



**DESERT HEALTHCARE DISTRICT
BOARD MEETING
Board of Directors
February 27, 2018
2:00 P.M.**

Jerry Stergios Building, 1st floor
Conference Room A
1140 N. Indian Canyon Drive, Palm Springs, California 92262
This meeting is handicapped-accessible

<i>Page(s)</i>	AGENDA	<i>Item Type</i>
	<i>Any item on the agenda may result in Board Action</i>	
	A. CALL TO ORDER – President Zendle, MD Roll Call ____Vice-President/Secretary Rogers, RN ____Director Wortham, DrPH ____Director/Treasurer Matthews____Director Hazen	
	B. PLEDGE OF ALLEGIANCE	
1-4	C. APPROVAL OF AGENDA	Action
	D. PUBLIC COMMENT At this time, comments from the audience may be made on items <u>not</u> listed on the agenda that are of public interest and within the subject-matter jurisdiction of the District. The Board has a policy of limiting speakers to no more than three minutes. The Board cannot take action on items not listed on the agenda. Public input may be offered on agenda items when they come up for discussion and/or action.	
	E. CONSENT AGENDA All Consent Agenda item(s) listed below are considered to be routine by the Board of Directors and will be enacted by one motion. <u>There will be no separate discussion of items unless a Board member so requests, in which event the item(s) will be considered following approval of the Consent Agenda.</u>	Action
5-11 12-18	1. BOARD MINUTES a. Board Meeting of January 23, 2018 b. Special Meeting of the Board February 19, 2018	
	F. DESERT HEALTHCARE DISTRICT CEO REPORT – Herb K. Schultz, CEO	Information
	G. DESERT REGIONAL MEDICAL CENTER CEO REPORT – Michele Finney, CEO	Information



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| | <p>H. DESERT REGIONAL MEDICAL CENTER GOVERNING BOARD OF DIRECTORS' REPORT –
President Les Zendle, MD and Vice-President/Secretary Carole Rogers, RN</p> | Information |
| | <p>I. COMMITTEE REPORTS</p> | |
| | <p>1. FINANCE, ADMINISTRATION, REAL ESTATE AND LEGAL COMMITTEE – Chair/Director Mark Matthews and Director Jennifer Wortham, DrPH</p> | |
| 19-40 | a. No February Meeting | |
| 41-62 | b. LPMP Lease Renewal – Suite 1W 101 – Pathway Pharmaceuticals, Inc. | Action |
| 63-84 | c. LPMP Lease Renewal – Suite 1E 101-102 – Eyecare Services Partners | Action |
| | d. LPMP Lease Renewal – Suite 2W 1-2-104 – Derakhsh Fozouni, M.D. | Action |
| | <p>2. HOSPITAL GOVERNANCE AND OVERSIGHT COMMITTEE - Chair/Vice-President Carole Rogers, RN and President Les Zendle, MD</p> | |
| 85-87 | a. January 19, 2018 Meeting Minutes | Information |
| | b. No February Meeting – Next Scheduled Meeting is March 13, 2018 | |
| | <p>3. NEW PROVIDERS, FACILITIES, PROGRAMS, AND SERVICES AD HOC COMMITTEE –
Director/Treasurer Mark Matthews and President Les Zendle</p> | |
| 88-89 | a. Update on LAFCO Process | Information |
| | b. Resolution - \$300k of Non-Property Tax, Unrestricted Funds Codifies Action by the Board | Action |
| 90-101 | c. LAFCO Plan of Services Application Addendum #1 – Funding | Action |



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- J. COMMUNITY HEALTH & WELLNESS**
 - 102-114 1. Resources and Philanthropy
 - a. Consideration to approve Desert Cancer Foundation \$200,000 for Patient Assistance and Suzanne Jackson Breast Cancer Fund Programs **Action**
 - 115-117 b. Draft Principles for Engagement Policies of Community and Expert Input to Guide Resources and Philanthropy and Public Policy Research Programs Information and Discussion

- K. OLD BUSINESS**
 - 118-128 1. 2018 Board Meeting Schedule Bylaws Amendment and Resolution **Action**
 - 2. Behavioral Health Update Information and Discussion

- L. NEW BUSINESS**

- M. LEGAL COMMENTS & REPORT** Information
 - 129-139 1. Legislative Update

- N. DIRECTORS' COMMENTS & REPORTS** Information

- O. ADJOURNMENT TO THE DESERT HEALTHCARE FOUNDATION BOARD OF DIRECTORS MEETING**

- P. ADJOURNMENT TO EXECUTIVE SESSION**

- Q. CONVENE TO CLOSED SESSION OF THE DESERT HEALTHCARE DISTRICT BOARD OF DIRECTORS**
 - 1. Public Employee Evaluation Pursuant to Government Code 54957 Title: Chief Executive Officer
 - 2. Report Involving Trade Secrets Pursuant to Health & Safety Code 32106 – concerning proposed New Providers, Facilities, Programs and Services. Discussion only, no action. Estimated date of public Disclosure: April 2018



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R. REPORT AFTER CLOSED SESSION

S. ADJOURNMENT

**DESERT HEALTHCARE DISTRICT
BOARD OF DIRECTORS
MEETING MINUTES
January 23, 2018**

A Meeting of the Board of Directors of the Desert Healthcare District was held in the Jerry Stergios Building – 2nd Floor, Palm Springs, CA.

Attendance

Members

President Les Zendle, MD
Vice-President/Secretary Carole Rogers, RN
Treasurer Mark Matthews
Director Kay Hazen
Director Jennifer Wortham, DrPH

Absent

Staff

Herb K. Schultz, CEO
Lisa Houston, COO
Chris Christensen, CFO
Donna Craig, Senior Program Officer
Alejandro Espinoza, Program Officer and Outreach Director
Michele McKinney, Communications and Marketing Director
Mary Pannoni, Accounting/Admin. Support
Vanessa Smith, Health Educator
Andrea S. Hayles, Clerk to the Board

Legal Counsel

Jeffrey G. Scott

Guests

Steve Ballard, Facility Director, Desert Regional Medical Center
Mitch Blumberg, Chair, Governing Board, Desert Regional Medical Center
Amy DiPerro, Reporter, Desert Sun
Linda Evans, Chief Strategy Officer, Desert Regional Medical Center
Beverly Fick, Chief Nursing Officer, Desert Regional Medical Center
Brett Klein, Marketing Director, Desert Regional Medical Center
Rich Ramhoff, Director of Marketing, Desert Regional Medical Center
Darrell Tucci, Chief Development Officer, Desert AIDS Project

CALL TO ORDER

The meeting was called to order at 2:03 p.m. by President Zendle.

APPROVAL OF AGENDA

President Zendle asked for a motion to approve the agenda explaining that Michele Finney, CEO, Desert Regional Medical Center (DRMC) is not present for the DRMC CEO Report.

**#18-20 MOTION WAS MADE by Director Matthews and seconded by Vice-President Rogers to approve the agenda.
Motion passed unanimously.**

Roll Call Vote:

**AYES 4 Director Matthews; Director Wortham;
Vice-President Rogers; President Zendle**

NOES: 0

ABSTAIN:

ABSENT: 1 Director Hazen

Motion Passed 4-1

PUBLIC COMMENTS

None

CONSENT AGENDA

Submitted for approval:

1. BOARD MINUTES
 - a. Meeting of December 19, 2017
 - b. Special Board Meeting of January 11, 2018
2. a. Consideration for Approval of District December 2017 Financial Statements
F&A Committee approved January 9, 2018.

**#18-21 MOTION WAS MADE by Director Matthews and seconded by Vice-President Rogers to approve the District December 2017 Financial Statements.
Motion passed unanimously.**

**AYES 4 Director Wortham; Director Matthews;
Vice-President Rogers; President Zendle**

NOES: 0

ABSTAIN:

ABSENT: 1 Director Hazen

Motion Passed 4-1

DESERT HEALTHCARE DISTRICT CEO REPORT – Herb K. Schultz, CEO

Herb K. Schultz, CEO, Desert Healthcare District, provided an update on the personnel and infrastructure plan of the three-year Strategic Plan explaining that the new COO, Lisa Houston and the Communications and Marketing Director, Michele McKinney have commenced in their new positions.

DESERT REGIONAL MEDICAL CENTER CEO REPORT – Michele Finney, CEO, Desert Regional Medical Center

None

PUBLIC COMMENT

None

DESERT REGIONAL MEDICAL CENTER GOVERNING BOARD OF DIRECTORS REPORT

President Zendle described the latest activities of the Governing Board meeting explaining the most recent capital projects.

COMMITTEE REPORTS

1. FINANCE, ADMINISTRATION, REAL ESTATE, AND LEGAL COMMITTEE – Chair/Director Matthews
 - a. Draft Minutes of January 9, 2018 Meeting
 - b. CFO Report & Las Palmas Leasing Update

Director/Treasurer Matthews detailed the draft Minutes of the January 9 meeting, the CFO Report, and the Las Palmas Leasing update.

PUBLIC COMMENT

None

2. HOSPITAL GOVERNANCE AND OVERSIGHT COMMITTEE
 - a. Draft Minutes of December 18, 2017 Meeting
 - b. January 19, 2018 Meeting
 - c. CBRE Facility Condition Assessment

Vice-President Rogers detailed the Hospital Governance and Oversight Committee's meeting and an update on the Leapfrog results presentation by The Leapfrog Group. Christine Langenwaller, MSN, Director Quality Improvement and Education Services, Desert Regional Medical Center provided a presentation on the current Leapfrog ratings highlighting the ongoing projects on patient safety and improving the hospital measures. Vice-President Rogers also provided an update on the CB Richard Ellis (CBRE) Facility Condition Assessment.

President Zendle explained the comparisons of the Leapfrog scores by year and the improvements at Desert Regional Medical Center (DRMC), including the barriers such as the trauma center distinction, medical insurance, and patient transfers. President Zendle also described the costs of capital improvements and Michele Finney, CEO, DRMC's transparency that the improvements are in progress. Herb K. Schultz, CEO, explained that it is the Staff's recommendation to continue discussions with the Committee and DRMC will be attending the Hospital Governance and Oversight Committee in February to provide further input and feedback.

Director Wortham inquired if an environmental assessment for air quality was performed with the Condition Report. Jason O. Lind, Executive Vice President, Americas, CBRE, explained that a mold assessment was performed and based on observations, a test for air quality was not necessary unless the engineers detected any issues. Director Wortham recommended an air quality test to ensure the report is comprehensive and wide-ranging primarily due to past flooding.

Vice-President Rogers expressed concerns about the ADA accessibility. Mr. Lind explained that ADA compliance would be a separate report. President Zendle requested that Staff inquire with DRMC on the most recent ADA compliance and Air Quality reports to determine if additional studies are necessary.

PUBLIC COMMENT

Ezra Kaufman, District Resident, detailed the medi-cal population similar to other hospitals in the East Valley with the same data related to quality.

3. NEW PROVIDERS, FACILITIES, PROGRAMS & SERVICES – Chair/Director Hazen

a. CBRE Seismic & PML Assessment Report

Herb K. Schultz, CEO, explained the role and work of the Ad Hoc Committee on New Providers, Facilities, Programs, and Services working with the District's consultants Kaufman Hall as a starting point to validate the assessment report figures. CBRE recommends an ASCE 41 - seismic evaluation and retrofit of existing buildings evaluation for a more reliable estimate that could potentially be lower or higher.

Director Matthews explained that the report will go back to the Committee for further discussion and more work is necessary on the seismic issues with obligations for completion by 2030.

Director Wortham inquired with Mr. Schultz on the policy aspects and the potential for standards to get pushed back. Given the in-depth experience of Mr. Schultz's public policy, unprecedented change in medi-cal and funding for FQHC's, Director Wortham explained that the District should be deliberate on plans to spend capital and how to support those changes in the community going forward. Director Wortham requested that Mr. Schultz determine the appropriate policy - where and how to support the population in the future.

Director Hazen arrived at 2:57 p.m.

PUBLIC COMMENT

None

4. COMMUNITY HEALTH & WELLNESS

1. Resources and Philanthropy

- a. Community and Expert Input to Guide Resources & Philanthropy and Public Policy & Research Programs

Herb K. Schultz, CEO, explained the Board's inquiry on incorporating extensive community expert input for recommendations to the Board, the current engagement, and the proposed enhancements using homelessness as a model. Lisa Houston, COO, explained that the approach is proactive as opposed to structured with a draft of principles for engagement policies. Staff will bring back an initiative for adoption of a policy for public, community, and subject matter expert engagement.

Director Wortham inquired where the initiative fits into the District or Foundation with Mr. Schultz explaining that Staff will come back with the appropriate recommendations with some funds in the District and others in the Foundation.

PUBLIC COMMENT

None

OLD BUSINESS

1. West Valley Homelessness Initiative Update

Donna Craig, Senior Program Officer, provided an update of the West Valley Homelessness Initiative explaining the latest match with the City of La Quinta – six of the nine cities. The City of Palm Desert is also interested in modeling and replicating City of Indio's homelessness outreach program.

2. Behavioral Health Consultant Modified Scope of Work and Contractual Agreement

Lisa Houston, COO, described the vague information of the workforce shortage and identifying the scarcity such as extreme cases or psychiatric patients, their release and lack of follow-up. Herb K. Schultz, CEO, explained that with current Staff and the resources of University of California Riverside and the incoming Community Health Analyst, Staff will bring back in 6 weeks a modified scope of work.

President Rogers clarified the presented scope of work reiterating that the Board approved consultant will assist with the identifiable short-term goals, including community stakeholder's contribution in the discussions. Further explaining that hiring the Board approved Behavioral Health Consultant is necessary to coordinate the District efforts.

President Zandle requests that Staff move forward quickly with consultants Kaufman Hall on inpatient psychiatry and a clear vision for the entire Coachella Valley by the end of the year.

NEW BUSINESS

1. Policy #BOD-15 Conflict of Interest Policy-Revised

Chris Christensen, CFO, explained the Conflict of Interest Policy revisions based on the new titles and positions as outlined in the Organization Infrastructure and Staffing Plan.

**#18-22 MOTION WAS MADE by Director Matthews and seconded by Vice-President Rogers to approve the Revised Conflict of Interest Policy #BOD-15.
Motion passed unanimously.**

**AYES 5 Director Hazen; Director Wortham; Director Matthews;
Vice-President Rogers; President Zendle**

NOES: 0
ABSTAIN:
ABSENT: 0
Motion Passed 5-0

2. 2018 Board Meeting Schedule

Herb K. Schultz, CEO, explained the evening schedule every other month based on public input to drive participation of the Board activities for public interest.

Vice-President Rogers indicated that there should be various locations for the meetings. Director Hazen explained that the afternoon and evening meetings every other month could be confusing. The Board recommends the Sinatra Auditorium or possibly the City Council Chambers. Consistency is necessary to drive the public which would require evening hours for all meetings.

Jeff Scott, Legal Counsel, explained the regular meetings as it relates to the Brown Act. An amendment of the bylaws is necessary including a passage of the resolution.

**#18-23 MOTION WAS MADE by Director Hazen and seconded by Vice-President Rogers to revise the bylaws to the same rotational schedule to change the meetings to 6 p.m., and the resolution returns to the Board at the February 2:00 p.m. meeting for the 2018 Board Meeting Schedule.
Motion passed unanimously.**

**AYES 5 Director Hazen; Director Wortham; Director Matthews;
Vice-President Rogers; President Zendle**

NOES: 0
ABSTAIN:
ABSENT: 0
Motion Passed 5-0

LEGAL COUNSEL COMMENTS & REPORTS

None – Deferred to closed session.

DIRECTORS’ COMMENTS & REPORTS

Director Wortham explained the annual fundraiser brought forward at a previous meeting for the Foundation that would commence once the new Staff positions were secured. President Zendle requested that Director Wortham work with Staff to bring the item forward for a future agenda topic.

Vice-President Rogers explained an evaluation concerning mother’s participation in breastfeeding at her prior Board, working with the mothers and the newborns inquiring if Staff can acquire more details about a new program.

ADJOURNMENT TO THE DESERT HEALTHCARE FOUNDATION BOARD OF DIRECTOR MEETING AT 3:39 P.M.

ADJOURNMENT TO EXECUTIVE SESSION OF THE DESERT HEALTHCARE DISTRICT AT 3:54 P.M.

CONVENE TO CLOSED SESSION OF THE DESERT HEALTHCARE DISTRICT BOARD OF DIRECTORS

1. Closed Session pursuant to Government Code 54956.95 Liability Claim – Agency: Desert Healthcare District Claimant: Barbara J. Smith.
2. Public Employee Evaluation pursuant to Government Code 54957 Title: Chief Executive Officer

RECONVENE TO OPEN SESSION OF THE DESERT HEALTHCARE DISTRICT BOARD OF DIRECTORS AT 5:10 P.M.

REPORT AFTER CLOSED SESSION

The Board in closed session directed Counsel to return the Notice of intent to commence action of Barbara Smith to Attorney Nield with the direction that an application to file a late claim must be filed.

The Board also discussed the evaluation of the CEO and provided direction to the Ad Hoc Committee to work with the CEO and to develop goals, expectations, milestones, measures, and reporting mechanism going forward.

ADJOURNMENT

The meeting adjourned at 5:11 p.m.

ATTEST: _____
Carole Rogers, Vice-President/Secretary
Desert Healthcare District Board of Directors

Minutes respectfully submitted by Andrea S. Hayles, Clerk to the Board

**DESERT HEALTHCARE DISTRICT
SPECIAL MEETING OF THE BOARD OF DIRECTORS
MEETING MINUTES
February 19, 2018**

A Meeting of the Board of Directors of the Desert Healthcare District was held in the Jerry Stergios Building – 1²t Floor, Palm Springs, CA.

Attendance

Members

President Les Zendle, MD
Vice-President/Secretary Carole Rogers, RN
Treasurer Mark Matthews
Director Kay Hazen
Director Jennifer Wortham, DrPH

Absent

Staff

Herb K. Schultz, CEO
Lisa Houston, COO
Chris Christensen, CFO
Donna Craig, Senior Program Officer
Alejandro Espinoza, Program Officer and Outreach Director
Michele McKinney, Communications and Marketing Director
Andrea S. Hayles, Clerk to the Board

Legal Counsel

Jeffrey G. Scott

Guests

Carl Baker, Director, Legal Affairs, DAP
Mitch Blumberg, Chair, Governing Board of Directors, Desert Regional Medical Center
Karen Borja, Director Community Affairs, Planned Parenthood, PSW
Steve Brown, Special Assistant, Assemblymember Eduardo Garcia
Sergio, Carranza, Executive Director, Pueblo El Nido
Debbie Espinosa, CEO, FIND Food Bank
Linda Evans, Mayor, La Quinta; Chief Strategy Officer, Desert Market Hospitals, Tenet
Erica Felci, Government Projects Manager, CVAG
Sherry Finke, Development Specialist, CV Rescue Mission
Kevin Fitzgerald, Reporter, Coachella Valley Independent
Neftali Galarza, Trustee, CVUSD
Bea Gonzalez, ASES Coordinator, CVUSD
Ezra Kaufman, District Resident
Ricardo Loretta, Executive Director, Dr. Carreon Foundation
Mariela Magana, Resident, Coachella
Monique Maldonado, Latino Commission
Charles L. Maynard, City Manager, Desert Hot Springs
Lisa Michelle, Path of Life Ministries

Joe McKee, Councilmember, Desert Hot Springs
Jackie Newby, Executive Director, The Joslyn Center
Eileen Packer, Resident
Marcia Ramirez, Health Specialist, Lideres Campesinas
Jennie Rayner, Executive Director, ACT for MS
Joaquin Ross, Public Affairs, Mercury
Gary Rotto, Senior Vice-President of Government and Public Affairs, Borrego Health
David Salter, District Resident
Stephanie Salter, RN, District Resident
Chantel Schuering, Community Relations Director, FIND Food Bank
Dave Thornton, Executive Director, Habitat for Humanity
Sheila Thorton, CEO, One Future Coachella Valley
Bill VanHemert, Director of Grants, DAP
Heather Verikona, Founding Director, Lift to Rise

CALL TO ORDER

The meeting was called to order at 2:04 p.m. by President Zendle.

President Zendle thanked all in attendance acknowledging President’s Day and recognizing Mayor Robert Moon, Palm Springs and Mayor Linda Evans, La Quinta.

APPROVAL OF AGENDA

President Zendle asked for a motion to approve the agenda.

#18-24 MOTION WAS MADE by Vice-President Rogers and seconded by Director Matthews to approve the agenda.

Motion passed unanimously.

Roll Call Vote:

**AYES 5 Director Matthews; Director Wortham; Director Hazen
Vice-President Rogers; President Zendle**

NOES: 0

ABSTAIN:

ABSENT: 0

Motion Passed 5-0

PUBLIC COMMENTS *(items not listed on the agenda)*

None

Potential Options to Fund Healthcare District Expansion in the Eastern Coachella Valley

President Zendle opened the meeting by describing the goal of expanding the District to the entire Coachella Valley explaining the need for sustainable health and wellness, including the significant discrepancies between the east and west valley. President Zendle provided details on the implementation of AB 2414 enacted by Assemblymember Eduardo Garcia. President Zendle

thanked the Ad Hoc Committee on New Providers, Facilities, Programs, and Services for their effort and guidance; elected officials; community members; and staff of Desert Healthcare District/Foundation.

Herb K. Schultz, CEO, Desert Healthcare District acknowledged Councilmember Joe McKee, City of Desert Hot Springs; Councilmember Russell Betts, City of Desert Hot Springs; and Steve Brown, Councilmember, City of Coachella. Mr. Schultz also thanked the community and staff.

Mr. Schultz provided an overview of the Board of Directors Discussion and Consideration of Expansion Funding that included AB 2414 Goals/Objectives, Current Implementation Status, Existing/Ongoing Funding Sources of the District and Foundation, and Examples of Potential Options.

Director Hazen, Chair, Ad Hoc Committee on New Providers, Facilities, Programs, and Services highlighted the background summary that includes the discussions and efforts on potential funding sources, explaining the Committee's synopsis for two funding sources – Check the Box/Self-Funded Approach and Conditional Approval/Combination of Public and Private Sources Approach. Director Hazen also explained that the Board would not continue with the expansion without additional funding, and prior dialogue of a scenario vote for expansion with an implementation to follow once an additional funding source was identified. Reiterating the vision of a broader Coachella Valley to add new services and funding. Director Matthews that serves on the Committee agreed and supports Director Hazen's position.

The Ad Hoc Committee's recommendation for funding is Option 2 – Conditional Approval/Combination of Public and Private Sources of a minimum of \$4M per year for programs and services.

Vice-President Rogers thanked Directors Hazen and Matthews for their forward-thinking approach to the challenging work on the funding options and tackling such an enormity of tasks with the future of the District, explaining that the two Directors have held the longest terms on the Board with the most experience. Vice-President Rogers requested a clarification on Option 2 concerning the various approaches to funding and inquired on the barriers of obtaining the letter from the County to send to LAFCO.

President Zendle conveyed that he is not in favor of a parcel tax and described his questions about Option 2 and exploring the various funding mechanisms.

PUBLIC COMMENTS

President Zendle read public comments received via email from Rick Mesa, Executive Director, Ranch Recovery; Thomi Clinton, Executive Director, Transgender Community Coalition; Ezra Kaufman, District Resident; and Stephanie Salter, RN, District Resident.

Stephanie Salter, RN, District Resident is concerned about removing funds from the Facilities Replacement Fund due to the current seismic issues at Desert Regional Medical Center. Mrs. Salters is also concerned about using monies from the west to fund the east.

Ricardo Lorretta, Executive Director, Dr. Carreon Foundation and RAP Foundation, Board Member stated that the needs east of Cook Street are necessary and applauded those present working to provide the appropriate healthcare and other services.

Joe McKee, Councilmember, Desert Hot Springs, Co-Chair, Homelessness Committee, thanked the District for the homelessness initiative collective fund and support over the last five years for grants to increase the number of doctors in the Valley. Mr. McKee also explained that one-third of the population is paying \$6M and two-thirds of the population is paying \$4M. As a representative of Desert Hot Springs, Mr. McKee expressed concerns with the existing monies and how it will be used in the future with the additional funding from the District – adding that Desert Hot Springs supports the inclusion of expansion to the entire East Valley.

Steve Brown, Special Assistant, Assemblymember Eduardo Garcia, explained the funds do not belong to the east or west valley, it is the county's funds with no assessment in the west valley, and no one individual is paying for the expansion; therefore, it is necessary to spread the assessments to where the need is necessary. Mr. Brown also stated that the Valley is fortunate to have a special district and Option 2 meets the need of LAFCO for conditional approval for the entire valley, requesting that Director Hazen explain the west valley tax assessment.

Karen Borja, Director Community Affairs, Planned Parenthood, PSW, disclosed the locations of their health centers in Rancho Mirage and Coachella describing the differences in gaps of services for reproductive healthcare. Ms. Borja added that Option 1 is also important as the North Shore continues to experience more growth and investments.

Russell Betts, Councilmember, Desert Hot Springs, stated that as a resident of the west side, he is inquiring on the share of funding that is diluted, and it is his responsibility to ensure the funding is not diluted - using more than the existing stakeholder monies. While creating one district with the One Coachella Valley approach makes matters easier, Councilmember Betts stated that a self-funded District would protect the existing stakeholder's funds.

Jennie Rayner, Executive Director, ACT for MS stated that the agency services everyone in the Coachella Valley with multiple sclerosis, and the District is preparing for what many nonprofits have already accomplished to support ACT for MS and other organizations in the east. Ms. Rayner further explained that ACT for MS services have grown by 66%.

Gary Rotto, Senior Vice-President of Government and Public Affairs, Borrego Health thanked the Board and Staff describing the numerous meeting with the District and Borrego as a key community partner in the Valley supporting the annexation concept of the expansion.

Linda Evans, Chief Strategy Officer, Desert Market Hospitals, Tenet, representing Michele Finney, CEO, Desert Regional Medical Center and Gary Honts, CEO, JFK Memorial Hospital, described Tenet's commitment to the Coachella Valley and the current partnership and services. Ms. Evans read aloud and provided verbal statements from Ms. Finney and Mr. Honts support early-on of AB 2414 to enhance the health of the region.

Heather Verikona, Founding Director, Lift to Rise, explained the organizations role acknowledging the health challenges and an equitable distribution of services and resources throughout the Valley.

Bea Gonzalez, ASES Coordinator, CVUSD, thanked the Board for the conversation on the east valley expansion explaining equality for the entire Valley and the willingness for support where necessary, describing that residents in the east not just going to simply take services in the east, but services are being taken away. There is a disconnect between the east and the west and more dialogue is necessary to make connections.

Neftali Galarza, Trustee, CVUSD, explained that the majority the east does not have transportation services and were not able to attend the meeting stating that an expansion of services is necessary for equitable distribution of services throughout the Valley.

Sheila Thorton, CEO, One Future Coachella Valley, explained her support of the expansion and funding. One Future Coachella Valley has attracted external dollars of \$15M over the years for students with a unified approach for matters in common for maximum effect that will be a critical piece of the work of the Board.

Linda Evans, Mayor, La Quinta, stated that the City Council has not had a formal discussion on the healthcare district – a request made to CEO Herb Schultz explain that now is the time to educate the expanded area councils and the current districts city councils. Mayor Evans does not support a parcel tax nor do the residents in her area detailing new upcoming legislation that may prevent local entities from adding on to future tax dollars going forward, which would be a challenge for cities with the rising costs of insurance, and public safety costs. Mayor Evans supports the expansion and will work to assist to find ways for funding.

Marcia Ramirez, Health Specialist, Lideres Campesinas, expressed her support for health for all including transportation for low-income families and the necessity of assistance to east valley residents.

Maria, 21-year Resident, City of Coachella explained that farmworkers that do not have access to healthcare. Maria inquired about the timing of funding, and once funding is available, explained that there should be a resolution of long-term and short-term goals working with other partnerships such as Kaiser.

Lisa Michele, Path of Life Ministries, explained the work of Path of Life Ministries with low-income vulnerable populations and their support of the expansion and appreciation of the work of the Board to create the opportunity.

Sergio, Carranza, Executive Director, Pueblo El Nido, detailed that he has been working in Coachella Valley for 18-years and understands the concerns of the community. Eastern Coachella Valley is the largest area that provides \$500M in revenue in farmworker communities. The Board has an opportunity to make history through a cohesive way – not east versus west but a unified approach for sustainability of sources of funding with a local campaign. Mr. Carranza also explained that

more healthcare forums are necessary for new public policy to reallocate taxes coming into the Coachella Valley.

Charles Maynard, City Manager, Desert Hot Springs clarified that Desert Hot Springs is in complete support of the expansion but wants to ensure the funding paid by those in the east is used to help fund the east. Instead of spending current monies look at long-term revenue explaining that a certain percentage of Desert Hot Springs residents live below the poverty level or received government assistance, and funding should be secured before draining the current resources.

President Zandle made a motion in support of Option 1 but modifying the amount to \$300,000 per year for 20 years (a total of \$6,000,000). Director Zandle explained his motion for Option 1 and that the goal is for LAFCO to approve the funding methodology, move forward with the election to achieve equal funding over time by obtaining additional funds from Option 2 with some funding sooner and other funding over several years. After the election, if the vote passes, the Board will add two additional Members from the east explaining that 40% of residents east of Cook Street obtain health services in the west.

Director Wortham stated that the after-expense profit from the current healthcare crisis in the Valley exceeds well over \$100k. Examining how wealth is redistributed throughout the Valley, including the how residents are cared for, the gaps in services, and the current financial burdens of the state, county, cities such as retirement plans, the District should explore the current revenue being generated from facilities throughout the Coachella Valley and partner with those entities to ensure residents receive the appropriate services. Director Wortham fully supports and endorses this approach with ways to leverage choices from Option 2 but commencing to build those bridges and seek support using existing funds.

Vice-President Rogers expressed her agreement with Director Wortham stating that there are underserved populations in the East Valley and the District needs to ensure equity of funding and moving forward towards the future.

Director Matthews will not support inadequate funding of Option 1 - \$300k since the District is expanding to the most sizable portion of diversity in the Valley with individuals and families that need the most assistance. Director Matthews supports the expansion, but to suggest \$300k for a minimum of 10-years does not bring about the work that has already been completed by the Ad Hoc Committee. Further, it is a disservice to the east to self-fund \$300k per year for 20-years since the Foundation is using its existing grant program to feed those services. Director Matthews will not support the motion as it is not a long-term solution.

Director Hazen stated that moving in the direction of Option 1 takes the pressure off the County to participate in funding and this option simply relieves some of the pressure. However, Director Hazen expressed her support for the expansion, but the District can do more and can do better.

#18-26 MOTION WAS MADE by President Zendle and seconded by Director Wortham to approve Option 1 with a minimum of \$300,000 per year for 20-years designated from current non-property tax funds and non-hospital replacement funds with the goal of achieving equity and equality.

Motion passed unanimously.

Roll Call Vote:

AYES 3 Director Wortham; Vice-President Rogers; President Zendle

NOES: 2 Director Matthews; Director Hazen

ABSTAIN:

ABSENT: 0

Motion Passed 3-2

ADJOURNMENT

The meeting adjourned at 3:48 p.m.

ATTEST: _____

Carole Rogers, Vice-President/Secretary
Desert Healthcare District Board of Directors

Minutes respectfully submitted by Andrea S. Hayles, Clerk to the Board



Date: February 27, 2018

To: Board of Directors

Subject: Lease Renewal Agreement (REVISED) – Pathway
Pharmaceuticals, Inc. - Las Palmas Medical Plaza Suite #1W-101

Staff recommendation: Consideration to approve Tenant Improvements for Pathway Pharmaceuticals, Inc. at the Las Palmas Medical Plaza.

Background:

- F&A committee reviewed and approved the lease agreement at the December 2017 meeting, which did not include Tenant Improvements.
- Pathway Pharmaceuticals, Inc. has since requested \$10/sf (\$10,640) for Tenant Improvement Allowance reimbursement.
- Draft lease agreement is attached for your review.

Fiscal Impact:

Estimated revenue from Rent and CAMs for life of the lease - \$136,595

Estimated cost of Tenant Improvement Allowance (\$10/sf) - \$10,640

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OFFICE BUILDING LEASE

This Lease between Desert Healthcare District, doing business as Las Palmas Medical Plaza hereinafter referred to as "Landlord", and Pathway Pharmaceuticals, Inc., referred to as "Tenant", and is dated January 1, 2018.

I. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Section 2L. The Premises are located within the Building and Project described in Section 2m. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants, and invitees, to use of the Common Areas (as defined at Section 2e).

2. DEFINITIONS.

As used in this Lease, the following terms shall have the following meanings:

- a. *Base Rent (Initial)*: \$ Eighteen Thousand, Five Hundred Thirteen Dollars and 60/100 (\$18,513.60) per year.
- b. *Base Year*: The calendar year of January 1 to December 31.
- c. *Broker(s)*:
Landlord's: N/A
Tenant's: N/A
In the event that N/A, represents both Landlord and Tenant, Landlord and Tenant hereby confirm that they were timely advised of the dual representation and that they consent to the same, and that they do not expect said broker to disclose to either of them the confidential information of the other party.
- d. *Commencement Date*: January 1st, 2018.
- e. *Common Areas*: The building lobbies, common corridors and hallways, restrooms, parking areas, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.
- f. *Expiration Date*: December 31st, 2022, unless otherwise sooner terminated in accordance with the provisions of this Lease.
- g. *Landlord's Mailing Address*: 1140 N. Indian Canyon Dr., Palm Springs, CA 92262
Tenant's Mailing Address: 555 E. Tachevah Dr. 1W-101, Palm Springs, CA 92262.
- h. *Monthly Installments of Base Rent (initial)*: One Thousand, Five Hundred Forty-Two and 80/100 Dollars (\$1,542.80) per month.
- i. *Project Operating Costs (CAMs)*: Currently Sixty-two Cents (\$.62) per square foot per month.
- j. *Tenant Improvement Allowance (TI)*: Ten Dollars (\$10) per square foot or Ten Thousand, Six Hundred Forty and 00/100 Dollars (\$10,640.00).
- k. *Parking*: Tenant shall be permitted, to park 5 cars on a non-exclusive basis in the area(s) designated by Landlord for parking (for Staff - generally in the back of the parking area, perimeter streets, and Wellness Park parking lot). Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator.
- l. *Premises*: That portion of the Building containing approximately 1064 square feet of Rentable Area, located in Building 1W and known as Suite 101.
- m. *Project*: The building of which the Premises are a part (the "Building") and any other buildings or improvements on the real property (the "Property") located at 555 E. Tachevah Drive, Palm Springs, California 92262. The Project is known as The Las Palmas Medical Plaza.
- n. *Rentable Area*: As to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project.

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- o. *Security Deposit (Section 7)*: \$ Tenant will carry over from previous lease in the amount of One Thousand Six Hundred and Seventeen Dollars and 28/100 (\$1,617.28).
- p. *State*: the State of California.
- q. *Tenant's First Adjustment Date (Section 5)*: The first day of the calendar month following the Commencement Date plus 12 months.
- r. *Tenant's Proportionate Share*: 2.16%. Such share is a fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project consists of six building(s) containing a total Rentable Area of 49,356 square feet.
- s. *Tenant's Use Clause (Article 8)*: General office use consistent with and use the City may allow under the City of Palm Springs zoning, subject to Landlord's reasonable approval.
- t. *Term*: The period commencing on the Commencement Date and expiring at midnight on the Expiration Date.

3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" Rules and Regulations.
- b. Addenda*

*See Addendum attached hereto and by this reference made a part hereof.

4. DELIVERY OF POSSESSION.

If for any reason Landlord does not deliver possession of the Premises to Tenant on the commencement Date, Landlord shall not be subject to any liability for such failure, the Expiration Date shall not change and the validity of this Lease shall not be impaired, but Rent shall be abated until delivery of possession, "Delivery of possession" shall be deemed to occur on the date Landlord completes Landlord's Work as defined in Addendum. If Landlord permits Tenant to enter into possession of the Premises before the Commencement Date, such possession shall be subject to the provisions of this Lease, including, without limitation, the payment of Rent.

5. RENT.

5.1 *Payment of Base Rent*: Tenant agrees to pay the base rent for the premises. Monthly installments of Base Rent shall be payable in advance on the first day of each calendar month of the term. If the term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease.

5.2 *Adjusted Base Rent*:

- a. The Base Rent (and the corresponding monthly installments of Base Rent) set forth at Section 2a shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date.
- b. Such adjustment shall be the greater of 3% over the preceding year or Consumer Price Index.

5.3 *Project Operating Costs (CAMs)*:

- a. In order that the Rent payable during the Term reflect Project Operating Costs, Tenant agrees to pay to Landlord as Rent, Tenant's Proportionate Share of all costs, expenses and obligations attributable to the Project and its operation as set forth in 2i, all as provided below.
- b. If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.3b.

(1.) The term "Project Operating Costs" shall include all those items described in the following subparagraphs (a) and (b).

- (a.) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Building or Project, (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this lease or on the rent received under any other leases of space in the Building or Project, or (2) and license fee, excise or franchise tax,

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assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transactions, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operation Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least eighty-five percent (85%) of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably Approximate the taxes, which would have been payable if the Project were completed and at least eighty-five percent (85%) occupied.

(b.) Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Building or Project tenant); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) management of the Building or Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office); (8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building or Project; (9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by landlord to reduce Project Operating Costs; and (11) any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than eighty-five percent (85%) of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs which would have been incurred if the Project had been at least eighty-five percent (85%) occupied.

(2.) Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

(a.) Beginning with the calendar year following the Base Year and for each calendar year thereafter ("comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Project Operating Costs incurred by Landlord in the Comparison Year which exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year. This excess is referred to as the "Excess Expenses."

(b.) To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expense for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

(c.) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ten (10) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is exhausted. If the credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

(d.) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.

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- (e.) If any dispute arises as to the amount of any additional rent due hereunder, Tenant shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office and, if after such inspection Tenant still disputes the amount of additional rent owed, a certification as to the proper amount shall be made by Landlord's certified public accountant, which certification shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%).
- (f.) If this Lease sets forth an Expense Stop at Section 2f, then during the Term, Tenant shall be liable for Tenant's Proportionate Share of any actual Project Operating Costs which exceed the amount of the Expense Stop. Tenant shall make current payments of such excess costs during the Term in the same manner as is provided for payment of Excess Expenses under the applicable provisions of Section 5.3(2)(b) and (c) above.

5.4 *Definition of Rent:* The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefore and without deduction or offset, in lawful money of the United States of America.

5.5 *Rent Control:* If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

5.6 *Taxes Payable by Tenant:* In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Building Standard Work made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

5.7 *Tenant Improvement Allowance:* In recognition for Tenant completing all improvements, including fire sprinklers, if necessary, to the premises as mutually agreed by Landlord and Tenant, Landlord shall provide Tenant with a total Tenant improvement allowance not to exceed that set forth in Section 2j upon completion of agreed tenant improvements. This allowance will be reimbursed to tenant upon satisfactory receipt of paid invoices and inspection by Property Management that work has been satisfactorily completed. Any additional tenant improvements will be at the sole expense of the Tenant. Improvements shall conform to a high quality of design approved by Landlord prior to commencement of work, and shall be performed by a licensed General Contractor approved by Landlord in advance. Tenant shall submit plans and specifications for any and all improvements to Landlord, and where necessary, the City of Palm Springs and other applicable government agencies for their required approval (if any) prior to commencement of work. Tenant and the General Contractor shall indemnify and hold Landlord and its officers, agents and employees harmless from any liability resulting from the tenant improvement work and shall be named as an additional insured on the insurance policy of both the Tenant and the General Contractor. All costs shall be subject to prevailing wages and if construction costs exceed \$25,000, then the tenant improvements shall also be subject to California competitive bid statutes.

6. INTEREST AND LATE CHARGES.

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

7. SECURITY DEPOSIT.

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Tenant agrees to deposit with Landlord the Security Deposit set forth at Section 2.0 upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

If Tenant fails to pay Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefore, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Article 27 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

8. TENANT'S USE OF THE PREMISES

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything, which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

9. SERVICES AND UTILITIES.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during generally recognized business days, and during hours determined by Landlord in its sole discretion, and subject to the Rules and Regulations of the Building or Project, electricity for normal desk top office equipment and normal copying equipment, and heating, ventilation and air conditioning ("HVAC") as required in Landlord's judgment for the comfortable use and occupancy of the Premises. If Tenant desires HVAC at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefore on demand. Landlord shall also maintain and keep lighted the common stairs, common entries and restrooms in the Building. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (I) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

Tenant shall not, without the written consent of Landlord, use any apparatus or devise in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of

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premises as general office space (as determined by Landlord), without first procuring the written consent of Landlord, which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant and Tenant agrees to pay to Landlord Promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for such water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility plus any additional expense incurred by Landlord in keeping account of the utilities so consumed. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

Landlord shall furnish elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitor services of common area in a manner that such services are customarily furnished to comparable office buildings in the area.

10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession of the Premises are in good order and satisfactory condition, except for such matters as to which Tenant gave Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant.

II. CONSTRUCTION, REPAIRS AND MAINTENANCE.

- a. *Landlord's Obligations:* Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other tenant in the Building.
- b. *Tenant's Obligations:*
 - (1.) Tenant shall perform Tenant's Work to the Premises as described in an exhibit specific to Tenant Improvements, if applicable."
 - (2.) Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to Article 9 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, Building Standard furnishings and special items and equipment installed by or at the expense of Tenant.
 - (3.) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.
 - (4.) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.
- c. *Compliance with Law:* Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein.
- d. *Waiver by Tenant:* Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.
- e. *Load and Equipment Limits:* Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer.

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The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

- f. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.
- g. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.
- h. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's expense.

12. ALTERATIONS AND ADDITIONS.

- a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor in which case the cost of such work shall be paid for before commencement of the work. Tenant shall pay to Landlord upon completion of any such work by Landlord's contractor, an administrative fee of fifteen percent (15%) of the cost of the work.
- b. Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notice at any reasonable time.

- c. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1.5) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and material men's liens and to insure timely completion of the work. Nothing contained in this Section 12c shall relieve Tenant of its obligations under Section 12b to keep the Premises, Building and Project free of all liens.
- d. Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

- a. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.
- b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's

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Property”) shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant’s Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

14. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit “D” and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of the Building of Project.

15. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord reserves the following rights, exercisable without liability to Tenant for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Tenant’s use or possession of the Premises:

- a. To name the Building and Project and to change the name or street address of the Building or Project;
- b. To install and maintain all signs on the exterior and interior of the Building and Project;
- c. To have pass keys to the Premises and all doors within the Premises, eluding Tenant’s vaults and safes;
- d. At any time during the Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and
- e. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord’s interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant’s business in the Premises in the course of any such entry.

16. ASSIGNMENT AND SUBLETTING.

No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Article 16.

- a. Tenant shall not, without the prior written consent of Landlord, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.
- b. If at any time or from time to time during the Term Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant’s notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant’s notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:
 - (1.) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;
 - (2.) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;
 - (3.) No assignment or sublease shall be valid and no assignee or sub lessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;
 - (4.) No assignee or sub lessee shall have a further right to assign or sublet except on the terms herein contained; and
 - (5.) Any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums

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which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.

- c. Notwithstanding the provisions of paragraphs a and b above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or termination option to Landlord, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern, provided that (i) the assignee or sub lessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, and (iii) the use of the Premises under Article 8 remains unchanged.
- d. No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or sub lettings or amendments or modifications to the Lease with assignees of tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereof and any such actions shall not relieve Tenant of liability under this Lease.
- e. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred Fifty and No/100 Dollars (\$150.00) plus any attorney's fees reasonably incurred by Landlord in connection with such act or request.

17. HOLDING OVER.

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

18. SURRENDER OF PREMISES.

- a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.
- b. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

19. DESTRUCTION OR DAMAGE.

- a. If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements, or other casualty, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days. If Landlord determines that repairs can be completed with ninety (90) days, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees, or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19d.
- b. If in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

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- c. If any other portion of the Building or Project is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days, Landlord may elect upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.
- d. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any injury or damage to the Building and Building Standard Work in the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration, and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building, or Project as a result of any damage from fire or other casualty.
- e. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building, or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absent of express agreement, shall have no application.

20. EMINENT DOMAIN.

- a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.
- b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment, or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title, and interest in any award, judgment, or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.
- c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of Building Standard Work. Tenant shall be responsible at its sole cost and expenses for the repair, restoration, and replacement of any other Leasehold improvements and Tenant's Property.

21. INDEMNIFICATION.

- a. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (1) Tenant's use and occupancy of the Premises, or any work, activity, or other things allowed or suffered by Tenant to be done in, on, or about the Premises; (2) any breach or default by Tenant of any of the Tenant's obligations under this Lease; or (3) any negligent or otherwise tortuous act or omission of Tenant, its agents, employees, invitees, or contractors. Tenant shall at Tenant's expense and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim and shall indemnify Landlord against all costs, attorneys' fees, expert witness fees, and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on, or about the Premises from any cause.
- b. Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees, or customers or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Project or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant of the Building or Project.

22. TENANT'S INSURANCE.

- a. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy

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and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees, and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees, or representatives. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefore. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee, and Tenant as required by this Lease.

- b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions, or improvements as may be made by Tenant pursuant to the provisions of Article 12 hereof), and (ii) trade fixtures, merchandise, and other personal property from time to time in, on, or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism, and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) above be paid to Landlord, and the proceeds under (ii) above be paid to Tenant.
- c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for, and maintain in effect worker's compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation, or condition of the Premises, and the operations of Tenant in, on, or about the Premises, providing broad form property damage coverage for not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) each occurrence, and property damage liability insurance with a limit of not less than Two Hundred Fifty Thousand Dollars (\$250,000) each accident.
- d. Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Article. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Article shall be adjusted for increases in the cost of living in the same manner as is set forth in Section 5.2 hereof for the adjustment of the Base Rent.

23. WAIVER OF SUBROGATION.

Landlord and Tenant each hereby waive all rights or recovery against the other and against the officers, employees, agents, and representatives of the other, on account of loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

24. SUBORDINATION AND ATTORNMENT.

Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or thereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor or Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure, or termination of the lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee, or lessor, as the case may be, and recognize that party as Landlord under this Lease provided such party acquires and accepts the Premises subject to this Lease.

25. TENANT ESTOPPEL CERTIFICATE.

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Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee, or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim, or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

26. TRANSFER OF LANDLORD'S INTEREST.

In the event of any sale or transfer by Landlord of the Premises, Building, or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Premises, Building, Project, or Lease occurring after the consummation of such sale or transfer, providing the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

27. DEFAULT.

27.1. *Tenant's Default.* The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- a. If Tenant abandons or vacates the Premises; or
- b. If Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for five (5) days after such payment is due and payable; or
- c. If Tenant fails to promptly and fully perform any other covenant, condition, or agreement contained in this lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody, or control of Tenant or any substantial part of its property and such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Tenant is not a party, a trustee, receiver, agent, or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d through g above.

27.2. *Remedies.* In the event of Tenant's default hereunder, then, in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of the Premises and re-enter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in effect, re-enter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Re-enter the Premises under the provisions of subparagraph b and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord re-enters the Premises under the provisions of subparagraph b or c above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or

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any part of Tenant's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting, which is applied against, the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Landlord elect to terminate this Lease under the provisions of subparagraph a or c above, Landlord may recover as damages from Tenant the following:

- (1.) *Past Rent*. The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
- (2.) *Rent Prior to Award*. The worth at the time of the 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 Tenant proves could have been reasonably avoided; plus
- (3.) *Rent After Award*. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant provides could be reasonably avoided; plus
- (4.) *Proximately Caused Damages*. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, any costs or expenses (including attorneys' fees) incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including broker's commissions.

"The worth at the time of the award@ as used in subparagraphs 1 and 2 above is to be computed by allowing interest at the rate of ten percent (10%) per annum." The worth at the time of the award@ as used in subparagraph 3 above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition unless Landlord gives Tenant written notice of such waiver.

27.3 *Landlord's Default*. If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title, and interest in the Premises, Building, or Project, and no other real, personal, or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense. Tenant shall not have the right to terminate this Lease or to withhold, reduce, or offset any amount against any payments of Rent or any other charges due and payable under this Lease, except as otherwise specifically provided herein.

28. BROKERAGE FEES.

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Tenant shall indemnify and hold Landlord harmless from any cost, expenses, or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission, or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant.

_____ District _____ Recipient

29. NOTICES.

All notices, approvals, and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if personally delivered or sent by certified or registered U.S. mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

30. GOVERNMENT ENERGY OR UTILITY CONTROLS.

In the event of imposition of federal, state, or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

31. RELOCATION OF PREMISES.

Landlord shall have the right to relocate the Premises to another part of the Building in accordance with the following:

- a. The new premises shall be substantially the same in size, dimension, configuration, decor and nature as the Premises described in this Lease, and if the relocation occurs after the Commencement Date, shall be placed in that condition by Landlord at its cost.
- b. Landlord shall give Tenant at least thirty (30) days written notice of Landlord's intention to relocate the Premises.
- c. As nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday. If the physical relocation has not been completed in that time, Base Rent shall abate in full from the time the physical relocation commences to the time it is completed. Upon completion of such relocation, the new premises shall become the "Premises" under this Lease.
- d. All reasonable costs incurred by Tenant as a result of the relocation shall be paid by Landlord.
- e. If the new premises are smaller than the Premises as it existed before the relocation, Base Rent shall be reduced proportionately.
- f. The parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of Base Rent, if any.

32. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

33. OBSERVANCE OF LAW.

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

34. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

35. CURING TENANT'S DEFAULTS.

_____ District _____ Recipient

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefore.

36. SIGN CONTROL.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

37. MISCELLANEOUS.

- a. *Accord and Satisfaction; Allocation of Payments:* No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.
- b. *Addenda:* If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.
- c. *Attorneys' Fees:* If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.
- d. *Captions, Articles and Section Numbers:* The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.
- e. *Changes Requested by Lender:* Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such charge or amendment is requested.
- f. *Choice of Law:* This Lease shall be construed and enforced in accordance with the laws of the State of California.
- g. *Consent:* Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc.
- h. *Corporate Authority:* If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.
- i. *Counterparts:* This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.
- j. *Execution of Lease; No Option:* The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.
- k. *Furnishing of Financial Statements; Tenant's Representations:* In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects.

_____ District _____ Recipient

- l. *Further Assurances*: The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.
- m. *Mortgagee Protection*: Tenant agrees to send by certified or registered mail to any first mortgagee or first deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.
- n. *Prior Agreements; Amendments*: This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.
- o. *Recording*: Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.
- p. *Severability*: A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.
- q. *Successors and Assigns*: This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.
- r. *Time of the Essence*: Time is of the essence of this Lease.
- s. *Waiver*: No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default.
- t. *Compliance*: The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or other provision of the Lease.

_____ District _____ Recipient

The parties hereto have executed this Lease as of the dates set forth below.

Date: _____

Date: _____

Landlord: Desert Healthcare District

Tenant: _____

dba: Las Palmas Medical Plaza

By: Herb K. Schultz

By: _____

Signature: _____

Signature: _____

Title: CEO

Title: _____

CONSULT YOUR ADVISORS This document has been prepared for approval by your attorney. No representation or recommendation is made as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney.

In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist or other person, with experience in evaluating the condition of the property, including the possible presence of asbestos, hazardous materials and underground storage tanks.

DRAFT

EXHIBIT "A"

RULES AND REGULATIONS

1. No sign, placard, pictures, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without the written consent of Landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant.

All approved signs or lettering on doors shall be printed, painted, affixed, or inscribed at the expense of Tenant by a person approved by Landlord outside the Premises; provided, however, that Landlord may furnish and install a Building standard window covering at all exterior windows. Tenant shall not, without prior written consent of Landlord, cause or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Tenant shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises.
4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of the rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.
5. Tenant shall not overload the floor of the Premises or in any way deface the Premises or any part thereof.
6. No furniture, freight or equipment of any kind shall be brought into the Building without the prior notice to Landlord and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant.
7. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substances in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises of the Building.
8. No cooking shall be done or permitted by any Tenant on the Premises, nor shall the Premises be used for storage of merchandise, for washing clothes, for lodging or for any improper, objectionable or immoral purposes.
9. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
10. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.
11. On Saturdays, Sundays and legal holidays, and on other days between the hours of 6:00 p.m. and 8:00 a.m. the following day, access to the Building or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. The Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, the Landlord reserves the right to prevent access to the Building during the continuance of the same by closing of the doors or otherwise, for the safety of the tenants and protection of property in the Building and the Building.
12. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.
13. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.
14. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building of which the Premises are a part.

_____ District _____ Recipient

- 15. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent same.
- 16. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
- 17. Landlord shall have the right to control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.
- 18. All entrance doors in the Premises shall be left locked when the Premises are not in use, and all doors opening to public corridors shall be kept closed except for normal ingress and egress from the Premises.

Landlord's Initials

Tenant's Initials

DRAFT

ADDENDUM

Addendum to that certain Office Building Lease dated January 1, 2018 by and between Desert Healthcare District doing business as the Las Palmas Medical Plaza, as Landlord and Pathway Pharmaceuticals, Inc., as Tenant for the property commonly known as Las Palmas Medical Plaza located at 555 E. Tachevah Drive, Palm Springs, CA 92262.

Page 1

In the event of any inconsistency between the Addendum language and the body of the Lease, the Addendum language shall prevail.

- 1. Commencement Date: January 1, 2018
- 2. Expiration Date: December 31, 2022
- 3. Rent Schedule:

1/1/2018 – 12/31/2018	\$1,542.80	
1/1/2019 – 12/31/2019	\$1,589.08	Greater of 3% or CPI
1/1/2020 – 12/31/2020	\$1,636.76	Greater of 3% or CPI
1/1/2021 – 12/31/2021	\$1,685.86	Greater of 3% or CPI
1/1/2022 – 12/31/2022	\$1,736.43	Greater of 3% or CPI
- 4. CAMs: \$.62 per square foot.
- 5. Security Deposit: Carry over from previous lease in the amount of One Thousand Six Hundred and Seventeen Dollars and 28/100 (\$1,617.28).

The foregoing is hereby agreed to and accepted:

Date: _____	Date: _____
Landlord: <u>Desert Healthcare District</u>	Tenant: _____
<u>dba: Las Palmas Medical Plaza</u>	
By: <u>Herb K. Schultz</u>	By: _____
Signature: _____	Signature: _____
Title: <u>CEO</u>	Title: _____



Date: February 27, 2018

To: Board of Directors

Subject: Lease Agreement – EyeCare Services Partners Management - Las Palmas Medical Plaza Suite #1E 101-102

Staff recommendation: Consideration to approve the draft lease agreement for EyeCare Services Partners Management at the Las Palmas Medical Plaza.

Background:

- Milauskas Eye Institute, the current occupant of Suite 1E 101-102, is a long standing tenant at LPMP.
- The tenant’s current lease will expire February 28, 2018. The tenant wishes to extend the lease for an additional 5 years, with 2 options for additional 5 year extensions.
- Tenant has entered into a purchase agreement with EyeCare Services Partners Management LLC.

Fiscal Impact:

Estimated revenue from Rent and CAMs for life of the lease - \$377,800

Tenant Improvement costs - \$19,362

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OFFICE BUILDING LEASE

This Lease between Desert Healthcare District, doing business as Las Palmas Medical Plaza hereinafter referred to as "Landlord", and EyeCare Services Partners Management LLC, a Delaware limited liability company, referred to as "Tenant", and is dated March 1, 2018.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Section 2L. The Premises are located within the Building and Project described in Section 2m. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants, and invitees, to use of the Common Areas (as defined at Section 2e).

2. DEFINITIONS.

As used in this Lease, the following terms shall have the following meanings:

- a. *Base Rent (Initial)*: Fifty-One Thousand, Seven Hundred Seventy-Nine Dollars & 52/100 (\$51,779.52) per year.
- b. *Base Year*: The calendar year of March 1 to February 28.
- c. *Broker(s)*:
 Landlord's: N/A
 Tenant's: N/A
 In the event that N/A represents both Landlord and Tenant, Landlord and Tenant hereby confirm that they were timely advised of the dual representation and that they consent to the same, and that they do not expect said broker to disclose to either of them the confidential information of the other party.
- d. *Commencement Date*: March 1, 2018.
- e. *Common Areas*: The building lobbies, common corridors and hallways, restrooms, parking areas, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.
- f. *Expiration Date*: February 28, 2023, unless otherwise sooner terminated in accordance with the provisions of this Lease.
- g. *Landlord's Mailing Address*: 1140 N. Indian Canyon Dr., Palm Springs, CA 92262
Tenant's Mailing Address: 555 E. Tachevah Dr. 1E-101, Palm Springs, CA 92262
- h. *Monthly Installments of Base Rent (initial)*: \$ Four Thousand, Three Hundred Fourteen Dollars & 96/100 (\$4,314.96) per month.
- i. *Project Operating Costs (CAMs)*: Currently Sixty-Two Cents (\$.62) per square foot per month.
- j. *Tenant Improvement Allowance (TI)*: \$ Seven (\$7) per square foot – Nineteen Thousand, Three Hundred Sixty-Two Dollars & 00/100 (\$19,362)
- k. *Parking*: Tenant shall be permitted, to park 14 cars on a non-exclusive basis in the area(s) designated by Landlord for parking (for Staff - generally in the back of the parking area, perimeter streets, and Wellness Park parking lot). Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator.
- l. *Premises*: That portion of the Building containing approximately 2766 square feet of Rentable Area, located in Building 1E and known as Suite 101-102.
- m. *Project*: The building of which the Premises are a part (the "Building") and any other buildings or improvements on the real property (the "Property") located at 555 E. Tachevah Drive, Palm Springs, California 92262. The Project is known as The Las Palmas Medical Plaza.
- n. *Rentable Area*: As to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project.

_____ District _____ Recipient

- o. *Security Deposit (Section 7)*: \$ N/A .
- p. *State*: the State of California.
- q. *Tenant's First Adjustment Date (Section 5)*: The first day of the calendar month following the Commencement Date plus 12 months.
- r. *Tenant's Proportionate Share*: 5.60%. Such share is a fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project consists of six building(s) containing a total Rentable Area of 49,356 square feet.
- s. *Tenant's Use Clause (Article 8)*: General office use consistent with and use the City may allow under the City of Palm Springs zoning, subject to Landlord's reasonable approval.
- t. *Term*: The period commencing on the Commencement Date and expiring at midnight on the Expiration Date.

3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" Rules and Regulations.
- b. Addenda*

*See Addendum attached hereto and by this reference made a part hereof.

4. DELIVERY OF POSSESSION.

If for any reason Landlord does not deliver possession of the Premises to Tenant on the commencement Date, Landlord shall not be subject to any liability for such failure, the Expiration Date shall not change and the validity of this Lease shall not be impaired, but Rent shall be abated until delivery of possession, "Delivery of possession" shall be deemed to occur on the date Landlord completes Landlord's Work as defined in Addendum. If Landlord permits Tenant to enter into possession of the Premises before the Commencement Date, such possession shall be subject to the provisions of this Lease, including, without limitation, the payment of Rent.

5. RENT.

5.1 *Payment of Base Rent*: Tenant agrees to pay the base rent for the premises. Monthly installments of Base Rent shall be payable in advance on the first day of each calendar month of the term. If the term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease.

5.2 *Adjusted Base Rent*:

- a. The Base Rent (and the corresponding monthly installments of Base Rent) set forth at Section 2a shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date.
- b. Such adjustment shall be the greater of 3% over the preceding year or Consumer Price Index.

5.3 *Project Operating Costs (CAMs)*:

- a. In order that the Rent payable during the Term reflect Project Operating Costs, Tenant agrees to pay to Landlord as Rent, Tenant's Proportionate Share of all costs, expenses and obligations attributable to the Project and its operation as set forth in 2i, all as provided below.
- b. If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.3b.

(1.) The term "Project Operating Costs" shall include all those items described in the following subparagraphs (a) and (b).

- (a.) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Building or Project, (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this lease or on the rent received under any other leases of space in the Building or Project, or (2) and license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, _____ District _____ Recipient

transactions, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operating Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least eighty-five percent (85%) of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably Approximate the taxes, which would have been payable if the Project were completed and at least eighty-five percent (85%) occupied.

(b.) Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Building or Project tenant); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) management of the Building or Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office); (8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building or Project; (9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by landlord to reduce Project Operating Costs; and (11) any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than eighty-five percent (85%) of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs which would have been incurred if the Project had been at least eighty-five percent (85%) occupied.

(2.) Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

(a.) Beginning with the calendar year following the Base Year and for each calendar year thereafter ("comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Project Operating Costs incurred by Landlord in the Comparison Year which exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year. This excess is referred to as the "Excess Expenses."

(b.) To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expense for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

(c.) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ten (10) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is exhausted. If the credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

(d.) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.

(e.) If any dispute arises as to the amount of any additional rent due hereunder, Tenant shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's

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accounting office and, if after such inspection Tenant still disputes the amount of additional rent owed, a certification as to the proper amount shall be made by Landlord's certified public accountant, which certification shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%).

- (f.) If this Lease sets forth an Expense Stop at Section 2f, then during the Term, Tenant shall be liable for Tenant's Proportionate Share of any actual Project Operating Costs which exceed the amount of the Expense Stop. Tenant shall make current payments of such excess costs during the Term in the same manner as is provided for payment of Excess Expenses under the applicable provisions of Section 5.3(2)(b) and (c) above.

5.4 *Definition of Rent*: The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefore and without deduction or offset, in lawful money of the United States of America.

5.5 *Rent Control*: If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

5.6 *Taxes Payable by Tenant*: In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Building Standard Work made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

5.7 *Tenant Improvement Allowance*: In recognition for Tenant completing all improvements, including fire sprinklers, if necessary, to the premises as mutually agreed by Landlord and Tenant, Landlord shall provide Tenant with a total Tenant improvement allowance not to exceed that set forth in Section 2j upon completion of agreed tenant improvements. This allowance will be reimbursed to tenant upon satisfactory receipt of paid invoices and inspection by Property Management that work has been satisfactorily completed. Any additional tenant improvements will be at the sole expense of the Tenant. Improvements shall conform to a high quality of design approved by Landlord prior to commencement of work, and shall be performed by a licensed General Contractor approved by Landlord in advance. Tenant shall submit plans and specifications for any and all improvements to Landlord, and where necessary, the City of Palm Springs and other applicable government agencies for their required approval (if any) prior to commencement of work. Tenant and the General Contractor shall indemnify and hold Landlord and its officers, agents and employees harmless from any liability resulting from the tenant improvement work and shall be named as an additional insured on the insurance policy of both the Tenant and the General Contractor. All costs shall be subject to prevailing wages and if construction costs exceed \$25,000, then the tenant improvements shall also be subject to California competitive bid statutes.

6. INTEREST AND LATE CHARGES.

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

7. SECURITY DEPOSIT.

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Tenant agrees to deposit with Landlord the Security Deposit set forth at Section 2.0 upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

If Tenant fails to pay Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefore, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Article 27 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

8. TENANT'S USE OF THE PREMISES

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything, which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

9. SERVICES AND UTILITIES.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during generally recognized business days, and during hours determined by Landlord in its sole discretion, and subject to the Rules and Regulations of the Building or Project, electricity for normal desk top office equipment and normal copying equipment, and heating, ventilation and air conditioning ("HVAC") as required in Landlord's judgment for the comfortable use and occupancy of the Premises. If Tenant desires HVAC at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefore on demand. Landlord shall also maintain and keep lighted the common stairs, common entries and restrooms in the Building. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (I) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

Tenant shall not, without the written consent of Landlord, use any apparatus or devise in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of premises as general office space (as determined by Landlord), without first procuring the written consent of Landlord,

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which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant and Tenant agrees to pay to Landlord Promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for such water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility plus any additional expense incurred by Landlord in keeping account of the utilities so consumed. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

Landlord shall furnish elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitor services of common area in a manner that such services are customarily furnished to comparable office buildings in the area.

10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession of the Premises are in good order and satisfactory condition, except for such matters as to which Tenant gave Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant.

II. CONSTRUCTION, REPAIRS AND MAINTENANCE.

- a. *Landlord's Obligations:* Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other tenant in the Building.
- b. *Tenant's Obligations:*
 - (1.) Tenant shall perform Tenant's Work to the Premises as described in an exhibit specific to Tenant Improvements, if applicable."
 - (2.) Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to Article 9 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, Building Standard furnishings and special items and equipment installed by or at the expense of Tenant.
 - (3.) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.
 - (4.) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.
- c. *Compliance with Law:* Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein.
- d. *Waiver by Tenant:* Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.
- e. *Load and Equipment Limits:* Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon

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demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

- f. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.
- g. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.
- h. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's expense.

12. ALTERATIONS AND ADDITIONS.

- a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor in which case the cost of such work shall be paid for before commencement of the work. Tenant shall pay to Landlord upon completion of any such work by Landlord's contractor, an administrative fee of fifteen percent (15%) of the cost of the work.
- b. Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notice at any reasonable time.

- c. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1.5) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and material men's liens and to insure timely completion of the work. Nothing contained in this Section 12c shall relieve Tenant of its obligations under Section 12b to keep the Premises, Building and Project free of all liens.
- d. Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

- a. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.
- b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the

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Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

14. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit "D" and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of the Building of Project.

15. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord reserves the following rights, exercisable without liability to Tenant for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Tenant's use or possession of the Premises:

- a. To name the Building and Project and to change the name or street address of the Building or Project;
- b. To install and maintain all signs on the exterior and interior of the Building and Project;
- c. To have pass keys to the Premises and all doors within the Premises, eluding Tenant's vaults and safes;
- d. At any time during the Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and
- e. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

16. ASSIGNMENT AND SUBLETTING.

No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Article 16.

- a. Tenant shall not, without the prior written consent of Landlord, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.
- b. If at any time or from time to time during the Term Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant's notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:
 - (1.) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;
 - (2.) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;
 - (3.) No assignment or sublease shall be valid and no assignee or sub lessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;
 - (4.) No assignee or sub lessee shall have a further right to assign or sublet except on the terms herein contained; and
 - (5.) Any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any

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portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.

- c. Notwithstanding the provisions of paragraphs a and b above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or termination option to Landlord, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern, provided that (i) the assignee or sub lessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, and (iii) the use of the Premises under Article 8 remains unchanged.
- d. No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or sub lettings or amendments or modifications to the Lease with assignees of tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereof and any such actions shall not relieve Tenant of liability under this Lease.
- e. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred Fifty and No/100 Dollars (\$150.00) plus any attorney's fees reasonably incurred by Landlord in connection with such act or request.

17. HOLDING OVER.

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

18. SURRENDER OF PREMISES.

- a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.
- b. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

19. DESTRUCTION OR DAMAGE.

- a. If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements, or other casualty, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days. If Landlord determines that repairs can be completed within ninety (90) days, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees, or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19d.
- b. If in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.
- c. If any other portion of the Building or Project is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days, Landlord may elect upon notice to Tenant

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given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

- d. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any injury or damage to the Building and Building Standard Work in the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration, and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building, or Project as a result of any damage from fire or other casualty.
- e. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building, or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absent of express agreement, shall have no application.

20. EMINENT DOMAIN.

- a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.
- b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment, or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title, and interest in any award, judgment, or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.
- c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of Building Standard Work. Tenant shall be responsible at its sole cost and expenses for the repair, restoration, and replacement of any other Leasehold improvements and Tenant's Property.

21. INDEMNIFICATION.

- a. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (1) Tenant's use and occupancy of the Premises, or any work, activity, or other things allowed or suffered by Tenant to be done in, on, or about the Premises; (2) any breach or default by Tenant of any of the Tenant's obligations under this Lease; or (3) any negligent or otherwise tortuous act or omission of Tenant, its agents, employees, invitees, or contractors. Tenant shall at Tenant's expense and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim and shall indemnify Landlord against all costs, attorneys' fees, expert witness fees, and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on, or about the Premises from any cause.
- b. Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees, or customers or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Project or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant of the Building or Project.

22. TENANT'S INSURANCE.

- a. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of

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any right of subrogation against Landlord, its agents, employees, and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees, or representatives. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefore. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee, and Tenant as required by this Lease.

- b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions, or improvements as may be made by Tenant pursuant to the provisions of Article 12 hereof), and (ii) trade fixtures, merchandise, and other personal property from time to time in, on, or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism, and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) above be paid to Landlord, and the proceeds under (ii) above be paid to Tenant.
- c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for, and maintain in effect worker's compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation, or condition of the Premises, and the operations of Tenant in, on, or about the Premises, providing broad form property damage coverage for not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) each occurrence, and property damage liability insurance with a limit of not less than Two Hundred Fifty Thousand Dollars (\$250,000) each accident.
- d. Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Article. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Article shall be adjusted for increases in the cost of living in the same manner as is set forth in Section 5.2 hereof for the adjustment of the Base Rent.

23. WAIVER OF SUBROGATION.

Landlord and Tenant each hereby waive all rights or recovery against the other and against the officers, employees, agents, and representatives of the other, on account of loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

24. SUBORDINATION AND ATTORNMENT.

Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or thereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor or Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure, or termination of the lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee, or lessor, as the case may be, and recognize that party as Landlord under this Lease provided such party acquires and accepts the Premises subject to this Lease.

25. TENANT ESTOPPEL CERTIFICATE.

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and

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additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee, or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim, or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

26. TRANSFER OF LANDLORD'S INTEREST.

In the event of any sale or transfer by Landlord of the Premises, Building, or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Premises, Building, Project, or Lease occurring after the consummation of such sale or transfer, providing the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

27. DEFAULT.

27.1. *Tenant's Default.* The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- a. If Tenant abandons or vacates the Premises; or
- b. If Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for five (5) days after such payment is due and payable; or
- c. If Tenant fails to promptly and fully perform any other covenant, condition, or agreement contained in this lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody, or control of Tenant or any substantial part of its property and such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Tenant is not a party, a trustee, receiver, agent, or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d through g above.

27.2. *Remedies.* In the event of Tenant's default hereunder, then, in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of the Premises and re-enter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in effect, re-enter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Re-enter the Premises under the provisions of subparagraph b and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord re-enters the Premises under the provisions of subparagraph b or c above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent

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due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting, which is applied against, the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Landlord elect to terminate this Lease under the provisions of subparagraph a or c above, Landlord may recover as damages from Tenant the following:

- (1.) *Past Rent.* The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
- (2.) *Rent Prior to Award.* The worth at the time of the 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 Tenant proves could have been reasonably avoided; plus
- (3.) *Rent After Award.* The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant provides could be reasonably avoided; plus
- (4.) *Proximately Caused Damages.* Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, any costs or expenses (including attorneys' fees) incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including broker's commissions.

"The worth at the time of the award@ as used in subparagraphs 1 and 2 above is to be computed by allowing interest at the rate of ten percent (10%) per annum." The worth at the time of the award@ as used in subparagraph 3 above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition unless Landlord gives Tenant written notice of such waiver.

27.3 *Landlord's Default.* If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title, and interest in the Premises, Building, or Project, and no other real, personal, or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense. Tenant shall not have the right to terminate this Lease or to withhold, reduce, or offset any amount against any payments of Rent or any other charges due and payable under this Lease, except as otherwise specifically provided herein.

28. BROKERAGE FEES.

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Tenant shall indemnify and hold Landlord harmless from any cost, expenses, or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission, or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant.

29. NOTICES.

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All notices, approvals, and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if personally delivered or sent by certified or registered U.S. mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

30. GOVERNMENT ENERGY OR UTILITY CONTROLS.

In the event of imposition of federal, state, or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

31. RELOCATION OF PREMISES.

Landlord shall have the right to relocate the Premises to another part of the Building in accordance with the following:

- a. The new premises shall be substantially the same in size, dimension, configuration, decor and nature as the Premises described in this Lease, and if the relocation occurs after the Commencement Date, shall be placed in that condition by Landlord at its cost.
- b. Landlord shall give Tenant at least thirty (30) days written notice of Landlord's intention to relocate the Premises.
- c. As nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday. If the physical relocation has not been completed in that time, Base Rent shall abate in full from the time the physical relocation commences to the time it is completed. Upon completion of such relocation, the new premises shall become the "Premises" under this Lease.
- d. All reasonable costs incurred by Tenant as a result of the relocation shall be paid by Landlord.
- e. If the new premises are smaller than the Premises as it existed before the relocation, Base Rent shall be reduced proportionately.
- f. The parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of Base Rent, if any.

32. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

33. OBSERVANCE OF LAW.

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

34. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

35. CURING TENANT'S DEFAULTS.

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If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefore.

36. SIGN CONTROL.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

37. MISCELLANEOUS.

- a. *Accord and Satisfaction; Allocation of Payments:* No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.
- b. *Addenda:* If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.
- c. *Attorneys' Fees:* If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.
- d. *Captions, Articles and Section Numbers:* The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.
- e. *Changes Requested by Lender:* Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such charge or amendment is requested.
- f. *Choice of Law:* This Lease shall be construed and enforced in accordance with the laws of the State of California.
- g. *Consent:* Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc.
- h. *Corporate Authority:* If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.
- i. *Counterparts:* This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.
- j. *Execution of Lease; No Option:* The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.
- k. *Furnishing of Financial Statements; Tenant's Representations:* In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects.

_____ District _____ Recipient

- l. *Further Assurances*: The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.
- m. *Mortgagee Protection*: Tenant agrees to send by certified or registered mail to any first mortgagee or first deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.
- n. *Prior Agreements; Amendments*: This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.
- o. *Recording*: Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.
- p. *Severability*: A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.
- q. *Successors and Assigns*: This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.
- r. *Time of the Essence*: Time is of the essence of this Lease.
- s. *Waiver*: No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default.
- t. *Compliance*: The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or other provision of the Lease.

_____ District _____ Recipient

The parties hereto have executed this Lease as of the dates set forth below.

Date: _____

Date: _____

Landlord: Desert Healthcare District

Tenant: _____

dba: Las Palmas Medical Plaza

By: Herb K. Schultz

By: _____

Signature: _____

Signature: _____

Title: CEO

Title: _____

CONSULT YOUR ADVISORS This document has been prepared for approval by your attorney. No representation or recommendation is made as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney.

In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist or other person, with experience in evaluating the condition of the property, including the possible presence of asbestos, hazardous materials and underground storage tanks.

DRAFT

EXHIBIT "A"

RULES AND REGULATIONS

1. No sign, placard, pictures, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without the written consent of Landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant.

All approved signs or lettering on doors shall be printed, painted, affixed, or inscribed at the expense of Tenant by a person approved by Landlord outside the Premises; provided, however, that Landlord may furnish and install a Building standard window covering at all exterior windows. Tenant shall not, without prior written consent of Landlord, cause or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Tenant shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises.
4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of the rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.
5. Tenant shall not overload the floor of the Premises or in any way deface the Premises or any part thereof.
6. No furniture, freight or equipment of any kind shall be brought into the Building without the prior notice to Landlord and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant.
7. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substances in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises of the Building.
8. No cooking shall be done or permitted by any Tenant on the Premises, nor shall the Premises be used for storage of merchandise, for washing clothes, for lodging or for any improper, objectionable or immoral purposes.
9. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
10. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.
11. On Saturdays, Sundays and legal holidays, and on other days between the hours of 6:00 p.m. and 8:00 a.m. the following day, access to the Building or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. The Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, the Landlord reserves the right to prevent access to the Building during the continuance of the same by closing of the doors or otherwise, for the safety of the tenants and protection of property in the Building and the Building.
12. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.
13. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.
14. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building of which the Premises are a part.

_____ District _____ Recipient

- 15. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent same.
- 16. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
- 17. Landlord shall have the right to control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.
- 18. All entrance doors in the Premises shall be left locked when the Premises are not in use, and all doors opening to public corridors shall be kept closed except for normal ingress and egress from the Premises.

Landlord's Initials

Tenant's Initials

DRAFT

ADDENDUM

Addendum to that certain Office Building Lease dated March 1, 2018 by and between Desert Healthcare District doing business as the Las Palmas Medical Plaza, as Landlord, and EyeCare Services Partners Management LLC, a Delaware limited liability company as Tenant for the property commonly known as Las Palmas Medical Plaza located 555 E. Tachevah Drive, Palm Springs, CA 92262.

Page 1

In the event of any inconsistency between the Addendum language and the body of the Lease, the Addendum language shall prevail.

- 1. Commencement Date: March 1, 2018
- 2. Expiration Date: February 28, 2023
- 3. Rent Schedule:

3/1/2018 – 2/28/2019	\$4,314.96	
3/1/2019 – 2/28/2020	\$4,444.41	Greater of 3% or CPI
3/1/2020 – 2/28/2021	\$4,577.74	Greater of 3% or CPI
3/1/2021 – 2/28/2022	\$4,715.07	Greater of 3% or CPI
3/1/2022 – 2/28/2023	\$4,856.53	Greater of 3% or CPI
- 4. CAMs: Currently \$.62 per square foot.
- 5. Security Deposit: N/A.
- 6. Renewal Options: Tenet requests 2 optional 5 year extensions.

The foregoing is hereby agreed to and accepted:

Date: _____	Date: _____
Landlord: <u>Desert Healthcare District</u>	Tenant: _____
<u>dba: Las Palmas Medical Plaza</u>	
By: <u>Herb K. Schultz</u>	By: _____
Signature: _____	Signature: _____
Title: <u>CEO</u>	Title: _____



Date: February 27, 2018

To: Board of Directors

Subject: Lease Renewal Agreement – Derakhsh Fozouni, MD - Las Palmas Medical Plaza Suite #2W-102, #2W-103/104

Staff recommendation: Consideration to approve the draft lease agreement for Derakhsh Fozouni, MD at the Las Palmas Medical Plaza.

Background:

- Dr. Fozouni has been a long standing tenant of the Las Palmas Medical Plaza in units 2W 102, 103 & 104.
- Dr. Fozouni would like to renew a 5 year lease with base rent of \$1.65/sf.
- Staff recommends approval of the draft lease agreement subject to Dr. Fozouni's approval.
- Draft lease agreement is attached for your review.

Fiscal Impact:

Estimated revenue from Rent and CAMs for life of the lease - \$358,364.00

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OFFICE BUILDING LEASE

This Lease between Desert Healthcare District, doing business as Las Palmas Medical Plaza hereinafter referred to as "Landlord", and Derakhsh Fozouni, MD. A Medical Corporation, hereinafter referred to as "Tenant", and is dated March 1, 2018.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises described in Section 2L. The Premises are located within the Building and Project described in Section 2m. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants, and invitees, to use of the Common Areas (as defined at Section 2e).

2. DEFINITIONS.

As used in this Lease, the following terms shall have the following meanings:

- a. *Base Rent (Initial)*: \$ Forty-Nine Thousand, Eight Hundred Fifty-Six and 40/100 Dollars (\$49,856.40) per year.
- b. *Base Year*: The calendar year of March 1 to February 28.
- c. *Broker(s)*:
Landlord's: N/A
Tenant's: N/A

In the event that N/A represents both Landlord and Tenant, Landlord and Tenant hereby confirm that they were timely advised of the dual representation and that they consent to the same, and that they do not expect said broker to disclose to either of them the confidential information of the other party.

- d. *Commencement Date*: March 1st, 2018.
- e. *Common Areas*: The building lobbies, common corridors and hallways, restrooms, parking areas, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.
- f. *Expiration Date*: February 28, 2023, unless otherwise sooner terminated in accordance with the provisions of this Lease.
- g. *Landlord's Mailing Address*: 1140 N. Indian Canyon Dr., Palm Springs, CA 92262
Tenant's Mailing Address: 555 E. Tachevah Dr. 2W 102-104, Palm Springs, CA 92262
- h. *Monthly Installments of Base Rent (initial)*: Four Thousand, One Hundred Fifty-Four and 70/100 Dollars (\$4,154.70) per month.
- i. *Project Operating Costs (CAMS)*: Currently Sixty-Two Cents (\$.62) per square foot per month.
- j. *Tenant Improvement Allowance (TI)*: \$0 per square foot or \$0.
- k. *Parking*: Tenant shall be permitted, to park 12 cars on a non-exclusive basis in the area(s) designated by Landlord for parking (for Staff - generally in the back of the parking area, perimeter streets, and Wellness Park parking lot). Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator.
- l. *Premises*: That portion of the Building containing approximately 2518 square feet of Rentable Area, located in Building 2W and known as Suites 102-104.
- m. *Project*: The building of which the Premises are a part (the "Building") and any other buildings or improvements on the real property (the "Property") located at 555 E. Tachevah Drive, Palm Springs, California 92262. The Project is known as The Las Palmas Medical Plaza.

- n. *Rentable Area*: As to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project.
- o. *Security Deposit (Section 7)*: \$ Tenant will carry over from previous leases in the amount of Four Thousand, Four Hundred, Forty-Nine and 30/100 Dollars (\$4,449.30).
- p. *State*: the State of California.
- q. *Tenant's First Adjustment Date (Section 5)*: The first day of the calendar month following the Commencement Date plus 12 months.
- r. *Tenant's Proportionate Share*: 1.30%. Such share is a fraction, the numerator of which is the Rentable Area of the Premises and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project consists of six building(s) containing a total Rentable Area of 49,356 square feet.
- s. *Tenant's Use Clause (Article 8)*: General office use consistent with and use the City may allow under the City of Palm Springs zoning, subject to Landlord's reasonable approval.
- t. *Term*: The period commencing on the Commencement Date and expiring at midnight on the Expiration Date.

3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

- a. Exhibit "A" Rules and Regulations.
- b. Addenda*

*See Addendum attached hereto and by this reference made a part hereof.

4. DELIVERY OF POSSESSION.

If for any reason Landlord does not deliver possession of the Premises to Tenant on the commencement Date, Landlord shall not be subject to any liability for such failure, the Expiration Date shall not change and the validity of this Lease shall not be impaired, but Rent shall be abated until delivery of possession, "Delivery of possession" shall be deemed to occur on the date Landlord completes Landlord's Work as defined in Addendum. If Landlord permits Tenant to enter into possession of the Premises before the Commencement Date, such possession shall be subject to the provisions of this Lease, including, without limitation, the payment of Rent.

5. RENT.

5.1 *Payment of Base Rent*: Tenant agrees to pay the base rent for the premises. Monthly installments of Base Rent shall be payable in advance on the first day of each calendar month of the term. If the term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease.

5.2 *Adjusted Base Rent*:

- a. The Base Rent (and the corresponding monthly installments of Base Rent) set forth at Section 2a shall be adjusted annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Such adjustment shall be the greater of 3% over the preceding year or Fair Market Value.

5.3 *Project Operating Costs (CAMs)*:

- a. In order that the Rent payable during the Term reflect any Project Operating Costs, Tenant agrees to pay to Landlord as Rent, Tenant's Proportionate Share of all costs, expenses and obligations attributable to the Project and its operation as set forth in 2i, all as provided below.
- b. If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.3b.

(1.) The term "Project Operating Costs" shall include all those items described in the following subparagraphs (a) and (b).

- (a.) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Building or Project, (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise,

capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this lease or on the rent received under any other leases of space in the Building or Project, or (2) and license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transactions, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operation Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least eighty-five percent (85%) of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably Approximate the taxes, which would have been payable if the Project were completed and at least eighty-five percent (85%) occupied.

(b.) Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Building or Project tenant); (6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); (7) management of the Building or Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office); (8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building or Project; (9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by landlord to reduce Project Operating Costs; and (11) any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than eighty-five percent (85%) of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs which would have been incurred if the Project had been at least eighty-five percent (85%) occupied.

(2.) Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

(a.) Beginning with the calendar year following the Base Year and for each calendar year thereafter ("comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Project Operating Costs incurred by Landlord in the Comparison Year which exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year. This excess is referred to as the "Excess Expenses."

(b.) To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expense for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

(c.) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ten (10) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is exhausted. If the credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit.

The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

- (d.) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.
- (e.) If any dispute arises as to the amount of any additional rent due hereunder, Tenant shall have the right after reasonable notice and at reasonable times to inspect Landlord's accounting records at Landlord's accounting office and, if after such inspection Tenant still disputes the amount of additional rent owed, a certification as to the proper amount shall be made by Landlord's certified public accountant, which certification shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%).
- (f.) If this Lease sets forth an Expense Stop at Section 2f, then during the Term, Tenant shall be liable for Tenant's Proportionate Share of any actual Project Operating Costs which exceed the amount of the Expense Stop. Tenant shall make current payments of such excess costs during the Term in the same manner as is provided for payment of Excess Expenses under the applicable provisions of Section 5.3(2)(b) and (c) above.

5.4 Definition of Rent: The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefore and without deduction or offset, in lawful money of the United States of America.

5.5 Rent Control: If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

5.6 Taxes Payable by Tenant: In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Building Standard Work made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

5.7 Tenant Improvement Allowance: In recognition for Tenant completing all improvements to the premises as mutually agreed by Landlord and Tenant, Landlord shall provide Tenant with a total Tenant improvement allowance not to exceed that set forth in Section 2j upon completion of agreed tenant improvements. This allowance will be reimbursed to tenant upon satisfactory receipt of paid invoices and inspection by Property Management that work has been satisfactorily completed. Any additional tenant improvements will be at the sole expense of the Tenant. Improvements shall conform to a high quality of design approved by Landlord prior to commencement of work, and shall be performed by a licensed General Contractor approved by Landlord in advance. Tenant shall submit plans and specifications for any and all improvements to Landlord, and where necessary, the City of Palm Springs and other applicable government agencies for their required approval (if any) prior to commencement of work. Tenant and the General Contractor shall indemnify and hold Landlord and its officers, agents and employees harmless from any liability resulting from the tenant improvement work and shall be named as an additional insured on the insurance policy of both the Tenant and the General Contractor. All costs shall be subject to prevailing wages and if construction costs exceed \$25,000, then the tenant improvements shall also be subject to California competitive bid statutes.

6. INTEREST AND LATE CHARGES.

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the maximum rate then allowed by law. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default

with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

7. SECURITY DEPOSIT.

Tenant agrees to deposit with Landlord the Security Deposit set forth at Section 2.0 upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

If Tenant fails to pay Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ten (10) days after written demand therefore, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Article 27 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

8. TENANT'S USE OF THE PREMISES

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything, which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

9. SERVICES AND UTILITIES.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during generally recognized business days, and during hours determined by Landlord in its sole discretion, and subject to the Rules and Regulations of the Building or Project, electricity for normal desk top office equipment and normal copying equipment, and heating, ventilation and air conditioning ("HVAC") as required in Landlord's judgment for the comfortable use and occupancy of the Premises. If Tenant desires HVAC at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefore on demand. Landlord shall also maintain and keep lighted the common stairs, common entries and restrooms in the Building. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (I) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

Tenant shall not, without the written consent of Landlord, use any apparatus or device in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of premises as general office space (as determined by Landlord), without first procuring the written consent of Landlord, which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant and Tenant agrees to pay to Landlord Promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for such water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility plus any additional expense incurred by Landlord in keeping account of the utilities so consumed. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

Landlord shall furnish elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitor services of common area in a manner that such services are customarily furnished to comparable office buildings in the area.

10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession of the Premises are in good order and satisfactory condition, except for such matters as to which Tenant gave Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant.

II. CONSTRUCTION, REPAIRS AND MAINTENANCE.

- a. *Landlord's Obligations:* Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other tenant in the Building.
- b. *Tenant's Obligations:*
 - (1.) Tenant shall perform Tenant's Work to the Premises as described in an exhibit specific to Tenant Improvements, if applicable."
 - (2.) Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to Article 9 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, Building Standard furnishings and special items and equipment installed by or at the expense of Tenant.
 - (3.) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.
 - (4.) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.
- c. *Compliance with Law:* Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

- d. *Waiver by Tenant*: Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.
- e. *Load and Equipment Limits*: Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.
- f. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.
- g. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.
- h. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's expense.

12. ALTERATIONS AND ADDITIONS.

- a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor in which case the cost of such work shall be paid for before commencement of the work. Tenant shall pay to Landlord upon completion of any such work by Landlord's contractor, an administrative fee of fifteen percent (15%) of the cost of the work.
- b. Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notice at any reasonable time.

- c. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1.5) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and material men's liens and to insure timely completion of the work. Nothing contained in this Section 12c shall relieve Tenant of its obligations under Section 12b to keep the Premises, Building and Project free of all liens.
- d. Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

- a. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant (“Leasehold Improvements”), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.
- b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively “Tenant’s Property”) shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant’s Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

14. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit “A” and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of the Building of Project.

15. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord reserves the following rights, exercisable without liability to Tenant for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Tenant’s use or possession of the Premises:

- a. To name the Building and Project and to change the name or street address of the Building or Project;
- b. To install and maintain all signs on the exterior and interior of the Building and Project;
- c. To have pass keys to the Premises and all doors within the Premises, eluding Tenant’s vaults and safes;
- d. At any time during the Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and
- e. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord’s interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant’s business in the Premises in the course of any such entry.

16. ASSIGNMENT AND SUBLETTING.

No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Article 16.

- a. Tenant shall not, without the prior written consent of Landlord, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.
- b. If at any time or from time to time during the Term Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant’s notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant’s notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:
 - (1.) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;

- (2.) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;
 - (3.) No assignment or sublease shall be valid and no assignee or sub lessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;
 - (4.) No assignee or sub lessee shall have a further right to assign or sublet except on the terms herein contained; and
 - (5.) Any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.
- c. Notwithstanding the provisions of paragraphs a and b above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or termination option to Landlord, to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant's business as a going concern, provided that (i) the assignee or sub lessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, and (iii) the use of the Premises under Article 8 remains unchanged.
 - d. No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or sub lettings or amendments or modifications to the Lease with assignees of tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereof and any such actions shall not relieve Tenant of liability under this Lease.
 - e. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred Fifty and No/100 Dollars (\$150.00) plus any attorney's fees reasonably incurred by Landlord in connection with such act or request.

17. HOLDING OVER.

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

18. SURRENDER OF PREMISES.

- a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.
- b. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

19. DESTRUCTION OR DAMAGE.

- a. If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements, or other casualty, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within ninety (90) days. If Landlord determines that repairs can be completed with ninety (90) days, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees,

contractors, licensees, or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19d.

- b. If in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.
- c. If any other portion of the Building or Project is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days, Landlord may elect upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.
- d. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any injury or damage to the Building and Building Standard Work in the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration, and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building, or Project as a result of any damage from fire or other casualty.
- e. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building, or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absent of express agreement, shall have no application.

20. EMINENT DOMAIN.

- a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.
- b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment, or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title, and interest in any award, judgment, or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.
- c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of Building Standard Work. Tenant shall be responsible at its sole cost and expenses for the repair, restoration, and replacement of any other Leasehold improvements and Tenant's Property.

21. INDEMNIFICATION.

- a. Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, arising out of: (1) Tenant's use and occupancy of the Premises, or any work, activity, or other things allowed or suffered by Tenant to be done in, on, or about the Premises; (2) any breach or default by Tenant of any of the Tenant's obligations under this Lease; or (3) any negligent or otherwise tortious act or omission of Tenant, its agents, employees, invitees, or contractors. Tenant shall at Tenant's expense and by counsel satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim and shall indemnify Landlord against all costs, attorneys' fees, expert witness fees, and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on, or about the Premises from any cause.
- b. Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees, or customers or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water, or rain which may leak or flow from or into any part of the Premises, or from the

breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Project or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant of the Building or Project.

22. TENANT'S INSURANCE.

- a. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees, and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees, or representatives. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefore. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee, and Tenant as required by this Lease.
- b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions, or improvements as may be made by Tenant pursuant to the provisions of Article 12 hereof), and (ii) trade fixtures, merchandise, and other personal property from time to time in, on, or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism, and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) above be paid to Landlord, and the proceeds under (ii) above be paid to Tenant.
- c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for, and maintain in effect worker's compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation, or condition of the Premises, and the operations of Tenant in, on, or about the Premises, providing broad form property damage coverage for not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) each occurrence, and property damage liability insurance with a limit of not less than Two Hundred Fifty Thousand Dollars (\$250,000) each accident.
- d. Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Article. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Article shall be adjusted for increases in the cost of living in the same manner as is set forth in Section 5.2 hereof for the adjustment of the Base Rent.

23. WAIVER OF SUBROGATION.

Landlord and Tenant each hereby waive all rights or recovery against the other and against the officers, employees, agents, and representatives of the other, on account of loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

24. SUBORDINATION AND ATTORNMENT.

Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or thereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender

or lessor or Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure, or termination of the lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee, or lessor, as the case may be, and recognize that party as Landlord under this Lease provided such party acquires and accepts the Premises subject to this Lease.

25. TENANT ESTOPPEL CERTIFICATE.

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee, or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim, or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

26. TRANSFER OF LANDLORD'S INTEREST.

In the event of any sale or transfer by Landlord of the Premises, Building, or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence, or omission relating to the Premises, Building, Project, or Lease occurring after the consummation of such sale or transfer, providing the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

27. DEFAULT.

27.1. *Tenant's Default.* The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- a. If Tenant abandons or vacates the Premises; or
- b. If Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for five (5) days after such payment is due and payable; or
- c. If Tenant fails to promptly and fully perform any other covenant, condition, or agreement contained in this lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody, or control of Tenant or any substantial part of its property and such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Tenant is not a party, a trustee, receiver, agent, or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d through g above.

27.2. *Remedies.* In the event of Tenant's default hereunder, then, in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

- a. Terminate this Lease and Tenant's right to possession of the Premises and re-enter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in effect, re-enter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Re-enter the Premises under the provisions of subparagraph b and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord re-enters the Premises under the provisions of subparagraph b or c above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting; third, to the payment of the cost of any alterations or repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting, which is applied against, the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Landlord elect to terminate this Lease under the provisions of subparagraph a or c above, Landlord may recover as damages from Tenant the following:

- (1.) *Past Rent.* The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
- (2.) *Rent Prior to Award.* The worth at the time of the 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 Tenant proves could have been reasonably avoided; plus
- (3.) *Rent After Award.* The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant provides could be reasonably avoided; plus
- (4.) *Proximately Caused Damages.* Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom including, but not limited to, any costs or expenses (including attorneys' fees) incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including broker's commissions.

"The worth at the time of the award@ as used in subparagraphs 1 and 2 above is to be computed by allowing interest at the rate of ten percent (10%) per annum." The worth at the time of the award@ as used in subparagraph 3 above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition unless Landlord gives Tenant written notice of such waiver.

27.3 *Landlord's Default.* If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title, and interest in the Premises, Building, or Project, and no other real, personal, or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's

expense. Tenant shall not have the right to terminate this Lease or to withhold, reduce, or offset any amount against any payments of Rent or any other charges due and payable under this Lease, except as otherwise specifically provided herein.

28. BROKERAGE FEES.

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Tenant shall indemnify and hold Landlord harmless from any cost, expenses, or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission, or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant.

29. NOTICES.

All notices, approvals, and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if personally delivered or sent by certified or registered U.S. mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

30. GOVERNMENT ENERGY OR UTILITY CONTROLS.

In the event of imposition of federal, state, or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

31. RELOCATION OF PREMISES.

Landlord shall have the right to relocate the Premises to another part of the Building in accordance with the following:

- a. The new premises shall be substantially the same in size, dimension, configuration, decor and nature as the Premises described in this Lease, and if the relocation occurs after the Commencement Date, shall be placed in that condition by Landlord at its cost.
- b. Landlord shall give Tenant at least thirty (30) days written notice of Landlord's intention to relocate the Premises.
- c. As nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday. If the physical relocation has not been completed in that time, Base Rent shall abate in full from the time the physical relocation commences to the time it is completed. Upon completion of such relocation, the new premises shall become the "Premises" under this Lease.
- d. All reasonable costs incurred by Tenant as a result of the relocation shall be paid by Landlord.
- e. If the new premises are smaller than the Premises as it existed before the relocation, Base Rent shall be reduced proportionately.
- f. The parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of Base Rent, if any.

32. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

33. OBSERVANCE OF LAW.

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the

condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

34. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

35. CURING TENANT'S DEFAULTS.

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefore.

36. SIGN CONTROL.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

37. MISCELLANEOUS.

- a. *Accord and Satisfaction; Allocation of Payments:* No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.
- b. *Addenda:* If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.
- c. *Attorneys' Fees:* If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.
- d. *Captions, Articles and Section Numbers:* The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.
- e. *Changes Requested by Lender:* Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such charge or amendment is requested.
- f. *Choice of Law:* This Lease shall be construed and enforced in accordance with the laws of the State of California.
- g. *Consent:* Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc.
- h. *Corporate Authority:* If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

- i. *Counterparts*: This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.
- j. *Execution of Lease; No Option*: The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.
- k. *Furnishing of Financial Statements; Tenant's Representations*: In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects.
- l. *Further Assurances*: The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.
- m. *Mortgagee Protection*: Tenant agrees to send by certified or registered mail to any first mortgagee or first deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.
- n. *Prior Agreements; Amendments*: This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.
- o. *Recording*: Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.
- p. *Severability*: A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.
- q. *Successors and Assigns*: This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.
- r. *Time of the Essence*: Time is of the essence of this Lease.
- s. *Waiver*: No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default.
- t. *Compliance*: The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or other provision of the Lease.

The parties hereto have executed this Lease as of the dates set forth below.

Date: _____

Date: _____

Landlord: Desert Healthcare District
dba: Las Palmas Medical Plaza

Tenant: _____

By: Herb K. Schultz

By: _____

Signature: _____

Signature: _____

Title: CEO

Title: _____

CONSULT YOUR ADVISORS This document has been prepared for approval by your attorney. No representation or recommendation is made as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney.

In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist or other person, with experience in evaluating the condition of the property, including the possible presence of asbestos, hazardous materials and underground storage tanks.

DRAFT

EXHIBIT "A"

RULES AND REGULATIONS

1. No sign, placard, pictures, advertisement, name or notice shall be inscribed, displayed or printed or affixed on or to any part of the outside or inside of the Building without the written consent of Landlord first had and obtained and Landlord shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of Tenant.

All approved signs or lettering on doors shall be printed, painted, affixed, or inscribed at the expense of Tenant by a person approved by Landlord outside the Premises; provided, however, that Landlord may furnish and install a Building standard window covering at all exterior windows. Tenant shall not, without prior written consent of Landlord, cause or otherwise sunscreen any window.

2. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress and egress from their respective Premises.
3. Tenant shall not alter any lock or install any new or additional locks or any bolts on any doors or windows of the Premises.
4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of the rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.
5. Tenant shall not overload the floor of the Premises or in any way deface the Premises or any part thereof.
6. No furniture, freight or equipment of any kind shall be brought into the Building without the prior notice to Landlord and all moving of the same into or out of the Building shall be done at such time and in such manner as Landlord shall designate. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Tenant.
7. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substances in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to the Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought in or kept in or about the Premises of the Building.
8. No cooking shall be done or permitted by any Tenant on the Premises, nor shall the Premises be used for storage of merchandise, for washing clothes, for lodging or for any improper, objectionable or immoral purposes.
9. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
10. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of the Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.
11. On Saturdays, Sundays and legal holidays, and on other days between the hours of 6:00 p.m. and 8:00 a.m. the following day, access to the Building or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the person or employee of the Building in charge and has a pass or is properly identified. The Landlord shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, the Landlord reserves the right to prevent access to the Building during the continuance of the same by closing of the doors or otherwise, for the safety of the tenants and protection of property in the Building and the Building.
12. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Building.
13. No vending machine or machines of any description shall be installed, maintained or operated upon the Premises without the written consent of the Landlord.

14. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Building of which the Premises are a part.
15. Tenant shall not disturb, solicit, or canvass any occupant of the Building and shall cooperate to prevent same.
16. Without the written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.
17. Landlord shall have the right to control and operate the public portions of the Building, and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally.
18. All entrance doors in the Premises shall be left locked when the Premises are not in use, and all doors opening to public corridors shall be kept closed except for normal ingress and egress from the Premises.

Landlord's Initials

Tenant's Initials

DRAFT

ADDENDUM

Addendum to that certain Office Building Lease dated March 1, 2018 by and between Desert Healthcare District doing business as the Las Palmas Medical Plaza, as Landlord and Derakhsh Fozouni, MD. A Medical Corporation, as Tenant for the property commonly known as Las Palmas Medical Plaza located 555 E. Tachevah Drive, Palm Springs, CA 92262.

Page 1

In the event of any inconsistency between the Addendum language and the body of the Lease, the Addendum language shall prevail.

- 1. Commencement Date: March 1, 2018
- 2. Expiration Date: February 28, 2023
- 3. Rent Schedule:

3/1/2018 – 2/28/2019	\$4,154.70	
3/1/2019 – 2/28/2020	\$4,279.34	Greater of 3% or CPI
3/1/2020 – 2/28/2021	\$4,407.72	Greater of 3% or CPI
3/1/2021 – 2/28/2022	\$4,539.95	Greater of 3% or CPI
3/1/2022 – 2/28/2023	\$4,676.15	Greater of 3% or CPI
- 4. CAMs: Currently \$.62 per square foot.
- 5. Security Deposit: Shall continue with previous deposit of \$4,449.30.

The foregoing is hereby agreed to and accepted:

Date:	_____	Date:	_____
Landlord:	<u>Desert Healthcare District</u>	Tenant:	_____
	<u>dba: Las Palmas Medical Plaza</u>		
By:	<u>Herb K. Schultz</u>	By:	_____
Signature:	_____	Signature:	_____
Title:	<u>CEO</u>	Title:	_____

**DESERT HEALTHCARE DISTRICT
HOSPITAL GOVERNANCE AND OVERSIGHT COMMITTEE
MEETING MINUTES
January 19, 2018**

Meeting of the Hospital Governance and Oversight Committee of the Desert Healthcare District was held in the Desert Healthcare District Conference Room, 2nd Floor, Palm Springs, CA

Attendance:

Members

Carole Rogers, RN, Vice-President/Chair
Les Zendle, MD, President

Absent

Staff

Herb K. Schultz, CEO
Lisa Houston, COO
Chris Christensen, CFO
Donna Craig, Senior Program Officer
Alejandro Espinoza, Program Director and Outreach Officer
Mary Pannoni, Accounting/Admin Support
Andrea S. Hayles, Clerk to the Board

Legal Counsel

Jeff Scott

Guests

Missy Danforth, Vice President, Health Care Ratings, Leapfrog Group – *Telephonic*
Michele Finney, CEO, Desert Regional Medical Center
Peter Green, District Resident
Ezra Kaufman, District Resident
Christine Langenwalter, MSN, RNC, CENP, Director of Clinical Quality Improvement and Education Services
Jason O. Lind, Executive Vice President, Americas, CB Richard Ellis
Stephanie Salters, District Resident

CALL TO ORDER

The meeting was called to order at 10:02 a.m. by Chair Rogers

Chair Rogers invited all in attendance to introduce themselves.

APPROVAL OF AGENDA

There were no changes to the agenda.

APPROVAL OF MINUTES

Minutes of the December 18, 2017 Meeting.

PUBLIC COMMENTS

Ezra Kaufman, District Resident, provided an overview of California Department of Public Health Survey Findings at Desert Regional Medical Center.

OLD BUSINESS

CB Richard Ellis (CBRE) Facility Condition Assessment Report

Chris Christensen, CFO, described the work of CBRE and its relation to the 3-Year Strategic Plan. Jason Lind, Executive Vice President, Americas, CBRE detailed the aspects of the Facility Condition Assessment Report.

Herb K. Schultz, CEO explained that the document would go forward as a working draft to the Board for discussion at the January 23 meeting.

PUBLIC COMMENTS

None

NEW BUSINESS

Leapfrog Group Performance Measures Presentation – Missy Danforth, Vice President, Health Care Ratings, The Leapfrog Group

Herb K. Schultz, CEO, explained the quality measures, initiatives, and outcomes of Desert Regional Medical Center and introduced Missy Danforth, Vice President, Health Care Ratings, The Leapfrog Group.

Ms. Danforth introduced herself, described the work of The Leapfrog Group, and outlined her presentation that included, hospital safety grades, eligibility of the safety grades, expert panels and guidance provided by the panels, measuring criteria, outcomes measures, and methodology.

Desert Regional Medical Center Leapfrog Score Overview - Christine Langenwaller, MSN, RNC, CENP, Director of Clinical Quality Improvement and Education Services

Christine Langenwaller, MSN, RNC, CENP, provided a presentation on Desert Regional Medical Center's (DRMC) current Leapfrog "C" rating. Ms. Langenwaller highlighted DRMC's ongoing projects on patient safety, including infection prevention strategies, surgical strategies, practices to prevent errors, and doctors, nurses and staff work which has led to year over year improvements when compared to Leapfrog reporting period 2013-2016.

Director Zendle expressed that it is the hospital's moral obligation to take patients regardless of condition or insurance even though it may reduce the score.

PUBLIC COMMENT

Ezra Kaufman, District Resident, stated that Desert Regional Medical Center is the only hospital in a 50-mile radius that is owned by the residents of the District and operated for their benefit. Mr. Kaufman inquired on how many hospitals in 50-mile radius net from operations in excess of \$70M per year. In addition, Mr. Kaufman explained that the case mix index compares hospitals with the patient population.

Peter Green, Palm Desert Resident, explained that the Counties under title 22 are supposed to perform the improvements and have a confidential morbidity analysis that can be reported back to the Supervisors, but there is not a state-wide standard reporting on quality of care. Mr. Green explained his experience in Santa Clara and attended a Grade A hospital in February, and the standard of care was not high-quality.

ADJOURNED

The Committee adjourned at 11:27 a.m.

ATTEST: _____
Carole Rogers, RN, Chair/Vice-President Hospital Governance and Oversight
Committee
Desert Healthcare District Board of Director



Date: February 27, 2018

To: Board of Directors

Subject: Healthcare District Expansion – Resolution and Application
Addendum with Board’s Initial Funding Decision

Staff recommendation: Consideration to approve a Resolution and an addendum to the previously submitted LAFCO Application outlining the Board’s expansion initial funding decision.

Background:

- On January 5, 2017, the Healthcare District Board of Directors filed an application per a provision in AB 2414 (Plan of Services plus Exhibits) that stated the filing must occur on or before January 5.
- Later in January and early February 2017, LAFCO advised that a specific funding source(s) must be included to complete the application process.
- An Ad Hoc Committee and Staff spent the last year analyzing potential funding sources and engaged in substantial public engagement activities, including Town Halls, Strategic Planning Meetings, and focus groups, among others.
- At a special meeting of the Board of Directors on February 19, 2018, the Board approved a Self-Funded Approach to commit a total of \$6,000,000 (\$300,000 per year for 20 years) to provide programs and services to the residents of the annexed area upon successful voter approval of the expansion initiative.
- The sources of funds will be generated from current existing and ongoing unrestricted sources (not from current property tax revenues and hospital replacement funds).
- On February 20, Staff spoke with LAFCO Executive Officer George Spiliotis regarding the Board’s action and inquired how best to convey the Board’s initial funding decision.
- LAFCO Executive Officer George Spiliotis requested an Application Addendum outlining the information, a copy of which is attached to this report.

Fiscal Impact:

\$300,000/year in unrestricted funds, beginning in FY 18-19, should expansion of the district to the Eastern Coachella Valley be successful on the November 6, 2018 Ballot.

RESOLUTION NO. 18-01

RESOLUTION OF THE BOARD OF DIRECTORS OF THE DESERT HEALTHCARE DISTRICT ADOPTING A \$6,000,000 (\$300,000 PER YEAR FOR 20 YEARS) SELF-FUNDED SOURCE FOR THE LAFCO APPLICATION

WHEREAS, at a special meeting of the Board of Directors (“Board”) of the Desert Healthcare District (“District”), the Board considered, for discussion and debate, examples of Funding Source Options for the proposed East Coachella Valley District expansion; and

WHEREAS, Options included Option 1: Self-Funded Approach which provided for a commitment of \$100,000 per year for 20 years, for a total of \$6 million from District/Foundation unrestricted funds and Option 2: Conditional Approval Approach which provided for expansion implementation contingent on funding streams that totaled a minimum of \$4 million per year utilizing a Combination of Public and Private Sources and;

WHEREAS, after robust discussion and public comment from government officials, residents, community-based organizations, provider organizations, and other stakeholders, the Board voted to adopt a modified Option 1: Self-Funded Approach to provide \$300,000 per year for 20 years from District/Foundation unrestricted funds.

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

Section 1: The District shall commit a total of \$6,000,000 (\$300,000 per year for 20 years from unrestricted funds) to support programs and services to the residents of the annexed area upon successful voter approval of the expansion initiative.

Section 2: The sources of funds will be generated from current existing and ongoing unrestricted sources (not from current property tax revenues and facility replacement funds).

PASSED, APPROVED AND ADOPTED by the Board of Directors of the Desert Healthcare District at a regular meeting held on this 27th day of February, 2018, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Les Zende MD, President
Board of Directors
Desert Healthcare District

ATTEST:

Carol Rogers RN, MPH, Vice-President/Secretary



AB2414 Desert Healthcare District Boundary Expansion

Plan of Services – Addendum #1 (Funding)*

February 27, 2018

I. BOARD APPROVED FUNDING OPTION - \$6,000,000 (\$300,000 per year for 20 years)

At a special meeting of the Board of Directors on February 19, 2018, the Board approved a Self-Funded Approach to commit a total of \$6,000,000 (\$300,000 per year for 20 years) to provide programs and services to the residents of the annexed area upon successful voter approval of the expansion initiative. The sources of funds will be generated from current existing and ongoing unrestricted sources (not from current property tax revenues and hospital replacement funds).

Committing the funding source may allow the application to move forward for the proposed annexation vote. With voter approval of the annexation, governance of the expanded District would increase to include equal representation across the District to better meet the needs of the residents.

The sources are immediately available and are both quantifiable and verifiable.

Figure A1 identifies the sources of funds to meet the commitment of \$300,000 per year for 20 years.

II. BOARD OF DIRECTOR'S GOAL - \$4,000,000 per year

The Board of Directors intends, and has directed Staff, to continue working towards securing additional revenue streams as identified in Section VI "Financing Opportunities and Constraints" of the original Plan of Services and Option 2 in Figure A4 of this Addendum. The ultimate goal of the Board of Directors is to generate a minimum of \$4,000,000 per year to provide equity and equal funding for programs and services to East Valley residents as is currently provided in the West.

Self-Funded Approach - \$6,000,000 (\$300,000 per year over 20 years)

Approved at the February 19, 2018 Special Meeting of the Board of Directors

Figure A1

<u>Source</u>	<u>Existing or Ongoing</u>	<u>Revenue \$</u>	<u>Unrestricted Sources</u>
FOUNDATION			
Investment Accounts - Morgan Stanley & Merrill Lynch (Sources Charitable Remainder Trusts)	Existing	\$2 Million	\$100,000
Investment Income	Ongoing	\$50,000 Per Year	\$50,000
Royalties – Frederick Lowe	Ongoing	\$75,000 Per Year	\$75,000
DISTRICT			
Avery Trust	Existing	\$1 Million – restricted to Pulmonary (in Reserve Fund)	\$50,000
Solar Income	Ongoing	\$75,000 Per Year	\$25,000
Total			\$300,000

III. BACKGROUND

Desert Healthcare District submitted an annexation application to the Riverside County Local Agency Formation Commission (LAFCO) January 5, 2017. Later in January and early February 2017, LAFCO advised that a specific funding source(s) must be included to complete the application process. This addendum provides the required funding source(s) to complete the application.

For almost two years, Desert Healthcare District has been at the forefront of the community-wide discussion on how to finance the potential annexation/expansion of the Eastern Coachella Valley into the current District. The District has been involved in a substantial number of activities related to developing and considering a large variety of possible funding streams. Funding options included in the LAFCO application were: Voluntary Dedication of Existing General Fund Taxes by City/County, with Possible Voter Advisory Measure; Community Facilities District; Joint Powers Authority (JPA); Parcel Tax; Hospital Lease Income; General Obligation (GO) Bonds; Enhanced Infrastructure Financing Districts and/or Community Revitalization Investment Areas; Public Lease Revenue Bonds; Financing Leases and Certificates of Participation; Conduit Revenue Bonds; User Fees; and Grants and Donations.

Discussion and work on potential funding streams has occurred both before and after the introduction of AB 2414 in late 2015 and early 2016, during both the development and submission of the LAFCO annexation application earlier this year, and continuing through to today. Desert Healthcare District has held public meetings and town halls, Board and Committee meetings, and stakeholder discussions across the Coachella Valley. The District has been engaged throughout this process with the bill's author, other local (county, city, special districts) elected officials and their staff, and stakeholders across the Coachella Valley.

An October 31, 2017 Study Session offered another significant opportunity for the Desert Healthcare District Board to hear about the implementation of AB 2414 directly from its author, Assemblymember Eduardo Garcia. Further, the Board continued its overall examination of potential streams to finance the law's proposed annexation/expansion into the Eastern Coachella Valley.

The following Timeline and a list of Major Activities provide detail of the work of the Board of Directors and Staff.

TIMELINE

- **February 19, 2016** – Introduction of AB 2414 by Assemblymember Eduardo Garcia.
- **March 2016 – September 2016** – District/Board Actively Monitored/Discussed AB 2414 at its Meetings, Through Staff, and with the Author throughout its Consideration.
- **June 9, 2016** -- District Letter to Assemblymember Garcia on Expansion Vote Recommendation.
- **July 26, 2016 and August 2, 2016** – District Board Authorized on July 26 and sent a Letter and Resolution on August 2 in support of AB 2414 with Recommended Changes to Assemblymember Garcia.
- **August 17, 2016** – Board Special Meeting on becoming the applicant and assuming financial responsibility.
- **September 20, 2016** – District/Board Sends Letter to Governor in Full Support of AB2414.
- **September 21, 2016** – Governor Jerry Brown Signs AB 2414 into Law.
- **December 29, 2016 – Present** – Starting with a December 29, 2016 Special Meeting (With Assemblymember Garcia as Guest Presenter), Ongoing Discussion of Potential Options to Fund the Annexation/Expansion by the Ad Hoc Committees on Expansion and Board of Directors as well as Elected Officials, Staff, and Stakeholders Across the Coachella Valley.
- **January 4, 2017** – CEO met with Riverside University Health System (RUHS).
- **January 5, 2017** – Application and Proposed Plan of Services Filed with LAFCO per AB 2414.
- **January 5, 2017** – CEO met with Eisenhower Medical Center.
- **January 18, 2017** -- Letter from LAFCO on Property Tax Exchange Notice to Riverside County Assessor-County Clerk-Recorder.
- **January 20, 2017** – CEO met with Borrego Community Health Foundation (Borrego).

- **January 21, 2017** -- Letter from LAFCO Complimenting the District on a Well-structured Application, but indicated the application is incomplete until a defined specific long term source(s) of funding is adequately identified.
- **January 25, 2017** – CEO met with Borrego.
- **February 16, 2017** – CEO met with Borrego.
- **March 1, 2017** – CEO met with Borrego.
- **March 23-24, 2017** – Board Strategic Planning Sessions and East and West Valley Voter Surveys.
- **March 28, 2017** -- Letter to District CEO from Riverside County Chief Assistant County CEO Regarding Property Tax Negotiation.
- **April 11, 2017** – First Expansion Town Hall Co-Hosted by Assemblymember Garcia and the District in Indio.
- **April 19, 2017** -- Riverside County CEO Letter to LAFCO on Revenue Taxation Code Application.
- **April 25, 2017** – CEO met with Borrego.
- **May 4, 2017** – Second Expansion Town Hall Co-hosted by Assemblymember Garcia and the District in Cathedral City.
- **May 8, 2017** – Property Tax “Increment” Negotiation with Riverside County CEO’s Office.
- **June 2, 2017** – Communication from the Riverside County CEO’s Office indicating County opposition to the District’s request for property tax increment allocation.
- **June 21, 2017** – CEO met with Borrego.
- **June 27, 2017** – Adoption of the District/Foundation’s Comprehensive Three-year Strategic Plan formally adopting Expansion (“One Coachella Valley”) as One of Three Strategic Priorities and Calling for the Development/Implementation of Six Expansion-Related Outcomes.
- **July 7, 2017** – CEO met with Loma Linda.

- ***June 3, 2017 – Present** – Board and Ad Hoc Committee Meetings, Meetings with Elected Officials and Staff, and Resident and Stakeholder Discussions across the Coachella Valley.
- **September 29, 2017** – CEO met with Borrego.
- **October 2, 2017** – CEO met with Borrego.
- **November 21, 2017** – CEO met Loma Linda.
- **December 11, 2017** – CEO met with RUHS.
- **December 15, 2017** – CEO met with Borrego.
- **February 12, 2018** – CEO met with RUHS.
- **February 19, 2018** – Special Meeting of the Board of Directors for Board Approving Expansion Funding Options.

***Note: Extensive public engagement has taken place for more than a year and continues to occur across the Coachella Valley.**

MAJOR ACTIVITIES

Board Strategic Planning Sessions

The Board of Directors held a substantial one and a half days Strategic Planning Session (among others) to validate the Board's new Vision and begin the development and discussion of a comprehensive three-year Strategic Plan. Extensive public participation and input occurred, resulting in a draft that included Strategic Priorities, Community Health Funding Areas, Major Activities, and Outcomes to guide the Board's work. The proposed expansion of the District ("One Coachella Valley") was a significant topic of discussion, including potential options to fund it.

East and West Valley-Focused Voter Polls/Surveys

A newly-completed East Valley voter-focused polling of the issue was extensively discussed at the Strategic Planning Session. Significant support was shown for expansion and two potential funding sources – reallocation of property tax revenues and a parcel tax. From Thursday, March 16 to Monday, March 20, 2017, Probolsky Research conducted a telephone survey of likely November 2018 voters within the proposed Desert Healthcare District expansion area. A total of 300 voters were surveyed. A survey of this size yields a margin of error of +/- 5.8 percent with a confidence level of 95 percent. Interviews were conducted with voters on both landline and mobile phones (49 percent) and were offered in English and Spanish language.

In November 2016, a West Valley-focused voter (current district) poll was conducted by the District. Potential annexation/expansion was not a subject of the poll, but questions were asked on important topics such as ranking of healthcare as an issue, quality of community medical care with a focus on DRMC, and awareness of the District and Tenet's Lease. From Friday, November 4 through Monday, November 7, 2016 Probolsky Research conducted a telephone survey of voters within the Desert Healthcare District. A total of 301 voters were surveyed. A survey of this size yields a margin of error of +/-5.8 percent with a confidence level of 95 percent. Interviews were conducted with voters on both landline and mobile phones (67.8 percent were completed on mobile phones) and were offered in English and Spanish language.

Public Engagement, Including Town Halls

Since January 2017, the Board, Ad Hoc Committee, and the Staff have discussed ongoing expansion and funding and program issues in numerous meetings in the current District and in the Eastern Coachella Valley, including residents, Government Officials and Staff, and community-based organizations, among others. Multiple meetings and discussions were held with providers, including Riverside University Health System (RUHS), Borrego Community Health Foundation, and Eisenhower and Loma Linda hospitals.

On April 11, the Desert Healthcare District held the first of two joint Town Halls on the proposed District expansion with Assemblymember Eduardo Garcia. The first was held in Indio

(College of the Desert Campus) and the speakers included the Assemblymember, District CEO, and the Director of The California Endowment’s Building Healthy Communities Coachella Valley. Topics included the history of AB 2414, implementation (including LAFCO and funding processes), and the health challenges in the Eastern Coachella Valley. On May 4, a similar Town Hall with the same speakers was held at the Cathedral City Senior Center. Both events were well-attended, full of residents and Board representatives who heard significant support for the expansion at both Town Halls.

IV. Special Meeting of the Board of Directors

At a Special meeting of the District’s Board of Directors on February 19, 2018, the Directors made a decision regarding the funding source(s). Present were government officials, residents, community-based organizations, provider organizations, Staff and other stakeholders.

To facilitate discussion, Staff provided the Board with charts of the District and Foundation’s “Existing/Ongoing Funding Sources” (Figure A2 & A3) and “Examples of Potential Options” (Figure A4). The information generated a debate on approaches to fund the annexation.

Figures A2 & A3 illustrate the current financial resources of the District & Foundation, indicating which are Existing or Ongoing amounts and if they are available for East Valley funding sources pre-expansion and post-expansion.

Figure A2

Existing/Ongoing Funding Sources, District

<u>Source</u>	<u>Existing or Ongoing</u>	<u>Revenue \$</u>	<u>Expansion Use Today</u>	<u>Expansion Use - Post Expansion</u>
Ad Valorem Tax	Ongoing	\$6 Million/Year	N	Y
DHCD Investment Income/Reserve Fund	Ongoing	\$200 Thousand/Year (Net of Unrealized Losses)	N	Y
Las Palmas Medical Plaza	Ongoing	\$250 Thousand/Year (Net of Expenses)	N	Y
Solar Income	Ongoing	\$75,000	N	Y
Avery Trust	Existing	\$1 Million – restricted to Pulmonary (in Reserve Fund)	Y	Y
Reserve Funds- aka Facilities Replacement Fund	Existing	\$54 Million District Board restricted reserve (Grant and Seismic commitments)	N	Y
Future DRMC Lease Revenue (Post 2027)	Ongoing	TBD	N/A	Y

Figure A3

Existing/Ongoing Funding Sources, Foundation

<u>Source</u>	<u>Existing or Ongoing</u>	<u>Revenue \$</u>	<u>Expansion Use Today</u>	<u>Expansion Use - Post Expansion</u>
Investment Accounts - Morgan Stanley & Merrill Lynch (Sources Charitable Remainder Trusts)	Existing	\$2 Million	Y	Y
Mayor's Race – Ready Set Swim & cvHIP	Existing - Collective Funds	\$340,000	N	Y
Homelessness Initiative	Existing - Collective Funds	\$1.5 Million	N	Y
Charitable Remainder Trusts (2)	Existing	\$186,000	N – Restricted as long as donor is living	N – Restricted as long as donor is living
Investment Income	Ongoing	\$50,000 Per Year	Y	Y
Royalties – Frederick Lowe	Ongoing-Indefinite	\$75,000 Per Year	Y	Y

Figure A4 provides two (2) examples of potential funding options.

Option 1: Check the Box/Self-Funded Approach. This approach would utilize \$100,000 per year of existing unrestricted funds over 20 years and could begin upon a successful voter approval of the Expansion initiative.

Option2: Conditional Approval/Combination of Public and Private Sources Approach. Under this approach, the Expansion implementation is contingent upon adoption of one or more funding streams that total a minimum of \$4 million per year for programs and services providing equity to the residents of the proposed annexed area.

Figure A4

Examples of Potential Options	
<u>Option 1: Check the Box/Self-Funded Approach</u>	
\$100,000/Yr. Plus District Pays for Operations and Staffing - \$2 Million over 20 Years	
Funds from \$1,000,000 – Unrestricted Foundation Funding @ \$50,000 per year	
Funds from \$1,000,000 – Avery Trust Funding (Pulmonary Only) @\$50,000 per year	
<u>Option 2: Conditional Approval/Combination of Public and Private Sources Approach*</u>	
<ul style="list-style-type: none">• Expansion Implementation Contingent upon Adoption of one or more funding streams that total a minimum of \$4 million per year (inflation adjusted) for programs and services.	
<ol style="list-style-type: none">1. Future Hospital/DRMC Lease Revenue (Post-2027)2. Property Tax Increment Revenue3. Special Tax Revenue (Ad Valorem Property, Sales, Parcel)4. AB 617/Chapter 136 (Garcia, 2017) – Air Quality-Focus Funding to Non-Profits5. SB 5/Chapter 852 (De Leon, 2017) – Water and Parks Bond with Salton Sea-focused funding6. Grants and Private Donations7. Administrative Simplification	

***Note:** The examples of potential funding options outlined in this paper comprise funding for East Valley expansion as a part of the Desert Healthcare District/Foundation’s One Coachella Valley Initiative. In Option 2, the current funding mechanism would remain in place in addition to the East Valley Options to create a \$10 Million/year One Coachella Valley fund.

Following a robust discussion by the Board of Directors, a number of stakeholders offered various comments to assist the Board in their decision process regarding the potential funding options. There was resounding support for the expansion and the need to provide resources to the underserved residents of the East Valley.

At the conclusion of the public comment, a motion was made and adopted to commit \$6,000,000 (\$300,000 per year for 20 years) under Option, the Self-Funded Approach. The source of funds will be from existing and ongoing current resources (excluding property tax revenues and hospital replacement funds) to provide programs and services to the residents of the annexed area upon successful voter approval of the expansion initiative. The commitment would begin providing an amount of current resources, while work continued into the future on the proposed revenue streams identified in Option 2 above and those referenced in the original application.

Carole Rogers, Vice President/Secretary

Attest:

Les Zendle, President

DRAFT



Date: February 27, 2018

To: BOARD OF DIRECTORS

Subject: RESOURCES AND PHILANTHROPY PROGRAM

Community Health Focus Area: Primary Care and Behavioral Health Access

GRANT REQUEST: Grant #960 Desert Cancer Foundation: Project Title: *Patient Assistance and Suzanne Jackson Breast Cancer Fund (SJBCF) Programs* – \$200,000

STAFF Recommendation: that an award of \$200,000 be approved to Desert Cancer Foundation to support the Patient Assistance and Suzanne Jackson Breast Cancer Fund programs.

Desert Cancer Foundation is the only community non-profit that provides financial assistance for cancer treatment in the Coachella Valley and surrounding regions.

BACKGROUND:

Since its inception in 1994, Desert Cancer Foundation has paid approximately \$9.2 million for cancer care services valued at \$77.9 million. As a result of the support the organization has received from the local medical community and negotiated rates for services, each dollar received is estimated to provide \$8.00 to \$12.00 in patient cancer care.

The financial assistance for their cancer care and leveraging of community resources to assist with other basic living needs, extends far beyond the individual, but also impacts the family unit. Desert Cancer Foundation can provide the financial assistance to cover the costs of cancer treatment, while leveraging existing community resources to fill the gaps in other financial needs for basic living expenses to ensure the patient is not burdened by large amounts of debt, allowing the patient and their family to focus solely on their recovery

USE OF DISTRICT FUNDS:

Desert Cancer Foundation provides two programs to serve the residents of the Coachella Valley and surrounding local communities that are uninsured or underinsured.

1. Suzanne Jackson Breast Cancer Fund provides no-cost breast cancer screening and diagnostic services.

2. Patient Assistance Program pays for cancer medical treatment, including but not limited to, biopsies, surgeries, chemotherapy, radiation, prescriptions, insurance premiums, Medi-Cal Share-of-Cost, copays, deductibles, and coinsurance.

ORGANIZATION REQUEST:

Desert Cancer Foundation is requesting funding from Desert Healthcare District in the amount of \$200,000 to assist in providing cancer care for the Suzanne Jackson Breast Cancer Fund and Patient Assistance Program, including patient navigation for both programs, for Desert Healthcare District residents.

The request is to assist in covering the costs of labor and direct financial assistance for SJBCF and Patient Assistance for a period of 12 months. The remaining 6 months of the grant period will allow for billing of rendered services during the initial 12-month period to be received and paid for by DCF.

These programs serve residents of the entire Coachella Valley, however funds requested are only to be utilized for an estimated **160 residents of Desert Healthcare District**. Approximately, a total of 352 residents of the Coachella Valley will be served.

Since inception, Desert Cancer Foundation has assisted more than 7,874 local and surrounding valley residents through their Suzanne Jackson Breast Cancer Fund program and our Patient Assistance Program.

COMMUNITY IMPACT:

The Desert Healthcare District has had a long-term relationship with Desert Cancer Foundation since 2005 when DCF assumed oversight and operation of the Suzanne Jackson Breast Cancer Fund from the Desert Healthcare Foundation.

Over the years, the District has supported DCF's efforts to fill a gap in the Coachella Valley healthcare system and with the continued whole person care assistance and management services offered to eligible low income, uninsured and underinsured District residents facing their cancer journey.

DCF's services meet the District/Foundation's strategic objectives by supporting programs and services that increase access to primary care and behavioral health services for Coachella Valley residents (Community Focus area #2)

Program Request Summary

Desert Cancer Foundation, Grant #960

Tel: (760) 773-6554
 Fax: (760) 773-6532
 74091 Larrea Street
 Palm Desert, CA 92260
www.desertcancerfoundation.org

Contact:

Sarah Bryant
 Tel: (760) 773-6554
 Fax: (760) 773-6532
sbryant@desertcancerfoundation.org

Historical (approved Requests)

Grant Year	Project Title	Grant Amount	Type	Disposition Date	Fund
2005	Project Support & Expansion	\$150,000	Grant	7/26/2005	Grant budget
2006	Comprehensive Program & Capacity Building Support	\$155,000	Grant	10/24/2006	Grant budget
2008	Operating support for program expansion	\$100,000	Grant	7/22/2008	Grant budget
2009	Comprehensive Patient Assistance Project	\$150,000	Improving Lives	10/27/2009	Grant budget
2010	Comprehensive Healthcare Assistance Project	\$200,000	Improving Lives	9/28/2010	Grant budget
2011	Integrated Healthcare Assistance Program	\$588,983	Achievement Building	9/27/2011	Grant budget
2013	Integrated Cancer Assistance Program	\$341,997	Achievement Building	1/28/2014	Grant budget
2015	Patient Assistance - Cancer Care	\$185,000	Grant	6/28/2016	Grant budget

About the Organization

Organization Type: Direct Service Provider\Medical

Background:

Desert Cancer Foundation was founded in 1994 by Art and Cory Teichner, and dedicated valley oncologist, Dr. Sebastian George. Their vision was to ensure that no resident of our local community went without cancer care due to the inability to pay. Desert Cancer Foundation (DCF) is a non-profit organization dedicated to assisting residents in the Coachella Valley and surrounding communities who need financial assistance in obtaining screening, diagnosis and treatment for cancer and allied diseases.

DCF provides two programs:

1. Patient Assistance Program pays for cancer medical care: insurance premiums, co-pays, co-insurance, deductibles, Medi-Cal Share-of-Cost, prescriptions, and medical services related to cancer care.

2. Suzanne Jackson Breast Cancer Fund provides no-cost breast cancer screening and diagnostic services for uninsured or underinsured residents.

Since inception, Desert Cancer Foundation has paid approximately \$9.2 million for cancer care services valued at \$77.9 million. As a result of the support we have received from the local medical community and negotiated rates for services, each dollar received is estimated to provide \$8.00 to \$12.00 in patient cancer care.

Furthermore, Desert Cancer Foundation was instrumental in coordinating the local cancer care organizations, a collaborative called "Better Together for Community" to help leverage resources and provide support for the overall health needs of those in the midst of cancer care. The Better Together for Community partners include: American Cancer Society, CancerPartners, Desert Cancer Foundation, Susan G. Komen Inland Empire and The Pendleton Foundation.

Desert Cancer Foundation's advance into cancer screening has been driven by the knowledge that individuals that lack financial resources frequently seek medical assistance for ongoing health problems in more advanced stages of disease. This situation habitually requires more costly treatment and often provides a less optimistic prognosis for the patient. Patients will be well served by having one agency to interact with for both cancer screening and treatment if a cancer diagnosis is made. The process will be faster and more efficient, which will allow for even earlier treatment for the patient. By reaching these individuals earlier, they will have a more positive prognosis, a better quality of life, and treatment will be less expensive.

Desert Cancer Foundation is the only community non-profit that provides financial assistance for cancer treatment in the Coachella Valley and surrounding regions. In fact, Desert Cancer Foundation is one of few organizations in existence that provide these services. Patients that receive financial assistance from Desert Cancer Foundation are able to focus on their healing, rather than struggle with the inability to pay for their care. When someone is diagnosed with cancer, they often become unable to work during treatment due to surgeries, chemotherapy, radiation or other treatments. Often their income from disability is not enough to pay for basic living needs such as a mortgage or rent, utilities, groceries, transportation and health insurance - let alone the cost of co-pays, deductibles, premiums and medications. Furthermore, the financial assistance for their cancer care and leveraging of community resources to assist with other basic living needs, extends far beyond the individual, but also impacts the family unit. Desert Cancer Foundation can provide the financial assistance to cover the costs of cancer treatment, while leveraging existing community resources to fill the gaps in other financial needs for basic living expenses to ensure the patient is not burdened by heaps of debt, allowing the patient and their family to focus solely on their recovery. We do not want any member of our community to forgo cancer care due to an inability to pay.

Since inception, we have assisted more than 7,874 local and surrounding valley residents through our Suzanne Jackson Breast Cancer Fund program and our Patient Assistance Program. The need for our services continues to expand, and we hope to continue to meet the needs of our community by providing financial sustainability during cancer treatment against the pitfalls of basic living needs and healthcare costs.

Proposal

Type of Request: Direct healthcare services\Patient care

Strategic Plan Link: GOAL#2: Facilitate access to and availability of health and wellness services for District Residents

***Project Title:* Patient Assistance and SJBCF Programs**

Total Project Cost: \$562,620

Requested from DHCD: \$200,000

Length of Project: 12 months

Start Date: 3/1/2018

End Date: 8/31/2019

Project Description:

Desert Cancer Foundation provides two programs to serve the residents of the Coachella Valley and surrounding local communities that are uninsured or underinsured.

1. Suzanne Jackson Breast Cancer Fund provides no-cost breast cancer screening and diagnostic services.

2. Patient Assistance Program pays for cancer medical treatment, including but not limited to, biopsies, surgeries, chemotherapy, radiation, prescriptions, insurance premiums, Medi-Cal Share-of-Cost, copays, deductibles, and coinsurance.

Patients are often referred by social workers in the region; however, we receive many self-referrals from patients and/or their families that are seeking resources. Desert Cancer Foundation staff provide professional guidance to help the client and their social worker apply/obtain health insurance coverage through Medi-Cal, Medicare, Covered California, Every Woman Counts, Breast and Cervical Cancer Treatment Program, Leukemia & Lymphoma Society, private health insurance options, as well as alternate sources of financial assistance such as Co-Pay Assistance Programs and pharmaceutical company programs. This navigation process allows DCF to have lower managed medical costs while leveraging other programs to reduce costs of care and ensure access to appropriate and timely services throughout the continuum of care which are best for the patient. DCF coordinates with social workers and health care systems in the valley to track patient navigation, referrals, and timely access to services and care. This process reduces barriers to care and increases access to early detection, with hopes of reducing late-stage diagnosis of cancer and thus reducing increased burdens associated with late-stage diagnoses.

Furthermore, our programs can help mitigate the repercussions of a cancer diagnosis. Patients that are enrolled in the Patient Assistance program are given renewed hope and peace, knowing that they can focus on getting better, instead of a mountain of bills and debt due to unemployment or disability due to cancer treatment. DCF is able to bridge the gap in financial needs to help those that have become unemployed, on disability, and/or lost their health insurance. DCF's programs allow the patient to continue their care, as well as connect them with other resources that can help meet additional needs. The financial assistance and patient navigation provided by DCF ensure that no patient goes without cancer care, does not become homeless due to the cost of their cancer treatment, and enables the patient to use their income to ensure stability for the family.

If our program were to disappear from our community, we could potentially recognize increased poverty, homelessness, food insecurity, and late-stage diagnosis and treatment of cancer patients. Furthermore, the negative impact could spread well beyond the individual, and adversely damage the financial well-being and stability of an entire family.

Our financial assistance programs may indirectly help prevent or reduce homelessness, increased poverty, food insecurity, late-stage treatment for cancer patients, as well as among their spouse and children.

Desert Cancer Foundation is requesting funding from Desert Healthcare District in the amount of \$200,000 to assist in providing cancer care for our Suzanne Jackson Breast Cancer Fund and Patient Assistance Program, including patient navigation for both programs, for Desert Healthcare District residents. Approximately 46 percent of clients served by Desert Cancer Foundation are residents of Desert Healthcare District, with an estimated 160 residents to be served by this program if funded by Desert Healthcare District. Based upon negotiated rates, the average cost per DHCD patient assisted with the requested funding for Suzanne Jackson Breast Cancer Fund and Patient Assistance Program is \$1,031.25. The average cost of wages for the Patient Assistance Program Navigator and the Suzanne Jackson Breast Cancer Fund Administrator is \$218.75 per DHCD patient.

The request is to assist in covering the costs of labor and direct financial assistance for SJBCF and Patient Assistance for a period of 12 months. The remaining 6 months of the grant period will allow for billing of rendered services during the initial 12-month period to be received and paid for by DCF. Billing for rendered services is an ongoing challenge during the grant period. Delayed receipt of medical billing for services rendered in our approved grant period is beyond our control, however we document references for bills received and payments processed support that patient charges will have been incurred during our grant funding period yet billing for services will not be received for several months after the service was provided. This is a challenge with the healthcare billing system and is not unique to Desert Cancer Foundation. Nonetheless, in planning for the delay in billing for services under grant funds, we request an additional six months in the grant period to ensure we do not need to request a no-cost extension or provide incomplete grant reports.

The environment for the SJBCF has fluctuated over the years, as the changes in our healthcare system and accessibly resources have shifted many times. Currently, most health insurance plans include breast cancer screenings as part of a mandated coverage. The requests for breast cancer screenings have declined since the inception of the Affordable Care Act. Those that do not have health insurance and are low income may qualify for the state's Breast & Cervical Cancer Early Detection Program (BCCEDP), Every Woman Counts (EWC), which provides free breast cancer screenings and diagnostic services. Those that do not have health insurance and do not qualify for EWC can be enrolled in Desert Cancer Foundation's Suzanne Jackson Breast Cancer Fund (SJBCF) and are offered free breast cancer screenings and diagnostic services. Patients that are diagnosed with breast cancer by either EWC or DCF's SJBCF are then enrolled in the state's free program Breast & Cervical Cancer Treatment Program (BCCTP), if they cannot afford health insurance. DCF aims to leverage existing resources in combination with our own, to ensure our community has access to quality, timely and appropriate breast health services along the entire continuum of care.

DCF experienced an increase of approximately 12 percent in our Patient Assistance Program from 2016 to 2017. We anticipate continued growth for our Patient Assistance Program based upon the current healthcare environment, as well as data trends and forecasts with increased population growth in the Coachella Valley. We have planned for increases in patient applications, and thus cost increases as we will likely serve more people in our program in the years to come. Most recently, in January of 2018, the number of submitted applications and

approved applications for our Patient Assistance program has more than tripled, indicating the need for our program is rising. We are currently averaging costs for our Patient Assistance program and SJBCF between \$30,000-40,000 per month, which is an increase in costs from the year prior. The implications of increased need require DCF to further leverage our funding and seek out additional sources of revenue in order to meet the unfortunate growing need in our community.

Number of District individuals with this issue:

17,000

Future Program Sustainability: Desert Cancer Foundation Board of Directors meet on a monthly basis. An integral part of monthly Board of Directors' meetings is to review, discuss and plan operational needs for DCF. In addition, Desert Cancer Foundation Board of Directors Annual Meeting is in June. The focus of the Annual Meeting is to address and review current and future organizational fiscal sustainability. Furthermore, the organization continually seeks potential new grant funding sources. Finally, our Patient Assistance Committee meets twice monthly at Eisenhower Medical Center's Lucy Curci Cancer Center and Desert Regional Medical Center's Comprehensive Cancer Center to review program guidelines, patient applications, and make recommendations to the DCF Board of Directors for program sustainability and implementation. Our ongoing continuous improvement processes focus on improved patient care, program needs, and sustainability initiatives. Our next strategic planning session will occur in June of 2019. The current strategic plan developed in 2014, was established for a 3-5-year period. It should be noted that our strategic plan will continued to be reviewed regularly, allow for flexibility and open to changes due to our healthcare environment and community, as well as ensure we are always mission-focused and meeting the needs of our community.

Participants:

(Description of District Residents who will benefit.)

Participant Number (District Residents):	160
Area to be served:	All District Areas
Participant age group(s):	(18-65) Adults
Participant community:	Desert Cancer Foundation provides

financial assistance and navigation for uninsured and underinsured Coachella Valley and local surrounding community men and women, age 18 years or older. Due to the unavailability of standard pediatric cancer care in our area, youth under age 18 do not currently fall within our service guidelines.

Does this program serve residents outside the District Boundaries? If so, approximately how many and in what Coachella Valley cities?

This program serves residents of the entire Coachella Valley, however funds requested are only to be utilized for an estimated 160 residents of Desert Healthcare District. Approximately, a total of 352 residents of the Coachella Valley will be served.

Results:

Specific benefits or tangible effects to be achieved:

1. From March 1, 2018 to February 28, 2019, DCF will provide financial assistance for cancer treatment and navigation through the Patient Assistance Program for approximately 75 cancer patients residing in the Desert Healthcare District.
2. From March 1, 2018 to February 28, 2019, DCF will provide financial assistance for breast cancer screening and diagnostic services, as well as navigation through the Suzanne Jackson Breast Cancer Fund for approximately 85 patients residing in the Desert Healthcare District.

*Please note: an additional six months (to August 31, 2019) has been requested for the grant program for the purpose of receiving and paying bills for services rendered during the grant period dedicated to providing services for the grant.

Project Tracking:

Measurements to be used throughout project:

1. Desert Cancer Foundation has strengthened the tracking of patients that are referred to the Suzanne Jackson Breast Cancer Fund. Patients are first reviewed for program eligibility and/or eligibility for existing programs, such as Every Woman Counts. Patients are then referred for appropriate services through SJBCF or EWC. Patients are followed up with three times to ensure breast health service(s) scheduled, patient received service(s) and outcome of service(s). Patient is also encouraged to obtain a more permanent health coverage, either through Every Woman Counts, Medi-Cal, Medicare, Covered California, or other private insurance to ensure patient has access to a viable medical home for other preventative health services, follow up appointments, and ongoing health care needs.
2. Desert Cancer Foundation has streamlined our Patient Assistance Program tracking systems, in addition to works closely with social workers, oncologists, etc. at our bimonthly Patient Assistance Committee meetings to ensure applications are reviewed within a timely manner, patients receive appropriate and timely care, and billing/services rendered are approved and paid.
3. Desert Cancer Foundation staff are cross-trained to ensure smooth and streamlined efforts to assist patients.
4. Executive Director guides, manages and reports on all measures of the programs.

If there are unanticipated costs associated with this service or program, how will they be covered?

The primary unanticipated cost associated with DCF programs is the ongoing "unknown" receipt of billing and delay for billing that is often incurred with this process and is a result of provider or medical center billing department processes. DCF financial assets would be the primary source of covering unanticipated costs. In planning for receipt of delayed billing, DCF has previously received an approved provision of a no-cost grant extension from Desert Healthcare District. However, to ensure that services rendered during the grant period are paid, although billing is received outside of the grant period, DCF has requested an additional six months for the entire grant period to ensure grant funds are fully utilized as intended and make the most impact in the Desert Healthcare District region, while allotting adequate time to receive billing and pay for services rendered during the grant period.

Key partners and their roles:

Our key collaborative partners include: DRMC Comprehensive Cancer Center, Eisenhower's Lucy Curci Cancer Center, American Cancer Society, CancerPartners, Susan G. Komen, The Pendleton Foundation, local valley medical clinics, cvHIP, and Every Woman Counts providers in the region. We often refer our clients for additional resources such as transportation assistance, mental health counseling services, support groups, group exercise, homeless shelters, food banks, basic living assistance programs, prescription drug assistance, and more. Our longstanding and trusted relationships with our community partners enable DCF to further support the cancer care needs of our community. Our community partners' commitment is made evident through our shared stable history, client rapport, and key stakeholder relations.

EXHIBIT B Grant#960

PAYMENT SCHEDULE, REQUIREMENTS & DELIVERABLES

<u>Project Title</u>	<u>Start/End</u>
Patient Assistance and Suzanne Jackson Breast Cancer Fund (SJBCF) Programs	3/1/2018 8/31/2019*
*grant funds cover 12 months; the last remaining 6 months allows for billing of rendered services during the initial 12-month period to be received and paid for by DCF	

PAYMENTS:

(2) Payments: \$90,000.00
 10% Retention: \$20,000.00

Total request amount: \$200,000.00

GRANT AND PAYMENT SCHEDULE REQUIREMENTS:

Scheduled Date	Grant Requirements for Payment	Payment
03/01/2018	Signed Agreement submitted & accepted	Advance of \$90,000.00 for time period 03/01/2018 - 08/31/2018
09/01/2018	1 st six-month (03/01/2018 - 08/31/2018) progress report, budget reports and receipts submitted & accepted	Advance of \$90,000.00 for time period 09/01/2018 - 02/28/2019
03/01/2019	2 nd six-month (09/01/2018 - 02/28/2019) progress report, budget reports and receipts submitted & accepted	\$0
09/30/2019	Final report (03/01/2018 - 08/31/2019) and final budget report submitted & accepted	\$20,000.00 (10 % retention)

TOTAL GRANT AMOUNT: \$200,000.00

DELIVERABLES:

1. From March 1, 2018 to February 28, 2019, DCF will provide financial assistance for cancer treatment and navigation through the Patient Assistance Program for approximately 75 cancer patients residing in the Desert Healthcare District.
2. From March 1, 2018 to February 28, 2019, DCF will provide financial assistance for breast cancer screening and diagnostic services, as well as navigation through the Suzanne Jackson Breast Cancer Fund for approximately 85 patients residing in the Desert Healthcare District.

Line Item Budget - Sheet 1 Operational Costs

Approved budgets are the basis for reporting all grant expenditures. Line items may not be added or changed without grant amendment. Prior authorization is required for transferring funds (<10%) between existing line items. Describe budget narrative in cell B38. You may insert rows or create additional worksheets if more space is needed to fully describe your budget.

PROGRAM OPERATIONS		Total Program Budget	Funds from Other Sources Detail on sheet 3	Amount Requested from DHCD
Total Labor Costs	Detail on sheet 2	\$ 128,620.03	\$ 93,620.03	\$ 35,000.00
Equipment (itemize)				
	1			
	2			
	3			
	4			
Supplies (itemize)				
	1			
	2			
	3			
	4			
Printing/Duplication				
Mailing/Postage/Delivery				
Travel				
Education/Training				
Facilities (Detail)				
	Office/Rent/Mortgage			
	Meeting Room Rental			
	Telephone/Fax/Internet			
	Utilities			
	Insurance			
	Maintenance/Janitorial			
Other Facility costs (itemize)				
	1			
	2			
	3			
	4			
Other Program Costs not described above (itemize)				
	1 Patient Assistance	\$ 394,500.00	\$ 254,500.00	\$ 140,000.00
	2 Suzanne Jackson Breast Cancer Fund	\$ 39,500.00	\$ 14,500.00	\$ 25,000.00
	3			
	4			
Total Program Budget		\$562,620.03	\$362,620.03	\$200,000.00

Line Item Budget - Sheet 1 Operational Costs

Budget Narrative	<p>Request of \$35,000 total for labor costs to assist with the administration and navigation of patients for the SJBCF and Patient Assistance Navigator. Requested salary amount for SJBCF Administrator is to manage and administer the Suzanne Jackson Breast Cancer Fund for patients residing in the area for Desert Healthcare District. Salary requested for the Patient Assistance Navigator to assist patients in the Desert Healthcare District area. \$140,000 is requested for the Patient Assistance program to provide direct financial assistance for cancer treatment for uninsured/underinsured residents of Desert Healthcare District. \$25,000 is requested for the Suzanne Jackson Breast Cancer Fund for the financial assistance for breast cancer screening and diagnostic services for uninsured/underinsured residents of Desert Healthcare District.</p>
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**Line Item Budget
Sheet 2 - Labor Costs**

Staff Salaries					
Employee Position/Title		Annual Salary	% of Time Allocated to Program	Actual Program Salary	Amount of Salary Paid by DHCD Grant
1	SJBCF Adminsitrator	\$ 41,983.56	80%	\$ 33,586.85	\$ 10,000.00
2	Patient Assistance Navigator	\$ 56,167.22	100%	\$ 56,167.22	\$ 25,000.00
3	Controller	\$ 79,079.86	10%	\$ 7,907.99	\$ -
4	Executive Director	\$ 103,193.25	30%	\$ 30,957.98	\$ -
5					
6					
7					
8					
<i>Enter this amount in Section 1, Employee Salaries</i>				Total >	\$ 35,000.00
Budget Narrative	Requested salary amount for SJBCF Administrator is to manage and administer the Suzanne Jackson Breast Cancer Fund for patients residing in the area for Desert Healthcare District. Salary requested for the Patient Assistance Navigator to assist patients in the Desert Healthcare District area. No funding is requested to assist in the salary amounts dedicated to the program for the Controller or Executive Director.				
Consultants/Contractors					
Consultant/Contractor Name		Hourly Rate	Hours/Week	Monthly Fee	Amount of Salary Paid by DHCD Grant
1					
2					
3					
4					
5					
6					
7					
8					
<i>Enter this amount in Section 1, Professional Services/Consultants</i>				Total >	0
Budget Narrative	None requested.				

Line Item Budget - Other Program Funds

Funding for this program received from other sources		Amount
Fees		\$ -
Donations		\$ 14,803.00
Grants (List Organizations)		
	1	United Way of the Desert \$ 9,500.00
	2	Susan G. Komen Inland Empire (pending) \$ 10,000.00
	3	Desert Regional Medical Center Auxiliary \$ 4,500.00
	4	Auen Foundation \$ 15,000.00
	5	City of Rancho Mirage \$ 2,500.00
	6	Desert Classic Charities \$ 20,000.00
	7	Stater Brothers Markets \$ 10,000.00
	8	Champions Volunteer \$ 6,000.00
Fundraising (describe nature of fundraiser)		
		DCF Events (Paint El Paseo Pink, Corks & Cuisine, Golf Tournament) \$ 150,682.00
		Third-Party Fundraisers \$ 119,635.03
Other Income, e.g., bequests, membership dues, in-kind services, investment income, fees from other agencies, etc. (Itemize)		
	1	
	2	
	3	
	4	
Total funding in addition to DHCD request		\$ 362,620.03
Budget Narrative	<p>1 United Way of the Desert \$9,500.00 - actual 2 Susan G. Komen Inland Empire \$10,000.00 - pending 3 Desert Regional Medical Center Auxiliary \$4,500.00 - actual 4 Auen Foundation \$15,000.00 - actual 5 City of Rancho Mirage \$2,500.00 - actual 6 Desert Classic Charities \$20,000.00 - actual 7 Stater Brothers Markets \$10,000.00 - actual 8 Champions Volunteer \$6,000.00 - actual</p>	



Date: February 27, 2018

To: Board of Directors

Subject: Draft District/ Foundation Policy: Engagement of the
Community, Public and Subject Matter Experts.

Staff recommendation:

Consideration to approve the Draft Engagement of the Community, Public and Subject Matter Experts.

Background:

- Following draft presentation and discussion to the Board of Directors on January 23, 2018 – staff took direction received and finalized Draft Policy.
- Key input from the Board - policy is a framework for decisions that give rise to action

Fiscal Impact:

None

DISTRICT/FOUNDATION POLICY

Engagement of the Community, Public and Subject Matter Experts

PURPOSE

1.1 This Community Engagement policy outlines the importance of engaging with the community and the principles that define the District/Foundation's commitment and approach to interaction with the community, public and subject matter experts.

1.2 This Community Engagement policy is to ensure that key stakeholders across the Coachella Valley have a voice to influence the development of policies and strategies that will affect their lives and inform the way in which District/Foundation services are planned and implemented.

1.3 The District/Foundation is committed to engaging with stakeholders and communities and this policy provides the strategic direction to ensure quality interaction and consistent engagement across the spectrum of services our organization provides.

SCOPE

2.1 This policy applies to all District/ Foundation employees, management, Board Members, contractors, consultants, interns, and volunteers, residents and service providers.

DEFINITION

3.1 Community engagement is defined as the range of opportunities for public involvement in decision-making, relationship-building and community strengthening. Community engagement is achieved when the community is a part of – and *feels a part of* – a project, process, or relationship.

3.2 Community engagement deepens the innovative, silo-busting partnerships that are signatures of successful programs by connecting the concerns of communities to the decisions that allocate funding – local and regional public investment dollars. Engagement brings meaning and relevance to sustainability goals across a broad spectrum of players; and it encourages local innovations in sustainable development through creative problem solving.

STANDARDS

4.1 Community engagement encompasses a more comprehensive approach, creating practices and institutionalized mechanisms that share the power and decision-making control in marginalized communities, groups, subject matter experts and all other stakeholders. When utilized for the purposes

of increasing community empowerment and problem solving, community engagement is guided by specific key principles.

KEY POLICY PRINCIPLES FOR ENGAGEMENT

Following the District/Foundation’s culture of commitment to the community, these key policy tenets reflect this and help the organization move to action effectively.

- Honor the wisdom, voice, and experience of residents and partners.
- Treat participants with integrity and respect.
- Be transparent about motives and power dynamics.

MEETING ELEMENTS

Engagement meetings will be designed to adhere to specific elements:

- Include all those that represent the group(s) affected.
- Educate with District/Foundation information and/or information the organization has gathered and assure the District/Foundation is educated by those attended who can share their lived experience.
- Listen to those with lived experience to ensure understanding of key subject information and areas where the District/Foundation can learn from.
- Assure the District/Foundation is seeking out and meeting with the experts in the field to learn from and understand what their needs are for continued and future success.
- Work in partnership and co-create a plan/ budget/ focused subject priorities.
- Build-in evaluative measures to assure for as-needed course corrections.
- Report out to Board of Directors and/or request approvals as necessary.
- The culture needs to be, the community feels heard and knows we will move into action.
- Utilize information gathered and leverage resources, both financially and with District and partner personnel.
- Provide meeting materials and/or verbally communicated information in the necessary languages to ensure communication is effective to attendees.
- As a follow-up to said meetings, disperse the information via District/Foundation communication vehicles so the general public and others have an opportunity to contribute.
- Meetings within the District/Foundation service area will maintain a baseline structure with the understanding that what is done in one community may not work in others; each is unique with its own circumstances and the District/Foundation will work to always honor the communities and members that live there.

RESPONSIBILITY

It is the responsibility of District/Foundation management to enforce all organizational policies and Board of Directors to oversee implementation.



Date: February 27, 2018

To: Board of Directors

Subject: 2018 Board of Directors Meeting Schedule – Desert Healthcare District Bylaws Amendment

Staff recommendation: Consideration to approve the District’s Bylaws Amendment to include updated 2018 Board of Director’s meeting schedule.

Background:

- At the January 23, 2018 Board of Directors meeting, Staff proposed changing the Board meeting times to include evenings to allow more public to attend and to hold meetings at other venues in the Coachella Valley.
- The Board directed Staff to amend the Bylaws to begin holding meetings at 6:00 pm beginning March 2018.
- The designated location is the Boardroom in the Stergios Building, unless noticed in the monthly Board meeting agenda.
- The Draft Bylaws amendment is included for review and approval.

Fiscal Impact:

None

AMENDED AND RESTATED BYLAWS AND RULES
OF
DESERT HEALTHCARE DISTRICT

ARTICLE I. DEFINITIONS

- 1.1 “Hospital” means Desert Regional Medical Center, 1140 North Indian Canyon Drive, Palm Springs, California 92262.
- 1.2 “Board” means the Board of Directors of the District.
- 1.3 “Director” means a member of the Board.
- 1.4 “District” means the Desert Healthcare District.
- 1.5 “Lease” means lease of the Hospital to Tenet HealthSystem Desert, Inc.
- 1.6 “President” means the president of the Board.
- 1.7 “Vice President/Secretary” means the vice president/secretary of the Board.
- 1.8 “Treasurer” means the treasurer of the Board.

ARTICLE II. ORGANIZATION, POWERS, AND MISSION STATEMENT

- 2.1 NAME. The name of the District is the “Desert Healthcare District.”
- 2.2 SEAL. The District shall have a seal which shall be circular in form and have in the perimeter thereof the following inscription:

“Desert Healthcare District
Incorporated December 14, 1948
California”

- 2.3 ORGANIZATION. The District is a political subdivision of the State of California organized under the Local Healthcare District Law, Division 23 of the California Health and Safety Code as now in effect or as amended in the future. The District operates under and has all of the rights and responsibilities set forth in The Ralph M. Brown Act, Government Code section 54950 and following as now in effect or as amended in the future.
- 2.4 PURPOSES AND POWERS. The District is organized for the purposes described in the Local Healthcare District Law and shall have and exercise such powers in the furtherance of its purposes as are now or may hereafter be set forth in the Local Healthcare District Law and any other applicable statutes, rules, or regulations of the State of California. The Hospital is operated by Tenet HealthSystem Desert, Inc., pursuant to a lease dated May 31, 1997, as amended between Tenet Healthcare, Inc., and the District. The District oversees Tenet’s compliance with said lease and ensures that the District asserts all of its rights and obligations pursuant to the terms of the lease.
- 2.5 MISSION STATEMENT. The mission of the Desert Healthcare District is to achieve optimal health for all stages of life for all District residents.

ARTICLE III. OFFICES

- 3.1 PRINCIPAL OFFICE. The principal office of the District is located at 1140 North Indian Canyon Drive, Palm Springs, California 92262.

ARTICLE IV. BOARD

- 4.1 GENERAL POWERS. The Board is the governing body of the District. All District powers shall be exercised by or under the direction of the Board. The Board is authorized to make appropriate delegations of its powers and authority to officers and employees of the District.
- 4.2 NUMBER AND QUALIFICATION. The Board shall consist of five (5) members, each of whom shall be a registered voter residing in the District.
- 4.3 ELECTION AND TERM OF OFFICE. An election shall be held in the District on the first Tuesday after the first Monday in November in each even-numbered year, at which time a successor shall be chosen to each Director whose term shall expire at noon on the first Friday of December following such election. The election of Board members shall be an election at large within the District and shall be consolidated with the statewide general election. The candidates receiving the highest number of votes for the offices to be filled at the election shall be elected thereto. The term of office of each elected Board member shall be four (4) years or until the Board member's successor is elected and has qualified, except as otherwise provided by law in the event of a vacancy.
- 4.4 VACANCIES. The remaining Board members may fill any vacancy on the Board by appointment in accordance with Government Code section 1780, as

amended, which sets forth the procedure for filling a vacancy of an elective office on a governing board of a special district.

- 4.5 RESIGNATION OR REMOVAL. Any Board member may resign effective upon giving written notice to the President, the Secretary, or the Board, unless the notice specified a later time for the effectiveness of such resignation. In accordance with Health & Safety Code section 32100.2, as amended, the term of any member of the Board shall expire if the member is absent from three (3) consecutive regular meetings or from three (3) of any five (5) consecutive meetings of the Board, and if the Board by resolution declares that a vacancy exists on the Board. All or any of the members may be recalled at any time by the voters following the recall procedure set forth in Division 11 of the Election Code.
- 4.6 COMPENSATION. The Board shall serve without compensation except that the Board, by resolution adopted by majority vote, may provide compensation for attendance at meetings in accordance with Health and Safety Code section 32103.
- 4.7 HEALTH BENEFITS. Pursuant to Government Code section 53200 et seq., the Board, by resolution adopted by a majority vote, may provide for health benefits to Board members, employees, retired employees, and retired Board members as allowed by law.

ARTICLE V. BOARD MEETINGS

- 5.1 REGULAR MEETINGS. Regular meetings of the Board of Directors shall be held on the fourth Tuesday of each month, excepting August, at ~~2~~6:00 p.m. [in the Jerry Stergios Building, 2nd floor Arthur H. "Red" Motley Boardroom 1140 N. Indian Canyon Drive, Palm Springs, California 92262 unless otherwise designated in the Agenda Notice](#); provided, however, that should said date fall upon a legal holiday, then the meeting shall be held at the same time on the next business day.
- 5.2 ORGANIZATION MEETING. At the first regular Board meeting in December, the Board shall organize by the election of one of its members as President, one as Vice-President/Secretary, and one as Treasurer.
- 5.3 SPECIAL MEETING. A special meeting may be called at any time by the President, or by three (3) Board members by delivering written notice to each Board member and to each local newspaper of general circulation, radio or televisions station requesting such notice in writing, personally or by mail. Such notice must be delivered personally or by mail at least twenty-four (24) hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at special meetings. Such written notice may be dispensed with as to any Board member who, at or prior to the time the meeting convenes, files with the Secretary a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

- 5.4 QUORUM. A majority of the members of the Board shall constitute a quorum for the transaction of business. The act of a majority of the Board members present at a meeting at which a quorum is present shall be the act of the Board.
- 5.5 ADJOURNMENT. The Board may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within twenty-four (24) hours after the time of adjournment.
- 5.6 RULES AND REGULATIONS. The Board may adopt rules and regulations governing the Board, the District, its facilities and programs, which rules and regulations shall not conflict with these bylaws.
- 5.7 RULES OF ORDER. Unless otherwise provided by law, these bylaws, or Board rules, Board meeting procedures shall be in accordance with *Robert's Rules of Order Newly Revised*. However, technical failure to follow *Robert's Rules of Order* shall not invalidate any action taken. The President may make and second motions and vote in the same manner as other Board members.

ARTICLE VI. COMMITTEES

- 6.1 APPOINTMENT. All Board committees, whether standing or special (ad hoc), shall be appointed by the President. The chairperson of each committee shall be appointed by the President. All committees shall be advisory only to the Board unless otherwise specifically authorized to act by the Board.

6.2 STANDING COMMITTEES. Standing committees shall meet periodically to review reports from District staff, legal counsel, and consultants relating to the particular subject matter of the committee. There shall be the following standing committees:

- (a) Finance, Legal and Administration. This committee shall be responsible for oversight and for making recommendations to the Board where appropriate on matters related to finance, administration, human resources, property management, legal affairs, (including legislation) real estate, and information systems (IS).
- (b) Strategic Planning. This committee, represented by the full Board of Directors, shall be responsible for monitoring the District's progress in achieving the expectations outlined in its strategic plan. In addition, the full Board of Directors is charged with reviewing the District's community relations programs.
- (c) Hospital Governance and Oversight. This committee, represented by the Directors assigned to the Desert Regional Hospital Governing Board, shall be responsible for handling complaints coming from the public to Board Members and Staff regarding Desert Regional Medical Center. In addition, this committee is charged with oversight responsibilities to ensure compliance with the terms of the current lease of Desert Regional Medical Center.

6.3 SPECIAL COMMITTEES. Special committees may be appointed by the President for special tasks as circumstances warrant, and upon completion of the task for which appointed such special committee shall stand discharged.

Updated ~~November 28, 2017~~ February 27, 2018

- 6.4 CONSULTANTS. A committee chairman may invite additional individuals with expertise in a pertinent area to meet with and assist the committee. Such consultants shall not vote or be counted in determining the existence of a quorum and may be excluded from any committee session. A committee chairman may exclude any or all consultants from attending a committee meeting.
- 6.5 MEETING AND NOTICE. Meetings of a committee may be called by the President of the Board, the chairman of the committee, or by a majority of the committee's members.
- 6.6 QUORUM. A majority of the members of a committee shall constitute a quorum for the transaction of business at any meeting of such committee. A committee member may designate an alternate Board member to attend a scheduled committee meeting in the event the committee member is unable to attend. Each committee shall keep minutes of its proceedings and shall report periodically to the Board.
- 6.7 MANNER OF ACTING. The act of a majority of the members of a committee present at a meeting which a quorum is present shall be the act of the committee. No act taken at a meeting at which less than a quorum was present shall be valid unless approved in writing by the absent members.
- 6.8 TENURE. Each member of a committee shall hold office until the organizational meeting of the Board at its first meeting in December and until a successor is appointed. Any member of a committee may be removed at any time by the

President subject to the consent of the Board. A member of the Board shall cease to hold committee membership upon ceasing to be a Board member.

- 6.9 TEMPORARY APPOINTMENTS. The President may appoint a temporary committee member to serve during the absence of a regular committee member or the President may serve.

ARTICLE VII. OFFICERS

- 7.1 PRESIDENT. The Board shall elect one of its members as President at the first regular meeting in December of each year, and the President shall hold office until a successor is elected. The President shall be the principal officer of the District and the Board and shall preside at all meetings of the Board. The President shall appoint all Board committee members and committee chairman and shall perform all duties incident to the office and such other duties as may be prescribed by the Board from time to time.
- 7.2 VICE PRESIDENT/SECRETARY. The Board shall elect one of its members as Vice President/Secretary at the first regular meeting in December of each year, and the Vice President shall hold office until a successor is elected. In the absence of the President, the Vice President/Secretary shall perform the duties of the President. The Vice President/Secretary shall provide for keeping of the minutes of all meetings of the Board. The Vice President/Secretary shall give or cause to be given appropriate notices in accordance with these bylaws or as required by law and shall act as custodian of District records and reports and of the District's seal.

7.3 TREASURER. The Board shall appoint a Treasurer who shall serve at the pleasure of the Board. The Treasurer shall be charged with the safekeeping and disbursal of the funds in the treasury of the District.

ARTICLE VIII. LOCAL GOVERNING BOARD

8.1 In accordance with the 1997 Lease Agreement, the District appoints two (2) District Board members to serve on the Desert Regional Medical Center governing board. Said members shall act as liaisons to the District Board and shall periodically report to the District Board on the affairs of the governing board. The President shall be responsible for appointing the two (2) District Board members to serve on the Hospital governing board in accordance with the rules and regulations of the bylaws of the governing board.

ARTICLE IX. AMENDMENT

9.1 These bylaws may be amended or repealed by vote of at least three (3) members of the Board at any Board meeting. Such amendments or repeal shall be effective immediately.

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FAX (858) 675-9897

DATE: February 27, 2018

TO: Board of Directors
Herb Schultz, CEO

FROM: Jeff Scott, General Counsel

RE: Legislative Bills of Interest

The bill introduction deadline has passed. This year there were more than 2,100 bills introduced and there were a large number of "spot" bills that have non-substantive language which does not have any effect on changing the law. Spot bills are widely used when a Legislator does not have the exact language ready to be placed in the bill and needs more time to meet the bill introduction deadline.

As expected, there were numerous bills introduced to look at making changes to the overall healthcare system. Many of these bills were spot bills so we do not know what will be placed in them at this point. Attached are bills of interest relating to Health Care District and Health Care in general.

**Desert Healthcare District
Legislative Bills of Interest
2/23/2018**

Healthcare District/Local Government

AB 448 (**Daly D**) **Local governments: parcel taxes: notice.** (Amended: 05/18/2017)

Status: 07/14/2017-Failed deadline pursuant to Rule 61(a)(10). Last location was GOV. & FIN. on 06/08/2017.

Location: 07/14/2017-S. 2 YEAR

Summary: Existing law requires the legislative body of a local agency, as defined, to provide notice of a new parcel tax to the owner of a parcel affected by the tax, if that owner does not reside within the jurisdictional boundaries of the taxing entity, as specified. This bill would instead require a local agency to provide notice of a new parcel tax to any owner of record of a parcel affected by the tax, if that owner of record does not reside within the jurisdictional boundaries of the taxing entity. The bill would also require the notice to be made within 30 days of the certification of the election approving the new parcel tax. The bill would, with regard to a school district or special district, require the city, county, or city and county in which the district is located, to prepare and mail the notice on behalf of the district. The bill would also require the district to reimburse the city, county, or city and county for the cost of preparing and mailing the notices.

This bill contains other related provisions and other existing laws.

AB 2019 (**Aguiar-Curry D**) **Health care districts.** (Introduced: 02/05/2018)

Status: 02/06/2018-From printer. May be heard in committee March 8.

Location: 02/05/2018-A. PRINT

Summary: Existing law, the Local Health Care District Law, regulates local health care districts. Existing law authorizes local health care districts to exercise specified powers, including purchasing and using property for the benefit of the district and exercising the power of eminent domain to acquire real or personal property necessary to the exercise of the district's powers. Existing law authorizes a district to include incorporated or unincorporated territory, or both, or territory in one or more counties, subject to specified limitations. This bill would make technical, non-substantive changes to a provision of the Local Health Care District Law.

AB 2258 (**Caballero** D) Local government. (Introduced: 02/13/2018)

Status: 02/14/2018-From printer. May be heard in committee March 16.

Location: 02/13/2018-A. PRINT

Summary: Existing law requires a local agency formation commission in each county to encourage the orderly formation and development of local agencies based upon local conditions and circumstances, among other things. Existing law requires the county auditor to apportion, as specified, the net operating expenses of the local agency formation commission among the county, cities, and special districts within the commission's jurisdiction. This bill would make a nonsubstantive change to that provision.

Healthcare Reform

AB 2459 (**Friedman** D) Health care coverage. (Introduced: 2/14/2018)

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Summary: Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacted various health care coverage market reforms that took effect January 1, 2014. PPACA required each state, by January 1, 2014, to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA defines a "qualified health plan" as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers. This bill would express the intent of the Legislature to enact legislation that would ensure that a Californian who purchases health care coverage as an individual would spend no more than ___% of his or her income on the premiums for health care coverage that pays ___% of the average cost of care.

AB 2499 (**Arambula** D) Health care coverage: medical loss ratios. (Introduced: 2/14/2018)

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Summary: Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Dept. of Managed Health Care and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. This bill would increase the minimum medical loss ratio percentages applicable to health care service plans and health insurers by 5%, except as specified. By increasing the number of health care service plans that would be required to pay a rebate, the bill would increase potential violations of an existing crime, thereby imposing a state-mandated local program. This bill contains other related provisions and other existing laws.

AB 2502 (Wood D) Health care costs. (Introduced: 2/14/2018)

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Summary: Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. This bill would state the intent of the Legislature to enact legislation to further control health care costs, as specified.

AB 2517 (Wood D) Health care coverage. (Introduced: 2/14/2018)

Status: 2/15/2018-From printer. May be heard in committee March 17.

Location: 2/14/2018-A. PRINT

Summary: Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that took effect January 1, 2014. Among other things, PPACA requires each state, by January 1, 2014, to establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers. Existing state law establishes the California Health Benefit Exchange (the Exchange), also known as Covered California, within state government for the purpose of facilitating the enrollment of qualified individuals and qualified small employers in qualified health plans, and specifies the powers and duties of the board governing the Exchange. This bill would express the intent of the Legislature to enact legislation to improve affordability of health coverage offered through Covered California to those who are now eligible for financial assistance in the form of advance premium tax credits.

AB 2566 (Chiu D) Health care: costs and outcomes. (Introduced: 2/15/2018)

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes the State Department of Public Health, within the California Health and Human Services Agency, vested with certain duties, powers, functions, jurisdiction, and responsibilities over specified public health programs. This bill would express the intent of the Legislature to enact legislation that would control health care costs, improve health outcomes, and reduce health disparities.

SB 562 (Lara D) The Healthy California Act. (Amended: 5/26/2017)

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10); last location was DESK on 6/1/2017.

Location: 7/14/2017-A. 2 YEAR

Summary: Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacted various health care coverage market reforms that took effect January 1, 2014. PPACA required each state, by January 1, 2014, to establish an American Health Benefit Exchange to facilitate the purchase of qualified health benefit plans by qualified individuals and qualified small employers. PPACA defines a "qualified health plan" as a plan that, among other requirements, provides an essential health benefits package. Existing state law creates the California Health Benefit Exchange, also known as Covered California, to facilitate the purchase of qualified health plans by qualified individuals and qualified small employers. This bill, the Healthy California Act, would create the Healthy California program to provide comprehensive universal single-payer health care coverage and a health care cost control system for the benefit of all residents of the state. The bill, among other things, would provide that the program cover a wide range of medical benefits and other services and would incorporate the health care benefits and standards of other existing federal and state provisions, including, but not limited to, the state's Children's Health Insurance Program (CHIP), Medi-Cal, ancillary health care or social services covered by regional centers for persons with developmental disabilities, Knox-Keene, and the federal Medicare program. The bill would require the board to seek all necessary waivers, approvals, and agreements to allow various existing federal health care payments to be paid to the Healthy California program, which would then assume responsibility for all benefits and services previously paid for with those funds. This bill contains other related provisions and other existing laws.

SB 974 (Lara D) Medi-Cal: immigration status: adults. (Introduced: 2/1/2018)

Status: 2/14/2018-Referred to Com. on HEALTH.

Location: 2/14/2018-S. HEALTH

Summary: Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. The federal Medicaid program provisions prohibit payment to a state for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law. This bill would extend eligibility for full-scope Medi-Cal benefits to individuals of all ages who are otherwise eligible for those benefits but for their immigration status. The bill would also delete provisions delaying implementation until the director makes the determination described above. Because counties are required to make Medi-Cal eligibility determinations and this bill would expand Medi-Cal eligibility, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

SB 1375 ([Hernandez D](#)) **Health care coverage: cost sharing.** (Introduced: 2/16/2018)

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Summary: Existing federal law, the Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that took effect January 1, 2014. Among other things, PPACA establishes annual limits on specified forms of cost sharing on all essential health benefits for non-grandfathered individual and group health insurance coverage. Existing state law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law requires, for non-grandfathered products in the individual or small group markets, a health care service plan contract or health insurance policy that is issued, amended, or renewed on or after January 1, 2015, subject to exceptions, to provide for a limit on annual out-of-pocket expenses for all covered benefits that meet the definition of essential health benefits. This bill would make technical, non-substantive changes to those provisions.

Hospital Financing

SB 993 ([Hertzberg D](#)) **Sales tax: services.** (Introduced: 2/5/2018)

Status: 2/14/2018-Referred to Com. on GOV. & FIN.

Location: 2/14/2018-S. GOV. & FIN.

Summary: The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. This bill would, on and after January 1, 2019, expand the Sales and Use Tax Law to impose a tax on the purchase of services by businesses in California at a specified percentage of the sales price of the service. The bill would require the tax to be collected and remitted by the seller of the purchased services. The bill would exempt certain types of services, including health care services, from the tax and would exempt from the tax a business with gross receipts of less than \$100,000 in the previous 4 quarters. The bill would require the tax to be paid to the California Department of Tax and Fee Administration and would require the department to transmit the payments, less refunds and cost of administration, to the Treasurer to be deposited into the Retail Sales Tax on Services Fund, which this bill would create in the State Treasury. The bill would state that the moneys in that fund are to be appropriated to provide tax relief to middle-income and low-income Californians and to assist in securing greater stability for California's infrastructure, its workforce, and its education services, including higher education. The bill would also state various related findings and declarations. This bill contains other related provisions.

Hospital Related

AB 2589 (**Bigelow R**) **Hospitals: community benefits.** (Introduced: 2/15/2018)

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Summary: Existing law declares that significant public benefit would be derived if private, not-for-profit hospitals periodically reviewed and reaffirmed their commitment to assist in meeting their communities' health care needs by identifying and documenting benefits provided to the communities that they serve, and requires each hospital to annually adopt and update a community benefits plan for providing community benefits either alone, in conjunction with other health care providers, or through other organizational arrangements. Each hospital is also required to annually submit its community benefits plan, including a description of the activities that the hospital has undertaken in order to address community needs within its mission and financial capacity, to the Office of Statewide Health Planning and Development. This bill would make technical, non-substantive changes to those provisions.

AB 2591 (**O'Donnell D**) **Acute care hospitals: seismic safety.** (Introduced: 2/15/2018)

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Summary: Existing law, the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, establishes, under the jurisdiction of the Office of Statewide Health Planning and Development, a program of seismic safety building standards for certain hospitals constructed on and after March 7, 1973. Existing law provides that after January 1, 2008, a general acute care hospital building that is determined to be a potential risk of collapse or to pose significant loss of life in the event of seismic activity be used only for nonacute care hospital purposes, except that the office may grant a specified extension under prescribed circumstances. This bill would make technical, non-substantive changes to these provisions.

AB 2681 (**Nazarian D**) **Seismic safety: potentially vulnerable buildings.** (Introduced: 2/15/2018)

Status: 2/16/2018-From printer. May be heard in committee March 18.

Location: 2/15/2018-A. PRINT

Summary: Existing law establishes a program within all cities and all counties and portions thereof located within seismic zone 4, as defined, to identify all potentially hazardous buildings and to establish a mitigation program for these buildings. The mitigation program may include, among other things, the adoption by ordinance of a hazardous buildings program, measures to strengthen buildings, and the application of structural standards necessary to provide for life safety above current code requirements. This bill would require each building department of a city or county to create an inventory of potentially vulnerable buildings, as defined, within its

jurisdiction, based on age and other publicly available information, and submit that inventory to the Office of Emergency Services, as specified. By increasing the duties of local officials, this bill would create a state- mandated local program. The bill would require the Office of Emergency Services to, among other things, maintain a statewide inventory, create a standard reporting form, prepare a report identifying possible funding mechanisms available to building departments and building owners in complying with these provisions, and report annually to the Legislature on the compliance of building departments with these provisions. The bill would require the owner of a building identified by a building department as a potentially vulnerable building to retain a licensed professional engineer to identify whether the building meets the definition of a potentially vulnerable building, and if it does, to complete the standard reporting form. The bill would specify the date by which each requirement must be met. This bill contains other related provisions and other existing laws.

AB 2798 (**Maienschein R**) **Health facility licensing.** (Introduced: 2/16/2018)

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Summary: Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, duties relating to the licensing and regulation of health facilities, as defined. This bill would declare the intent of the Legislature to subsequently amend this bill to include provisions that would make sufficient resources and staffing available to the department to enable it to approve applications for hospital licensure changes within 60 days.

AB 3006 (**Stone, Mark D**) **Health care: county hospitals.** (Introduced: 2/16/2018)

Status: 2/17/2018-From printer. May be heard in committee March 19.

Location: 2/16/2018-A. PRINT

Summary: Existing law allows the board of supervisors of each county to prescribe rules which authorize the county hospital to integrate its services with those of other hospitals into a system of community service which offers free choice of hospitals to that requiring hospital care. Existing law authorizes the board of supervisors of any county to transfer the maintenance, operation, and management or ownership of the county hospital to the University of California or any other public agency or community nonprofit corporation empowered to operate a hospital facility. This bill would make technical, non-substantive changes to these provisions.

SB 349 (**Lara D**) **Chronic dialysis clinics: staffing requirements.** (Amended: 8/22/2017)

Status: 9/12/2017-Ordered to inactive file on request of Assembly Member Calderon.

Location: 9/12/2017-A. INACTIVE FILE

Summary: Existing law establishes the State Department of Public Health and sets forth its powers and duties, including, but not limited to, the licensure and regulation of chronic dialysis clinics. Existing law requires the department to adopt regulations to implement these provisions, and requires those regulations to prescribe, among other things, minimum standards for staffing with duly qualified personnel. Violation of these provisions is a crime. This bill would establish minimum staffing requirements for chronic dialysis clinics and establish a minimum transition time between patients receiving dialysis services at a treatment station. The bill would require chronic dialysis clinics to maintain certain information relating to the minimum staffing and minimum transition time requirements and provide that information, certified by the chief executive officer or administrator, to the department on a schedule and in a format specified by the department, but no less frequently than 4 times per year. The bill would authorize the department to assess an administrative penalty for a violation of these provisions and other licensing provisions and would require the department to promulgate regulations to establish criteria for assessing these penalties. The bill would authorize a chronic dialysis clinic that disputes an alleged deficiency or failure to correct a deficiency, or the reasonableness of a proposed deadline for correction of a violation or an amount of an administrative penalty, to request a hearing. Because failure to comply with the minimum staffing and minimum transition time requirements would be a crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

SB 538 (**Monning D**) **Hospital contracts.** (Amended: 5/26/2017)

Status: 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10); last location was HEALTH on 6/15/2017.

Location: 7/14/2017-A. 2 YEAR

Summary: Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law provides for the licensure and regulation of health facilities, including general acute care hospitals, acute psychiatric hospitals, and special hospitals, administered by the State Department of Public Health. A violation of these provisions is a crime. Existing law, the Health Care Providers' Bill of Rights, prescribes restrictions on the types of contractual provisions that may be included in agreements between health care service plans and health care providers and agreements between health insurers and health care providers. This bill, the Health Care Market Fairness Act of 2017, would prohibit contracts between hospitals and contracting agents, health care service plans, or health insurers from containing certain provisions, including, but not limited to, setting payment rates or other terms for nonparticipating affiliates of the hospital, requiring the contracting agent, plan, or insurer to keep the contract's payment rates confidential from any payor, as defined, that is or

may become financially responsible for the payment, and requiring the contracting agent, plan, or insurer to submit to arbitration, or any other alternative dispute resolution program, any claims or causes of action that arise under state or federal antitrust laws after those claims or causes of action arise, except as provided. The bill would make any prohibited contract provision void and unenforceable. The bill would define "contracting agent" and "hospital" for those purposes. The bill would enact an identical provision under the health facility licensure and regulation provisions as that provision described above for contracts between hospitals and contracting agents. The bill would provide that its provisions are severable. This bill contains other related provisions and other existing laws.

SB 1152 (**Hernandez D**) **Hospital patient discharge process: homeless patients.** (Introduced: 2/14/2018)

Status: 2/15/2018-From printer. May be acted upon on or after March 17.

Location: 2/14/2018-S. RLS.

Summary: Existing law establishes the State Department of Public Health and sets forth its powers and duties, including the licensure and regulation of health facilities. A violation of those provisions is a crime. This bill would require those health facilities to include within the hospital discharge policy, a written homeless patient discharge planning policy and process, as specified. The bill would require the health facilities to develop a written plan for coordinating services and referrals for homeless patients including procedures for homeless patient discharge referrals, designated liaisons at each participating entity, and coordination protocols. Because violation of these requirements would be a crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

SB 1373 (**Stone R**) **General acute care hospitals: minimum levels of pharmaceutical staff.**

(Introduced: 2/16/2018)

Status: 2/20/2018-From printer. May be acted upon on or after March 22.

Location: 2/16/2018-S. RLS.

Summary: Existing law requires the State Department of Public Health to license and regulate general acute care hospitals. Existing regulations require a hospital with a capacity of 100 or more beds to have a pharmacy on the premises that is licensed by the California State Board of Pharmacy. Existing regulations require a hospital having fewer than 100 beds to comply with other licensing requirements enforced by the California State Board of Pharmacy. Existing law requires general acute care hospitals to comply with specific statutory provisions for standards of care and regulations promulgated by the department, and a violation of these provisions or regulations is a crime. This bill would require a general acute care hospital licensed by the department to employ, at a minimum, one full-time pharmacist for every 100 licensed beds, and for additional licensed beds, employ additional pharmacists on a pro rata basis. The bill would require a general acute care hospital that is licensed for less than 100 beds to employ one pharmacist on at least a part-time basis. This bill contains other related provisions and other existing laws.

Physician Related Issues

AB 2203 (Gray D) Medi-Cal: primary care services. (Introduced: 2/12/2018)

Status: 2/13/2018-From printer. May be heard in committee March 15.

Location: 2/12/2018-A. PRINT

Summary: Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low- income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions. Existing federal law requires the state to provide payment for primary care services furnished in the 2013 and 2014 calendar years by Medi-Cal providers with specified primary specialty designations at a rate not less than 100% of the payment rate that applies to those services and physicians under the federal Medicare Program. Under state law, this requirement was implemented for both Medi-Cal fee-for-service and managed care plans, only to the extent that the federal medical assistance percentage was equal to 100%, until January 1, 2015. This bill would, beginning July 1, 2019, require that the basic Medi-Cal rate for primary care services provided by a primary care service provider be not less than 100% of the payment rate that applies to those services as established by the Medicare Program, as specified. The bill would make the payment increases inapplicable to provider rates for specified program services provided to individuals who are not eligible for the Medi-Cal program or the Family Planning, Access, Care, and Treatment (Family PACT) Program. The bill would also make the payments exempt from specified provider payment reductions. The bill would require the Director of Health Care Services to prepare appropriate amendments in the state plan and waiver requests, as necessary, for the implementation of these provisions. This bill would require the department to implement its provisions by provider bulletins or similar instructions until regulations are adopted.