

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment to Lease Agreement (“Amendment”) is made as of this _____ day of December, 2020 (the “Amendment Effective Date”) by and between TULARE LOCAL HEALTHCARE DISTRICT, dba TULARE REGIONAL MEDICAL CENTER, a local healthcare district organized under the California Health and Safety Code (“District”), and EVO MANAGEMENT COMPANY, LLC, a California limited liability company (“EMC”), each sometimes referred to individually in this Amendment as a “Party”, and collectively as the “Parties.”

RECITALS

This Amendment is made with respect to the following recitals of facts:

A. District and EMC previously entered into that certain Lease Agreement dated effective November 22, 2017 (the “Existing Lease”), as amended on or about September 26, 2018, attached hereto and incorporated herein as Exhibit A, under which District, as “LESSOR”, leased to EMC, as “LESSEE”, certain real property and improvements located in the County of Tulare, State of California, comprising 50,000± sq. ft. of commercial space located at 1425 E. Prosperity Avenue (the “Premises”).

B. The intent of EMC in leasing the Premises was to assist District by operating a fitness facility, commonly referred to as Evolutions Fitness & Wellness Center (“Evolutions”), previously operated by District, so that District might focus on significant issues related to its operation of a hospital and related bankruptcy.

C. The Parties intended, subject to the provisions of the Existing Lease, for the Existing Lease to terminate upon District’s attainment of relative financial stability, at the determination of the Board of Directors (the “Board”) for the District.

D. District emerged from bankruptcy in October of 2019, refinanced its municipal bonds in early 2020, paid off its line of credit with the City of Tulare in June of 2020, and began directly benefitting from payment of rents by Adventist Health (its new hospital operator) in October of 2020. Consequently, the Board is, as of the date hereof, in the process of determining the best way to transition operation of Evolutions back to District, which process potentially includes the near-term termination of the Existing Lease.

E. In or about March of 2020, the State of California began grappling with a worldwide pandemic caused by COVID-19. Consequently, all fitness centers operating within Tulare County, including Evolutions, were ordered by the Governor of California to cease operations. Evolutions has generally remained closed since March of 2020.

F. On or about March 27, 2020, the federal government enacted the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which, under its Paycheck Protection Program (“PPP”) program, provided approximately \$350 billion in loans/grants to small businesses impacted by the COVID-19 pandemic (“PPP Funds”).

G. EMC did apply for and receive PPP Funds. District, as a public agency under California law, is ineligible to receive PPP Funds.

H. As of the date hereof, the U.S. Congress has agreed in principle on an extension and expansion of the benefits provided under the CARES Act, including another round of PPP Funds. EMC intends to apply for such funds, and the Board desires that EMC be able to so apply.

I. Because Evolutions remains closed in compliance with state and/or County orders, EMC is unable to generate the revenue necessary to pay for the minimal operational costs and expenses (collectively, “Core Operational Costs”) making it possible for Evolutions to eventually reopen.

J. District desires that the Existing Lease remain in full force and effect, on a month-to-month basis, in order that EMC may be in a position to apply for additional PPP Funds, and EMC agrees to the same so long as District is willing to provide financial assistance, on an as-needed basis, in order to allow EMC to adequately cover its Core Operational Costs.

AMENDMENT

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and EMC hereby agree as follows:

1. **Recitals.** The above introductory paragraph identifying the Parties, and the provisions under “Recitals,” are incorporated herein by reference and are made a part of the terms of this Amendment.

2. **Ongoing Authority of the Existing Contract.** Except as amended specifically by this Amendment, the Existing Contract remains the controlling document for EMC’s leasing of the Premises.

3. **Defined in the Existing Contract.** All capitalized terms in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Existing Lease.

4. **Amendment to the Existing Contract.** The Existing Lease is hereby amended as follows:

4.1 Addition of Section 12.06 to Article 12. The following provisions are hereby added as a new section at the end of Article 12 of the Existing Lease:

“ **Periodic Support Payments**

12.06 LESSOR, in its sole discretion, on a monthly basis and upon due consideration of information provided by LESSEE regarding LESSEE’s estimated anticipated operational costs and expenses for the subsequent month, shall determine the amount of funds, if any, LESSOR shall provide to LESSEE for the purpose of covering such costs and expenses (so determined, each a “SUPPORT PAYMENT”) as follows:

(a) Method of Determination/Use of Funds. LESSOR's determination of each SUPPORT PAYMENT shall be made by vote of its Board of Directors during the open session of any duly noticed meeting; LESSOR having first made such findings as it deems appropriate based upon the information provided by LESSEE in support of such SUPPORT PAYMENT. Each SUPPORT PAYMENT shall be used by LESSEE solely to cover its minimal operational expenses and costs for the month subsequent to the month in which LESSOR's determination is made.

(b) Timing of Payment. To the extent practicable, each SUPPORT PAYMENT shall be distributed by LESSOR to LESSEE within five (5) business days of LESSOR's determination. Notwithstanding the foregoing, LESSEE waives any and all claims against LESSOR, whether such claims sound in equity or at law, arising from or relating to LESSEE's late payment of any SUPPORT PAYMENT.

(c) Periodic Increase in Support Payment. LESSOR's Chief Executive Officer, subject to the approval of LESSOR's designated Board representative, shall have the right, upon written request by LESSEE setting forth in reasonable detail the specific expenditures not previously considered by LESSOR, to increase each SUPPORT PAYMENT during the month in which such payment is applicable by an amount, in aggregate for all SUPPORT PAYMENTS made under this Section 12.06, not to exceed his or her authority to expend LESSOR's as funds set forth in the Bylaws applicable to LESSOR.

(d) Purpose of Support Payments. LESSOR and LESSEE hereby warrant and acknowledge that each SUPPORT PAYMENT is to be made by LESSOR in exchange for LESSEE's continued operation of Evolutions Fitness and Wellness Center ("Evolutions") for the principal purpose of ensuring LESSEE's ability to apply for additional Coronavirus Aid, Relief, and Economic Security Act funding, under said Act's Paycheck Protection Program (or similar federal COVID-19 related stimulus relief).

(e) LESSOR's Reservation of Rights. Upon the cessation of the COVID-19 pandemic and/or expiration of any benefit to LESSEE and/or LESSOR of any related federal funding, LESSOR reserves the right to cease providing SUPPORT PAYMENTS under this Section 12.06, and to terminate this LEASE and take back operational control of Evolutions in accordance with the terms of this LEASE.

(f) LESSEE's Representations, Covenants and Warranties. LESSEE represents and covenants that it shall provide reasonably accurate information to LESSOR in advance of LESSOR's monthly SUPPORT PAYMENT determinations, and that LESSEE shall notify LESSOR

immediately upon discovery of any material inaccuracy of said information. LESSEE hereby warrants and agrees that nothing in this Section 12.06 shall be interpreted by LESSEE as creating an affirmative obligation by LESSOR to provide any SUPPORT PAYMENT to LESSEE, and that LESSOR, in its sole discretion, may provide less funding, including, without limitation, no funding, to LESSEE.

(g) Indemnification. To the fullest extent allowable by law, LESSEE hereby indemnifies, defends and holds LESSOR harmless for any claim, cause of action, liability, or damage arising from or related to LESSOR's provision of any SUPPORT PAYMENT to LESSEE.

(h) Relationship of Parties. Neither LESSOR nor LESSEE intend this Section 12.06 to allow for LESSOR's control over LESSEE's operation of Evolutions, or otherwise to create a de facto or de jure joint venture, joint enterprise or partnership between LESSOR and LESSEE."

4.2 References to the Lease. Each reference in the Lease to "this Lease" and the words "hereof," "herein," "hereunder," or words of like import, shall mean and be a reference to the Existing Lease as amended by this Amendment.

5. **Miscellaneous**

5.1 Costs and Expenses. The Parties agree that each Party will bear its own costs and expenses, including, without limitation, any legal and administrative fees, incurred by such Party in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith on the Amendment Effective Date or after such date.

5.2 Binding Effect. This Amendment binds and is for the benefit of the successors and permitted assigns of each Party.

5.3 Relationship of Parties. By this Amendment, the Parties do not intend to provide for District's control over EMC's operation of Evolutions, or otherwise to create a de facto or de jure joint venture, joint enterprise or partnership between District and EMC.

5.4 Governing Law. This Amendment shall be construed, interpreted, and the rights of the Parties determined in accordance with the laws of the State of California. The venue for any judicial proceeding brought by either Party with regard to any provision of or obligation arising under this Amendment shall be in Fresno, California. If any action of law or inequity, including an action for declaratory relief, results or is brought to enforce or interpret provisions of this Amendment, the prevailing Party shall be entitled to actual attorney's fees and

cost of collection or enforcement of the judgment received by the prevailing Party, in addition to any other relief to which the prevailing Party may be entitled.

5.5 Severability. Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.

5.6 Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Amendment. For purposes of this Amendment, a facsimile or other electronic signature shall be deemed as valid and enforceable as an original.

IN WITNESS WHEREOF, District and EMC have executed this Amendment, to be effective as of the Amendment Effective Date.

DISTRICT

EMC

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE REGIONAL
MEDICAL CENTER, a local healthcare
district organized under the California Health
and Safety Code

EVO MANAGEMENT COMPANY, LLC, a
California limited liability company

By: _____
By: Kevin Northcraft
Its: President of the Board

By: _____
By: _____
Its: _____

Date: _____

Date: _____

EXHIBIT A

Existing Lease

[to be attached after this page]