of the projects planned for implementation. Management will develop a new proforma for each new addition to the clinic and will keep to the overall budget.

B. Approve contracts for implementation of the clinic as budgeted including:

- Professional Services Agreements. Contracts with physicians establishing a basis for them to work with the clinic and for the District to pay for their services based on compensation market surveys, including benefits and productivity incentives.
- Asset Purchase agreements. Agreements with individual physicians to purchase their hard assets to be used in the clinics based on a market based valuation of the assets. The District will not pay for soft assets like goodwill or charts.
- Billing Agreement. A Billing contract will be signed with MMPC, an established local physician practice billing service.
- Management agreement. A management contract will be signed to hire the staff and manage the day to day operations of the clinic settings.
- Space Leases. The District will sign sub-leases for the on-boarding 1206b physicians to transition the offices to the clinic. The offices have been consolidated in various locations around the community to increase access to care and gain some economies of scale and promote ease of physician and patient access to the Hospital.
- Letter of intent. For many of the physicians a letter of intent may be signed once Management knows the key terms of agreement prior to finalizing a services agreement.
- Implement and execute operational agreements within the established budget, and all related documents and agreements, deemed beneficial and necessary by Management, consistent with establishment and operation of a District 1206(b) clinic.

Timeline

- | | |
|--|----------------------------------|
| • 1206b recommendation to Board | February 4 th , 2016 |
| • LOI completed | February 11 th , 2016 |
| • Operational, management and asset purchase agreement | February 25 th , 2016 |
| • Contractual work, PSA finalization, Billing Agreement | March 24 th , 2016 |
| • Space lease completed | March 24 th , 2016 |
| • 1206b budget for Board approval (pending recommendation) | April 7 th , 2016 |

Attachment

Resolution No. 327



RESOLUTION No. 327

RESOLUTION SETTING THE DEVELOPMENT OF A 1206B CLINIC TO BEGIN 2016 FISCAL YEAR FOR THE PURPOSE OF PROVIDING SERVICES TO THE PATIENTS IN THE COMMUNITY

WHEREAS, by resolution, adopted by the Board of Directors (the “Board”) of the Sonoma Valley Health Care District (the “District”) on February 4th, 2016, the Board determined and declared that public interest and necessity demanded the need to establish a 1206b clinic determined by the Health and Safety code 1206b allows for districts to establish a clinic for the purpose of providing clinical services to the community and

WHEREAS, Sonoma Valley Health Care district wants to establish such a clinic for its primary service area.

NOW THEREFORE, the Board of directors for SVHCD does hereby resolve the establishment of a 1206b clinic

WHEREAS, at such election there was submitted to and approved by the requisite two-thirds (2/3) vote of the qualified electors of the District a question as to the development of such clinic for the community of Sonoma

WHEREAS, pursuant to the California Health and Safety Code 1206b (the “Act”), the District is empowered to control management of such practice

NOW, THEREFORE, THE BOARD OF DIRECTORS OF SONOMA VALLEY HEALTH CARE DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. Recitals. All of the recitals herein are true and correct. To the extent that the recitals relate to findings and determinations of the Board, the Board declares such findings or determinations to be made thereby.

Section 2. General Authority. The Chair, the Secretary, the Chief Executive Officer and the Chief Financial Officer, and their respective designees, are each hereby authorized, empowered and directed in the name and on behalf of the District to take any and all steps which they or any of them might deem necessary or appropriate in order to give effect to this resolution.

Section 3. Effective Date. This resolution shall take effect immediately on and after its adoption.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Sonoma Valley Health Care District, a political subdivision of the State of California, on this 4th day of February 2016, by the following vote:

HIRSCH

HOHORST

RYMER

NEVINS

BOERUM

Jane Hirsch
Chair, Board of Directors
Sonoma Valley Health Care District

ATTEST:

Peter Hohorst
1st Vice Chair, Board of Directors
Sonoma Valley Health Care District

10.

**SATELLITE
HEALTHCARE LEASE**



Meeting Date: February 4th, 2016
Prepared by: Michelle Donaldson, Chief Revenue Officer
Agenda Item Title: Satellite Healthcare lease of space

Recommendations:

Enclosed is a recommendation regarding entering into an agreement with Satellite Healthcare to lease space from Sonoma Valley Hospital in order to construct an outpatient dialysis unit.

Background:

An active member of our community brought to our attention the need for an outpatient dialysis unit due to the increased need for transportation. After discussions, Satellite Healthcare has requested that a dialysis service be placed in our facility thus launching a pilot program aligned with their strategic plan to bring dialysis back to the patient in a chronic care setting. A study of need completed by Satellite Healthcare concluded that within 5 miles of Sonoma Valley Hospital there are currently 50 end stage renal disease residents who require dialysis an average of 3 times a week.

Consequences of Negative Action/Alternative Actions:

The consequences of a negative action would be to continue the current state of our community. Our residents cannot receive the care and treatment they need to maintain and improve their quality of life. This issue was solidified by community focus group meetings held by Sonoma Valley Hospital and Satellite Healthcare in July 2015.

Financial Impact:

The financial impact of this recommendation is as follows:

- Rent revenue of \$81,768 per year with an increase of 2.5% per year for 5 years plus 2 options of extensions for 3 years and 2 years
- Timeshare rent of \$6,000 per year with increases as clinic volumes increase
- Santa Rosa Nephrology Specialist are now local to provide services to our community
- Vascular surgery working with Nephrology for vascular access services to patients
- Cost of \$35,000 from Sonoma Valley Hospital towards make ready of the space

Attachment:

Please see enclosed lease and addendum



AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only December, 2015, is made by and between Sonoma Valley Health Care District, dba Sonoma Valley Hospital and Satellite Healthcare, Inc. ("Lessor")

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 347 Andriex St., Suite No. TBD and provided by Lessor prior to Rent Commencement Date, located in the City of Sonoma, County of Sonoma, State of California, with zip code 95476, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): The Portico entrance and approximately 3,401 square feet in the former emergency room of a total square feet for the project. Exact location and square footage is subject to Lessee's approval of actual space plan. (See Addendum ¶ 50)

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the 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." (See also Paragraph 2)

1.2(b) Parking: See Addendum ¶ 51 unreserved vehicle parking spaces. (See also Paragraph 2.6)
1.3 Term: five (5) years and -0- months ("Original Term") commencing See Addendum ¶ 52 ("Commencement Date") and ending See Addendum ¶ 52 ("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 upon full execution ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3 and 53)

1.5 Base Rent: \$See Addendum ¶ 55 per month ("Base Rent"), payable on the first day of each month commencing See Addendum ¶ 54. (See also Paragraph 4 and 55)

[X] If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph (See ¶ 56)
1.6 Lessee's Share of Common Area Operating Expenses: [TBD] percent ([TBD]%) ("Lessee's Share"). In the event that the 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 (See Paragraph 55).

1.7 Base Rent and Other Monies Paid Upon Execution:
(a) Base Rent: \$See Addendum ¶ 55 for the period first full month following Rent Commencement Date (RCD).
(b) Common Area Operating Expenses: \$[TBD] for the period first full month following RCD.
(c) Security Deposit: \$1 Month Base Rent ("Security Deposit"). (See also Paragraph 5)
(d) Other: \$ for
(e) Total Due Upon Execution of this Lease: \$[TBD]

1.8 Agreed Use: Dialysis treatment, related medical offices, general offices and other uses incidental to dialysis treatment. (See also Paragraph 8)

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: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- [] represents Lessor exclusively ("Lessor's Broker");
[] represents Lessee exclusively ("Lessee's Broker"); or
[] represents both Lessor and Lessee ("Dual Agency")
(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 % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.11 Guarantor. The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:
[X] an Addendum consisting of Paragraphs 50 through 77;
[] a site plan depicting the Premises; Exhibit A

- a site plan depicting the Project;
- a current set of the Rules and Regulations for the Project;
- a current set of the Rules and Regulations adopted by the owners' association;
- a Work Letter; Exhibit B
- other (specify): Exhibit C - Exclusions to Operating Expenses; Exhibit D - Form of Commencement Date Memorandum

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 that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, 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 Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 12 months as to the HVAC systems; and (ii) 30-days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see as set forth in Paragraph 7). (See Addendum 9 57) 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.** (See Addendum 9 57) Lessor warrants that to the best of its knowledge the improvements on the Premises 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 specific 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 specific 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 Applicable Requirements and especially the zoning 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 at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. 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 Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("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 elect to pay fifty percent (50%) of the amount of the Capital Expenditures which exceed six months' rent or 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 amortize such Capital Expenditure over its useful life, 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 1/44th of the monthly amortized amount 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, and 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) it 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 the Americans with Disabilities Act), 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 ~~Intentionally Deleted. 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.~~

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. Lessee shall not use more parking spaces than said number. Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, 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 the owner of such vehicle. ~~Lessee, which cost shall be immediately payable upon demand by Lessor.~~

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 Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas. ~~Common Areas shall be included without limitation, those men's and women's restrooms located adjacent to the Premises.~~

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 establish, 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. 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 non-compliance with said Rules and Regulations by other tenants of the Project, but shall use diligent efforts to enforce any non-compliance upon notice from any tenant of such non-compliance.

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 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. (See Addendum ¶ 5B)

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 except for the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) 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 tender 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 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) **"Common Area Operating Expenses"** are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, including, but not limited to, the following:

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

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

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

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion (except for earthquake insurance deductible) of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12-year period ~~its useful life~~ and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the ~~amortized~~ cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are 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 Common Area 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 annual Common Area Operating Expenses. Within 60 days after ~~the end of a calendar~~ 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 Common Area 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 ~~or if no future payment are due, refund such credit to Lessee.~~ 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) Common Area 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 insurance proceeds. (See Addendum 1159)

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 Common Area 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. 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.

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 Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. 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.** (See Addendum ¶ 61)

(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, by-products 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, 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 are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession 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 the Lessee taking possession, 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 shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice (at least 24 hours in advance), for the purpose of inspecting the condition of the Premises and 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 and such is caused by Lessee, or the inspection is requested or ordered by a governmental authority and is attributable to Lessee. 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.

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

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers for the Premises. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraphs 7.1(a) or 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months equal to the useful life of such replacement ~~144 (ie. 1/144th of the cost per month).~~ Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area 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 foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease. (See Addendum ¶ 62)

7.3 Utility Installations; Trade Fixtures; Alterations. (See Addendum ¶ 63)

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing 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 or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3-6 month's Base Rent in the aggregate or a sum equal to one three month's Base Rent in any one year. 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 reasonably 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 materialman'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 Lessee has not bonded the lien and 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 reasonable 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 at the time of granting its consent to the Tenant Improvements in Exhibit "B", any Alterations or Utility Installations ~~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 shall designate at such time whether such 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 broom 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, if this Lease is 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.

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance. (See Addendum ¶ 64)

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor by means of a policy endorsement 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 ~~\$2,000,000~~ 4,000,000 per occurrence with an annual aggregate of not less than ~~\$3,000,000~~ 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 Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, 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 order such insurance 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, reasonable attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by 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 \$10,000 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 *Gross* 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 9 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, ~~Lessee~~ or 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 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 is 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, provided that Lessor shall thereafter use diligent efforts to complete the repair or restoration.

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 **Definition.** 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 and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "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. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common. (See Addendum ¶ 65)

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 Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area 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 Common Area 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.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. 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. (See Addendum ¶ 66)

12. **Assignment and Subletting.** (See Addendum ¶ 67)

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 buy-out 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 140% 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 140% 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 140% 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 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 therefore 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 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 data safety 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 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.~~

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 for the next six (6) months. (See Addendum ¶ 68).

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 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. (See Addendum ¶ 69)

(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 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 floor area of the Unit, or more than 25% of the parking spaces is 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 and the unamortized value of the Alterations or Utility Installations paid for by Lessee, 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 or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers 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 the AIR Commercial Real Estate Association, 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 business 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 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 business 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 after execution of a mutually acceptable Non-Disclosure Agreement, 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 Premises, 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.

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 moneys 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) Lessor'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 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 that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that 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.~~

~~(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 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.

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 which was not paid or credited to such new owner.

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 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 on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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. 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.** 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 the AIR Commercial Real Estate Association.~~

~~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. (See Addendum ¶ 70)

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), or (iii) during the time Lessee is in monetary 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.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (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. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

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); 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.; 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.~~

~~(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific 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 ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.~~

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 THE AIR COMMERCIAL REAL ESTATE ASSOCIATION 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 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.

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

Executed at: _____ Executed at: _____
On: _____ On: _____

By LESSOR: Sonoma Valley Health Care District **By LESSEE:** Satellite Healthcare, Inc.
dba Sonoma Valley Hospital

By: _____ By: _____
Name Printed: _____ Name Printed: _____
Title: _____ Title: _____

By: _____ By: _____
Name Printed: _____ Name Printed: _____
Title: _____ Title: _____
Address: _____ Address: 300 Santana Row, Suite 300
San Jose, CA 95128

Telephone: (____) _____ Telephone: (650) 404-3600
Facsimile: (____) _____ Facsimile: (650) 404-3601
Email: _____ Email: _____
Federal ID No. _____ Federal ID No. _____

BROKER: _____ **BROKER:** _____

Attn: _____ Attn: _____
Title: _____ Title: _____
Address: _____ Address: _____

Telephone: (____) _____ Telephone: (____) _____
Facsimile: (____) _____ Facsimile: (____) _____
Email: _____ Email: _____
Federal ID No. _____ Federal ID No. _____
Broker/Agent BRE License #: _____ Broker/Agent BRE License #: _____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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ADDENDUM
TO THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE – NET
WITH SONOMA VALLEY HOSPITAL DISTRICT

THIS ADDENDUM TO STANDARD INDUSTRIAL/COMMERCIAL - MULTI-TENANT LEASE - NET (“**Addendum**”) is made and entered into by and between SONOMA VALLEY HOSPITAL DISTRICT (“**Lessor**”), and SATELLITE HEALTHCARE, INC., a California corporation (“**Lessee**”), as of the date set forth on the first page of that certain Standard Industrial/Commercial Multi-Tenant Lease - Net (the “**Lease**”) by and between Lessor and Lessee to which this Addendum is attached and incorporated. The terms, covenants, and conditions set forth herein are intended to and shall have the same force and effect as if set forth at length in the body of the Lease. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Lease. To the extent that the provisions of this Addendum A are inconsistent with any provisions of the Lease, the provisions of this Addendum A shall prevail.

50. Measurement of Premises. Prior to the Commencement Date (as defined in 1.3), Lessee shall have the right to independently measure and calculate the area of the Premises. Should Lessee’s independent measurement using BOMA Standards, identify a discrepancy between the actual square footage and the square footage defined in the Lease, Lessor and Lessee shall in good faith cooperate with each other to determine a mutually agreeable square footage calculation. In the event Lessor and Lessee are unable to agree on the measurement of the Premises, the final determination shall be made through a three party arbitration, as follows: within ten (10) days of the parties determining by giving written notice from either party to the other that they cannot agree on the final measurement of the Premises, each party shall specify in writing to the other the name and address of a person to act as the architect on its behalf. If either party fails to timely appoint an architect, the determination of the timely appointed architect shall be final and binding. The two architects shall have ten (10) days from the day of their respective appointments (the “**Determination Period**”) to make their respective determinations and agree on the final measurement of the Premises. If the two architects selected by the Lessor and Lessee cannot reach agreement on the final measurement of the Premises, such architects shall within five (5) business days jointly appoint an impartial third architect with at least ten (10) years of experience in measuring the size of premises, and the final measurement of the Premises shall be established by the three architects in accordance with the following procedures: The architect selected by each party shall state in writing his determination of the architect. The first two architects shall arrange for the simultaneous delivery of their determinations to the third architect no later than ten (10) days after the expiration of the Determination Period. The role of the third architect shall be to select which of the two proposed determinations most closely approximates the third architect’s determination of the final measurement of the Premises, and shall have no more than five (5) business days in which to select the final determination. The determination chosen by the third architect shall constitute the decision of the architects and be final and binding on the parties. Each party shall pay the cost of its own architect and shall share equally the cost of the third architect.

51. Parking. Lessor shall provide Lessee the parking lot adjacent to the Premises to Lessee for "Satellite Healthcare Patients Only" use and not less than 3 parking spaces per 1,000 square

feet of space. Lessee's employees may park in Lessor's designated employee parking lot. All parking provided to Lessee shall be at no cost to Lessee.

52. Term. The Original Term shall commence upon the date Lessor delivers possession of the Premises in the condition required under the Lease ("**Commencement Date**") and shall expire on the last day of the sixtieth (60th) month following the Commencement Date ("**Expiration Date**"). Upon determination of the Commencement Date, and upon either parties request, Lessor and Lessee shall execute a mutually agreeable memorandum in the form attached hereto as Exhibit "D".

53. Early Possession Period. From and after the execution of the Lease, Lessee shall have access to the Premises until the Commencement Date (the "**Early Possession Period**"), without the obligation to pay Base Rent or Common Area Operating Expenses (defined in Lease Paragraph 4.2(a)), for the purposes of designing, planning, construction and installing all Tenant Improvements, underground plumbing and sewer, furniture, fixtures and equipment necessary for its operations that are not part of Landlord's Work. All terms and conditions of the Lease, exclusive of payment of Base Rent or Common Area Operating Expenses shall apply to the Early Possession Period, as if the Lease were in full force and effect. Upon the full execution of the Lease, Lessor will grant Lessee permission to perform inspections of the roof and mechanical systems by third party contractors. Further, Lessor agrees to provide Lessee with any inspection reports in its possession that have been performed on the Premises within the prior two (2) years.

54. Rent Commencement Date. Base Rent and Common Area Operating Expenses shall commence one hundred twenty (120) days following the Commencement Date.

55. Revisions to Base Rent and Lessee's Share. In the event the square footage of the Premises is revised pursuant to Paragraph 50 above, Base Rent and Lessee's Share shall be adjusted accordingly.

56. Base Rent Schedule. Subject to Paragraph 55 above, Lessee shall pay Base Rent upon the following schedule:

Period	Base Rent/sq. ft./month	Monthly Base Rent
Months 1 – 4*	\$0.00	\$0.00
Months 5 – 12	\$2.00	\$6,814.00
Months 13 – 24	\$2.05	\$6,984.00
Months 25 – 36	\$2.10	\$7,158.00
Months 37– 48	\$2.15	\$7,337.00
Months 49 – 60	\$2.21	\$7,521.00

**The first four full calendar months and any partial period prior to such four month period if the Commencement Date does not fall on the first day of the month.*

In addition, Lessor shall waive an additional three months of Base Rent upon issuance of occupancy permits required by all governmental agencies.

57. Condition. Lessor shall deliver the Premises to Lessee in the condition described in Exhibit B-1 and with the roof water tight and the Premises in compliance with all applicable laws and codes and free of Hazardous Materials. Notwithstanding the Lease to the contrary, any costs incurred by Lessor to deliver the Premises in the condition required herein shall not be included as part of the Common Area Operating Expenses (as defined in Lease Section 4.2(a)) of the Lease or passed through to Lessee as part of the Common Area maintenance and repair costs.

58. Common Area Changes. In exercising its rights under Paragraph 2.10, Lessor shall minimize interference with Lessee's use of and business operations in the Premises.

59. Exclusions to Common Area Operating Expenses. Notwithstanding anything to the contrary, Common Area Operating Expenses shall not include (i) those expenses listed in Exhibit "C" attached hereto, (ii) management expenses/fees in excess of 3% of the annual Base Rent for the Premises, (iii) Permitted Capital Expenditures (as defined below), and (iv) capital improvements associated with mechanical, roof or parking lot repair except as pursuant to Paragraph 7.1(d). "**Permitted Capital Expenditures**" mean only those costs identified as capital expenditures under Generally Accepted Accounting Principles (GAAP) and that are (a) reasonably intended to reduce Common Area Operating Expenses or water and/or energy consumption; (b) required after the date of the Lease under any Applicable Law that was not applicable to the Building at the time it was originally constructed; or (c) for replacement of any equipment or improvement needed to operate and/or maintain the Building and the Common Areas in the same condition as at the Commencement Date, ordinary wear and tear and damage from casualty or condemnation excepted. If the cost of a Permitted Capital Expenditure exceeds Ten Thousand Dollars (\$10,000.00), then such cost shall be amortized over its useful life, and the amount included in monthly Common Area Operating Expenses shall be limited to the monthly amortized cost thereof. The foregoing shall not apply to any particular capital expenditure triggered by Lessee as a result of Lessee's actual or proposed use, change in use, or modification to the Premises, which capital expenditures shall be Lessee's sole responsibility.

60. Audit. Tenant shall have ongoing rights to review and audit Lessor's books and records with respect to Common Area Operating Expenses. Not more often than once each calendar year, Lessee, upon thirty (30) days advance written notice thereof to Lessor, at Lessee's sole cost and expense, may retain an independent certified public accountant reasonably acceptable to Lessor, to review and audit Lessor's books and records with regard to the Common Area Operating Expenses for the Project and the calculations of Lessee's Share thereof. If it is reasonably determined by such auditors that Lessee overpaid its share of Common Area Operating Expenses, Lessor shall refund to Lessee the amount of such overpayment within thirty (30) days. If it is reasonably determined by such auditors that Lessee underpaid its share of any increase in Common Area Operating Expenses, Lessee shall pay to Lessor the amount of such deficiency within thirty (30) days. If it is reasonably determined by such auditors that Lessee overpaid its share of Common Area Operating Expenses by more than five percent (5%) for the applicable calendar year, Lessor shall reimburse Lessee for the reasonable costs of Lessee's audit.

61. Hazardous Substances. Lessor will deliver copies of all the hazardous material reports in its possession addressing the condition of the property, including the land, and if applicable, the groundwater under and about the Building to Lessee prior to Lease execution. Lessor will indemnify and hold Lessee harmless for any claims, costs or liabilities associated with any hazardous materials (collectively, "Claims") existing in, on, under, or about the Building which were not caused by Lessee, and Lessee will indemnify and hold Lessor harmless for Claims caused by Lessee. To the best of Lessor's knowledge, no Hazardous Substances are present in, on, under or about the Premises or the Project, and no action, proceeding, or claim is pending or threatened concerning any Hazardous Substances or pursuant to any Hazardous Substances laws. Lessor shall defend, indemnify and hold Lessee and anyone claiming under Lessee harmless from and against all claims, penalties, expenses and liabilities, including attorneys' and consultants' fees and costs, arising out of or caused in whole or in part, directly or indirectly, by or in connection with any Hazardous Substances in, on, under or about the Premises or Project,

except to the extent the same results from Lessee's release or admission of Hazardous Substances in or about the Premises in violation of Hazardous Substances laws. For the purposes of the indemnity provisions hereof, any acts or omissions of Lessor or anyone claiming under Lessor (whether or not they are negligent, intentional or unlawful) shall be strictly attributable to Lessor. Lessor's obligations under this Paragraph 61 shall survive the termination or expiration of the Lease.

62. Lessor's Obligations. Lessor, at its sole cost, shall be responsible on an ongoing basis for the structural elements of the building, (including but not limited to, the structural portions of the roof, roof screens, roof screen penetrations), foundation, footings, floor slab, load bearing walls and exterior walls to comply with all governmental laws, rules, regulations orders, building codes and/or ADA requirements. Lessor shall keep the exterior walls and windows maintained in good, clean condition, provided that damage cause by Lessee shall be repaired by Lessee, at its sole cost and expense.

63. Alterations. Lessor grants Lessee the right to perform nonstructural alterations to the Premises with Lessor's written consent, which shall not be unreasonably withheld, conditional or delayed. Lessee shall not be required to remove such Alterations at the end of the Lease Term or any exercised Option Term unless Lessor designates in writing at least ninety (90) days before the end of the Lease Term or any exercised Option Term, that Lessee is to remove such alterations and restore the Premises to the condition preceding the installation of such Alterations. Lessor's failure to provide such written notice within the time period described above shall be deemed Lessor's election not to have such Alterations removed.

64. Insurance.

(a) **Carried by Lessee.** The coverage amounts specified in the Lease shall not be increased during the term of the Lease, including any renewal term. Lessee shall not be required to carry earthquake or flood insurance.

(b) **Carried by Lessor.** Lessor shall maintain and keep public liability coverage under a commercial general liability policy with combined limits of not less than \$ 2,000,000 per occurrence and shall insure all building shell and site improvements within the Project under an all risk policy.

65. Real Property Taxes. Real Property Taxes shall not include (A) interest or penalties incurred by Lessor as a result of Lessor's late payment of Real Property Taxes, or (B) franchise, transfer, gift, inheritance, estate or net income taxes imposed upon Lessor.

66. Utilities and Services. Notwithstanding Paragraph 11 of the Lease to the contrary, in the event utilities or services are interrupted for more than five (5) consecutive days, Rent shall abate during the entire period of interruption until such utilities or services are restored.

67. Assignment and Subletting. Notwithstanding anything to the contrary in this Lease and provided Tenant delivers written notice to Landlord within ten (10) business days of such transfer, Tenant may, with Landlord's consent and not subject to any recapture, legal or transfer fees, or bonus rent provisions, sublet the Premises or assign the Lease to related physicians and/or joint venture partnerships or limited liability companies between Lessee and affiliated physicians and Tenant shall also have the right at any time to sublease or otherwise permit occupancy of all or any portion of its space to an affiliated physician, without the requirement of obtaining Landlord's consent. Any of the above are referenced hereafter as "**Permitted Transfer**" and the transferee is referenced as "**Permitted Transferee**". Notwithstanding any

sublease, Lessee shall not be relieved of its obligations under the Lease. Notwithstanding Paragraph 12.2(g) of the Lease to the contrary, in the event of a transfer to a Permitted Transferee, any Option granted to the original Lessee by the Lease shall also be transferred to such Permitted Transferee as if such Permitted Transferee were the original Lessee.

68. Late Charge. Notwithstanding Paragraph 13.4 of the Lease to the contrary, Lessor will not assess a late charge until Lessor has given written notice of Lessee's late payment for the first late payment in any twelve (12) month period and after Lessee has not cured such late payment within three (3) days from receipt of such notice. No other notices will be required during the following twelve (12) months for a late charge to be incurred.

69. Lessor's Default.

(a) If Lessor fails in performing any of its non-structural obligations and as a result of such failure to repair, there is a clear and imminent danger of personal injury or substantial property damage to the Premises, and such default continues for ten (10) days after written notice to Lessor, Lessee may perform the non-structural repairs and the amount of such reasonable costs and expenses incurred by Lessee shall be paid by Lessor within thirty (30) days after written demand by Lessee.

(b) With respect to Lessor's obligations the failure of which do not present a clear and imminent danger of personal injury or substantial property damage to the Premises or interruption of Lessee's operations, Lessor shall have thirty (30) days after written notice from Lessee to repair. In the event Lessor fails to complete repairs within such thirty (30) day period, Lessee may, but is not obligated to, perform said repairs and the amount of such reasonable costs and expenses incurred by Lessee shall be paid by Lessor within thirty (30) days after written demand by Lessee.

70. Original Lessee. Notwithstanding Paragraph 39.2, for the purposes of the Lease, a Permitted Transferee shall be deemed an original Lessee and any Option granted to the original Lessee under the Lease may be exercised by such a Permitted Transferee.

71. Building Signage. To the extent permitted by applicable laws, Lessee shall be entitled to install eyebrow signage above the main entrance to the Premises on the portico of the former emergency room porte cochere, subject to Lessor's approval, which shall not be unreasonably withheld or delayed. All costs associated with Lessee's signage design, installation and maintenance shall be at Lessee's sole expense.

72. Lessee Improvements. Lessee, at Lessee's sole cost and expense, shall have the right to construct those certain improvements as set forth and in accordance with Exhibit "B". Lessor shall cooperate and coordinate with Lessee for the installation of the Lessee Improvements, including, without limitation, coordinate with power re-routing, re-circuiting and temporary power shutdowns for affected panel boards.

73. Occupancy Requirements. Lessee shall have full access to the Premises seven (7) days per week, twenty-four (24) hours per day subject to all applicable City codes, provided, however, that Lessee's normal daily hours of business operation shall be 6:00 a.m. to 8:00 p.m. Except in the case of emergency access for use of hospital emergency exits and access to the existing PBX/data storage enclosure, Lessor shall have access to the Premises upon twenty-four (24) hours written notice. All non-emergency access shall be in compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

74. Use Contingency. This Lease shall be contingent upon Lessee receiving all ~~commercially reasonable discretionary approvals (the scope and nature of which shall be decided in Lessee's reasonable discretion)~~ permitting its use of the Premises; Lessor, at no additional expense, shall reasonably cooperate with Lessee in obtaining the approvals and permits. The contingencies described above shall be removed within 120 days following the full execution of the Lease. If approvals are not obtained within the aforementioned contingency period, Lessee may cancel the Lease with no further obligations on either party, except that Lessor shall return the deposit and prepaid rent to Lessee within ten (10) days of such lease termination.

75. Loading Access. Lessor shall provide an area reasonably acceptable to Lessee for third party delivery access to the Premises for Lessee deliveries as shown on the approved space plan.

76. Option to Extend.

(a) Lessee shall have two (2) options to extend the Original Term for a period of three (3) years for the first option and two (2) years for the second option (each an "**Extension Term**"), subject to Lessee's advance written notice to Lessor at least six (6) months prior to the expiration of the Original Term or subsequent Extension Term, as the case may be, of Lessee's intent to exercise its option to renew the term of the Lease. Base Rent during each option period shall be determined pursuant to Paragraphs 75(c) through 75(e).

(b) Notwithstanding Paragraph 39.2 of the Lease to the contrary, the options this Paragraph 74 may be assigned to or exercised by any Permitted Transferee.

(c) At the beginning of each Extension Term, the Base Rent shall be adjusted to 95% of Fair Market Value Rent (as determined below). After the first year of each Extension Term, the Base Rent shall increase by 2% annually through the balance of the term of such Extension Term.

(d) For purposes of determining Base Rent applicable to the first year of an Extension Term, "**Fair Market Value Rent**" shall mean the rental rate per square foot for medical use space comparable to the Premises in building type and age in the Lynwood area of Los Angeles County, California for leases being entered into at or about the time the determination is being made and adjusted to reflect the change if any, in market rates being experienced indicating the rates at or about this time of the commencement of the renewal term, taking into account and being adjusted for Lessee concessions, brokerage commissions, Lessee improvement allowances, existing improvements in the Premises (where Lessor does not have the right to have Lessee remove) as compared to the market comparables, the method of allocating and who pays for Common Area Operating Expenses, and the term of the lease being compared in relation to the renewal term.

(e) Within ten (10) days of the parties determining by giving written notice from either party to the other that they cannot agree on Fair Market Value Rent, each shall specify in writing to the other the name and address of a person to act as the appraiser on its behalf. Each such person shall be a commercial real estate appraiser with at least five (5) years of experience with the prevailing market rents for the area in which the Premises are located. If either party fails to timely appoint an appraiser, the determination of the timely appointed appraiser shall be final and binding. The two appraisers shall have thirty (30) days from the day of their respective appointments (the "**Determination Period**") to make their respective determinations and agree on the Fair Market Value Rent. If the two appraisers selected by the Lessor and Lessee cannot reach agreement on the Fair Market Value Rent, such appraisers shall within five (5) business

days jointly appoint an impartial third appraiser with qualifications similar to those of the first two appraisers, and the Fair Market Value Rent shall be established by the three appraisers in accordance with the following procedures: The appraiser selected by each party shall state in writing his determination of the Fair Market Value Rent, which determination will provide for periodic adjustments to the Base Rent if such appraiser believes that such adjustments are appropriate. The first two appraisers shall arrange for the simultaneous delivery of their determinations to the third appraiser no later than ten (10) days after the expiration of the Determination Period. The role of the third appraiser shall be to select which of the two proposed determinations most closely approximates the third appraiser's determination of the Fair Market Value Rent, and shall have no more than ten (10) days in which to select the final determination. The determination chosen by the third appraiser shall constitute the decision of the appraisers and be final and binding on the parties. Each party shall pay the cost of its own appraiser and shall share equally the cost of the third appraiser.

77. Biohazardous Storage and Disposal. Lessee shall, as part of Lessee's improvements, construct an approximately fifty (50) square foot area for bio-hazardous material storage. Lessee shall, at Lessee's expense, arrange for regular pickup and disposal of all biohazardous materials used by Lessee in accordance with applicable laws.

EXHIBIT A

SITE PLAN DEPICTING PREMISES

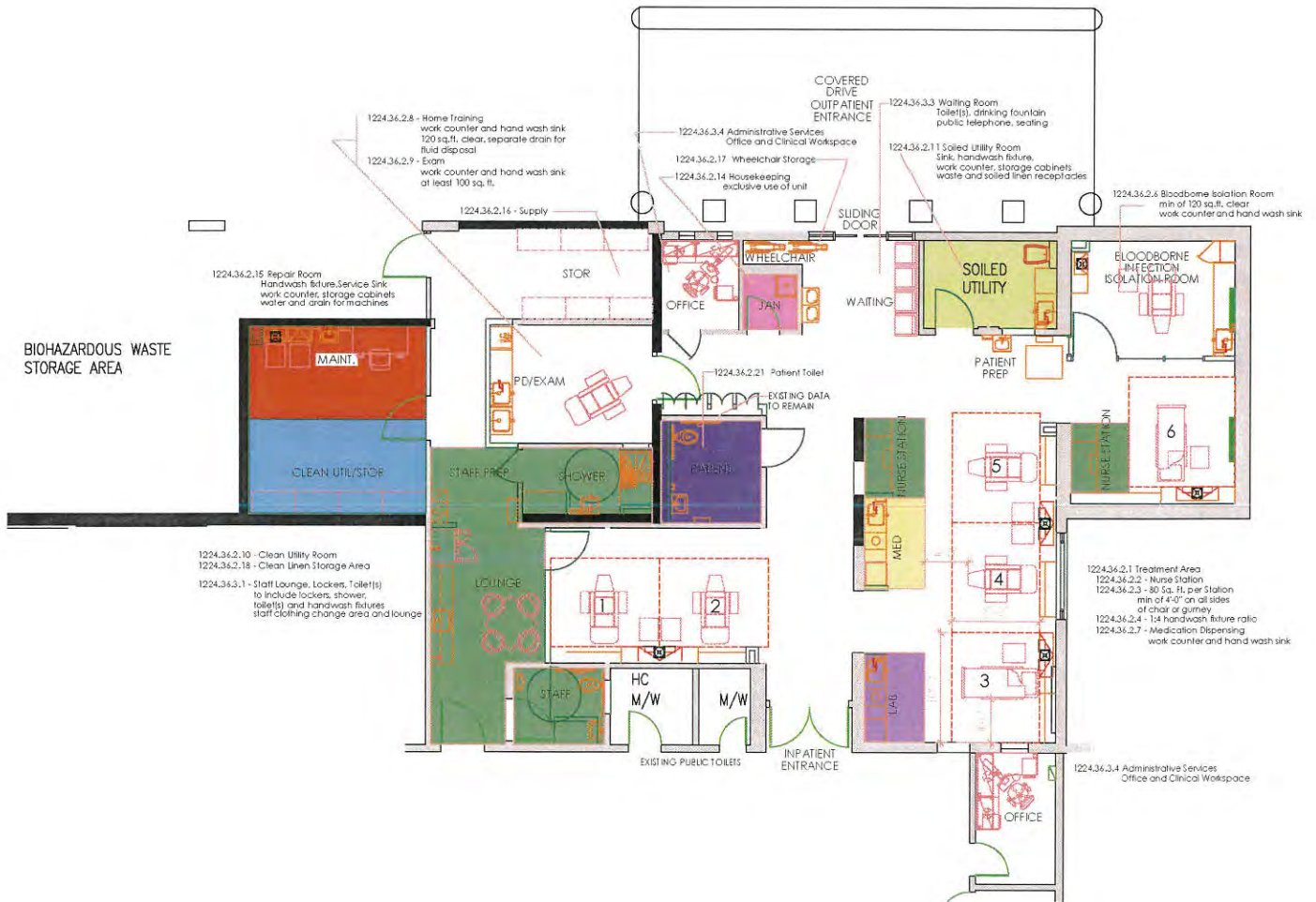


EXHIBIT B

WORK LETTER

1. **Lessor Improvements.** Lessor shall deliver the Premises in the condition described in Exhibit B-1 and subject to the terms and conditions stated therein.

2. **Lessee Improvements.** Lessee shall have the right, subject to applicable law, to make the following improvements to the Premises ("Lessee Improvements"):

Any improvements reasonably required by Lessee in order to construct the Premises substantially in the manner shown in Exhibit "A" and as required by Paragraph 73 of the Addendum and in accordance and compliance with all applicable laws, covenants or restriction of record, regulations, and ordinances in effect on the Commencement Date, including all requirements of OSHPD relating to the Use.

3. **Lessee Improvement Allowance.** Lessor shall pay to Lessee a \$35,000.00 construction allowance to be applied to the the total construction costs. In addition, Lessor will waive 3 months of rent upon issuance of occupancy by all required governmental agencies.

4. **Changes to Lessee Improvements.** Lessee shall have the right to modify the Lessee Improvements provided Lessee first obtain Lessor's prior written consent, which consent shall not be unreasonably withheld.

5. **End of Term Removal.** Lessee shall not be required to remove the Lessee Improvements at the end of the Lease term or sooner termination thereof.

6. **CONTRACTED SERVICES**

6.1 **Contracts.** Lessee will engage an Architect to prepare and submit Construction Drawings to required government agencies for review and permit issuance. Prior to submission for permit, Lessee's Architect will submit Construction Drawings including Mechanical, Electrical and Plumbing plans to Lessor's Building Engineer for review and approval. Lessor will review drawings and provide written disapproval or written approval to Lessee's Architect within business 3 days from submission. Lessor's approval shall not be unreasonably withheld, or delayed. If Lessor reasonably disapproves such Construction Drawings, Lessor shall specify the reasons for such disapproval, and Lessee shall within ten (10) days after receipt of Lessor's notice of disapproval, revise and resubmit such Construction Drawings to Lessor, correcting or altering such disapproved items. This process will be repeated until there are reasonably approved Construction Drawings. If Lessor has not notified Lessee in writing of its approval or disapproval within the three-day period, the Construction Drawings shall be deemed approved by Lessor.

(a) Lessee may initiate changes in the Work. Each such change must receive prior written approval of the Lessor within 3 business days from submission, such approval not to be reasonably withheld or delayed. Change orders shall be approved by the government agencies that issued the construction permit, if required.

(b) Lessee shall enter into a written construction contract reasonably approved by Lessor with a General Contractor which shall comply with Standards of Performance of this Work Letter.

(c) Lessee will arrange for project inspections as required by OSHPD.

6.2 **Contractors Standards of Performance.** Lessee shall hold the contract with the General Contractor. The Work shall be performed only by licensed Contractors and Subcontractors.

(a) Lessee's Contractor's and Subcontractors shall be required to procure insurance for workman's compensation, commercial automatic liability, and commercial general liability in at least \$1,000,000 limits per policy. Certificates of such insurance must be received by Lessor before the Work is commenced.

(b) Lessee's Contractor shall deliver work free from any and all liens, claims, chattel, mortgages, and conditional sales agreements of 3rd parties. All parties filing liens shall provide progress lien release and unconditional lien releases at the end of the project.

(c) Lessee's Contractor upon completion of the Work, shall furnish Lessor with an accurate "as built" plan of the Work as constructed by the General Contractor in both electronic and hard copy.

(d) Lessee's Contractor shall provide and furnish all labor, materials, supplies and services for the completion of the Project. The Work shall be performed in a good and workmanlike manner free of defect, shall conform strictly to the Construction Documents and shall be performed in such a manner and at such times as not to materially interfere with or delay Lessor's operation of the Building.

(e) Lessee's Contractor shall provide a written schedule per a submitted phasing plan and confirm the schedule with the Lessor prior to starting the Work at least 72 hours in advance of commencement of the Construction project.

i. Upon start of Construction, Lessee's Contractor will provide project updates to the Lessor's Building Engineer on a weekly basis until the completion of the project.

ii. Lessee's Contractor must submit requests for shut downs of utilities to Lessor at least 48 hours in advance of required shut down.

(f) Lessee's Contractor shall provide a competent representative on-site while construction is occurring to receive notices, orders and instructions and communicate with the Lessor.

(g) Lessee's Contractor shall at all times from the beginning to the completion of the contract, provide all necessary and proper safeguards for Infection Control, Security, Fire and Life Safety in and around the area of work in accordance with Hospital's Policies, applicable codes and to the Hospital's reasonable satisfaction. The Lessor's Building Engineer has authority up to and including stoppage of all work whenever a Security, Fire and

Life Safety deficiency exists. The Lessee's Contractor shall take immediate action to correct all deficiencies.

EXHIBIT B-1

LESSOR'S WORK

Lessor shall deliver the Premises to Lessee with the work specified in subsection (a) through (l) below completed. Lessee shall reimburse Lessor for the direct cost and expenses incurred in the work necessary to prepare the Premises and deliver the Premises in the condition identified below. Lessee, subject to the Tenant Improvement Allowance, shall reimburse Lessor for these costs within thirty (30) days of receipt of invoice for payment. Where more than one type of material or structure is indicated, Lessor will have the option of using any one of them.

- (a) Walls. Interior walls to be removed as shown in Site Plan, Exhibit "A."
- (b) Ceiling. Exposed to roof structure above.
- (c) Floor. Ground floor concrete slab shall be level, smooth and free of flooring and mastic.
- (d) Electrical. Removed and stubbed to nearest subparcel.
- (e) Telephone. Main service provided to telephone backboard in common electrical or telephone room.
- (f) Sprinklers. Automatic fire protection system (upright heads only) and fire alarm system for building shell only.
- (g) HVAC. Ducts removed to units in ceiling.
- (h) Water. In current condition, stubbed to ground floor locations.
- (i) Sewer. In current condition stubbed to a ground floor location within the Premises.
- (j) Parking Lot. In ADA compliant condition.
- (k) Gas and Air Pipes. Removed and disconnected and capped at Premises perimeter or nearest pipe junction outside of Premises.
- (l) Inpatient Entrance. Doors removed and installed with new code-compliant emergency exit.

Lessee shall have the right to reasonably approve or disapprove the scope of the proposed work, the estimated cost of work, and the proposed contractor for the work prior to the commencement of the work to ready the Premises for delivery to Lessee.

EXHIBIT C

EXCLUSIONS TO OPERATING EXPENSES

1. Interest, or amortization on mortgages or ground or master lease payments;
2. Legal fees incurred in negotiating tenant leases, and in enforcing tenant leases other than this lease;
3. Leasing commissions;
4. The cost of improvements or alterations to tenant spaces;
5. The cost of providing any service directly to and/or paid directly by any tenant (as opposed to services provided to all tenants);
6. Any costs expressly excluded from Common Area Operating Expenses elsewhere in the Lease and the Addendum to Lease;
7. Costs of any items for which Lessor receives reimbursement from insurance proceeds or a third party;
8. Attorney fees, costs of environmental investigations, loan origination fees, appraisal, closing costs, financing costs on any mortgage or mortgages, ground lease payments, or other debt instrument encumbering the Project;
9. Insurance premiums to the extent of any refunds of those premiums;
10. Any bad debt loss, rent loss, or reserves for bad debt or rent loss;
11. Interest or penalties resulting from:
 - a. Lessor's negligence or willful misconduct; or
 - b. Any amount payable by Lessor resulting from Lessor's default in its obligations under any agreement to which Lessor is a party, including, without limitation, all leases now or hereafter in effect with respect to the Real Property of which the Premises are a part.
12. Costs, fees, and compensation paid to Lessor, or to Lessor's subsidiaries or affiliates, for services rendered that exceed market based fees and compensation as might be charged by an unaffiliated third party of comparable skill, competence, stature, and reputation;
13. Costs associated with:

- a. Operation of the business of the ownership of the Real Property or entity that ~~constitutes Lessor or Lessor's property manager~~, as distinguished from the cost of building operations, including the costs of partnership or corporate accounting and legal matters; defending or prosecuting any Lessee, occupant, or prospective Lessee or occupant; selling or syndicating any of Lessor's interest in the Real Property; and disputed between Lessor and Lessor's property manager;
 - b. Lessor's general corporate or partnership overhead and general administrative expenses, including the salaries of management personnel; or
 - c. Wages, salaries, and other compensation paid to any executive, employee of Lessor or Lessor's property manager or paid to any off-site personnel;
14. Costs arising from the presence of any Hazardous Materials in or about the Premises or the Real Property, (including Hazardous Materials in the ground, water or soil) that was not placed in the Premises by Lessee;
15. Costs incurred because the Building, or Common Area violate any valid, applicable building code, regulation, or law in effect and as interpreted by government authorities before the date on which the Lease is signed. This exclusion from Common Expenses shall include fines, penalties, interest, and the cost of repairs, replacements, alterations, or improvements necessary to make the Building, or Common Area, comply with applicable past laws in effect and as interpreted by government authorities before the date on which this Lease is signed, such as sprinkler installation or requirements under the ADA;
16. Costs of:
- a. Initial construction of the Building or any additional buildings;
 - b. Reconstruction of the Building or any additional buildings, except for insurance deductibles;
 - c. Modification, alteration, repair, additions, improvements or replacements of any portion of the Building due to faulty construction (other than by Lessee) defects in the design, construction, materials or workmanship of the Building or Common Area; or
 - d. Notwithstanding the foregoing, Lessor shall be entitled to a management fee which will be part of the CAM charges for the center; provided, however, the total management fee for the center does not exceed the three percent (3%) management fee cap.
17. Costs incurred in installing, operating, and maintaining any specialty service that is not necessary for Lessor's provision, management, maintenance, and repair of required services for the operation of the Building or any associated parking facilities. The following are examples of these specialty services: observatory; broadcasting facilities (other than the life-support and security system for the Building); luncheon club; or other

dining facility; newsstand; flower service; shoeshine service; carwash; athletic or recreational club; and helicopter landing pad (other than the Building's emergency and life-safety helicopter facilities); provided that this exclusion shall not apply to such improvements as are required by any governmental agency;

18. Charitable or political contributions or fees or dues payable to trade associations, industry associations, or similar associations;
19. All items and services for which a contractor, manufacturer or supplier or Lessee or any other tenant in the Building is required to reimburse Lessor (other than through Lessee's share or any other Lessee's share of "Common Area Operating Expenses";
20. Costs for sculpture, paintings or other objects of art or the insuring, repair or maintenance thereof in excess of \$200.00;
21. Any costs, fees, dues, contributions or similar expenses for industry associations or similar organizations;
22. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Lessor in the Building;
23. The entertainment expenses and travel expenses of Lessor, its employees, agents, partners and affiliates;
24. Costs to traffic studies, environmental impact reports, transportation systems management plans and reports, and traffic mitigation measures or due to any studies or reports; and
25. Earthquake insurance deductibles.

EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

With respect to that certain lease ("Lease") dated _____, between **Sonoma Valley Hospital District** ("Lessor") and **Satellite Healthcare, Inc.** ("Lessee"), whereby Lessor leased to Lessee and Lessee leased from Lessor space located at _____ (the "Premises"). Lessee and Lessor hereby acknowledge as follows:

- (1) Lessor delivered possession of the Premises to Lessee on _____;
- (2) The Term of the Lease commenced on _____ (the "Commencement Date"); and
- (3) Lessee shall commence payment of Rent on _____.
- (4) The Premises contain _____ rentable square feet of space.

All capitalized terms herein, not otherwise defined herein shall have the meaning assigned in the Lease.

IN WITNESS WHEREOF, this Commencement Date Memorandum is executed the date(s) set forth below.

LESSOR:

LESSEE:

SONOMA VALLEY HOSPITAL DISTRICT

SATELLITE HEALTHCARE, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ADDENDUM
TO THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE – NET
WITH SONOMA VALLEY HOSPITAL DISTRICT

THIS ADDENDUM TO STANDARD INDUSTRIAL/COMMERCIAL - MULTI-TENANT LEASE - NET (“**Addendum**”) is made and entered into by and between SONOMA VALLEY HOSPITAL DISTRICT (“**Lessor**”), and SATELLITE HEALTHCARE, INC., a California corporation (“**Lessee**”), as of the date set forth on the first page of that certain Standard Industrial/Commercial Multi-Tenant Lease - Net (the “**Lease**”) by and between Lessor and Lessee to which this Addendum is attached and incorporated. The terms, covenants, and conditions set forth herein are intended to and shall have the same force and effect as if set forth at length in the body of the Lease. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Lease. To the extent that the provisions of this Addendum A are inconsistent with any provisions of the Lease, the provisions of this Addendum A shall prevail.

50. Measurement of Premises. Prior to the Commencement Date (as defined in 1.3), Lessee shall have the right to independently measure and calculate the area of the Premises. Should Lessee’s independent measurement using BOMA Standards, identify a discrepancy between the actual square footage and the square footage defined in the Lease, Lessor and Lessee shall in good faith cooperate with each other to determine a mutually agreeable square footage calculation. In the event Lessor and Lessee are unable to agree on the measurement of the Premises, the final determination shall be made through a three party arbitration, as follows: within ten (10) days of the parties determining by giving written notice from either party to the other that they cannot agree on the final measurement of the Premises, each party shall specify in writing to the other the name and address of a person to act as the architect on its behalf. If either party fails to timely appoint an architect, the determination of the timely appointed architect shall be final and binding. The two architects shall have ten (10) days from the day of their respective appointments (the “**Determination Period**”) to make their respective determinations and agree on the final measurement of the Premises. If the two architects selected by the Lessor and Lessee cannot reach agreement on the final measurement of the Premises, such architects shall within five (5) business days jointly appoint an impartial third architect with at least ten (10) years of experience in measuring the size of premises, and the final measurement of the Premises shall be established by the three architects in accordance with the following procedures: The architect selected by each party shall state in writing his determination of the architect. The first two architects shall arrange for the simultaneous delivery of their determinations to the third architect no later than ten (10) days after the expiration of the Determination Period. The role of the third architect shall be to select which of the two proposed determinations most closely approximates the third architect’s determination of the final measurement of the Premises, and shall have no more than five (5) business days in which to select the final determination. The determination chosen by the third architect shall constitute the decision of the architects and be final and binding on the parties. Each party shall pay the cost of its own architect and shall share equally the cost of the third architect.

51. Parking. Lessor shall provide Lessee the parking lot adjacent to the Premises to Lessee for "Satellite Healthcare Patients Only" use and not less than 3 parking spaces per 1,000 square feet of space. Lessee’s employees may park in Lessor’s designated employee parking lot. All parking provided to Lessee shall be at no cost to Lessee.

52. Term. The Original Term shall commence upon the date Lessor delivers possession of the Premises in the condition required under the Lease (“**Commencement Date**”) and shall expire on the last day of the sixtieth (60th) month following the Commencement Date (“**Expiration Date**”). Upon determination of the Commencement Date, and upon either parties request, Lessor and Lessee shall execute a mutually agreeable memorandum in the form attached hereto as Exhibit "D".

53. Early Possession Period. From and after the execution of the Lease, Lessee shall have access to the Premises until the Commencement Date (the “**Early Possession Period**”), without the obligation to pay Base Rent or Common Area Operating Expenses (defined in Lease Paragraph 4.2(a)), for the purposes of designing, planning, construction and installing all Tenant Improvements, underground plumbing and sewer, furniture, fixtures and equipment necessary for its operations that are not part of Landlord’s Work. All terms and conditions of the Lease, exclusive of payment of Base Rent or Common Area Operating Expenses shall apply to the Early Possession Period, as if the Lease were in full force and effect. Upon the full execution of the Lease, Lessor will grant Lessee permission to perform inspections of the roof and mechanical systems by third party contractors. Further, Lessor agrees to provide Lessee with any inspection reports in its possession that have been performed on the Premises within the prior two (2) years.

54. Rent Commencement Date. Base Rent and Common Area Operating Expenses shall commence one hundred twenty (120) days following the Commencement Date.

55. Revisions to Base Rent and Lessee’s Share. In the event the square footage of the Premises is revised pursuant to Paragraph 50 above, Base Rent and Lessee’s Share shall be adjusted accordingly.

56. Base Rent Schedule. Subject to Paragraph 55 above, Lessee shall pay Base Rent upon the following schedule:

Period	Base Rent/sq. ft./month	Monthly Base Rent
Months 1 – 4*	\$0.00	\$0.00
Months 5 – 12	\$2.00	\$6,814.00
Months 13 – 24	\$2.05	\$6,984.00
Months 25 – 36	\$2.10	\$7,158.00
Months 37– 48	\$2.15	\$7,337.00
Months 49 – 60	\$2.21	\$7,521.00

**The first four full calendar months and any partial period prior to such four month period if the Commencement Date does not fall on the first day of the month.*

In addition, Lessor shall waive an additional three months of Base Rent upon issuance of occupancy permits required by all governmental agencies.

57. Condition. Lessor shall deliver the Premises to Lessee in the condition described in Exhibit B-1 and with the roof water tight and the Premises in compliance with all applicable laws and codes and free of Hazardous Materials. Notwithstanding the Lease to the contrary, any costs incurred by Lessor to deliver the Premises in the condition required herein shall not be included as part of the Common Area Operating Expenses (as defined in Lease Section 4.2(a)) of the Lease or passed through to Lessee as part of the Common Area maintenance and repair costs.

58. Common Area Changes. In exercising its rights under Paragraph 2.10, Lessor shall minimize interference with Lessee’s use of and business operations in the Premises.

59. Exclusions to Common Area Operating Expenses. Notwithstanding anything to the contrary, Common Area Operating Expenses shall not include (i) those expenses listed in Exhibit “C” attached hereto, (ii) management expenses/fees in excess of 3% of the annual Base Rent for the Premises, (iii) Permitted Capital Expenditures (as defined below), and (iv) capital improvements associated with mechanical, roof or parking lot repair except as pursuant to Paragraph 7.1(d). “**Permitted Capital Expenditures**” mean only those costs identified as capital expenditures under Generally Accepted Accounting Principles (GAAP) and that are (a) reasonably intended to reduce Common Area Operating Expenses or water and/or energy consumption; (b) required after the date of the Lease under any Applicable Law that was not applicable to the Building at the time it was originally constructed; or (c) for replacement of any equipment or improvement needed to operate and/or maintain the Building and the Common Areas in the same condition as at the Commencement Date, ordinary wear and tear and damage from casualty or condemnation excepted. If the cost of a Permitted Capital Expenditure exceeds Ten Thousand Dollars (\$10,000.00), then such cost shall be amortized over its useful life, and the amount included in monthly Common Area Operating Expenses shall be limited to the monthly amortized cost thereof. The foregoing shall not apply to any particular capital expenditure triggered by Lessee as a result of Lessee’s actual or proposed use, change in use, or modification to the Premises, which capital expenditures shall be Lessee’s sole responsibility.

60. Audit. Tenant shall have ongoing rights to review and audit Lessor’s books and records with respect to Common Area Operating Expenses. Not more often than once each calendar year, Lessee, upon thirty (30) days advance written notice thereof to Lessor, at Lessee’s sole cost and expense, may retain an independent certified public accountant reasonably acceptable to Lessor, to review and audit Lessor’s books and records with regard to the Common Area Operating Expenses for the Project and the calculations of Lessee’s Share thereof. If it is reasonably determined by such auditors that Lessee overpaid its share of Common Area Operating Expenses, Lessor shall refund to Lessee the amount of such overpayment within thirty (30) days. If it is reasonably determined by such auditors that Lessee underpaid its share of any increase in Common Area Operating Expenses, Lessee shall pay to Lessor the amount of such deficiency within thirty (30) days. If it is reasonably determined by such auditors that Lessee overpaid its share of Common Area Operating Expenses by more than five percent (5%) for the applicable calendar year, Lessor shall reimburse Lessee for the reasonable costs of Lessee’s audit.

61. Hazardous Substances. Lessor will deliver copies of all the hazardous material reports in its possession addressing the condition of the property, including the land, and if applicable, the groundwater under and about the Building to Lessee prior to Lease execution. Lessor will indemnify and hold Lessee harmless for any claims, costs or liabilities associated with any hazardous materials (collectively, “Claims”) existing in, on, under, or about the Building which were not caused by Lessee, and Lessee will indemnify and hold Lessor harmless for Claims caused by Lessee. To the best of Lessor’s knowledge, no Hazardous Substances are present in, on, under or about the Premises or the Project, and no action, proceeding, or claim is pending or threatened concerning any Hazardous Substances or pursuant to any Hazardous Substances laws. Lessor shall defend, indemnify and hold Lessee and anyone claiming under Lessee harmless from and against all claims, penalties, expenses and liabilities, including attorneys’ and consultants’ fees and costs, arising out of or caused in whole or in part, directly or indirectly, by or in connection with any Hazardous Substances in, on, under or about the Premises or Project, except to the extent the same results from Lessee’s release or admission of Hazardous Substances in or about the Premises in violation of Hazardous Substances laws. For the purposes of the indemnity provisions hereof, any acts or omissions of Lessor or anyone claiming under

Lessor (whether or not they are negligent, intentional or unlawful) shall be strictly attributable to Lessor. Lessor's obligations under this Paragraph 61 shall survive the termination or expiration of the Lease.

62. Lessor's Obligations. Lessor, at its sole cost, shall be responsible on an ongoing basis for the structural elements of the building, (including but not limited to, the structural portions of the roof, roof screens, roof screen penetrations), foundation, footings, floor slab, load bearing walls and exterior walls to comply with all governmental laws, rules, regulations orders, building codes and/or ADA requirements. Lessor shall keep the exterior walls and windows maintained in good, clean condition, provided that damage cause by Lessee shall be repaired by Lessee, at its sole cost and expense.

63. Alterations. Lessor grants Lessee the right to perform nonstructural alterations to the Premises with Lessor's written consent, which shall not be unreasonably withheld, conditional or delayed. Lessee shall not be required to remove such Alterations at the end of the Lease Term or any exercised Option Term unless Lessor designates in writing at least ninety (90) days before the end of the Lease Term or any exercised Option Term, that Lessee is to remove such alterations and restore the Premises to the condition preceding the installation of such Alterations. Lessor's failure to provide such written notice within the time period described above shall be deemed Lessor's election not to have such Alterations removed.

64. Insurance.

(a) **Carried by Lessee.** The coverage amounts specified in the Lease shall not be increased during the term of the Lease, including any renewal term. Lessee shall not be required to carry earthquake or flood insurance.

(b) **Carried by Lessor.** Lessor shall maintain and keep public liability coverage under a commercial general liability policy with combined limits of not less than \$ 2,000,000 per occurrence and shall insure all building shell and site improvements within the Project under an all risk policy.

65. Real Property Taxes. Real Property Taxes shall not include (A) interest or penalties incurred by Lessor as a result of Lessor's late payment of Real Property Taxes, or (B) franchise, transfer, gift, inheritance, estate or net income taxes imposed upon Lessor.

66. Utilities and Services. Notwithstanding Paragraph 11 of the Lease to the contrary, in the event utilities or services are interrupted for more than five (5) consecutive days, Rent shall abate during the entire period of interruption until such utilities or services are restored.

67. Assignment and Subletting. Notwithstanding anything to the contrary in this Lease and provided Tenant delivers written notice to Landlord within ten (10) business days of such transfer, Tenant may, with Landlord's consent and not subject to any recapture, legal or transfer fees, or bonus rent provisions, sublet the Premises or assign the Lease to related physicians and/or joint venture partnerships or limited liability companies between Lessee and affiliated physicians and Tenant shall also have the right at any time to sublease or otherwise permit occupancy of all or any portion of its space to an affiliated physician, without the requirement of obtaining Landlord's consent. Any of the above are referenced hereafter as "**Permitted Transfer**" and the transferee is referenced as "**Permitted Transferee**". Notwithstanding any sublease, Lessee shall not be relieved of its obligations under the Lease. Notwithstanding Paragraph 12.2(g) of the Lease to the contrary, in the event of a transfer to a Permitted Transferee, any Option granted to the original Lessee by the Lease shall also be transferred to such Permitted Transferee as if such Permitted Transferee where the original Lessee.

68. Late Charge. Notwithstanding Paragraph 13.4 of the Lease to the contrary, Lessor will not assess a late charge until Lessor has given written notice of Lessee's late payment for the first late payment in any twelve (12) month period and after Lessee has not cured such late payment within three (3) days from receipt of such notice. No other notices will be required during the following twelve (12) months for a late charge to be incurred.

69. Lessor's Default.

(a) If Lessor fails in performing any of its non-structural obligations and as a result of such failure to repair, there is a clear and imminent danger of personal injury or substantial property damage to the Premises, and such default continues for ten (10) days after written notice to Lessor, Lessee may perform the non-structural repairs and the amount of such reasonable costs and expenses incurred by Lessee shall be paid by Lessor within thirty (30) days after written demand by Lessee.

(b) With respect to Lessor's obligations the failure of which do not present a clear and imminent danger of personal injury or substantial property damage to the Premises or interruption of Lessee's operations, Lessor shall have thirty (30) days after written notice from Lessee to repair. In the event Lessor fails to complete repairs within such thirty (30) day period, Lessee may, but is not obligated to, perform said repairs and the amount of such reasonable costs and expenses incurred by Lessee shall be paid by Lessor within thirty (30) days after written demand by Lessee.

70. Original Lessee. Notwithstanding Paragraph 39.2, for the purposes of the Lease, a Permitted Transferee shall be deemed an original Lessee and any Option granted to the original Lessee under the Lease may be exercised by such a Permitted Transferee.

71. Building Signage. To the extent permitted by applicable laws, Lessee shall be entitled to install eyebrow signage above the main entrance to the Premises on the portico of the former emergency room porte cochere, subject to Lessor's approval, which shall not be unreasonably withheld or delayed. All costs associated with Lessee's signage design, installation and maintenance shall be at Lessee's sole expense.

72. Lessee Improvements. Lessee, at Lessee's sole cost and expense, shall have the right to construct those certain improvements as set forth and in accordance with Exhibit "B". Lessor shall cooperate and coordinate with Lessee for the installation of the Lessee Improvements, including, without limitation, coordinate with power re-routing, re-circuiting and temporary power shutdowns for affected panel boards.

73. Occupancy Requirements. Lessee shall have full access to the Premises seven (7) days per week, twenty-four (24) hours per day subject to all applicable City codes, provided, however, that Lessee's normal daily hours of business operation shall be 6:00 a.m. to 8:00 p.m. Except in the case of emergency access for use of hospital emergency exits and access to the existing PBX/data storage enclosure, Lessor shall have access to the Premises upon twenty-four (24) hours written notice. All non-emergency access shall be in compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA).

74. Use Contingency. This Lease shall be contingent upon Lessee receiving all commercially reasonable discretionary approvals (the scope and nature of which shall be decided in Lessee's reasonable discretion) permitting its use of the Premises; Lessor, at no additional expense, shall reasonably cooperate with Lessee in obtaining the approvals and permits. The contingencies described above shall be removed within 120 days following the full execution of the Lease. If approvals are not obtained within the aforementioned contingency period, Lessee

may cancel the Lease with no further obligations on either party, except that Lessor shall return the deposit and prepaid rent to Lessee within ten (10) days of such lease termination.

75. Loading Access. Lessor shall provide an area reasonably acceptable to Lessee for third party delivery access to the Premises for Lessee deliveries as shown on the approved space plan.

76. Option to Extend.

(a) Lessee shall have two (2) options to extend the Original Term for a period of three (3) years for the first option and two (2) years for the second option (each an “**Extension Term**”), subject to Lessee’s advance written notice to Lessor at least six (6) months prior to the expiration of the Original Term or subsequent Extension Term, as the case may be, of Lessee’s intent to exercise its option to renew the term of the Lease. Base Rent during each option period shall be determined pursuant to Paragraphs 75(c) through 75(e).

(b) Notwithstanding Paragraph 39.2 of the Lease to the contrary, the options this Paragraph 74 may be assigned to or exercised by any Permitted Transferee.

(c) At the beginning of each Extension Term, the Base Rent shall be adjusted to 95% of Fair Market Value Rent (as determined below). After the first year of each Extension Term, the Base Rent shall increase by 2% annually through the balance of the term of such Extension Term.

(d) For purposes of determining Base Rent applicable to the first year of an Extension Term, “**Fair Market Value Rent**” shall mean the rental rate per square foot for medical use space comparable to the Premises in building type and age in the Lynwood area of Los Angeles County, California for leases being entered into at or about the time the determination is being made and adjusted to reflect the change if any, in market rates being experienced indicating the rates at or about this time of the commencement of the renewal term, taking into account and being adjusted for Lessee concessions, brokerage commissions, Lessee improvement allowances, existing improvements in the Premises (where Lessor does not have the right to have Lessee remove) as compared to the market comparables, the method of allocating and who pays for Common Area Operating Expenses, and the term of the lease being compared in relation to the renewal term.

(e) Within ten (10) days of the parties determining by giving written notice from either party to the other that they cannot agree on Fair Market Value Rent, each shall specify in writing to the other the name and address of a person to act as the appraiser on its behalf. Each such person shall be a commercial real estate appraiser with at least five (5) years of experience with the prevailing market rents for the area in which the Premises are located. If either party fails to timely appoint an appraiser, the determination of the timely appointed appraiser shall be final and binding. The two appraisers shall have thirty (30) days from the day of their respective appointments (the “**Determination Period**”) to make their respective determinations and agree on the Fair Market Value Rent. If the two appraisers selected by the Lessor and Lessee cannot reach agreement on the Fair Market Value Rent, such appraisers shall within five (5) business days jointly appoint an impartial third appraiser with qualifications similar to those of the first two appraisers, and the Fair Market Value Rent shall be established by the three appraisers in accordance with the following procedures: The appraiser selected by each party shall state in writing his determination of the Fair Market Value Rent, which determination will provide for periodic adjustments to the Base Rent if such appraiser believes that such adjustments are appropriate. The first two appraisers shall arrange for the simultaneous delivery of their determinations to the third appraiser no later than ten (10) days after the expiration of the

Determination Period. The role of the third appraiser shall be to select which of the two proposed determinations most closely approximates the third appraiser's determination of the Fair Market Value Rent, and shall have no more than ten (10) days in which to select the final determination. The determination chosen by the third appraiser shall constitute the decision of the appraisers and be final and binding on the parties. Each party shall pay the cost of its own appraiser and shall share equally the cost of the third appraiser.

77. Biohazardous Storage and Disposal. Lessee shall, as part of Lessee's improvements, construct an approximately fifty (50) square foot area for bio-hazardous material storage. Lessee shall, at Lessee's expense, arrange for regular pickup and disposal of all biohazardous materials used by Lessee in accordance with applicable laws.

EXHIBIT A

SITE PLAN DEPICTING PREMISES



EXHIBIT B
WORK LETTER

1. Lessor Improvements. Lessor shall deliver the Premises in the condition described in Exhibit B-1 and subject to the terms and conditions stated therein.

2. Lessee Improvements. Lessee shall have the right, subject to applicable law, to make the following improvements to the Premises (“Lessee Improvements”):

Any improvements reasonably required by Lessee in order to construct the Premises substantially in the manner shown in Exhibit "A" and as required by Paragraph 73 of the Addendum and in accordance and compliance with all applicable laws, covenants or restriction of record, regulations, and ordinances in effect on the Commencement Date, including all requirements of OSHPD relating to the Use.

3. Lessee Improvement Allowance. Lessor shall pay to Lessee a \$35,000.00 construction allowance to be applied to the the total construction costs. In addition, Lessor will waive 3 months of rent upon issuance of occupancy by all required governmental agencies.

4. Changes to Lessee Improvements. Lessee shall have the right to modify the Lessee Improvements provided Lessee first obtain Lessor’s prior written consent, which consent shall not be unreasonably withheld.

5. End of Term Removal. Lessee shall not be required to remove the Lessee Improvements at the end of the Lease term or sooner termination thereof.

6. CONTRACTED SERVICES

6.1 **Contracts.** Lessee will engage an Architect to prepare and submit Construction Drawings to required government agencies for review and permit issuance. Prior to submission for permit, Lessee’s Architect will submit Construction Drawings including Mechanical, Electrical and Plumbing plans to Lessor’s Building Engineer for review and approval. Lessor will review drawings and provide written disapproval or written approval to Lessee’s Architect within business 3 days from submission. Lessor’s approval shall not be unreasonably withheld, or delayed. If Lessor reasonably disapproves such Construction Drawings, Lessor shall specify the reasons for such disapproval, and Lessee shall within ten (10) days after receipt of Lessor's notice of disapproval, revise and resubmit such Construction Drawings to Lessor, correcting or altering such disapproved items. This process will be repeated until there are reasonably approved Construction Drawings. If Lessor has not notified Lessee in writing of its approval or disapproval within the three-day period, the Construction Drawings shall be deemed approved by Lessor.

(a) Lessee may initiate changes in the Work. Each such change must receive prior written approval of the Lessor within 3 business days from submission, such approval not to be reasonably withheld or delayed. Change orders shall be approved by the government agencies that issued the construction permit, if required.

(b) Lessee shall enter into a written construction contract reasonably approved by Lessor with a General Contractor which shall comply with Standards of Performance of this Work Letter.

(c) Lessee will arrange for project inspections as required by OSHPD.

6.2 **Contractors Standards of Performance.** Lessee shall hold the contract with the General Contractor. The Work shall be performed only by licensed Contractors and Subcontractors.

(a) Lessee's Contractor's and Subcontractors shall be required to procure insurance for workman's compensation, commercial automatic liability, and commercial general liability in at least \$1,000,000 limits per policy. Certificates of such insurance must be received by Lessor before the Work is commenced.

(b) Lessee's Contractor shall deliver work free from any and all liens, claims, chattel, mortgages, and conditional sales agreements of 3rd parties. All parties filing liens shall provide progress lien release and unconditional lien releases at the end of the project.

(c) Lessee's Contractor upon completion of the Work, shall furnish Lessor with an accurate "as built" plan of the Work as constructed by the General Contractor in both electronic and hard copy.

(d) Lessee's Contractor shall provide and furnish all labor, materials, supplies and services for the completion of the Project. The Work shall be performed in a good and workmanlike manner free of defect, shall conform strictly to the Construction Documents and shall be performed in such a manner and at such times as not to materially interfere with or delay Lessor's operation of the Building.

(e) Lessee's Contractor shall provide a written schedule per a submitted phasing plan and confirm the schedule with the Lessor prior to starting the Work at least 72 hours in advance of commencement of the Construction project.

i. Upon start of Construction, Lessee's Contractor will provide project updates to the Lessor's Building Engineer on a weekly basis until the completion of the project.

ii. Lessee's Contractor must submit requests for shut downs of utilities to Lessor at least 48 hours in advance of required shut down.

(f) Lessee's Contractor shall provide a competent representative on-site while construction is occurring to receive notices, orders and instructions and communicate with the Lessor.

(g) Lessee's Contractor shall at all times from the beginning to the completion of the contract, provide all necessary and proper safeguards for Infection Control, Security, Fire and Life Safety in and around the area of work in accordance with Hospital's Policies, applicable codes and to the Hospital's reasonable satisfaction. The Lessor's Building Engineer has authority up to and including stoppage of all work whenever a Security, Fire and

Life Safety deficiency exists. The Lessee's Contractor shall take immediate action to correct all deficiencies.

EXHIBIT B-1

LESSOR'S WORK

Lessor shall deliver the Premises to Lessee with the work specified in subsection (a) through (l) below completed. Lessee shall reimburse Lessor for the direct cost and expenses incurred in the work necessary to prepare the Premises and deliver the Premises in the condition identified below. Lessee, subject to the Tenant Improvement Allowance, shall reimburse Lessor for these costs within thirty (30) days of receipt of invoice for payment. Where more than one type of material or structure is indicated, Lessor will have the option of using any one of them.

- (a) Walls. Interior walls to be removed as shown in Site Plan, Exhibit "A."
- (b) Ceiling. Exposed to roof structure above.
- (c) Floor. Ground floor concrete slab shall be level, smooth and free of flooring and mastic.
- (d) Electrical. Removed and stubbed to nearest subparcel.
- (e) Telephone. Main service provided to telephone backboard in common electrical or telephone room.
- (f) Sprinklers. Automatic fire protection system (upright heads only) and fire alarm system for building shell only.
- (g) HVAC. Ducts removed to units in ceiling.
- (h) Water. In current condition, stubbed to ground floor locations.
- (i) Sewer. In current condition stubbed to a ground floor location within the Premises.
- (j) Parking Lot. In ADA compliant condition.
- (k) Gas and Air Pipes. Removed and disconnected and capped at Premises perimeter or nearest pipe junction outside of Premises.
- (l) Inpatient Entrance. Doors removed and installed with new code-compliant emergency exit.

Lessee shall have the right to reasonably approve or disapprove the scope of the proposed work, the estimated cost of work, and the proposed contractor for the work prior to the commencement of the work to ready the Premises for delivery to Lessee.

EXHIBIT C

EXCLUSIONS TO OPERATING EXPENSES

1. Interest, or amortization on mortgages or ground or master lease payments;
2. Legal fees incurred in negotiating tenant leases, and in enforcing tenant leases other than this lease;
3. Leasing commissions;
4. The cost of improvements or alterations to tenant spaces;
5. The cost of providing any service directly to and/or paid directly by any tenant (as opposed to services provided to all tenants);
6. Any costs expressly excluded from Common Area Operating Expenses elsewhere in the Lease and the Addendum to Lease;
7. Costs of any items for which Lessor receives reimbursement from insurance proceeds or a third party;
8. Attorney fees, costs of environmental investigations, loan origination fees, appraisal, closing costs, financing costs on any mortgage or mortgages, ground lease payments, or other debt instrument encumbering the Project;
9. Insurance premiums to the extent of any refunds of those premiums;
10. Any bad debt loss, rent loss, or reserves for bad debt or rent loss;
11. Interest or penalties resulting from:
 - a. Lessor's negligence or willful misconduct; or
 - b. Any amount payable by Lessor resulting from Lessor's default in its obligations under any agreement to which Lessor is a party, including, without limitation, all leases now or hereafter in effect with respect to the Real Property of which the Premises are a part.
12. Costs, fees, and compensation paid to Lessor, or to Lessor's subsidiaries or affiliates, for services rendered that exceed market based fees and compensation as might be charged by an unaffiliated third party of comparable skill, competence, stature, and reputation;
13. Costs associated with:
 - a. Operation of the business of the ownership of the Real Property or entity that constitutes Lessor or Lessor's property manager, as distinguished from the cost of

building operations, including the costs of partnership or corporate accounting and legal matters; defending or prosecuting any Lessee, occupant, or prospective Lessee or occupant; selling or syndicating any of Lessor's interest in the Real Property; and disputed between Lessor and Lessor's property manager;

- b. Lessor's general corporate or partnership overhead and general administrative expenses, including the salaries of management personnel; or
 - c. Wages, salaries, and other compensation paid to any executive, employee of Lessor or Lessor's property manager or paid to any off-site personnel;
14. Costs arising from the presence of any Hazardous Materials in or about the Premises or the Real Property, (including Hazardous Materials in the ground, water or soil) that was not placed in the Premises by Lessee;
15. Costs incurred because the Building, or Common Area violate any valid, applicable building code, regulation, or law in effect and as interpreted by government authorities before the date on which the Lease is signed. This exclusion from Common Expenses shall include fines, penalties, interest, and the cost of repairs, replacements, alterations, or improvements necessary to make the Building, or Common Area, comply with applicable past laws in effect and as interpreted by government authorities before the date on which this Lease is signed, such as sprinkler installation or requirements under the ADA;
16. Costs of:
- a. Initial construction of the Building or any additional buildings;
 - b. Reconstruction of the Building or any additional buildings, except for insurance deductibles;
 - c. Modification, alteration, repair, additions, improvements or replacements of any portion of the Building due to faulty construction (other than by Lessee) defects in the design, construction, materials or workmanship of the Building or Common Area; or
 - d. Notwithstanding the foregoing, Lessor shall be entitled to a management fee which will be part of the CAM charges for the center; provided, however, the total management fee for the center does not exceed the three percent (3%) management fee cap.
17. Costs incurred in installing, operating, and maintaining any specialty service that is not necessary for Lessor's provision, management, maintenance, and repair of required services for the operation of the Building or any associated parking facilities. The following are examples of these specialty services: observatory; broadcasting facilities (other than the life-support and security system for the Building); luncheon club; or other dining facility; newsstand; flower service; shoeshine service; carwash; athletic or recreational club; and helicopter landing pad (other than the Building's emergency and

life-safety helicopter facilities); provided that this exclusion shall not apply to such improvements as are required by any governmental agency;

18. Charitable or political contributions or fees or dues payable to trade associations, industry associations, or similar associations;
19. All items and services for which a contractor, manufacturer or supplier or Lessee or any other tenant in the Building is required to reimburse Lessor (other than through Lessee's share or any other Lessee's share of "Common Area Operating Expenses";
20. Costs for sculpture, paintings or other objects of art or the insuring, repair or maintenance thereof in excess of \$200.00;
21. Any costs, fees, dues, contributions or similar expenses for industry associations or similar organizations;
22. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Lessor in the Building;
23. The entertainment expenses and travel expenses of Lessor, its employees, agents, partners and affiliates;
24. Costs to traffic studies, environmental impact reports, transportation systems management plans and reports, and traffic mitigation measures or due to any studies or reports; and
25. Earthquake insurance deductibles.

EXHIBIT D

FORM OF COMMENCEMENT DATE MEMORANDUM

With respect to that certain lease ("Lease") dated _____, between **Sonoma Valley Hospital District** ("Lessor") and **Satellite Healthcare, Inc.** ("Lessee"), whereby Lessor leased to Lessee and Lessee leased from Lessor space located at _____ (the "Premises"). Lessee and Lessor hereby acknowledge as follows:

- (1) Lessor delivered possession of the Premises to Lessee on _____;
- (2) The Term of the Lease commenced on _____ (the "Commencement Date"); and
- (3) Lessee shall commence payment of Rent on _____.
- (4) The Premises contain _____ rentable square feet of space.

All capitalized terms herein, not otherwise defined herein shall have the meaning assigned in the Lease.

IN WITNESS WHEREOF, this Commencement Date Memorandum is executed the date(s) set forth below.

LESSOR:

LESSEE:

SONOMA VALLEY HOSPITAL DISTRICT

SATELLITE HEALTHCARE, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

11.

**RESOLUTION No. 326
UNION BANK LINE OF
CREDIT EXTENSION**



RESOLUTION NO. 326

RESOLUTION OF THE SONOMA VALLEY HEALTHCARE DISTRICT AUTHORIZING THE EXECUTION OF THE EXTENSION OF THE LINE OF CREDIT AGREEMENT AND RELATED DOCUMENTATION FOR AN ADDITIONAL THREE YEARS WITH THE UNION BANK

WHEREAS, the District wishes to extend the existing Line of Credit terms and conditions remaining the same for the continued use for operational or expansion of the Sonoma Valley Hospital.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sonoma Valley Healthcare District as follows:

Section 1. The District shall enter into an arrangement with the Bank approved by the Board of Directors by which the Bank will extend the LOC with all conditions and terms remaining the same for an additional three years.

Section 2. The District's Chief Executive Officer is authorized and directed to take such action and to execute on behalf of the District any transaction documents necessary or desirable to effectuate securing the extension of the Line of Credit from the Bank on existing terms and conditions.

Section 3. The Secretary of this District is hereby authorized to execute, acknowledge and deliver a certified copy of this Resolution and the Bank's authorization to extend the existing Line of Credit for an additional three years beginning February 1, 2016.

PASSED AND ADOPTED by the Board of Directors of the Sonoma Valley Health Care District, a political subdivision of the State of California, on this 4th day of February 2016, by the following vote:

HIRSCH
HOHORST
RYMER
NEVINS
BOERUM

Jane Hirsch, Chair
SONOMA VALLEY HEALTH CARE
DISTRICT

ATTEST:

Bill Boerum, Secretary
SONOMA VALLEY HEALTH CARE
DISTRICT

(SEAL)

12.

FY16 CAPITAL
SPENDING

FY 2015 Carry Overs

Dept #	Department	DESCRIPTION	Remaining Approved Budget	Spent to Date	Remaining Balance
8450	Engineering	Fire System	120,000	13,738	106,262
8450	Engineering	Nurse Call System	100,000	98,966	1,034
			220,000	112,704	107,296

FY 2016 Budget Requests:

Year 1 (Fiscal Year 2016)

Dept #	Department	DESCRIPTION	ESTIMATED AMOUNT	SPENT TO DATE	REMAINING BALANCE	Patient Care	Plant/ Building	Information Technology	Year 2 (FY 2017)	Year 3 (FY 2018)
8450	Engineering	Fire System	18,000		18,000		18,000			
8450	Engineering	Nurse Call System	150,000	79,772	70,228		150,000			
7660	MRI	1.5 8 Channel Knee Coil	16,968		16,968	16,968				
7660	MRI	1.5 8 CHANNEL NEUROVASCULAR ARRAY	25,200		25,200				25,200	
7670	Ultrasound	OB GYN Stretcher	6,473		6,473	6,473				
8340	Dietary	Computrition Diet Office system. This will enable us to implement Room Service for the acute patients, and to get nutritional analysis of menu items	72,198		72,198	72,198				
8340	Dietary	Boilerless Convection Steamer	7,180		7,180	7,180				
6171	OB	2 Wireless Fetal Monitors	50,000		50,000	50,000	*			
6171	OB	2 Infant Warmers	45,000		45,000	45,000	*			
6171	OB	Carts	8,000		8,000	8,000	*			
7630	Radiology	OR Table	10,000	6,296	-	10,000				
7420	Surgery	Camera (eye microscope)	113,655	44,350	7,687	113,655				
7420	Surgery	Eye Tray	5,513		5,513	5,513				
7420	Surgery	Mini C-Arm	71,038		71,038				71,038	
7420	Surgery	Colonoscope	24,250		24,250					24,250
7420	Surgery	Cautery Machine	6,027		6,027					6,027
8450	Engineering	EAH #1- Nurses Station air handler, SNF - replacement	270,000		270,000				270,000	
8450	Engineering	EAH #2 - Patient room air handler, SNF - replacement	135,000		135,000				135,000	
8450	Engineering	SNF chilled water pipes	750,000		750,000				325,000	425,000
8450	Engineering	Install Automatic doors by Cardio Pulmonary	25,000		25,000		25,000			
8450	Engineering	Automatic door at PT-Hwy 12	25,000		25,000		25,000			
8450	Engineering	SPC-4D Classification	50,000		50,000				50,000	
8450	Engineering	Sewer pumps replacement in the basement	100,000		100,000				100,000	
8480	Information Systems	Desktop computers/laptops/datalux all-in-one: Estimated annual refresh for computers that are more than 5 years old	50,000		50,000			50,000		
8480	Information Systems	Multiple printers (Zebra, Inkjet, Laser, Dymo) & Handheld Scanners: Estimated annual refresh of printers more than 5 years old	16,000		16,000			16,000		
8480	Information Systems	Kronos System Upgrade professional services from v5 to v7	15,570		15,570				15,570	
8480	Information Systems	FormFast Phase II (expand use of signature pads) 14 desktop locations: Occ Health, Outpatient PT, Imaging, ER, Caridio & Admitting; includes additional server license and HL7 Interface	18,148		18,148			18,148		
8480	Information Systems	CareBook SVH Implementation (Grant)	-		-					
8480	Information Systems	Hospital Wireless Network Replacement	7,000		7,000			7,000		
8480	Information Systems	VMWare license for 3 blade servers	9,000		9,000			9,000		
8480	Information Systems	Fiber pull from new wing 1st floor to MPOE to WW basement MPOE	10,000		10,000			10,000		
8480	Information Systems	Cisco POE Switches (3560) 3 @ \$4000 each	12,000		12,000			12,000		
8510	Accounting	AP paperless system	70,000		70,000			70,000		
	Various	Contingency	100,000		100,000			100,000		
		Ultra Sound (Direct Connect)		14,681						
		Replace Spring Pumps in Basement		9,100						
			2,292,218	154,199	2,096,478	334,986	218,000	292,148	991,808	455,277
			2,512,218	266,904	2,203,774	845,134				

* Foundations Goal to raise money for these items.

Construction In Progress (CIP)	CIP Committed	Spent Prior to Date	Remaining Balance	
E H R Implementation	6,315,356	5,294,353	1,021,003	MedOne Leases
NPC2	12,800	14,412	(1,612)	Operations
Lobby Upgrade	198,000	33,945	164,056	Operations
Phase 2 Feasibility	40,000	24,785	15,215	Operations
Nuclear Med Heat Pump	58,733	10,615	48,118	Celtic lease
ER Communication	25,596	10,853	14,742	Operations
Time Share	67,532	8,750	58,782	Operations
Flouroscopy	802,981	41,005	761,976	GE Loan
	7,520,998	5,388,963	1,261,522	

13.

FINANCIAL REPORT
FOR MONTH ENDING
DECEMBER 31, 2015



To: SVH Finance Committee
From: Ken Jensen, CFO
Date: January 26, 2016
Subject: Financial Report for the Month Ending December 31, 2015

Financially, December was another positive month. The loss from operations is (\$82,001), better than budget by \$462,749. In Fiscal Year 2015 we accrued amounts that were expected for AB 915, Outpatient Supplemental Reimbursement. In November, we filed a cost report with MediCal and Partnership Health Plan which claimed \$597,133 more than what we had accrued due to increased volume, particularly in for Emergency Services. In December we received notice that SVH received notice that it will receive the addition money in the next few months. The additional reimbursement was recorded in December and it lowered the Contractual Discounts by the additional amount. Without the additional AB915 reimbursement, December's loss from operations would have been (\$679,134) or (\$134,384) worse than budget. The year-to-date actual loss from operations is (\$1,528,758) which compares favorably to the expected year-to-date loss of (\$2,255,435). After accounting for all other activity, the December net income was a gain of \$574,955 vs. the budgeted net income of \$371,753. The December EBIDA was 10.6% vs. a budgeted 0.3%. Year-to-date, the total net income is \$731,107 better than budget with a year to date EBIDA of 6.6% vs the budget of 6.6%.

Gross patient revenue for December was \$19,895,941, \$1,661,778 better than expected. Inpatient gross revenue was under budget by (\$73,735) due to patient days being under expectations by 64. Outpatient revenue was over budget by \$799,310 due to an increase in outpatient surgeries, 18 over budget. The Emergency Room gross revenue is over budget by \$965,371 due to the continuing trend of increased volume over budgeted expectations. SNF was over expectations by \$36,852 due to a slight increase in volume. Home Health was under budget by (\$66,020) due to purposely reducing services provided to Marin patients.

Deductions from revenue were unfavorable to budgeted expectations by (\$1,702,564) due to higher than expected use of the Emergency Room by Medi-Cal and Medicare patients. Overall, Medi-Cal accounts for 21.5% of gross revenue on budgeted expectations of 17.8%

After accounting for all other operating revenue, the **total operating revenue** was \$433,964 better than budget.

Operating Expenses of \$4,828,540 were better than budget by \$28,785. The significant negative variances were: Employee Benefits (\$47,727), supplies (61,895) and interest expense (33,270).



Employee benefits were over budgeted expectations due to higher use of PTO during the holidays, but were offset by a lower cost in salaries and wages. Supplies were over budget due to higher volume in the Emergency Department, Surgery, Laboratory, and Pharmacy. Interest expense is over budgeted expectations due to the quarterly true up of the Celtic lease.

After accounting for all income and expenses, but not including Restricted Contributions and GO bond activity, the net gain for December was \$138,006 vs. a budgeted net loss of (\$312,788). The total net income for December after all activity was \$574,955 vs. a budgeted net income of \$371,753.

EBIDA for the month of December was 10.6% vs. the budgeted 0.3%.

Patient Volumes – December

	ACTUAL	BUDGET	VARIANCE	PRIOR YEAR
Acute Discharges	109	116	-7	111
Newborn Discharges	24	16	8	18
Acute Patient Days	351	415	-64	406
SNF Patient Days	648	596	52	596
Home Care Visits	915	1,204	-289	1,103
OP Gross Revenue	\$12,274	\$10,512	\$1,762	\$10,084
Surgical Cases	136	117	19	117

Overall Payer Mix – December

	ACTUAL	BUDGET	VARIANCE	YTD ACTUAL	YTD BUDGET	VARIANCE
Medicare	44.2%	49.7%	-5.5%	46.6%	48.9%	-2.3%
Medicare Mgd Care	9.0%	4.9%	4.1%	6.9%	4.8%	2.1%
Medi-Cal	21.5%	17.8%	3.7%	19.6%	17.6%	2.0%
Self Pay	0.4%	1.8%	-1.4%	1.1%	1.8%	-0.7%
Commercial	19.9%	19.8%	0.1%	20.3%	20.6%	-0.3%
Workers Comp	3.0%	3.2%	-0.2%	2.9%	3.3%	-0.4%
Capitated	2.0%	2.8%	-0.8%	2.7%	3.0%	-0.3%
Total	100.0%	100.0%		100.0%	100.0%	

Cash Activity for December:

For the month of December the cash collection goal was \$3,422,216 and the Hospital collected \$3,740,509, or over the goal by \$318,293. The year-to-date cash goal is \$20,784,018 and the Hospital has collected \$20,912,928 or over the goal by \$128,910. The cash collection goal is based upon net hospital revenue from 90 days ago. Days of cash on hand are 21 days at December 31, 2015. The increase in cash is due to the December receipt of the parcel tax. Accounts Receivable decreased from November, from 53.2 days to 51.2 days in December. Accounts Payable is up by \$235,698 from November and Accounts Payable days are at 53.7.

ATTACHMENTS:

- Attachment A is the Payer Mix Analysis which includes the projected collection percentage by payer.
- Attachment B is the Operating Indicators Report
- Attachment C is the Balance Sheet
- Attachment D (two pages) is the Statement of Revenue and Expense. The first page breaks out the hospital operations and page two includes all other activity.
- Attachment E is the Variance Analysis. The line number tie to the Statement of Revenue and Expense line numbers and explains any significant variances.
- Attachment F are the graphs for Revenue and Accounts Payable.
- Attachment G is the Statistical Analysis
- Attachment H is the Cash Forecast



Sonoma Valley Hospital
Net Revenue by Payer for the month of December 31, 2015

ATTACHMENT A

December-15

YTD

Gross Revenue:	Actual	Budget	Variance	% Variance
Medicare	8,772,327	9,016,234	-243,907	-2.7%
Medi-Cal	4,265,444	3,230,326	1,035,118	32.0%
Self Pay	82,197	318,538	-236,341	-74.2%
Commercial	3,986,709	3,688,899	297,810	8.1%
Medicare Managed Care	1,781,576	874,558	907,018	103.7%
Worker's Comp.	600,617	589,399	11,218	1.9%
Capitated	407,070	516,209	-109,139	-21.1%
Total	19,895,941	18,234,163	1,661,778	

	Actual	Budget	Variance	% Variance
Medicare	55,659,141	55,056,369	602,772	0.5%
Medi-Cal	23,486,903	19,804,884	3,682,019	3.3%
Self Pay	1,327,614	2,010,074	(682,460)	-0.6%
Commercial	24,485,007	23,752,181	732,826	0.6%
Medicare Managed Care	8,196,488	5,454,137	2,742,351	2.4%
Worker's Comp.	3,460,583	3,757,523	(296,940)	-0.3%
Capitated	3,168,804	3,400,731	(231,927)	-0.2%
Total	119,784,541	113,235,899	6,548,642	

Net Revenue:	Actual	Budget	Variance	% Variance
Medicare	1,409,843	1,627,761	(217,918)	-13.4%
Medi-Cal	605,456	633,690	(28,234)	-4.5%
Self Pay	24,659	111,488	(86,829)	-77.9%
Commercial	1,564,949	1,329,691	235,259	17.7%
Medicare Managed Care	231,427	139,180	92,247	66.3%
Worker's Comp.	133,637	138,869	(5,231)	-3.8%
Capitated	14,003	21,004	(7,001)	-33.3%
Prior Period Adj/IGT	597,133	125,250	471,883	376.8%
Total	4,581,108	4,126,933	454,175	11.0%

	Actual	Budget	Variance	% Variance
Medicare	10,008,420	10,493,649	(485,229)	-4.6%
Medi-Cal	3,406,603	3,140,081	266,522	8.5%
Self Pay	406,308	691,285	(284,977)	-41.2%
Commercial	8,873,271	8,636,900	236,372	2.7%
Medicare Managed Care	1,177,388	869,224	308,165	35.5%
Worker's Comp.	775,457	909,558	(134,101)	-14.7%
Capitated	113,302	121,188	(7,886)	-6.5%
Prior Period Adj/IGT	1,566,827	751,500	815,327	108.5%
Total	26,327,577	25,613,384	714,193	2.8%

Percent of Net Revenue:	Actual	Budget	Variance	% Variance
Medicare	30.8%	39.4%	-8.6%	-21.8%
Medi-Cal	13.2%	15.4%	-2.2%	-14.3%
Self Pay	0.5%	2.7%	-2.2%	-81.5%
Commercial	34.2%	32.2%	2.0%	6.2%
Medicare Managed Care	5.1%	3.4%	1.7%	50.0%
Worker's Comp.	2.9%	3.4%	-0.5%	-14.7%
Capitated	0.3%	0.5%	-0.2%	-40.0%
Prior Period Adj/IGT	13.0%	3.0%	10.0%	333.3%
Total	100.0%	100.0%	0.0%	0.0%

	Actual	Budget	Variance	% Variance
Medicare	38.0%	41.0%	-3.1%	-7.6%
Medi-Cal	12.9%	12.3%	0.6%	4.9%
Self Pay	1.5%	2.7%	-1.2%	-44.4%
Commercial	33.7%	33.7%	0.0%	0.0%
Medicare Managed Care	4.5%	3.4%	1.1%	32.4%
Worker's Comp.	2.9%	3.6%	-0.7%	-19.4%
Capitated	0.4%	0.5%	-0.1%	-20.0%
Prior Period Adj/IGT	6.1%	2.8%	3.4%	121.4%
Total	100.0%	100.0%	0.0%	0.0%

Projected Collection Percentage:	Actual	Budget	Variance	% Variance
Medicare	16.1%	18.1%	-2.0%	-11.0%
Medi-Cal	14.2%	19.6%	-5.4%	-27.6%
Self Pay	30.0%	35.0%	-5.0%	-14.3%
Commercial	39.3%	36.0%	3.2%	8.9%
Medicare Managed Care	13.0%	15.9%	-2.9%	-18.4%
Worker's Comp.	22.3%	23.6%	-1.3%	-5.6%
Capitated	3.4%	4.1%	-0.6%	-15.5%
Prior Period Adj/IGT	3.0%	0.7%	2.3%	336.9%

	Actual	Budget	Variance	% Variance
Medicare	18.0%	19.1%	-1.1%	-5.7%
Medi-Cal	14.5%	15.9%	-1.4%	-8.5%
Self Pay	30.6%	34.4%	-3.8%	-11.0%
Commercial	36.2%	36.4%	-0.1%	-0.3%
Medicare Managed Care	14.4%	15.9%	-1.6%	-9.9%
Worker's Comp.	22.4%	24.2%	-1.8%	-7.4%
Capitated	3.6%	3.6%	0.0%	0.3%
Prior Period Adj/IGT	1.3%	0.7%	0.6%	97.1%

Sonoma Valley Health Care District
Balance Sheet
As of December 31, 2015

ATTACHMENT C

		<u>Current Month</u>	<u>Prior Month</u>	<u>Prior Year</u>
Assets				
Current Assets:				
1	Cash	\$ 3,108,433	\$ 1,397,891	\$ 1,823,144
2	Trustee Funds	2,970,872	1,302,603	2,533,185
3	Net Patient Receivables	7,864,567	8,306,816	7,398,657
4	Allow Uncollect Accts	(654,860)	(726,710)	(668,956)
5	Net A/R	7,209,707	7,580,106	6,729,701
6	Other Accts/Notes Rec	4,932,326	7,749,709	3,999,477
7	3rd Party Receivables, Net	1,122,720	422,221	1,190,072
8	Inventory	904,149	894,596	803,069
9	Prepaid Expenses	752,812	727,902	933,858
10	Total Current Assets	\$ 21,001,019	\$ 20,075,028	\$ 18,012,506
12	Property, Plant & Equip, Net	\$ 53,415,047	\$ 53,705,856	\$ 55,654,793
13	Specific Funds	275,657	279,134	370,214
14	Other Assets	143,691	143,691	143,007
15	Total Assets	\$ 74,835,415	\$ 74,203,709	\$ 74,180,519
 Liabilities & Fund Balances				
Current Liabilities:				
16	Accounts Payable	\$ 3,732,055	\$ 3,496,357	\$ 4,047,093
17	Accrued Compensation	4,229,706	4,061,646	3,617,860
18	Interest Payable	571,281	457,025	589,645
19	Accrued Expenses	1,628,644	1,254,088	1,210,693
20	Advances From 3rd Parties	1,261,918	1,397,743	31,592
21	Deferred Tax Revenue	2,956,665	3,449,442	3,436,032
22	Current Maturities-LTD	1,706,832	1,703,099	1,706,832
23	Line of Credit - Union Bank	5,923,734	5,923,734	5,698,734
24	Other Liabilities	165,819	192,855	144,392
25	Total Current Liabilities	\$ 22,176,654	\$ 21,935,989	\$ 20,482,873
26	Long Term Debt, net current portion	\$ 36,905,660	\$ 37,089,574	\$ 39,740,968
27	Fund Balances:			
28	Unrestricted	\$ 12,768,215	\$ 12,501,688	\$ 12,554,469
29	Restricted	2,984,886	2,676,458	1,402,209
30	Total Fund Balances	\$ 15,753,101	\$ 15,178,146	\$ 13,956,678
31	Total Liabilities & Fund Balances	\$ 74,835,415	\$ 74,203,709	\$ 74,180,519

Sonoma Valley Health Care District
Statement of Revenue and Expenses
Comparative Results
For the Period Ended December 31, 2015

	Month					Year-To- Date				YTD	
	This Year		Variance			This Year		Variance			Prior Year
	Actual	Budget	\$	%		Actual	Budget	\$	%		
					Volume Information						
1	109	116	(7)	-6%	Acute Discharges	567	601	(34)	-6%	610	
2	648	596	52	9%	SNF Days	3,718	3,638	80	2%	3,638	
3	915	1,204	(289)	-24%	Home Care Visits	5,797	7,513	(1,716)	-23%	6,878	
4	12,274	10,512	1,762	17%	Gross O/P Revenue (000's)	\$ 75,502	\$ 69,339	6,163	9%	\$ 65,562	
					Financial Results						
					Gross Patient Revenue						
5	\$ 5,327,142	\$ 5,400,877	(73,735)	-1%	Inpatient	\$ 31,268,630	\$ 30,259,656	1,008,974	3%	\$ 30,519,645	
6	7,104,819	6,305,509	799,310	13%	Outpatient	43,340,998	42,740,214	600,784	1%	38,856,567	
7	4,896,597	3,931,226	965,371	25%	Emergency	30,540,603	24,861,597	5,679,006	23%	24,588,941	
8	2,264,831	2,227,979	36,852	2%	SNF	12,736,190	13,076,298	(340,108)	-3%	12,485,554	
9	302,552	368,572	(66,020)	-18%	Home Care	1,898,120	2,298,134	(400,014)	-17%	2,116,475	
10	\$ 19,895,941	\$ 18,234,163	1,661,778	9%	Total Gross Patient Revenue	\$ 119,784,541	\$ 113,235,899	6,548,642	6%	\$ 108,567,183	
					Deductions from Revenue						
11	\$ (15,824,466)	\$ (14,121,902)	(1,702,564)	-12%	Contractual Discounts	\$ (94,485,625)	\$ (87,710,547)	(6,775,078)	-8%	\$ (84,215,081)	
12	(60,000)	(89,314)	29,314	33%	Bad Debt	(350,000)	(535,884)	185,884	35%	(740,000)	
13	(27,500)	(21,264)	(6,236)	-29%	Charity Care Provision	(188,166)	(127,584)	(60,582)	-47%	(111,700)	
14	597,133	125,250	471,883	0%	Prior Period Adj/Government Program Revenue	1,566,827	751,500	815,327	0%	30,581	
15	\$ (15,314,833)	\$ (14,107,230)	(1,207,603)	9%	Total Deductions from Revenue	\$ (93,456,964)	\$ (87,622,515)	(5,834,449)	7%	\$ (85,036,200)	
16	\$ 4,581,108	\$ 4,126,933	454,175	11%	Net Patient Service Revenue	\$ 26,327,577	\$ 25,613,384	714,193	3%	\$ 23,530,983	
17	\$ 148,240	\$ 171,184	(22,944)	-13%	Risk contract revenue	\$ 920,200	\$ 1,027,104	(106,904)	-10%	\$ 1,547,492	
18	\$ 4,729,348	\$ 4,298,117	431,231	10%	Net Hospital Revenue	\$ 27,247,777	\$ 26,640,488	607,289	2%	\$ 25,078,475	
19	\$ 17,191	\$ 14,458	2,733	-19%	Other Op Rev & Electronic Health Records	\$ 160,559	\$ 86,748	73,811	85%	\$ 482,842	
20	\$ 4,746,539	\$ 4,312,575	433,964	10%	Total Operating Revenue	\$ 27,408,336	\$ 26,727,236	681,100	3%	\$ 25,561,317	
					Operating Expenses						
21	\$ 2,128,408	\$ 2,184,359	55,951	3%	Salary and Wages and Agency Fees	\$ 12,992,249	\$ 12,964,241	(28,008)	0%	\$ 12,047,955	
22	873,469	825,742	(47,727)	-6%	Employee Benefits	4,992,684	4,826,080	(166,604)	-3%	4,560,932	
23	\$ 3,001,877	\$ 3,010,101	8,224	0%	Total People Cost	\$ 17,984,933	\$ 17,790,321	(194,612)	-1%	\$ 16,608,887	
24	\$ 376,599	\$ 376,605	6	0%	Med and Prof Fees (excl Agency)	\$ 2,035,742	\$ 2,133,549	97,807	5%	\$ 2,132,678	
25	515,552	453,657	(61,895)	-14%	Supplies	3,056,525	2,951,713	(104,812)	-4%	2,953,931	
26	292,675	352,170	59,495	17%	Purchased Services	1,678,086	2,113,020	434,934	21%	2,029,941	
27	290,245	283,132	(7,113)	-3%	Depreciation	1,746,659	1,698,789	(47,870)	-3%	1,744,920	
28	94,350	98,958	4,608	5%	Utilities	600,509	593,748	(6,761)	-1%	603,508	
29	25,266	20,834	(4,432)	-21%	Insurance	151,474	125,004	(26,470)	-21%	115,530	
30	76,687	43,417	(33,270)	-77%	Interest	291,934	246,353	(45,581)	-19%	277,497	
31	155,289	155,951	662	0%	Other	1,023,206	955,173	(68,033)	-7%	162,146	
32	0	62,500	62,500	100%	Matching Fees (Government Programs)	368,026	375,000	6,974	2%	645,940	
33	\$ 4,828,540	\$ 4,857,325	28,785	1%	Operating expenses	\$ 28,937,094	\$ 28,982,671	45,577	0%	\$ 27,274,979	
34	\$ (82,001)	\$ (544,750)	462,749	85%	Operating Margin	\$ (1,528,758)	\$ (2,255,435)	726,677	32%	\$ (1,713,662)	

**Sonoma Valley Health Care District
Statement of Revenue and Expenses
Comparative Results
For the Period Ended December 31, 2015**

	Month					Year-To- Date				YTD	
	This Year		Variance			This Year		Variance			Prior Year
	Actual	Budget	\$	%		Actual	Budget	\$	%		
35	\$ 7,507	\$ 13,657	(6,150)	-45%	Non Operating Rev and Expense						
36	-	5,805	(5,805)	-100%	Miscellaneous Revenue	\$ 20,836	\$ 81,942	(61,106)	-75%	\$ 79,932	
37	(37,500)	(37,500)	-	0%	Donations	-	34,830	(34,830)	100%	46,629	
38	250,000	250,000	-	0%	Physician Practice Support-Prima	(225,000)	(225,000)	-	0%	(225,000)	
39	\$ 220,007	\$ 231,962	(11,955)	-5%	Parcel Tax Assessment Rev	1,501,954	1,500,000	1,954	0%	1,500,000	
					Total Non-Operating Rev/Exp	\$ 1,297,790	\$ 1,391,772	(93,982)	-7%	\$ 1,401,562	
40	\$ 138,006	\$ (312,788)	450,794	-144%	Net Income / (Loss) prior to Restricted Contributions	\$ (230,968)	\$ (863,663)	632,695	-73%	\$ (312,100)	
41	\$ 308,428	\$ 35,183	273,245	777%	Capital Campaign Contribution	\$ 484,511	\$ 211,098	273,413	130%	\$ 395,088	
42	\$ -	\$ 520,837	(520,837)	0%	Restricted Foundation Contributions	\$ 450,000	\$ 625,002	(175,002)	100%	\$ -	
43	\$ 446,434	\$ 243,232	203,202	84%	Net Income / (Loss) w/ Restricted Contributions	\$ 703,543	\$ (27,563)	731,106	-2653%	\$ 82,988	
44	242,777	242,777	-	0%	GO Bond Tax Assessment Rev	1,456,662	1,456,662	-	0%	915,644	
45	(114,256)	(114,256)	-	0%	GO Bond Interest	(689,209)	(689,210)	1	0%	(771,159)	
46	\$ 574,955	\$ 371,753	203,202	55%	Net Income/(Loss) w GO Bond Activity	\$ 1,470,996	\$ 739,889	731,107	99%	\$ 227,473	
	\$ 504,938	\$ 13,761			EBIDA - Not including Restricted Contributions	\$ 1,807,625	\$ 1,081,480			\$ 1,710,317	
	10.6%	0.3%				6.6%	4.0%			6.7%	

Sonoma Valley Health Care District
Statement of Revenue and Expenses Variance Analysis
For the Period Ended December 31, 2015

ATTACHMENT E

Description	YTD Variance	MONTH Variance	
Volume Information			
1 Acute Discharges	(34)	(7)	
2 SNF Days	80	52	
3 Home Care Visits	(1,716)	(289)	
4 Gross O/P Revenue (000's)	6,163	1,762	
Financial Results			
Gross Patient Revenue			
5 Inpatient	1,008,974	(73,735)	Acute patient days were under budget by 64.
6 Outpatient	600,784	799,310	Outpatient visits were over budget by 25 visits and outpatient surgeries were over budget by 18 cases.
7 Emergency	5,679,006	965,371	ER visits were over budget by 117 visits.
8 SNF	(340,108)	36,852	SNF patient days were over budget by 52 days.
9 Home Care	(400,014)	(66,020)	Home Care visits were under budget by 289 visits.
10 Total Gross Patient Revenue	6,548,642	1,661,778	
Deductions from Revenue			
11 Contractual Discounts	(6,775,078)	(1,702,564)	The ER payer mix consisted of primarily Medicare and Medi-Cal with reimbursement rates of 8.25% and 3.25% respectively.
12 Bad Debt	185,884	29,314	
13 Charity Care Provision	(60,582)	(6,236)	
14 Prior Period Adj/Government Program Revenue	815,327	471,883	The hospital received notification of it's AB 915 Partnership and Medi-Cal OP supplemental payment for FY 2015 and it is \$597,133 over what was accrued.
15 Total Deductions from Revenue	(5,834,449)	(1,207,603)	
Net Patient Service Revenue	714,193	454,175	
17 Risk contract revenue	(106,904)	(22,944)	Blue Shield capitation received was under budget.
18 Net Hospital Revenue	607,289	431,231	
19 Other Op Rev & Electronic Health Records	73,811	2,733	
20 Total Operating Revenue	681,100	433,964	
Operating Expenses			
21 Salary and Wages and Agency Fees	(28,008)	55,951	Gross wages and salaries were under budget but is offset by higher PTO use.
22 Employee Benefits	(166,604)	(47,727)	There was a higher use of PTO in December due to the holidays.
23 Total People Cost	(194,612)	8,224	
24 Med and Prof Fees (excl Agency)	97,807	6	
25 Supplies	(104,812)	(61,895)	Supplies are over budget due to higher volume in ER, surgery, lab, and pharmacy.
26 Purchased Services	434,934	59,495	Budgeted Services not used during December.
27 Depreciation	(47,870)	(7,113)	
28 Utilities	(6,761)	4,608	
29 Insurance	(26,470)	(4,432)	Insurance premiums increased over budgeted expectations.
30 Interest	(45,581)	(33,270)	
31 Other	(68,033)	662	
32 Matching Fees (Government Programs)	6,974	62,500	There were no matching fees in December. This expense is offset from the revenue above from line 14.
33 Operating expenses	45,577	28,785	
34 Operating Margin	726,677	462,749	
Non Operating Rev and Expense			
35 Miscellaneous Revenue	(61,106)	(6,150)	
36 Donations	(34,830)	(5,805)	There were no unrestricted donations in December.
37 Physician Practice Support-Prima	-	-	
38 Parcel Tax Assessment Rev	1,954	-	
39 Total Non-Operating Rev/Exp	(93,982)	(11,955)	
40 Net Income / (Loss) prior to Restricted Contributions	632,695	450,794	
41 Capital Campaign Contribution	273,413	273,245	Capital campaign donations received from the Foundation were over budgeted expectations.
42 Restricted Foundation Contributions	(175,002)	(520,837)	The mammography funds of \$450,000 accrued in November were budgeted in December.
43 Net Income / (Loss) w/ Restricted Contributions	731,106	203,202	
44 GO Bond Tax Assessment Rev	-	-	
45 GO Bond Interest	1	-	
46 Net Income/(Loss) w GO Bond Activity	731,107	203,202	

14.

**ADMINISTRATIVE
REPORT FOR
JANUARY 2015**



To: Sonoma Valley Health Care District Board of Directors
From: Kelly Mather
Date: 1/27/16
Subject: Administrative Report

Summary

We had a very good month in December and I am pleased to say that we are projected to meet our budget goals this year. Leadership has done an outstanding job in managing the expenses, even with a significant increase in physician expenses this year.

Dashboard and Trended Results

The inpatient and emergency satisfaction goals were met in October. We have reviewed our return rate and while the number is low, we have a good return rate. We should have a new VBP score in the next few weeks. The staff satisfaction survey is complete and we met the goal of having 80% participation. The EBIDA is looking very good as compared to our budgeted goal of 4%. The Parcel Tax money (\$1.6 million) was received and helped improve our Days cash on hand. The number of surgeries for the year is now ahead of the prior year. We also met our goal for community hours in just 6 months of the year.

Strategic Update

Strategic Priorities	Initiatives	Status
Offer the highest levels of safety and quality healthcare	Staff satisfaction Inpatient satisfaction Emergency satisfaction Physician satisfaction Benchmark rankings Culture of safety	Survey results will be out in March Inconsistently meeting goal above 70 th percentile Meeting goal above 50 th percentile Great participation. Action plan was implemented Meeting VBP goal Starting to discuss a "harm score"
Improve hospital financial stability	Physician outreach Improve margins Pricing & Health plans Ortho & Gen surgery Timeshare office Outpatient services center Parcel tax renewal South lot purchase	Many new physicians and referrals are up Margins are up in SNF & OB, working on Inpatient Prices were increased, some health plan increases Orthopedics is up, General Surgery is down 1 timeshare is going well, opening another Too expensive, will look at major fundraiser Polling starts next month Will likely purchase by August
Respond well to the regulation and payment model changes	Medicare margins Partnership & Medi-Cal Large hospital systems Physician integration Study capitation ICD 10 Meaningful use E H R	Starting Medicare dashboard Improved some reimbursements, supplemental \$ Nothing from Kaiser, UCSF not interested Working with Prima, considering 1206(b) clinic Still not sure if we should do this with Medi-Cal Complete Complete
Lead efforts to be a healthy community	Population Health SVHF expand donors Employer Wellness Community Care Network Disease reversal program Wellness U Advanced healthcare plan Community opinion survey SVHF raises >\$750k	Girltalk, Active Aging, IHN working well Good progress, starting grateful patient program Will begin offering to Occupational Health clients Coaching started, teaching to begin in Spring Decided to do Cancer Support Sonoma instead Successfully have over 130 graduates Good progress, planning more this spring Complete Raised over \$1 million in 2015



DECEMBER DASHBOARD

PILLAR	PERFORMANCE GOAL	METRIC	ACTUAL RESULT	GOAL LEVEL
Service Excellence	Highly satisfied Inpatients	Maintain at least 5 out of 9 HCAHPS domain results above the 70 th percentile	6 out of 9 in October	>7 = 5 (stretch) 5 = 4 5 = 3 (Goal) 4 = 2 <4=1
Service Excellence	Highly satisfied Emergency Patients	Maintain at least 5 out of 7 ERCAPS domain results above the 70 th percentile	5 out of 7 in October	7 = 5 (stretch) 6 = 4 5 = 3 (Goal) 4 = 2 3 = 1
Quality	Excellent Clinical Outcomes	Value Based Purchasing Clinical Score at 50 or higher	52.5 (80 TH percentile)	>55 = 5 (stretch) >52 = 4 >50 = 3 (Goal) >47=2 <40 = 1
People	Highly Engaged and Satisfied Staff	Press Ganey percentile ranking of 75 th percentile or higher	79.6% mean score at 91st percentile	>80th = 5 (stretch) >77th=4 >75th=3 (Goal) >72nd=2 <70 th =1
Finance	Financial Viability	YTD EBIDA	6.6%	>5% (stretch) >4.5%=4 >4.0% (Goal) >3/5%=2 <3.5%=1
	Efficiency and Financial Management	Meet FY 2016 Budgeted Expenses	\$28,937,094 (actual) \$28,982,671 (budget)	<2% =5 (stretch) <1% = 4 <Budget=3 (Goal) >1% =2 >2% = 1
Growth	Surgical Cases	Increase surgeries by 2% over prior year	778 YTD FY2016 736 YTD FY2015	>2% = 5 >1% = 3 < 1% = 2
	Outpatient & Emergency Volumes	2% increase (gross outpatient revenue over prior year)	\$75.8 mm YTD \$65.6 mm prior year	>5% = 5 (stretch) >3% = 4 >2% = 3 (Goal) <2% = 2
Community	Community Benefit Hours	Hours of time spent on community benefit activities per year	1031 hours for 6 months	>1500 = 5 >1200 = 4 >1000 = 3 >750 = 2 >500 = 1



FY 2016 TRENDED RESULTS

MEASUREMENT	Goal FY 2016	Jul 2015	Aug 2015	Sep 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2015	Feb 2015	Mar 2015	Apr 2015	May 2015	Jun 2015
Inpatient Satisfaction	6/9	5	5	2	6								
Emergency Satisfaction	5/7	2	3	4	5								
Value Based Purchasing	>50	52	52.2	53.5	52.5						47	48	48
Staff Satisfaction	>75th	91	91	91	91	91	91	76	91	91	91	91	91
FY YTD Turnover	<10%	1.2	1.2	1.8	2.8	3.4	4.6	5.5	6.5	7.4	7.6	8	8.3
YTD EBIDA	>4%	8.2	7.6	7.7	7.3	5.7	6.6	6.9	6.2	5.4	4.7	4.2	3.8
Net Operating Revenue	>4.5m	4.48	4.6	4.7	4.7	4.1	4.7	4.4	4.6	4.1	4.1	4.1	4.5
Expense Management	<4.8m	4.7	4.8	4.9	4.9	4.6	4.8	4.6	5.0	4.7	4.8	4.6	5.1
Net Income	>50k	202	174	27.8	104	244	575	29	-211	-382	-278	74	139
Days Cash on Hand	>20	22	16	18	13	9	21	17	12	15	20	17	16
A/R Days	<50	46	45	49	47	53	51	53	48	47	47	43	47
Total FTE's	<315	313	310	312	327	322	317	299	303	310	304	307	309
FTEs/AOB	<4.0	3.6	3.77	3.65	3.77	4.1	3.77	4.12	3.46	3.79	4.05	3.91	3.36
Inpatient Discharges	>100	110	74	92	97	85	109	104	98	113	95	97	97
Outpatient Revenue	>\$12m	12.6	12.9	12.7	13.1	11.9	12.2	11.8	10.5	11.8	11.2	10.7	12.0
Surgeries	>130	125	122	127	131	114	136	129	136	137	144	118	122
Home Health	>1000	981	917	948	948	1088	915	1097	1109	1232	1154	963	1014
Births	>15	16	15	11	11	14	24	11	11	16	7	11	24
SNF days	>660	619	634	607	666	544	648	654	607	669	487	626	669
MRI	>120	143	131	119	132	109	113	108	116	157	138	125	144
Cardiology (Echos)	>65	66	62	63	77	41	50	62	56	67	61	63	66
Laboratory	>12.5	12.1	12.2	11.5	11.7	11.6	11.4	12.5	11.5	12.1	12.3	11.9	12.3
Radiology	>850	1036	1011	997	1018	875	907	1111	1053	1156	1030	1014	965
Rehab	>2587	3014	2384	2773	2886	2297	3003	2478	2751	3113	3063	3008	2873
CT	>300	384	352	343	336	381	323	392	309	347	302	357	335
ER	>800	878	888	871	820	841	863	988	845	769	876	943	846
Mammography	>475	462	439	367	543	406	492	487	444	466	497	476	453
Ultrasound	>325	395	314	320	353	246	290	309	317	357	391	354	345
Occupational Health	>650	733	728	646	871	681	683	653	588	679	687	573	660

15.

**OFFICER &
COMMITTEE
REPORTS**



Meeting Date: February 4, 2016

Prepared by: Peter Hohorst

Agenda Item Title: **Policy on Governing Bidding for Facilities Contracts**

Recommendations:

That the policy governing bidding for facilities contracts be approved subject to review by legal counsel.

Background:

The Board does not have an existing policy that specifies how contracting for facilities projects is to be handled. The Board has previously approved a policy governing contracts for purchasing material and services that are not part of a facilities project. . During the past four years almost all facilities work was performed under the design-build agreement with Otto Construction, and a policy governing contracting for facilities work was not a pressing need.

Under the Health and Safety Code the procedures and requirements are different for the two categories. This policy outlines the procedures and criteria that must be followed to be in compliance with the Health and Safety Code and the Public Contracting Code. It also clarifies the authority delegated to the CEO and the authority retained by the Board.

Consequences of Negative Action/Alternative Actions:

Without a set policy the complies with the Health and Safety Code and the Public Contracting Code the District is at risk of failing to comply with the law because of ignorance of the law.

Financial Impact:

None if the policy is adopted

Attachment:

Policy on Governing Bidding for Facilities Contracts



TO: SVHCD Board of Directors

Prepared by: Peter Hohorst

Date: February 4, 2016

Agenda Item Title: Policy Governing Bidding for Facility Contracts

PURPOSE:

It is the intent of the Board of Directors (“Board”) of the Sonoma Valley Health Care District (“District”) to provide an equal opportunity to all qualified and responsible parties wishing to participate in the bidding process with respect to the Sonoma Valley Health Care District (“District”) and the Sonoma Valley Hospital (“Hospital”).

It is the intent of the Board, consistent with the District’s obligations, to obtain the maximum value for all expenditures.

It is the intent of the Board to clarify, with this policy, the authority granted to the President and Chief Executive Officer (“CEO”) by the Board with regard to District and Hospital purchases and contracts. It is also the intent to clarify the authority retained by the Board.

In all instances where authority is granted to the CEO, it is understood that the CEO may in turn delegate this authority to a member of the CEO’s staff. Responsibility for adherence to this policy, when the authority is delegated by the CEO to a staff member, remains with the CEO.

For purposes of this Policy “Facility Project” is defined as work relating to projects involving construction or improvement of a hospital or health facility (i.e. public works projects), but excluding routine or recurring maintenance.

STATEMENT OF BOARD POLICY:

Section 1 Scope and Application of the Policy

1.1 Delegation of Authority

Except as specified in Section 5 of this policy, the Board hereby delegates to the CEO the authority to act on behalf of the Board in the implementation of the provisions of this Policy.

1.2 Bidding Threshold

The District, with certain exceptions, as covered in Section 2, (H&S Code 32132) shall award any contract exceeding twenty-five thousand dollars (\$25,000) for projects relating to the construction or improvement of the Hospital or a facility owned by or leased to the District (Facility Projects) to the lowest responsible bidder using the “formal” bidding procedures provided in Section 3 [Formal Bidding Procedure]. Alternately, the District shall reject all bids.

1.3 Authority to Make Purchases.

The District's CEO is hereby given authority to make all purchases and to execute all purchase orders or contracts for the District duly authorized pursuant to this Policy. All purchases and contracts shall be upon written order.

1.4 Contract File

The CEO shall keep and maintain written or electronic records of all contracts. The contract file shall include a description of the method used to select the contractor or service provider, including a copy of the request for proposal (RFP) or other form of solicitation, the amount of the contract, the expiration date of the contract, and the name of the contractor or service provider. The file shall also include a copy of the Notice of Bids and the names of all bidders and their proposals.

The contract file for all contracts awarded under the exceptions listed in section 2 shall include a description of the exception and an explanation of the method used to select the contractor or service provider.

The contract file shall include the names of any employ of the District, or any Board member who elected to recuse themselves from the award process because of a conflict of interest.

1.5 Conflict of Interest

With respect to all contracts covered by this Policy, any practices or procedures which might result in unlawful activity shall be prohibited, including practices which might result in rebates, kickbacks or other unlawful consideration. No employee of the District may participate in any selection process when such employee has a relationship with a person or business entity seeking a contract which would subject those employees to the prohibitions in *Government Code § 87100*

1.6 No Advantage.

No illegal, unfair, unethical or otherwise improper advantage shall be accorded to any bidder by the District, a Board member or an employee of the District/Hospital.

Section 2. Exceptions to Bidding and Lowest Bid Policy

The District shall not be required to apply the lowest bid policy to (a) emergency contracts, (b) emergency service contracts, (c) change orders to existing contracts that are less than 5% of the original contract, (d) routine and recurring maintenance, (e) professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms for work on Facility Projects, and (f) Facility Projects where the District has elected to use a design-build method to select the contractor H&S Code 32132.b)

Section 2.1 Emergency Contracts.

Notwithstanding anything to the contrary, the Board may award contracts without following the lowest bid policy, if it first determines (i) an emergency exists that warrants such expenditure due to fire, flood, storm, epidemic or other disaster or equipment failure and (ii) it is necessary to protect public health, safety, welfare or property. (H&S Code 32136). In the event that the emergency requires immediate action, the CEO may make the determination that an emergency condition exists and award a contract without first receiving Board approval. The CEO shall inform the Board of the contract and the emergency at the next regularly scheduled Board meeting.

Section 2.2 Change Orders

Notwithstanding anything to the contrary, the CEO shall not be required to secure bids for change orders that do not materially change the scope of work set forth in a contract previously made, provided (i) the contract was made in compliance with bidding requirements, and (ii) no individual change order amounts to more than five percent (5%) of the contract (H&S Code 32132.c).

Section 2.3 Professional Services

Notwithstanding anything to the contrary, where required by facility projects, the CEO shall award contracts for professional services of private architectural, landscape architectural, engineering, environmental, land surveying or construction management firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. (Government Code § 4526.) No competitive bidding shall be required. (Health and Safety Code § 32132(b).)

If the CEO elects to solicit bids for architectural, landscape architectural, engineering, environmental, land surveying or construction management firms, the Notice Inviting Bids for these services shall contain the following statement in boldface type: *“Please be advised that the successful design professional will be required to indemnify, defend and hold harmless the District against liability for claims that arise out of or relate to the negligence, recklessness or willful misconduct of the design professional.”* (Public Contract Code § 20103.6 and Civil Code § 2782.8.)

The CEO shall establish procedures for verifying competence and professional qualifications and for determining fair and reasonable benchmark prices for these services (Government Code § 4526.).

Section 2.5 Design – Build Projects

Notwithstanding anything to the contrary, the Board may elect to use the Design – Build method to select a contractor for construction or improvement of the Hospital facility if the project amount will be greater than \$1.0 million. (H&S Code 32132.5., Public Contract Code 20133.)

If the Board elects to use the design – build method, the Board shall follow the contracting provisions of Public Contract Code 20133 and shall award the contract based on “best value” as defined in section 20133. Because of their complexity the Design – Build contracting provisions have not been delineated in this policy.

Section 3. Formal Bidding Procedure

Section 3.1 Bid Packet

Where formal bidding is required, the CEO shall prepare a bid packet, including a notice inviting formal bids (“Notice Inviting Bids”). The packet shall include a description of the scope of Work in such detail and written with such specificity as may be required to allow all potential bidders to understand the need and give a level playing field to all bidders (Specifications). In establishing the Specifications, the CEO may consider the direct cost of the project as well as any requirement reasonably related to the quality, fitness and capacity of a bidder to perform the proposed Work satisfactorily.

(a) Prequalification

The CEO may establish a uniform prequalification system using a standard questionnaire to evaluate the ability, competency and integrity of bidders as outlined in Public Contract Code §§ 20101 et seq. In such event, the CEO may require each prospective bidder to complete and submit a standardized questionnaire and financial statement.

(b) Bidder's Security

The CEO shall include in the Specifications a requirement that all bids be accompanied by bidder's security in the form of cash, a cashier's check, certified check, or a bidder's bond executed by an admitted surety insurer made payable to the Hospital. The security shall be in an amount equal to at least ten percent (10%) of the amount bid. (Public Contract Code § 10167.) Any bid not accompanied by one of the applicable bidder's security shall be rejected as non-responsive. The District shall return to all unsuccessful bidders their respective bidder's security within five (5) working days after awarding the contract.

(c) Performance Bond

The CEO shall include in the Specifications, a requirement that the successful bidder furnish a performance bond in the amount of one hundred percent (100%) of the contract sum at the time of entering into the contract if the contract amount for the work is in excess of \$500,000. The performance bond shall be filed with the District to insure the District against faulty, improper or incomplete materials or workmanship, and to insure the District of complete and proper performance of the contract.

(d) Payment Bond

The CEO shall include in the Specifications, a requirement that the successful bidder to whom a contract is awarded which is in excess of twenty-five thousand dollars (\$25,000) shall furnish a payment bond acceptable to the District. (Civil Code § 9550) This labor and material bond shall be filed with the District pursuant to applicable laws of the State of California. The CEO shall not require a payment bond from an architectural, landscape architectural, engineering, land surveying or construction management firms.

(e) Completion Date

The CEO may include in the Specifications a time within which the whole or any specified portion of the Work shall be completed. (Government Code § 53069.85.)

The CEO may include in the Specifications a provision that the contractor shall forfeit a specified sum of money for each day completion is delayed beyond the date stated in the Specifications.

The CEO may include in the Specifications a provision for the payment of a bonus to the contractor for completion of the project prior to the specified date stated in the Specifications when such timely completion would be beneficial to the District. (Government Code § 53069.85.)

(f) Subcontractors

The CEO shall include in the Specifications a provision that any prime contractor include in his/her bid: (i) the name and address of each subcontractor who will perform labor or render service or fabricate or install a portion of the Work in excess of 5% of the total amount of the contract and (ii) a description of Work to be performed by each such subcontractor.

The bidder shall list only one subcontractor for each portion as is defined by the bidder in his/her bid. (Public Contract Code § 4104.)

A prime contractor whose bid is accepted may not substitute a new subcontractor in place of the subcontractor listed in the original bid except as allowed under Public Contract Code 4107.

3.2 Notice Inviting Bids.

Where formal bidding is required, the CEO shall publish the Notice Inviting Bids at least ten (10) days before the date of opening the bids. Notice shall be published at least twice, not less than five (5) days apart, in a newspaper of general circulation, printed and published in the jurisdiction of the District. (Public Contract Code 22037).

In addition, the CEO shall also publish Notice Inviting Bids in a trade publication, as specified in Public Contract Code § 22036.

3.3 Requirements of Notice Inviting Bids

The CEO shall include all of the following in the Notice Inviting Bids:

- a. Description of the contemplated Work;
- b. The procedure by which potential bidders may obtain electronic copies of the Plans and Specifications;
- c. The final time, date and address (or e-mail address) for receiving and opening of bids (including designation of the appropriate District person or office) (Government Code § 53068; Public Contract Code § 4104.5, 22037)
- d. The date, time and place for opening of bids;
- e. The payment or performance bond amounts if required by the Specifications (Civil Code § 9550)
- f. The time within which the whole or any specified portion of the Work shall be completed (Government Code § 53069.85)
- g. The penalty amount, if required by the Specifications, for each day completion is delayed beyond the specified time. (Government Code 53069.85)
- h. The bonus amount payable to the contractor for completion of the work prior to the specified completion day if a bonus payment is included in the Specifications. (Government Code 53069.85)

3.4 Submission of Bids.

The CEO shall accept only written sealed bids from the prospective bidders. The CEO shall date and time stamp all bids upon receipt. All bids shall remain sealed until the date and time set forth for opening the bids in the Notice Inviting Bids. Any bid received by the District after the time specified in the Notice Inviting Bids shall be returned unopened. (Government Code 53068)

3.5 Examination and Evaluation of Bids.

On the date provided in the Notice Inviting Bids, the District shall publicly open the sealed bids. A person designated by the CEO, will attend and officiate over the opening of bids (“Opening”). The bids will be made public for bidders and other properly interested parties who may be present at the Opening.

The District reserves the right not to determine the low bidder at the Opening, to obtain the opinion of counsel on the legality and sufficiency of all bids, and to determine at a later date which bid to accept. Such determination shall be made within sixty (60) days of the Opening or unless a different period of time is specified in the Notice Inviting Bids.

In the event there are two or more identical lowest bids pursuant to any provision requiring competitive bidding, the CEO may determine by lot which bid shall be accepted. (Government Code 53064)

3.6. Award of Contract.

The CEO shall award the contract to the lowest bidder, provided the bidder is responsible as defined by section 3.7 and the bid is reasonable and meets the requirements and criteria set forth in the Notice Inviting Bids

Any contract awarded by the District shall be subject to all applicable provisions of federal, California and local laws. In the event of a conflict between any contract documents and any applicable law, the law shall prevail.

Notwithstanding anything to the contrary, the District is under no obligation to accept the lowest responsible bidder and reserves the right to reject all bids. (H&S Code 32132)

Section 3.7 Responsible Bidder

a. For purposes of this Policy, “responsible bidder” means a bidder who has demonstrated the attribute of trustworthiness and quality during prior service, a reputation for reliability and satisfactory service with other clients, sufficient financial capacity and the physical capability and the technical and non-technical expertise in order to perform the contract satisfactorily (Public Contract Code 1103).

b. If the CEO determines that the lowest bidder is not responsible, the Board may award the contract to the next lowest responsible bidder

c. If the Board decides to award the contract to a bidder other than the lowest bidder pursuant to subparagraph (b), the Board shall first notify the low bidder of any evidence, either obtained from third parties or concluded as a result of the District’s investigation, which reflects on such bidder’s responsibility. The District shall afford the low bidder an opportunity to rebut such adverse evidence and shall permit such bidder to present evidence that it is qualified. Such opportunity to rebut adverse evidence and to present evidence of qualification shall be submitted in writing to the District.

Section 4. Bid Conditions

All formal bids shall be subject to the following general conditions.

Section 4.1 Minimum Number of Bids.

The CEO shall consider a minimum of three (3) bids whenever possible; however, where the CEO cannot obtain three bids or when the CEO decides that time will not permit obtaining three bids, the CEO may consider a minimum of two (2) bids.

Section 4.2 Multiple Bids.

When bids for multiple items are solicited at the same time, the CEO may accept parts of one or more bids (provided the Notice Inviting Bids so indicates) unless the bidder has specified to the contrary, in which event the District reserves the right to disregard the bid in its entirety.

Section 4.4 Minor Deviations.

The CEO reserves the right to waive inconsequential deviations from the specifications in the substance or form of bids received.

Section 5. Limit of Authority Delegated to CEO

Section 5.1 District Contracts (Non Hospital)

Facility Project contracts or contracts regarding land purchases and leases which bind the District (but not the Hospital) to the terms of a contractual agreement shall be approved by the Board and shall be signed by the Chair of the Board unless the Board designates an alternate signer when the contract is approved.

Section 5.2 Capital Project Contracts

Facility Project contracts for capital projects that will financially obligate the Hospital to more than \$100,000 shall be reviewed by the Finance Committee.

Facility Project contracts for capital projects that are included in the capital budget and will obligate the Hospital to more than \$250,000 shall be approved by the Board.

Facility Project contracts for capital projects that are not included in the capital budget and will obligate the Hospital to more than \$50,000 shall be approved by the Board.

Facility Project change orders that in aggregate increase the scope of the Facility Project by more than 20% shall be approved by the Board.

Section 5.3 Board Approval Process

For all Facility Project contracts where the approval of the Board is required (not delegated to the CEO) the project Specifications and the Notice Inviting Bids shall be approved by the Board before publication.

For all Facility Project contracts where the approval of the Board is required (not delegated to the CEO) the final contract shall be reviewed by the Finance Committee before submission to the Board for approval.