

**SIoux FALLS PARKS AND RECREATION BOARD MEETING**

**Wednesday, May 15, 2024**

**4:00 p.m. Regular Board Meeting**

**Main Library Meeting Room A/B – 200 N. Dakota Ave**

ORDER OF BUSINESS

1. Roll call and determination of quorum
2. Approval of minutes from March 20, 2024, meeting
3. Approval of minutes from April 29, 2024, meeting
4. Public Comment
5. Unfinished business
6. New business
  - a. Offer to Purchase Commercial Real Estate and Asset Agreement between Sanford Medical Center and the City – Don Kearney
  - b. Facility Lease Agreement between Sanford Medical Center and the City- Don Kearney
  - c. Chapter 90: Zoo Bees- Ordinance Amendment- Councilor Greg Neitzert & Zoo Staff
  - d. A Conditional Gifting Agreement of Staging For The Midco Aquatic Center- Jackie Nelson
  - e. Years of Service Recognition for Ann Nachtigal – Don Kearney
7. Report of Director of Parks and Recreation
  - a. Aquatics Report – March
  - b. Golf Course Report –March
8. Items added after the agenda deadline
  - a. The Parks and Recreation Board may include other such business as may come before this body.
9. Reading of communications to the Board
10. Open board discussion
11. Adjournment

Persons requiring special accommodation for participation in any programs or activities sponsored by Sioux Falls Parks and Recreation should call 605-367-8222 during regular business hours at least 48 hours prior to the event. Special needs will be accommodated whenever reasonably possible.

A REGULAR MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Wednesday, March 20, 2024, at 4 p.m. at Main Library meeting room A/B.

**Roll Call and Determination of Quorum**

Members present: Jim Stavenger, Rick Weber, Brooke Wegener, Mike Begeman, Teresa Cauwels

Members absent: Ann Nachtigal & Mick Conlin

Parks and Recreation staff present: Don Kearney, Director; Brett Kollars, Assistant Director of Parks and Recreation, Mackenzie Songstad, City Services Technician

Others Present: Catherine Schlimgen, City Attorney's Office; Carlton Retzlaf, Citizen

**Approval of Minutes (February 21, 2024)**

A motion to approve the minutes was made by Wegener and seconded by Cauwels. Motion passed unanimously with all present Board members voting yes.

**Public Input**

None.

**Unfinished Business**

None.

**New Business**

**Option to Extend the Management Agreement between the City and the Stensland Enterprises, Inc. for the Café Located in Falls Park:** A motion to recommend approval for Option to Extend the Management Agreement between the City and the Stensland Enterprises, Inc. for the Café Located in Falls Park was made by Weber and seconded by Stavenger. Motion passed unanimously with all present Board members voting yes.

**Report of Director of Parks and Recreation:**

Kearney started his report by stating that great work is going on at both Jacobson Plaza and the River Greenway. Buildings are going up and they are starting on the grading for the ice ribbon. Kearney noted that work is progressing on the low head dam and the river walls. The steel for the shelter at Lloyd's Landing have been installed. Kearney mentioned that the consultants for the Zoo Master Plan will be presenting at the Council Informational on March 26<sup>th</sup> at 3 pm. The business planning consultant will also be in attendance. Kearney stated the Zoo splash pad is projected to open on Memorial Day. Kearney mentioned that lions have been secured for the new lion exhibit. It will be mid-summer before the lion exhibit opens. Kearney mentioned that April 23<sup>rd</sup>, 24<sup>th</sup> and 25<sup>th</sup> have been identified to have final public meetings regarding Kuehn Park and Frank Olsen. The feedback on those projects has been very positive and built a lot of excitement in those neighborhoods. Kearney stated that the local contractor working on the Barb Iverson Skate Plaza is back on site working. The skate park contractor is expected to come back in early May and has approximately 9 pours left. The Barb Iverson Skate Plaza is expected to open in late June or early July. Finally, Kearney responded to a question from Wegener regarding the recreation trail campaign. Kearney asked Kollars to speak to the recreational trail campaign. Kollars stated he is currently working with our communication team and planning

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team to prepare what the signage could look like. The team is working on an outward messaging campaign. Starting in the middle of April there will be media interactions, social media posts, and website updates to reflect the amendments. They are also preparing visual aids to help spread the word. The ordinance effective date is June 1<sup>st</sup> . Expect to see an increase in police activity on the trail to support the messaging.

**Items Added After the Agenda Deadline**

None.

**Reading of Communications to the Board**

None.

There being no further business, Cauwels made a motion to adjourn. Meeting adjourned.

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Secretary

Approved by:

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President

A SPECIAL MEETING OF THE SIOUX FALLS PARKS AND RECREATION BOARD was held on Monday, April 29, 2024 at 12:00 p.m. at the City Center.

**Roll Call and Determination of Quorum**

Members present: Jim Stavenger, Mike Begeman, Ann Nachtigal, Rick Weber, Teresa Cauwels, Brooke Wegener, and Mick Conlin(telephonically)

Members absent: none.

Parks and Recreation staff present: Don Kearney, Director; Brett Kollars, Assistant Director; Jackie Nelson, Recreational Manager; Mike Patten, Parks Planning and Projects Manager; Tory Miedema, Park Development Specialist; Tyler Landry, Park Development Specialist and Mackenzie Songstad, City Services Technician.

Others present: Karen Leonard(telephonically), City Attorney's Office; Catherine Schlimgen, City Attorney's Office; Steve Young, Sanford Health; Paul Heinert, Sanford Health; Leon Younger, Pros Consulting; Will Younger, Pros Consulting; Todd Stromswold, Willams Architects; Tom Poulos, Williams Architects; Jon Brown, Stockwell Engineering; David Locke, Stockwell Engineering; Kristen Tinklenberg, Stockwell Engineering; Wendy Kay, Sioux Falls Swim Team; Kyle Margheim, Sioux Falls Swim Team; Megan Raposa, Sioux Falls Simplified

**Public Input**

None.

**New Business**

**Offer to Purchase Commercial Real Estate and Asset Agreement- Wellness Center:**

Ann Nachtigal and Teresea Cauwels recused themselves from the discussion and the vote, citing conflict of interest. After board discussion, a motion to recommend approval of the Offer to Purchase Commercial Real Estate and Asset Agreement-Wellness Center- was made by Wegener and seconded by Weber. Motion passed unanimously with all present Board members voting yes.

**Facility Lease Agreement- Wellness Center:** Ann Nachtigal and Teresea Cauwels recused themselves from the discussion and the vote, citing conflict of interest. After board discussion, a motion to recommend approval of the Facility Lease Agreement-Wellness Center- was made by Wegener and seconded by Stavenger. Motion passed unanimously with all present Board members voting yes.

**Physical Therapy Lease Agreement:** Ann Nachtigal and Teresea Cauwels recused themselves from the discussion and the vote, citing potential conflict of interest. After board discussion, a motion to recommend approval of the Physical Therapy Lease Agreement - was made by Wegener and seconded by Weber. Motion passed unanimously with all present Board members voting yes.

**Frank Olson Park Master Plan:** After public input and board discussion, a motion to recommend approval of the Frank Olson Park Master Plan was made by Wegener and seconded by Nachtigal. Motion passed 6-1. Yes: Nachtigal, Begeman, Conlin, Weber, Wegener and Stavenger. No: Cauwels.

**Kuehn Park Master Plan:** After board discussion, a motion to recommend approval of the Kuehn Park Master Plan was made by Nachtigal and seconded by Wegener. Motion passed unanimously with all present Board members voting yes.

April 29, 2024

**A Memorandum of Understanding Between the City of Sioux Falls and the Harrisburg School District No. 41-2 Regarding A New Aquatics Facility:** After board discussion, a motion to approve A Memorandum of Understanding Between the City of Sioux Falls and the Harrisburg School District No. 41-2 Regarding A New Aquatics Facility was made by Weber and seconded by Conlin. Motion passed unanimously with all present Board members voting yes.

There being no further business, Wegener made a motion to adjourn. Meeting adjourned.

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Secretary

Approved by:

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President

## OFFER TO PURCHASE COMMERCIAL REAL ESTATE AND ASSET AGREEMENT

THIS OFFER TO PURCHASE COMMERCIAL REAL ESTATE AND ASSET AGREEMENT (this "Agreement") is made and entered into as of July \_\_\_, 2024, by and between Sanford Medical Center, a South Dakota nonprofit corporation ("Seller"), and the City of Sioux Falls, a home-ruled chartered municipality ("Purchaser"). Purchaser and Seller may each be referred to herein as a "Party" and collectively the "Parties."

### RECITALS

**WHEREAS**, Seller owns and operates the Sanford Wellness Center situated upon the Property (defined below), offering various services and facilities aimed at promoting health and well-being within the City of Sioux Falls;

**WHEREAS**, Purchaser is committed to enhancing the quality of life for its residents by providing access to recreational facilities and promoting healthy lifestyles;

**WHEREAS**, Seller recognizes and supports the Purchaser's mission to foster recreational activities and improve public health within the City of Sioux Falls. In furtherance of this shared goal, Seller is willing to offer the Sanford Wellness Center to the Purchaser at a discounted price, enabling the Purchaser to continue its efforts in fulfilling its mission;

**WHEREAS**, Purchaser desires to purchase from Seller, and Seller desires to sell to Purchaser, the Property and substantially all assets used by Seller in connection with the operation of the Sanford Wellness Center as described herein upon the terms and conditions set forth in this Agreement; and

**WHEREAS**, The Parties desire to set forth the terms of this sale and certain additional agreements related to the sale.

**NOW, THEREFORE**, in consideration of the recitals (which are incorporated into this Agreement as if fully restated herein) and of the mutual promises, representations, warranties, and covenants stated herein, it is hereby agreed as follows:

### ARTICLE I. SALE OF REAL PROPERTY

1. **CONVEYANCE**: Seller agrees to sell and convey, and Purchaser agrees to purchase and receive certain real estate and all improvements thereon (the "Property"), legally described as follows:

**Lot 2A in Block 1 of Westwood Valley Addition to the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof, together with the benefits and subject to the burdens of a driveway easement as disclosed by Book 247 of Miscellaneous on page 674.**

with a Parcel ID of 012128426006000 and a common address of 8701 W 32nd St., Sioux Falls, South Dakota 57106. The final legal description of the Property will be that set forth in the title commitment.

At Closing (defined below), Seller will deliver to Purchaser a warranty deed, acceptable to Purchaser conveying to Purchaser good and marketable title, free of all liens, security interests and encumbrances in the Property, except for Permitted Exceptions, together with any and all improvements, personal property and/or fixtures to be conveyed with the Property as mutually agreed by the parties. Notwithstanding the foregoing, the warranty deed shall reserve for Seller and Seller's successors and assigns, the right of access to that portion of the Property identified on Exhibit G, for purposes of ingress and egress and access to utilities between the Property and the Benefitted Property, as identified on Exhibit G.

2. **PURCHASE PRICE:**

- a. **Purchase Price of Property and Assets**. In consideration of the sale, transfer, conveyance and delivery of the Property and Assets, and in reliance upon the representations and warranties made herein by Seller, upon effective City Council approval and authorization for the Mayor to execute this Agreement, Purchaser offers to purchase is Nine Million and No/100 Dollars (\$9,000,000) (the "Purchase Price"). Purchaser will pay to Seller Nine Million and No/100 Dollar (\$9,000,000.00) at Closing.
- b. The City's offer to purchase commercial real estate and asset agreement document with the Seller will be presented to the City Council for approval and issuance of authorization for the Mayor to sign on behalf of the City. The Seller will receive a signed original document after this process has been completed.
- c. **In-Kind Donation**. The Parties acknowledge the fair market value of the Property and Assets is Fifteen Million Three Hundred Thousand and No/100 Dollars (\$15,300,000), as determined by third party appraisal dated March 26, 2024. The Parties agree the difference in value of Six Million Three Hundred Thousand and No/100 Dollars (\$6,300,000) between the appraised value and the Purchase Price will be recognized by the Purchaser as an in-kind donation to the City of Sioux Falls in support of the Parties' shared mission to improve public health and wellness within the City of Sioux Falls.
- d. **Allocation of Purchase Price**. The Purchase Price will be allocated among the Property and Assets as mutually agreed upon by the Parties. Purchaser and Seller agree to file IRS form 8594 as required by law consistent with said allocation. Each party agrees not to assert, in connection with any tax return, audit or other similar proceeding, any allocation of the Purchase Price which differs from the allocation specified herein.

3. **TITLE:** Merchantable title will be conveyed by warranty deed, subject to conditions, zoning, restrictions, and easements of record, if any, which do not interfere with or restrict the existing use and/or the intended use of the Property ("Permitted Exceptions"). A title commitment will be furnished promptly to Purchaser for examination. The cost of an owner's policy of title insurance in the amount of Purchase Price will be paid as follows: Seller 50% and Purchaser 50%.

- a. Within thirty (30) days after the signing of this agreement, Seller will furnish to Purchaser, the cost of which will be shared equally between Seller and Purchaser, a current title commitment (“Commitment”) for an owner’s title insurance policy (with copies of all underlying title documents listed in the Commitment) issued by the Title Company. If the Commitment shows exceptions that are objectionable to Purchaser, then Purchaser will notify Seller, in writing, on or before fifteen (15) days prior to the end of the Due Diligence Period (defined below), specifying any such objectionable title matter. On or before the end of the Due Diligence Period, Purchaser will have received adequate assurances that any such objectionable title matter will be removed or endorsed over by the Title Company on or before Closing. In the event that Seller fails or is not able to cure an objectionable title matter to be removed or endorsed over, Seller will provide written notice to Purchaser of the same at least five (5) business days prior to the end of the Due Diligence Period. Purchaser may terminate this Agreement if Seller fails to cure any objectionable title matter; provided, however, that title matters disclosed by the Commitment which are not objected to by Purchaser in the timeframes set forth herein or which are objected to, but which are waived by Purchaser will constitute permitted encumbrances. For the avoidance of doubt, failure of Purchaser to notify Seller in writing of any objectionable title or survey matter within the time periods prescribed herein will constitute an election by Purchaser to take title to the Property subject to the permitted encumbrances. If, at Closing, Purchaser is unable to obtain an owner’s policy consistent with its timely title objections, Purchaser may terminate this agreement.
  - b. Purchaser will pay all costs and expenses of any survey, inspection or tests which are performed as a result of Purchaser’s due diligence or financing obligations.
4. **FINANCING:** The obligations of the Parties set forth in this Agreement are contingent upon Purchaser securing financing for the Purchase of the Property and Assets pursuant to the City Council adopting an ordinance providing supplemental appropriations to fund the acquisition of the Property. It is anticipated the supplemental appropriation ordinance will be considered and voted upon no later than May 14, 2024.
  5. **INSPECTIONS:** This offer is contingent upon Purchaser’s satisfaction with all desired inspections. Inspections will be completed within the Due Diligence Period (as defined below) of this offer, or this contingency will be deemed waived. Should the results of any survey, inspections or other matter not be satisfactory to Purchaser, then, within the Due Diligence Period, Purchaser will notify Seller in writing of the specific dissatisfaction and at which time parties may renegotiate or terminate this contract. If such reports disclose conditions or information unsatisfactory to the Purchaser, which the Seller is unwilling or unable to correct, Purchaser may terminate this Agreement and it will become null and void and the Parties will have no further obligations hereunder. If Purchaser fails to specifically approve or disapprove any inspections within the Due Diligence Period, then Purchaser will be deemed to have approved and accepted the Property in its present condition.
  6. **PERMITS AND PLANNING:** This Agreement is contingent upon Purchaser obtaining all necessary permits, licenses, and approvals for its intended use of the Property, if any, prior to the Operations Transfer Date.



7. **LEASE AGREEMENTS:**

- a. **Lease Back.** The Parties desire for Seller to lease back the Property and Assets from Purchaser at Closing for purposes of operating the Sanford Wellness Center for a period of time mutually agreeable to the Parties, but in no event will the lease extend beyond December 31, 2024 (the "Facility Lease"). Upon expiration of the Facility Lease, the right to possess and operate the Property and Assets will transfer to the Purchaser (the "Operations Transfer Date"), at which time all employees that will be hired by the Purchaser, memberships, and rights and obligations to revenues and expenses related to the operation of the Sanford Wellness Center will transfer to the Purchaser. The Facility Lease will be in substantially the same form as attached hereto as Exhibit B.
- b. **PT Lease.** Seller further desires to lease from Purchaser certain space within the Sanford Wellness Center for purposes of operating a physical therapy clinic (the "PT Lease"). Accordingly, the Parties will execute after Closing and pursuant to state law and the Code of Ordinances of Sioux Falls, SD the PT Lease in substantially the same form as attached here to as Exhibit C.

Full execution of Facility Lease will be a condition precedent to the closing of this Agreement.

8. **REAL ESTATE TAXES:** Taxes are to be paid as follows: real estate taxes assessed in 2023 and payable in 2024 will be paid 100% by Seller and 0% by Purchaser. All other real estate taxes will be prorated to the Closing Date. Purchaser acknowledges that Seller is not responsible for any taxes assessed or payable after the Closing Date.
9. **ASSESSMENTS:** Any assessments levied against the Property, or which will be levied against it, for improvements completed but not yet entered on the books of the local assessing authority, will be paid by Seller.
10. **SURVEY:** Purchaser may have a property survey completed, if needed. Seller will provide Purchaser with copies of any current surveys that are in the Sellers possession within ten (10) days of full execution of this Agreement.
11. **ORDINARY COURSE:** During the term of the Facility Lease, Seller will operate the Sanford Wellness Center in the ordinary course business and will not sell, transfer or otherwise dispose of any material assets, enter into or cancel any material contracts, or increase or promise to increase any wages or benefits, or grant or promise to grant any bonuses, commissions or other compensation to employees or independent contractors of the Sanford Wellness Center outside of Seller's ordinary course of business without Purchaser's prior written approval. Seller will promptly inform Purchaser in writing of any material event adversely affecting the ownership, use, operation, or management of the Sanford Wellness Center, whether or not insured against.
12. **DUE DILIGENCE PERIOD:** The Due Diligence Period will expire ninety (90) days from the full execution of this Agreement (the "Due Diligence Period"). If Purchaser determines, in Purchaser's sole discretion, that the Property is not suitable for Purchaser's

intended use and investment, then Purchaser will provide Seller with written notice, and at that time this Agreement will become null and void.

13. **DUE DILIGENCE DOCUMENTS:** As a part of the due diligence investigation of the Property, Seller will provide Purchaser within twenty-one (21) days from the full execution of this Agreement any and all documents pertaining to the Property that are in the Seller's possession or control, if any, including, but not limited to:
- a. Any documents referencing any maintenance agreements, easements, covenants and/or restrictions that impact the Property;
  - b. A list of any expenses impacting the Property;
  - c. A list of all insurance claims at the Property for the prior three years;
  - d. Any environmental assessments or studies concerning the Property;
  - e. Copies of all contracts which have an impact on the Property independent of Seller's ownership;
  - f. Property condition, engineering, and other reports in Seller's possession and/or control or which Seller is aware of relating to the condition of the Property;
  - g. Any soil reports or geotechnical reports in Seller's possession and/or control regarding the Property;
  - h. Any other documents in Seller's possession and/or control reasonably requested by Purchaser relating to the Property.

## **ARTICLE II. SALE OF ASSETS**

1. **SALE OF ASSETS:** At Closing, Seller agrees to sell, convey, assign, and transfer, and Purchaser agrees to purchase, acquire and accept on the terms and subject to the conditions set forth in this Agreement, all of Seller's right, title and interest in and to, substantially all of the assets used to operate the Sanford Wellness Center, including without limitation, membership roster and information related thereto, all equipment, fixtures, office or other supplies, furniture, tools, technology related to the operation of the Sanford Wellness Center, know-how, telephone numbers, facsimile numbers, goodwill and other intangible property rights of any kind whatsoever (the "Assets") of the Sanford Wellness Center with the Assets to be delivered free and clear of any and all pledges, mortgages, security interests or encumbrances. The Assets will not include the excluded assets listed on Exhibit D (the "Excluded Assets").
2. **INSTRUMENT OF TRANSFER:** Seller agrees to deliver to Purchaser at the Closing a Bill of Sale for the Assets, in substantially the same form as attached hereto as Exhibit E.
3. **ASSIGNMENT AND ASSUMPTION OF AGREEMENTS:** Seller agrees to assign to Purchaser, and Purchaser agrees to assume certain agreements, contracts, and other contracts listed on Exhibit F attached hereto (the "Assumed Agreements") which shall be inserted administratively post execution of this Agreement.
4. **LIABILITIES:** Purchaser will purchase from Seller the Property and Assets only, and Purchaser is assuming no liabilities or obligations of Seller as of or before the Closing and the Operations Transfer Date (including accounts payable which obligations will be retained by Seller), except the "Assumed Liabilities" (as defined herein). Assumed

Liabilities will mean all obligations and liabilities arising or accruing under the Assumed Agreements and the other Assets after the Closing.

5. **USE AND CONDITION OF ASSETS:** SELLER IS THE LAWFUL OWNER OF THE ASSETS, WITH GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY LIENS, CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES TO THE ASSETS. SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, RELATING TO THE CONDITION OF THE ASSETS (INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR USE, OR FREEDOM FROM LATENT DEFECT) AND SELLER SELLS THE ASSETS TO PURCHASER, AND PURCHASER ACCEPTS THE ASSETS, "AS IS". SELLER WILL NOT BE LIABLE TO PURCHASER OR ANY THIRD PERSON FOR ANY DAMAGE OR INJURIES RESULTING FROM THE ACQUISITION, REMOVAL AND USE OR SALE OF THE ASSETS.
6. **TAXES:** Seller has paid or will pay any taxes due with respect to the ownership, possession, or operation of the Assets prior to Closing to the applicable governmental authorities and has filed or will file any and all necessary tax returns related to the Assets for all time periods prior to Closing.

### **ARTICLE III. EMPLOYEES**

1. **NEW EMPLOYMENT:** All existing employees currently employed by the Seller are invited to apply for employment through the Purchaser. Purchaser's hiring decisions will be in accordance with Purchaser's policies and procedures. Purchaser's applicable personnel policies, procedures, resolutions, and ordinances shall control employment.
2. **COMPENSATION AND BENEFITS:** Seller agrees to pay out any accrued and unused paid time off (PTO) balances or other benefits of employment to any employee who becomes subsequently employed by Purchaser. Purchaser assumes no responsibility or liability for any prior compensation, promises, privileges, or benefits from Seller's employment.
3. **EMPLOYEE RECORDS AND INFORMATION:** Seller agrees to provide Purchaser with certain employee information to facilitate Purchaser's operational and staffing analysis. Seller further agrees to cooperate with Purchaser in providing any other relevant employee information and documentation in the event Purchaser elects to hire any of Seller's employees.
4. **TAXES:** Seller has paid or will pay in full when due all necessary employment taxes, including but not limited to payroll taxes, unemployment taxes, and any other applicable taxes related to the employment of the employees at the Sanford Wellness Center.

### **ARTICLE IV. GENERAL PROVISIONS**

1. **ASSIGNABILITY:** Purchaser or Seller may not assign this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld. Such assignment will be binding upon all Parties and their successors or assigns.

2. **CLOSING:** Closing of the sale of the Property and Assets will take place at a time as mutually agreed upon by the Parties but is anticipated to occur on or about October 31, 2024 (the "Closing" or "Closing Date"). Closing will take place at Getty Abstract and Title (the "Title Company") in Sioux Falls, SD. Seller agrees to maintain and manage the Property and Assets in a condition comparable to its present condition from the execution of this Agreement through the Operations Transfer Date, subject to ordinary wear and tear and maintenance and repair obligations of the Parties as set forth in the Facility Lease.
3. **POSSESSION:** Ownership and title of the Property and Assets will be transferred on the Closing Date, at which time all risk of loss with respect to the Property will be transferred from Seller to Purchaser, subject to the terms and conditions of the Facility Lease.
4. **BROKERS:** No agent, broker, investment banker, financial advisor, finder, or other person is or will be entitled to any brokerage commission, finder's fee or like payment in connection with any of the transactions contemplated by this Agreement.
5. **TIME IS OF THE ESSENCE OF THIS CONTRACT.**
6. **NAMING.** The City has no obligation to continue to refer to the building as Sanford Wellness Center or honor any other interior naming rights that may exist. The City further has no obligation to honor any sponsorship or commemorative signing within the Property.
7. **REPRESENTATIONS AND WARRANTIES OF SELLER:** As of the Effective Date and as of the Closing Date and regarding the following matters, Seller represents and warrants to Purchaser that, to the best of Seller's actual knowledge, the following representations and warranties are true and correct as if made on the Effective Date and again on the Closing Date:
  - a. Seller is authorized and empowered to enter this Agreement and perform all of its obligations under this Agreement.
  - b. Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon Seller and enforceable against Seller in accordance with all its provisions.
  - c. Seller has not committed any act or permitted any action to be taken which would adversely affect its ability to fulfill its material obligations under this Agreement.
  - d. The execution and delivery of this Agreement, and the performance of Seller's obligations under this Agreement, will not violate or breach, or conflict with, the terms, covenants or provisions of any agreement, contract, note, mortgage, indenture or other document of any kind whatsoever to which Seller is a party or to which the Property is subject.
  - e. To Seller's actual knowledge (1) the existing use and condition of the Property does not violate any applicable zoning, environmental, building, health, fire or similar statute, ordinance, regulation or code, (2) the Property is in compliance in all material respects with all applicable governmental permits and current zoning requirements, including, all parking requirements, and (3) the Property includes all rights to any off-site facilities necessary to ensure compliance with applicable zoning, building, health, fire, water use or similar statutes, laws, regulations and orders.

- f. To the knowledge of Seller: (i) no toxic or hazardous substances or wastes, pollutants, or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel, oil, crude oil, and various constituents of such products, and any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § § 9601 et seq., as amended) have been generated, treated, stored, released, or disposed of, or otherwise placed, deposited in, or located on the Property; (ii) no activity has been undertaken on the Property that would cause or contribute to (a) the Property becoming a treatment, storage, or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRAII"), 42 U.S.C. § 6901, et seq., or any similar state law or local ordinance; (b) a release or threatened release of toxic or hazardous wastes or substances, pollutants, or contaminants, from the Property within the ambit of CERCLA or any similar state law or local ordinance; or (c) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters, or the discharge into the air of any emissions that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. § 7401, et seq., or any similar state law or local ordinance; (iii) no substances or conditions exist in or on the Property that do or may support a claim or cause of action under RCRA, CERCLA, or any other federal, state, or local environmental statutes, regulations, ordinances, or other environmental regulatory requirements; (iv) all above-ground and underground storage tanks are in compliance with all applicable State and Federal laws and regulations; and (v) any wells on or under the Property, whether in use, not in use, abandoned, sealed or otherwise, are in compliance with all laws regulating such wells.
- g. There are no pending or threatened matters of litigation, administrative action or examination, government investigation, claim or demand relating to the Seller, Tenant, the Property or Seller's interest in the Property.
- h. All bills and invoices for labor and material of any kind relating to the Property have been paid in full or will be paid in full in the ordinary course (other than those which are the subject of bona fide disputes as to payment) and, as of the Closing Date, and, to Seller's actual knowledge, there will be no liens or other claims outstanding or available to any party in connection with the Property.
- i. Except for this Agreement, Seller has not executed or entered into any other agreement of any kind whatsoever with respect to all or any portion of the Property, including, without limitation, any agreement to purchase, sell, option, lease or otherwise dispose of or alienate all or any portion of the Property, which would be binding on Purchaser.
- j. Except as disclosed on Exhibit A, to the actual knowledge of Seller, all the improvements on the Property are in reasonably good working order, condition and repair and are not in need of material repair or replacement (subject to ordinary wear and tear between the date of this Agreement and the Closing Date).
- k. Seller has provided to Purchaser true, correct, and complete copies of documents furnished or to be furnished to Purchaser by Seller or on its behalf in connection with the transaction contemplated hereby. While Seller is not responsible for any inaccuracies in respect of any information set forth in such documents if prepared

by third-parties, Seller has no actual knowledge that any of the documents or written information provided by such third-parties is materially inaccurate or incomplete or contains any material untrue statements of fact or omits any material fact.

- l. To the Seller's actual knowledge, all utility services, including storm and sanitary sewer, water, electric power and telephone service are available to the Property in form, properly sized and with capacity sufficient for the useful enjoyment and operation of the Property for its current use and all assessments, impact fees, development fees, tap-on fees or recapture costs then due and payable in connection therewith will be paid prior to Closing except the usual and customary charges involved in the ordinary course of business and specifically identified in the budget that has been approved by Purchaser.

8. **REPRESENTATIONS AND WARRANTIES OF PURCHASER:** As of the Effective Date and as of the Closing Date and regarding the following matters, Purchaser represents and warrants to Seller that the following representations and warranties are true and correct as if made on the Effective Date and again on the Closing Date:

- a. Purchaser is duly created, validly existing and in good standing pursuant to the law of the jurisdiction of its organization and is duly qualified to do business and is in good standing in the jurisdictions in which the Property is located.
- b. This Agreement shall be presented to the City Council for approval and issuance of authorization for the Mayor to sign on behalf of the City. The Seller will receive a signed original document after this process has been completed.
- c. Upon the signing and delivery of this Agreement, this Agreement will be legally binding upon Purchaser and enforceable against Purchaser in accordance with all its provisions.
- d. Upon the City Council granting authorization to sign, the person signing this Agreement on behalf of Purchaser has been duly authorized to sign and deliver this Agreement on behalf of Purchaser.
- e. Purchaser has not committed any act or permitted any action to be taken which would adversely affect its ability to fulfill its material obligations under this Agreement.
- f. The execution and delivery of this Agreement, and the performance of Purchaser's obligations under this Agreement, will not violate or breach, or conflict with, the terms, covenants or provisions of any agreement, contract, note, mortgage, indenture, or other document of any kind whatsoever to which Purchaser is a party.

9. **RISK OF LOSS:** All risk of loss or damage to the Property prior to Closing, including, without limitation, loss by fire, windstorm, or other casualty (collectively, a "Casualty") or by condemnation, eminent domain or similar proceedings or threat thereof (collectively, a "Taking"), will rest with Seller. If, prior to the Closing, the Property is the subject of a Casualty or Taking, Seller will give Purchaser written notice thereof and Purchaser will have the option, exercisable on or before the Closing Date by written notice to Seller, to elect to either:

- a. Renegotiate any and all terms of this Agreement;
- b. Accept title to the Property without any reduction of the Purchase Price, in which event, at the Closing, Seller will assign to Purchaser (and Seller will deliver to Purchaser any monies received by Seller) any insurance or condemnation proceeds

- payable to Seller or its successors or assigns by reason of such Casualty or Taking to restore the Property in accordance with the Lease for the Property; or
- c. Terminate this Agreement.

In the event Purchaser fails to exercise any such option, Purchaser will be deemed to have elected the option set forth in the foregoing clause (b).

10. **ATTORNEYS FEES:** In the event of any litigation between the parties in connection with this Agreement, each party will pay its own attorney fees and expenses, including any fees and expenses incurred in connection with appeals, in connection with any such proceeding.
11. **FUNDING.** The funding being provided pursuant to this Agreement is contingent upon City Council appropriation and/or existing budget authority. If the funds are not budgeted or appropriated, this Agreement shall impose no future obligation on the City for disbursement. In such event the Agreement shall become null and void, and no right of action or damage shall accrue to the benefit of the Seller.
12. **BINDING EFFECT:** This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
13. **CONTROLLING LAW:** This Agreement will be governed by and construed in accordance with the laws of the state in which the Property is located. Venue with respect to any litigation related to this Agreement will be in Minnehaha County, South Dakota.
14. **MODIFICATION:** This Agreement may only be modified or amended in a writing executed by a duly authorized representative of Seller and Purchaser.
15. **ENTIRE AGREEMENT:** This Agreement represents the entire agreement between the Seller and Purchaser with respect to the subject matter hereof, and all prior agreements between Seller and Purchaser with respect to such subject matter will have no further force or effect.
16. **EXCLUSIVITY:** Seller will not submit the Property to any other party or entity for consideration as a purchase or equity investment unless this Agreement is terminated as provided herein.
17. **REMEDIES:** In the event that the sale of the Property is not consummated for any reason, the parties may pursue any and all available remedies, whether at law or in equity, including, but not limited to, recovery of applicable attorneys' fees.
18. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument. Facsimile signature pages will be deemed original signature pages.
19. **EFFECTIVE DATE:** For purposes of this Agreement, the parties agree that the "Effective Date" of this Agreement will be the date this Agreement is accepted and agreed to by all parties, as evidenced by the dates and times set forth below, together with the appropriate signatures of both parties.

20. **NOTICES:** Any notice required to be given by either party pursuant to this Agreement, will be in writing and will be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Priority Mail Express or other comparable mail delivery service, addressed to the other party at the addresses set forth below, and will be deemed to have been given, rendered or made on the earlier of the day so delivered or on the first business day after having been deposited with the courier service:

If to Seller:            Sanford Medical Center  
                                  Attn: Legal Department  
                                  2301 E. 60<sup>th</sup> St. N.  
                                  Sioux Falls, SD 57104

If to Purchaser:        City of Sioux Falls  
                                  224 W. Ninth St.  
                                  Sioux Falls, SD 57104

---

**Signature Page Follows**



IN WITNESS, WHEREOF, the parties hereto have executed this Agreement as of the dates below:

**PURCHASER:**

**CITY OF SIOUX FALLS,  
a home-ruled chartered municipality**

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

\_\_\_\_\_

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

Its: Mayor \_\_\_\_\_

ATTEST:

\_\_\_\_\_

City Clerk

Acceptance of Offer

Sanford Medical Center hereby accepts the foregoing Offer to Purchase Commercial Real Estate and Assets Agreement from the City on this \_\_\_ day of June, 2024.

**SANFORD MEDICAL CENTER, a South Dakota  
nonprofit corporation**

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

\_\_\_\_\_

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

Its: \_\_\_\_\_

## LIST OF EXHIBITS

Exhibit A	Improvements
Exhibit B	Facility Lease
Exhibit C	PT Lease
Exhibit D	The Excluded Assets
Exhibit E	Instruments of Transfer
Exhibit F	Assumed Agreements
Exhibit G	Right of Access

EXHIBIT A

Improvements

1. Parking Lot
2. Court Refinish
3. Roofing – The pool area’s roof shows delamination and has been temporarily secured with pavers
4. Pool Curtain Wall System - Chlorine exposure has caused deterioration in the metal framing around the pool glass
5. Water Heaters - Two of the four installed water heaters are operational, with built-in redundancy ensuring no reported service interruptions

Exhibit B

Facility Lease

**FACILITY LEASE AGREEMENT**

This FACILITY LEASE AGREEMENT (this "Lease") is entered into effective \_\_\_\_\_, 2024 (the "Effective Date"), by and between CITY OF SIOUX FALLS ("Landlord") and SANFORD MEDICAL CENTER ("Tenant").

**RECITALS:**

WHEREAS, Tenant is the former owner and operator of the Sanford Wellness Center located at 8701 W 32<sup>nd</sup> St Sioux Falls, South Dakota;

WHEREAS, Tenant sold to Landlord and Landlord purchased from Tenant the Property and substantially all Assets used to operate the Sanford Wellness Center pursuant to an Offer to Purchase Commercial Real Estate and Asset Agreement dated July \_\_\_\_\_, 2024 (the "Purchase Agreement");

WHEREAS, the Parties desire for Tenant continue to operate the Sanford Wellness Center for a period of time beginning on the Commencement Date and ending on the Operations Transfer Date, pursuant to the terms and conditions set forth in this Facility Lease.

NOW, THEREFORE, the parties agree as follows:

1. Defined Terms. Terms capitalized in this Lease but not defined herein will have the meanings ascribed to the in the Purchase Agreement.

2. Premises. Tenant hereby leases from Landlord the Property and Assets (collectively, the "Leased Premises") effective as of the Commencement Date. The Leased Premises shall only be used for its existing uses, which include a wellness center, outpatient physical therapy clinic and similar or related uses.

3. Term and Termination. This Lease shall commence on the Closing Date (as defined therein) of the Purchase Agreement ("Commencement Date") and remain in full force and effect for a period from the Closing Date through and until December 31, 2024 (the "Term"). This Lease may only be extended by a signed written agreement between the parties. Landlord may terminate this Agreement upon thirty (30) days' notice at any time.

4. Rent. As compensation for the use of the Leased Premises, Tenant agrees to pay to Landlord one dollar (\$1.00) for the Term.

5. Utilities. From and after the Commencement Date, Tenant shall be responsible for and pay all utilities servicing the Leased Premises and provide all reasonable lawn and landscaping care and maintenance, together with snow removal from the sidewalks and parking lot(s) servicing the Leased Premises.

6. Maintenance. Except as required to be performed by Tenant pursuant to this Lease, Landlord shall be responsible for all capital improvements and the repair and replacement of all structural elements to the Leased Premises, exterior surfaces, including, but not limited to, the roof, roof membrane, roof covering, exterior walls, slab floors, footings, parking areas, grounds and

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sidewalks of the Property, and replacement of any part of the HVAC system costing more than \$5,000 per event or occurrence. Tenant shall be responsible for routine maintenance and minor repairs to the interior of the Leased Premises costing less than \$5,000, per event or occurrence, which shall be deemed to include, but not be limited to, the exterior and interior portions of all windows and window frames, doors and door frames, plate glass, storefront, fixtures, plumbing fixtures, lighting fixtures (excluding exterior lighting fixtures), electrical and sewage equipment, interior walls, partitions, floors, floor coverings and ceilings. If any repair, maintenance, or replacement shall exceed or shall reasonably be expected to exceed \$5,000 during the Term, Landlord shall be notified of such repair, required maintenance, or replacement provided, however, Landlord shall be under no obligation to make the repair, required maintenance, or replacement until funds are sufficiently appropriated by the City Council. In the event the City Council does not fund the repair, required maintenance, or replacement, the Tenant shall have no liability for any claims, costs, or damages arising out of a failure by the Landlord to make any requested repair, required maintenance, or replacement that were determined to be necessary for the safety, health, and welfare of the people.

7. Right of Entry. The Landlord shall have the right to ~~enter into~~ enter into the leased area at all reasonable times to inspect the premises and/or to take such actions as may, in the opinion of the Landlord, be deemed necessary. Except for emergency situations, the Landlord will make every reasonable effort to timely notify the Tenant of any pending work and to coordinate such work so as to minimize any disruption to the Tenant's delivery of services. Nothing in this section will impose or may be construed to impose upon the Landlord any independent obligation to construct or maintain or make repairs, replacements, alterations, additions, or improvements nor create any independent liability for any failure to do so.

8. Insurance.

a. Property Insurance. The Landlord, at its own expense, shall procure and maintain property insurance for the Property. The Landlord shall, at its own option, either obtain replacement value insurance for damage by fire or casualty to the Property or self-insure for an equivalent amount.

b. Liability Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain commercial general liability insurance providing occurrence form contractual personal injury, bodily injury, and property damage liability coverage with total available limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. Each Party's commercial general liability insurance policy shall include the other Party, its elected and appointed officials, officers, and employees as additional insured as their interests may appear under this Lease for any covered liability, caused, in whole or in part, by such Party's performance or nonperformance under the Lease. The above additional insured status shall not extend to claims arising out of the gross negligence or willful misconduct of the insured Party, its employees, agents, or independent contractor.

c. Personal Property Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain personal property insurance for their own respective betterments and property stored on the premises.

d. Workers' Compensation Insurance. Tenant shall at all times secure worker's compensation providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.

e. Insurance Requirement. Each insurance policy required under this Lease shall be obtained from insurance companies, or pools licensed or authorized to do business in the State of South Dakota, or through a program of self-insurance.

f. Notice of Intent to Cancel or Renew. Each Party will provide the other Party with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The parties agree to hold each other harmless from any liability, including additional premium due, because of the failure to maintain the coverage limits required.

g. Evidence of Renewal. Each Party will deliver to the other, at least 15 days prior to expiration of each policy, satisfactory evidence of renewal to the extent any policy expires and requires renewal during the term of this Lease. Evidence of renewal may be provided less than 15 days prior to the expiration of each policy with prior written consent by the other Party but shall never be later than one business day prior to the expiration of the policy. Upon request, each Party will provide to the other a complete copy of all insurance policies required under the Lease. This section shall survive the termination of this Lease.

h. Validity of Insurance Not Assumed. Each Party's approval or acceptance of certificates of insurance does not constitute the Party's assumption of responsibility for the validity of any insurance policies nor does either represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore.

9. No Limitation of Liability. These insurance provisions are separate and apart from any indemnification obligation and should not be interpreted as a limitation of liability.

10. Waiver of Subrogation. The parties to this Lease mutually waive all rights of recovery for losses caused by fire or extended coverage even though caused by the negligence of the other party, its employees, agents or representatives and further waive any rights of recovery from other perils covered by insurance to the extent of such insurance coverage, provided that this waiver does not prejudice the rights of the party in recovering from its insurance company. This waiver shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this waiver shall not affect the rights of the insured to recover under such policies.

11. Parking. Tenant is hereby granted the right to use the parking lot(s) associated with the Leased Premises.

12. Signage. Tenant shall be allowed to maintain existing signage on and around the Leased Premises in accordance with the Code of Ordinances of Sioux Falls, SD. All costs associated with said signage shall be borne by the Tenant. At the end of the Term or upon termination, Landlord shall be responsible and pay for all signage removal at its sole cost and

expense. The parties shall mutually agree on the signage to be removed and the timelines associated therewith.

13. Taxes and Special Assessments. Tenant shall be responsible for and pay all real property taxes and special assessments (if any) directly to the taxing authority.

14. Incidental PHI. The parties agree that all information regarding patients, as well as all information with respect to the operations and business of the other party gained during this negotiations leading up to this Agreement, and from the performance of this Lease, will be held in confidence and will not be divulged to any unauthorized person without prior written consent of the other, except for access required by law, regulation, and third party reimbursement agreements. Provider and Sanford agree that each is a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and HIPAA's implementing privacy regulations, 45 C.F.R. § 165.500, et seq. ("Privacy Regulations") and each party shall comply with all requirements with respect to protected health information ("PHI") as defined in HIPAA. The provisions of this paragraph shall survive the termination of this Agreement.

15. Indemnity. Tenant agrees to defend, indemnify, and hold Landlord harmless from any and all claims, lawsuits and damages (including reasonable attorneys' fees) arising in connection with the management of Tenant's Services at or from the Leased Premises, or which may at any time be asserted against Landlord by any reason of Tenant's, its agents', invitees', licensees', employees' or clients' use of the Leased Premises, negligence or willful misconduct or resulting from any breach or default on the part of Tenant of its obligations hereunder.

16. Force Majeure. Neither Landlord or Tenant shall be liable for delay or failure to perform hereunder, despite best efforts to perform. If such delay or failure is the result of force majeure. "Force majeure" shall mean causes beyond the reasonable control of a Party such as, but not limited to, pandemics or epidemics, weather conditions, acts of God or of public enemy, terrorism, war, national or local calamity, sabotage, strikes, fire or other casualty, or action of the government authorities. Written notice of any claim of a Party's inability to perform or comply due to force majeure must be promptly given to the other Parties.

17. Damage or Destruction-Repair and Restoration.

a. If the Property or any portion is damaged or destroyed during the term of this Lease by fire, casualty, or any other cause, the Landlord shall, to the extent of insurance proceeds and at the Landlord's sole election, including any applicable deductible, or self-insurance, with due diligence, repair, rebuild, or replace the Property so that after repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds or self-insurance, as prior to such damage or destruction.

b. Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, the Landlord shall not have any obligations for repair, rebuilding, or replacing the Property in the event of all or a substantial part of the facility shall be destroyed or damaged by fire or casualty.

c. In the event of total destruction of the Property or if the Landlord shall not elect within ninety (90) days after such damage to rebuild, or restore the Property, then this Lease shall terminate, and all rights and obligations of the Landlord and Tenant shall cease and terminate.

d. If the damage or destruction to the leased Premises is caused by the negligence or the willful acts of the Tenant, its employees, agents, invitees and customers, or servants, Landlord shall not be responsible for any costs of repair or rebuilding the leased Premises or any other portion of the building which is so damaged to the extent the laws in effect at the time so permit. As permitted by law, Tenant shall pay all such amounts to Landlord upon demand.

e. If the damage or destruction to the Leased Premises is caused by the negligence or the willful acts of Landlord, its employees, agents, invitees and customers, or servants, Landlord shall be responsible for any costs of repair or replacement of Tenant's betterments and personal property, including without limitation all equipment and stored property, to the extent the laws in effect at the time so permit. As permitted by law, Landlord shall pay all such amounts to Tenant upon demand.

18. No Personal Liability. No official, director, officer, agent, or employee of the Landlord shall be charged personally or held contractually liable by or to the Tenant under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Lease.

19. Discrimination. During the performance of the Lease, the Tenant agrees that it will comply with all applicable provisions of federal, state, and local laws, including Chapter 98 of the Code of Ordinance of Sioux Falls, South Dakota and regulations prohibiting discrimination. Without limiting this, Tenant warrants that it will fully comply with Title VI and VII of the Civil Rights Act of 1964, as amended, the Americans of Disabilities Act (ADA) and all other regulations promulgated thereunder. Tenant will not discriminate against any employee or Applicant for employment because of race, religion, color, disability, national origin, sex, sexual orientation, or age. Tenant will take affirmative action to ensure that employment is offered and that employees are treated during employment without regard to their race, religion, color, disability, national origin, sex, sexual orientation, or age. Such action shall include, but is not limited to, the following: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection, including apprenticeship. The Tenant shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD, as in effect at any given time. It is declared to be discrimination for the Tenant, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment. Tenant will not discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political, or religious opinions, affiliations, or national origin.

20. Human Relations. If the Tenant is found to have engaged in discrimination by the Commission on Human Relations (Commission), this Lease may be terminated in whole or in part by the Landlord. The Tenant shall permit the Commission reasonable access to ~~any and all~~ records pertaining to hiring and employment and to other pertinent data and records as are reasonably

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necessary for the sole purpose of enabling the Commission, its agencies, or representatives, to ascertain compliance with the above provisions. The Landlord and Commission agree to keep any employee and personnel records confidential. This section shall be binding on all subcontractors and suppliers of the Lessee.

21. Waiver. This failure to enforce or to require the performance at any time of any of the provisions of this Lease shall in no way be constructed to be a waiver of such provisions, and shall not affect either the validity of this Lease or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Lease.

22. Severability. If any term, provision, covenant, or condition of this Lease is found to be invalid, void, or unenforceable, the remainder of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

23. Notices. Any notice required to be given by either party pursuant to this Lease, will be in writing and will be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Priority Mail Express or other comparable mail delivery service, addressed to the other party at the addresses set forth below, and will be deemed to have been given, rendered or made on the earlier of the day so delivered or on the first business day after having been deposited with the courier service:

If to Tenant:            Sanford Medical Center  
                                  Attn: Legal Department  
                                  2301 E. 60<sup>th</sup> St. N.  
                                  Sioux Falls, SD 57104

If to Landlord:         City of Sioux Falls  
                                  224 W. Ninth St.  
                                  Sioux Falls, SD 57104

24. Amendment. This Lease shall not be supplemented, amended, or modified except by an express written agreement signed by both parties.

25. Binding Effect. Landlord and Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their heirs and their successors and assigns.

26. Assignment. Tenant shall not assign or in any manner transfer this Lease or any interest therein, nor sublet said Leased Premises or any part or parts thereof, nor permit occupancy by anyone.

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27. Successors in Interest. Except as otherwise provided in this Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this Lease.

28. Governing Law, Venue. This Lease shall be construed and enforced in accordance with the laws of the State of South Dakota, without regard to applicable conflict of laws principles. Venue for any legal action relating to this Lease shall lie in Second Judicial Circuit Court, Minnehaha County, SD.

29. Counterparts. This Lease may be executed in counterparts.

30. Entire Agreement. This Lease sets forth the entire agreement of the parties and supersedes and is in lieu of all pre-existing agreements or arrangements between the parties relating to the subject matter thereof.

**Signature Page Follows**

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IN WITNESS WHEREOF, this Lease has been executed as of the above date.

**CITY OF SIOUX FALLS**

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

Its \_\_\_\_\_  
LANDLORD

ATTEST:

\_\_\_\_\_  
City Clerk

**SANFORD MEDICAL CENTER**

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

Its \_\_\_\_\_  
TENANT

Agreement No. \_\_\_\_\_

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EXHIBIT C  
PT Lease

**PHYSICAL THERAPY LEASE AGREEMENT**

This PHYSICAL THERAPY LEASE AGREEMENT (this "PT Lease") is entered into effective \_\_\_\_\_, 2024 (the "Effective Date"), by and between CITY OF SIOUX FALLS ("Landlord") and SANFORD MEDICAL CENTER ("Tenant").

**RECITALS:**

**WHEREAS**, Tenant is the former owner and operator of the Sanford Wellness Center located at 8701 W 32<sup>nd</sup> St Sioux Falls, South Dakota ("Property");

**WHEREAS**, Tenant sold to Landlord and Landlord purchased from Tenant the Property and substantially all Assets used to operate the Sanford Wellness Center pursuant to an Offer to Purchase Commercial Real Estate and Asset Agreement dated June \_\_, 2024 (the "Purchase Agreement");

**WHEREAS**, the Parties desire for Tenant continue to operate Physical Therapy Services ("PT Services") within the Sanford Wellness Center for a period of five (5) years, pursuant to the terms and conditions set forth in this PT Lease.

**NOW, THEREFORE**, the parties agree as follows:

1. Defined Terms. Terms capitalized in this PT Lease but not defined herein will have the meanings ascribed to the in the Purchase Agreement.

2. Premises. Tenant hereby leases from Landlord a portion of the Wellness Center, consisting of approximately 2,711 square feet (includes rooms 107,108,109A,125C) as depicted on Exhibit A (collectively, the "Leased Premises") effective as of the Commencement Date. D The Leased Premises shall only be used for its existing uses, which include a wellness center, outpatient physical therapy clinic and similar or related uses. Tenant shall have reasonable access to the common areas of the Wellness Center (specifically, rooms 199A, 199B, 109, and 132) and all equipment and facilities within the Leased Premises to carry out PT Services, subject to limitations on time or certain areas based on Landlord's operating hours.

3. Term and Termination.

3.1 Initial Term. This PT Lease shall commence on the Operations Transfer Date (as defined therein) of the Purchase Agreement ("Commencement Date") and remain in full force and effect for a period of **five (5) years**, plus the number of days, if any, necessary to end the term on the last day of the month thereof (the "Term"), unless extended or earlier terminated as hereinafter provided. The Landlord reserves the right to terminate for material breach in accordance with the terms and conditions set forth in this PT Lease.

3.2 Option to Extend. Upon City Council approval and mutual agreement of the parties which such agreements shall not be unreasonably withheld, Tenant shall have the option of extending the Term for an additional period of Five (5) years, commencing upon the date following the last day of the Term (the "Extended Term"). Tenant shall give Landlord written notice of its request to extend the Term of this PT Lease at least ninety (90) days prior to the expiration of the

initial Term. Tenant shall have no right to renew this PT Lease unless Tenant is at the time of such notice and at the expiration of the Term in material compliance with all of the terms and provisions of this PT Lease. All references in this PT Lease to the "PT Lease Term" or the "Term" shall mean the Initial Term and the Extended Term, if exercised by Tenant.

3.3 Termination. Tenant may, at any time with or without cause terminate this PT Lease upon one hundred twenty (120) days notice to the Landlord.

4. Rent and Late Charge.

4.1 Rent. Tenant will pay to Landlord monthly payments of rent in the amount of \$3,727.63 or \$16.50 per square foot (the "Rent"), for the first three (3) years of the Term. Beginning with the fourth year of the Term and each year thereafter, the Rent will be increased by three percent (3%) over the Rent paid in the prior year, as set forth hereafter:

Year(s)	Rent PSF	Rentable Square Feet	Annual Rent	Monthly Rent
1-3	\$16.50	2,711	\$44,731.50	\$3,727.63
4	\$17.00	2,711	\$46,087.00	\$3,840.58
5	\$17.51	2,711	\$47,469.61	\$3,955.80
6 (Extended Term)	\$18.04	2,711	\$48,893.70	\$4,074.47
7 (Extended Term)	\$18.58	2,711	\$50,373.63	\$4,197.80
8 (Extended Term)	\$19.14	2,711	\$51,881.49	\$4,323.46
9 (Extended Term)	\$19.71	2,711	\$53,445.20	\$4,453.77
10 (Extended Term)	\$20.30	2,711	\$55,036.82	\$4,586.40

Rent is due and payable in advance on the first day of each month with the first Rent payment being due within ten (10) days of the Commencement Date. Rent for any partial month will be prorated on a per diem basis. Until otherwise directed by Landlord in writing, Tenant will deliver all notices and pay all rent to Landlord at Landlord's notice address as set forth below in Section 25 of this Lease.

4.2 Late Charges. If any Rent payment is not paid by Tenant within fifteen (15) days of the required payment date, Tenant will pay Landlord a late charge equal to 10% of the overdue Rent.

5. Utilities and IT systems.

5.1 Utilities. Landlord will pay for all heat, air conditioning, water, light, power, and all other utility services not specifically allocated to Tenant herein, including, but not limited to, garbage and trash removal and sewer disposal, and snow removal. Tenant will pay for telephone, internet, cable television services, and any other services desired by Tenant which Landlord is not expressly required to provide pursuant to this Section 5.1.

5.2 Hazardous Materials. Disposal of hazardous materials is the sole responsibility of the Tenant in accordance with all applicable laws in effect at the time of the disposal.

5.3 Interruption of Services. Landlord will not be liable in damages if any utility services to the Leased Premises are interrupted or impaired by fire, repairs, accident, or any other cause beyond Landlord's reasonable control.

5.4 IT Systems. Landlord and Tenant agree that they shall maintain separate IT systems throughout the duration of the Term. Tenant shall be solely responsible for all costs associated with the setup, maintenance, and operation of its own IT system, including but not limited to hardware, software, licensing fees, and any related expenses. Landlord shall not be responsible for any aspect of Tenant's IT system, including its functionality, security, or compliance with applicable laws and regulations. Furthermore, Landlord shall have no obligation to provide technical support or assistance to Tenant in relation to its IT system.

5.5 No other Services. Except as noted in this PT Lease, Landlord shall provide no other service to Tenant and Tenant shall provide no other services to Landlord.

6. Maintenance and Improvements.

6.1 Maintenance by Landlord and Tenant. Except as required to be performed by Tenant pursuant to this PT Lease, Landlord shall be responsible for all capital improvements and the repair and replacement of all structural elements to the Leased Premises, exterior surfaces, including, but not limited to, the roof, roof membrane, roof covering, exterior walls, slab floors, footings, parking areas, grounds and sidewalks of the Property, and replacement of any part of the HVAC system costing more than \$5,000 per event or occurrence. Tenant shall be responsible for routine maintenance and minor repairs to the interior of the Leased Premises costing less than \$5,000, per event or occurrence, which shall be deemed to include, but not be limited to, the exterior and interior portions of all windows and window frames, doors and door frames, plate glass, storefront, fixtures, plumbing fixtures, lighting fixtures (excluding exterior lighting fixtures), electrical and sewage equipment, interior walls, partitions, floors, floor coverings and ceilings. If any repair, maintenance, or replacement shall exceed or shall reasonably be expected to exceed \$5,000 during the Term, Landlord shall be notified of such repair, required maintenance, or replacement provided, however, Landlord shall be under no obligation to make the repair, required maintenance, or replacement until funds are sufficiently appropriated by the City Council. In the event the City Council does not fund the repair, required maintenance, or replacement, the Tenant shall have no liability for any claims, costs, or damages arising out of a failure by the

Landlord to make any requested repair, required maintenance, or replacement that were determined to be necessary for the safety, health, and welfare of the people.

6.2 Tenant Improvements. The Tenant shall not erect any structures or additions to the Leased Premises without first obtaining written approval of the city. The Landlord may impose conditions upon the installation of any improvements. Violation of this section shall constitute grounds for termination of this PT Lease.

6.3 Landlord Improvements. The Landlord may expand and/or improve the Property as it, in its sole judgment, may deem necessary to serve the needs of the public and the Landlord.

7. Right of Entry. The Landlord shall have the right to enter into the leased area at all reasonable times to inspect the premises and/or to take such actions as may, in the opinion of the Landlord, be deemed necessary. Except for emergency situations, the Landlord will make every reasonable effort to timely notify the Tenant of any pending work and to coordinate such work so as to minimize any disruption to the Tenant's delivery of services. Nothing in this section will impose or may be construed to impose upon the Landlord any independent obligation to construct or maintain or make repairs, replacements, alterations, additions, or improvements nor create any independent liability for any failure to do so.

## 8. Insurance.

8.1 Property Insurance. The Landlord, at its own expense, shall procure and maintain property insurance for the Property. The Landlord shall, at its own option, either obtain replacement value insurance for damage by fire or casualty to the Property or self-insure for an equivalent amount.

8.2 Liability Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain commercial general liability insurance providing occurrence form contractual personal injury, bodily injury, and property damage liability coverage with total available limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. Each Party's commercial general liability insurance policy shall include the other Party, its elected and appointed officials, officers, and employees as additional insured as their interests may appear under this PT Lease for any covered liability, caused, in whole or in part, by such Party's performance or nonperformance under the PT Lease. The above additional insured status shall not extend to claims arising out of the gross negligence or willful misconduct of the insured Party, its employees, agents, or independent contractor.

8.3 Personal Property Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain personal property insurance for their own respective betterments and property stored on the premises.

8.4 Workers' Compensation Insurance. Tenant shall at all times secure worker's compensation providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.

8.5 Insurance Requirement. Each insurance policy required under this PT Lease shall be obtained from insurance companies, or pools licensed or authorized to do business in the State of South Dakota, or through a program of self-insurance.

8.6 Notice of Intent to Cancel or Renew. Each Party will provide the other Party with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The parties agree to hold each other harmless from any liability, including additional premium due, because of the failure to maintain the coverage limits required.

8.7 Evidence of Renewal. Each Party will deliver to the other, at least 15 days prior to expiration of each policy, satisfactory evidence of renewal to the extent any policy expires and requires renewal during the term of this PT Lease. Evidence of renewal may be provided less than 15 days prior to the expiration of each policy with prior written consent by the other Party but shall never be later than one business day prior to the expiration of the policy. Upon request, each Party will provide to the other a complete copy of all insurance policies required under the PT Lease. This section shall survive the termination of this PT Lease.

8.8 Validity of Insurance Not Assumed. Each Party's approval or acceptance of certificates of insurance does not constitute the Party's assumption of responsibility for the validity of any insurance policies nor does either represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore.

9. No Limitation of Liability. These insurance provisions are separate and apart from any indemnification obligation and should not be interpreted as a limitation of liability.

10. Waiver of Subrogation. The parties to this PT Lease mutually waive all rights of recovery for losses caused by fire or extended coverage even though caused by the negligence of the other party, its employees, agents or representatives and further waive any rights of recovery from other perils covered by insurance to the extent of such insurance coverage, provided that this waiver does not prejudice the rights of the party in recovering from its insurance company. This waiver shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this waiver shall not affect the rights of the insured to recover under such policies.

11. Parking. Tenant is hereby granted the right to use the parking lot(s) associated with the Leased Premises. In addition, Tenant's patients are granted the exclusive use of six (6) specifically assigned parking spaces during reasonable business hours from 5 a.m.-6 p.m., Monday through Friday, and at such times as agreed upon by the parties. These parking spaces shall be available to the public outside of the hours listed in this paragraph.

12. Trade Fixtures & Equipment. All trade fixtures and equipment, signs, and specifically designed components of improvements to the Leased Premises, including decorative materials and accessories necessarily related to these items placed in or upon the Leased Premises by Tenant either before the Effective Date of this PT Lease or during the Term of this PT Lease shall at all times remain Tenant's property, and, so long as Tenant is not in default under this PT Lease, Tenant shall have the right to remove the same at any time. Tenant shall further be permitted (so long as Tenant is not in default under this PT Lease) to install, use on and about, and remove from the Leased Premises at any time and from time to time all other personal property



which are not a component of the Building located or to be located on the Leased Premises (hereinafter collectively referred to as the "Tenant's Property"), all of which at all times shall remain the property of Tenant with the right of removal at or before the expiration or termination of this PT Lease. Tenant's Property shall include without limitation: (1) removable decor items and office equipment, including but not limited to computers, telephones and fax machines; (2) building lettering, signs, sign posts and sign standards; and (3) unattached equipment used to conduct Tenant's business.

13. Signage. Upon Landlord approval of the location of the signage, Tenant shall be entitled to install and maintain both existing and new signage pertaining to PT Services, including but not limited to, exterior building signage, signage on the monument sign, directional (wayfinding) signage, and signage located above the external and internal entrance to the physical therapy facilities on the Leased Premises in accordance with the Code of Ordinances of Sioux Falls, SD. All costs associated with said signage shall be borne by the Tenant. At the end of the Term or upon termination, Tenant shall be responsible and pay for all signage removal at its sole cost and expense. The parties shall mutually agree on the signage to be removed and the timelines associated therewith.

14. Sponsorships. During the Term and Extended Term of this PT Lease, the Landlord may sell sponsorship rights, including but not limited to naming rights, in the Wellness Center to any person or entity, except as specifically set forth in this PT Lease. Sponsorships, including logo display and graphical depictions, by any person or entity is permissible so long as such person or entity is not substantially engaged in the provision of health care services or products ("Health Care Services). Health Care Services shall include businesses and entities that operate a hospital and/or clinic, which provide any health care services of any kind including, without limitation, a clinic such as a "walkup", "rapid care", or "urgent care" clinics. This prohibition does not include dental, orthodontic, or oral surgery services or products. Notwithstanding the foregoing, the City of Sioux Falls is exempt from this provision. From time to time, the Landlord may request the Tenant's waiver to enter into sponsorships with persons or entities which would be otherwise prohibited. Upon mutual agreement of the parties, such sponsorship may be allowed. This provision does not survive termination of this PT Lease.

15. Taxes and Special Assessments. Tenant shall be responsible for and pay all real property taxes and special assessments (if any) directly to the taxing authority.

16. Incidental PHI. The parties agree that all information regarding patients, as well as all information with respect to the operations and business of the other party gained during the negotiations leading up to this Agreement, and from the performance of this PT Lease, will be held in confidence and will not be divulged to any unauthorized person without prior written consent of the other, except for access required by law, regulation, and third party reimbursement agreements. Provider and Sanford agree that each is a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and HIPAA's implementing privacy regulations, 45 C.F.R. § 165.500, et seq. ("Privacy Regulations") and each party shall comply with all requirements with respect to protected health information ("PHI") as defined in HIPAA. The provisions of this paragraph shall survive the termination of this Agreement.

17. Indemnity. Tenant agrees to defend, indemnify, and hold Landlord harmless from any and all claims, lawsuits and damages (including reasonable attorneys' fees) arising in connection with the management of Tenant's Services at or from the Property, or which may at any time be asserted against Landlord by any reason of Tenant's, its agents', invitees', licensees', employees' or clients' use of the Leased Premises, negligence or willful misconduct or resulting from any breach or default on the part of Tenant of its obligations hereunder.

17.1 Events of Default by Tenant. The occurrence of any of the following will constitute a default by Tenant of this PT Lease: (a) Tenant fails to pay Rent fifteen (15) days beyond when due; (b) Tenant fails to timely observe or perform Tenant's other covenants or obligations hereunder within thirty (30) days following receipt by Tenant of a written notice specifying the matters then in default, provided that additional time reasonably required to cure the matters in default will be allowed so long as Tenant is diligently pursuing all actions required to cure the matters for which a default is claimed; or (c) Tenant files or has filed against it a petition in bankruptcy or insolvency, or for reorganization or for appointment of a receiver or trustee, or if Tenant makes an assignment for the benefit of creditors, and such adjudication, appointment, assignment, petition, execution or attachment will not be set aside, vacated, discharged or bonded within thirty (30) days after the determination, issuance or filing thereof.

17.2 Remedies of Landlord. Upon the occurrence of any default under Section 17.1 and so long as the default continues, Landlord may exercise one or more of the following remedies, as Landlord may lawfully elect: (a) demand that Tenant pay all amounts then due from Tenant and for other amounts which may arise from Tenant's failure to return possession of the Leased Premises as provided in this PT Lease; and (b) by notice in writing, terminate this PT Lease, whereupon all rights of Tenant's use of the Leased Premises will terminate. The foregoing remedies are cumulative, and any or all may be exercised instead of or in addition to each other or any other remedies at law, in equity, or under statute.

18. Force Majeure. Neither Landlord or Tenant shall be liable for delay or failure to perform hereunder, despite best efforts to perform. If such delay or failure is the result of force majeure. "Force majeure" shall mean causes beyond the reasonable control of a Party such as, but not limited to, pandemics or epidemics, weather conditions, acts of God or of public enemy, terrorism, war, national or local calamity, sabotage, strikes, fire or other casualty, or action of the government authorities. Written notice of any claim of a Party's inability to perform or comply due to force majeure must be promptly given to the other Parties.

19. Damage or Destruction-Repair and Restoration.

19.1 If the Property or any portion is damaged or destroyed during the term of this PT Lease by fire, casualty, or any other cause, the Landlord shall, to the extent of insurance proceeds and at the Landlord's sole election, including any applicable deductible, or self-insurance, with due diligence, repair, rebuild, or replace the Property so that after repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds or self-insurance, as prior to such damage or destruction.

19.2 Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, the Landlord shall not have any obligations for repair, rebuilding, or replacing the Property in the event of all or a substantial part of the facility shall be destroyed or damaged by fire or casualty.

19.3 In the event of total destruction of the Property or if the Landlord shall not elect within ninety (90) days after such damage to rebuild, or restore the Property, then this PT Lease shall terminate, and all rights and obligations of the Landlord and Tenant shall cease and terminate.

19.4 If the damage or destruction to the Leased Premises is caused by the negligence or the willful acts of the Tenant, its employees, agents, invitees and customers, or servants, Landlord shall not be responsible for any costs of repair or rebuilding the Leased Premises or any other portion of the building which is so damaged to the extent the laws in effect at the time so permit. As permitted by law, Tenant shall pay all such amounts to Landlord upon demand.

19.5 If the damage or destruction to the Leased Premises is caused by the negligence or the willful acts of Landlord, its employees, agents, invitees and customers, or servants, Landlord shall be responsible for any costs of repair or replacement of Tenant's betterments and personal property, including without limitation all equipment and stored property, to the extent the laws in effect at the time so permit. As permitted by law, Landlord shall pay all such amounts to Tenant upon demand.

20. No Personal Liability. No official, director, officer, agent, or employee of the Landlord shall be charged personally or held contractually liable by or to the Tenant under any term or provision of this PT Lease or because of any breach thereof or because of its or their execution, approval, or attempted execution of this PT Lease.

21. Discrimination. During the performance of the PT Lease, Tenant agrees that it will comply with all applicable provisions of federal, state, and local laws, including Chapter 98 of the Code of Ordinance of Sioux Falls, South Dakota and regulations prohibiting discrimination. Without limiting this, Tenant warrants that it will fully comply with Title VI and VII of the Civil Rights Act of 1964, as amended, the Americans of Disabilities Act (ADA) and all other regulations promulgated thereunder. Tenant will not discriminate against any employee or Applicant for employment because of race, religion, color, disability, national origin, sex, sexual orientation, or age. Tenant will take affirmative action to ensure that employment is offered and that employees are treated during employment without regard to their race, religion, color, disability, national origin, sex, sexual orientation, or age. Such action shall include, but is not limited to, the following: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection, including apprenticeship. The Tenant shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD, as in effect at any given time. It is declared to be discrimination for the Tenant, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment. Tenant will not discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political, or religious opinions, affiliations, or national origin.

22. Human Relations. If the Tenant is found to have engaged in discrimination by the Commission on Human Relations (Commission), this PT Lease may be terminated in whole or in part by the Landlord. The Tenant shall permit the Commission reasonable access to any and all records pertaining to hiring and employment and to other pertinent data and records as are reasonably necessary for the sole purpose of enabling the Commission, its agencies, or representatives, to ascertain compliance with the above provisions. The Landlord and Commission agree to keep any employee and personnel records confidential. This section shall be binding on all subcontractors and suppliers of the Lessee.

23. Waiver. This failure to enforce or to require the performance at any time of any of the provisions of this PT Lease shall in no way be constructed to be a waiver of such provisions, and shall not affect either the validity of this PT Lease or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this PT Lease.

24. Severability. If any term, provision, covenant, or condition of this PT Lease is found to be invalid, void, or unenforceable, the remainder of this PT Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

25. Notices. Any notice required to be given by either party pursuant to this PT Lease, will be in writing and will be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Priority Mail Express or other comparable mail delivery service, addressed to the other party at the addresses set forth below, and will be deemed to have been given, rendered or made on the earlier of the day so delivered or on the first business day after having been deposited with the courier service:

If to Tenant:            Sanford Medical Center  
                                  Attn: Legal Department  
                                  2301 E. 60<sup>th</sup> St. N.  
                                  Sioux Falls, SD 57104

If to Landlord:        City of Sioux Falls  
                                  224 W. Ninth St.  
                                  Sioux Falls, SD 57104

26. Amendment. This PT Lease shall not be supplemented, amended, or modified except by an express written agreement signed by both parties.

27. Binding Effect. Landlord and Tenant agree that all the provisions of this PT Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their heirs and their successors and assigns.

28. Assignment. Tenant shall not assign or in any manner transfer this PT Lease or any interest therein, nor sublet said Leased Premises or any part or parts thereof, nor permit occupancy by anyone.

29. Memorandum of PT Lease. Tenant shall not record this PT Lease without the written consent of Landlord. Landlord may prepare a memorandum of this PT Lease for purposes of recording. The original of this lease shall be retained by Landlord.

30. Subordination. Except where the provisions of this PT Lease may conflict therewith, this PT Lease shall be subordinate to any and all ordinances, guidelines, rules and regulations, and all covenants, reciprocal easement declarations, restrictions and the like which may presently affect or hereafter be placed upon or affect the Leased Premises. Tenant shall have the opportunity to review any proposed amendment to all covenants, reciprocal easement declarations, restrictions affecting the Wellness Center to the extent they may conflict with the terms of this PT Lease and Tenant's rights hereunder.

31. Quiet Enjoyment. Landlord covenants that Landlord will put the Tenant into complete and exclusive possession of the Leased Premises on the Commencement Date as hereinbefore provided, and that, if the Tenant shall pay the rental and perform all the covenants and provisions of this PT Lease to be performed by the Tenant, the Tenant shall during the Term demised, freely, peaceably and quietly occupy and enjoy the full possession of the Leased Premises hereby leased, and the tenements, hereditaments and appurtenances thereto belonging and the rights and privileges herein granted without molestation or hindrance, lawful or otherwise.

32. Surrender and Possession. Tenant shall, on the last day of the Term or sooner on termination of this PT Lease, peaceably and quietly surrender and yield up to the Landlord the premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of God or the elements excepts.

33. Successors in Interest. Except as otherwise provided in this PT Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this PT Lease.

34. Governing Law, Venue. This PT Lease shall be construed and enforced in accordance with the laws of the State of South Dakota, without regard to applicable conflict of laws principles. Venue for any legal action relating to this PT Lease shall lie in Second Judicial Circuit Court, Minnehaha County, SD.

35. Counterparts. This PT Lease may be executed in counterparts.

36. Entire Agreement. This PT Lease sets forth the entire agreement of the parties and supersedes and is in lieu of all pre-existing agreements or arrangements between the parties relating to the subject matter thereof.

**Signature Page Follows**

**IN WITNESS WHEREOF**, this PT Lease has been executed as of the above date.

**CITY OF SIOUX FALLS**

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

Its \_\_\_\_\_  
LANDLORD

ATTEST:

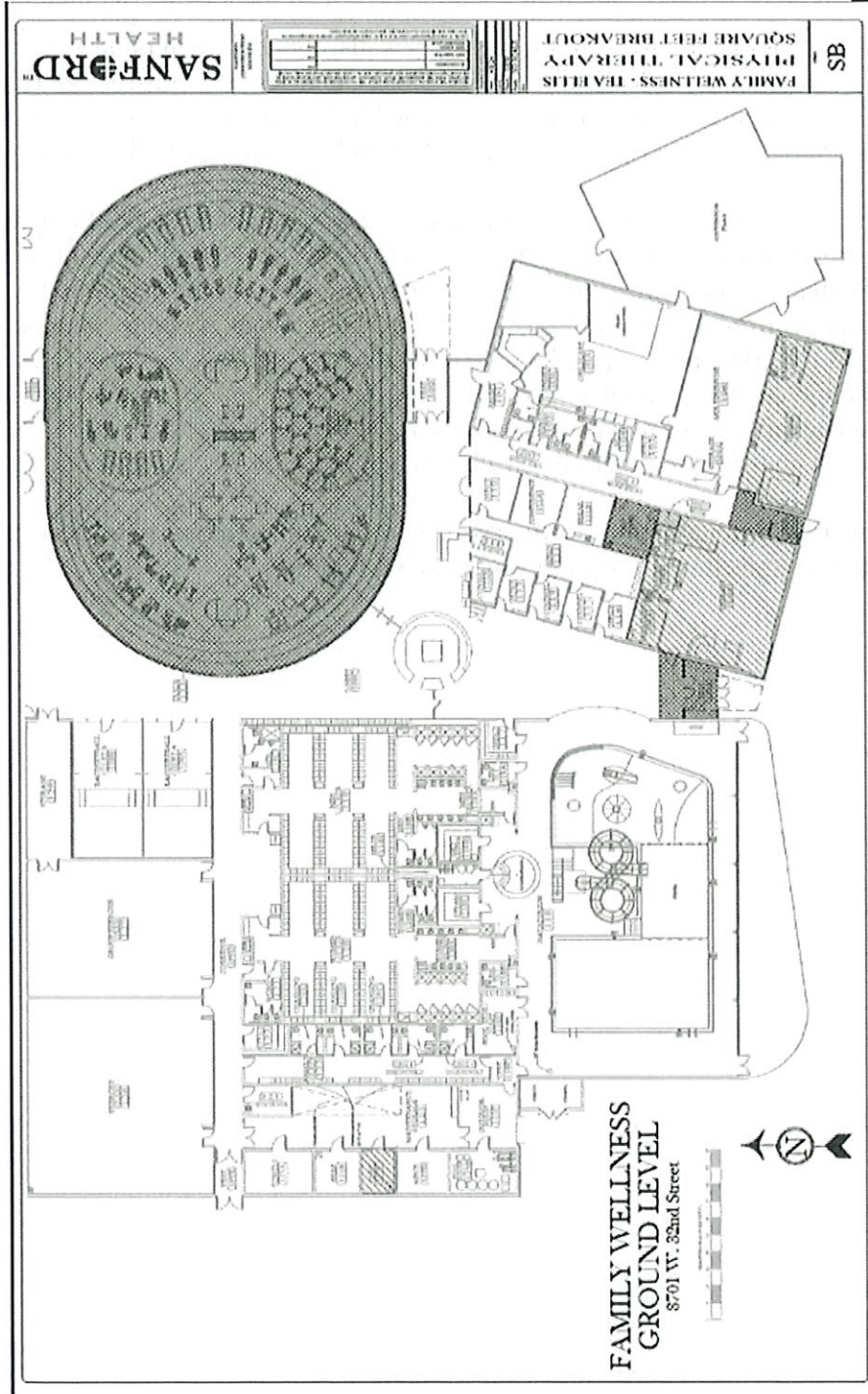
\_\_\_\_\_  
City Clerk

**SANFORD MEDICAL CENTER**

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

Its \_\_\_\_\_  
TENANT

LEASED PREMISES





## EXHIBIT D

### Excluded Assets

The furniture, fixtures, and equipment to be removed from the Property include:

1. Seller's personal computers, software, routers, firewalls, switches, cell phones, wireless access points, domain names, websites, tablets, kiosks, and server infrastructure (for clarification, all computer equipment not determined to be Excluded Assets as mutually agreed by the Parties will be wiped clean of all data and software, including operating systems).
2. All employee records (other than certain employee information provided to Purchaser under this Agreement), employee agreements, employee manuals, training materials and video tapes, policies, procedures and materials related thereto with respect to the operation of the Sanford Wellness Center prior to the Operations Transfer Date, policies, procedures and materials related thereto with respect to the Sanford Wellness Center, all brochures, pamphlets, flyers, mailers and all other promotional material relating to the marketing and advertising of the Sanford Wellness Center, all marketing and sales studies, analyses and similar materials, check scanners, time clocks, smartphones, music devices.
3. All assets situated within the physical therapy space, including but not limited to exercise equipment, therapy machines, furniture, and medical supplies.

EXHIBIT E

Instruments of Transfer

BILL OF SALE

THIS BILL OF SALE (this "Agreement"), dated June \_\_\_\_, 2024, is executed by Sanford Medical Center ("Seller") in favor of the City of Sioux Falls ("Buyer"), pursuant to that certain Offer to Purchaser Commercial Real Estate and Asset Agreement dated June \_\_\_\_, 2024 (the "Offer to Purchase").

NOW, THEREFORE, for valuable consideration in the amount of \$1.00 and other consideration, the receipt and sufficiency of which Seller does hereby acknowledge, Seller does hereby sell, transfer, convey, assign and deliver to Buyer free and clear of all liens, security interests, or encumbrances, the following Asses:

Substantially all of the Assets used to operate the Sanford Wellness Center, including without limitation, membership roster and information related thereto, all equipment, fixtures, office or other supplies, furniture, tools, technology related to the operation of the Sanford Wellness Center, know-how, telephone numbers, facsimile numbers, goodwill and other intangible property rights of any kind whatsoever of the Sanford Wellness Center, excluding the Excluded Assets as defined in the Offer to Purchase.

Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required by Buyer in order to assign, transfer, set over, convey, assure, and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed, and transferred by this Bill of Sale.

Seller represents and warrants that they are a duly authorized representative of the Seller and that they have the authority to bind the Seller. Terms capitalized in this Bill of Sale but not defined herein will have the meanings ascribed to them in the Offer to Purchase.

Dated as of \_\_\_\_\_, 2024.

SANFORD MEDICAL CENTER

\_\_\_\_\_  
BY: \_\_\_\_\_

\_\_\_\_\_  
ITS: \_\_\_\_\_

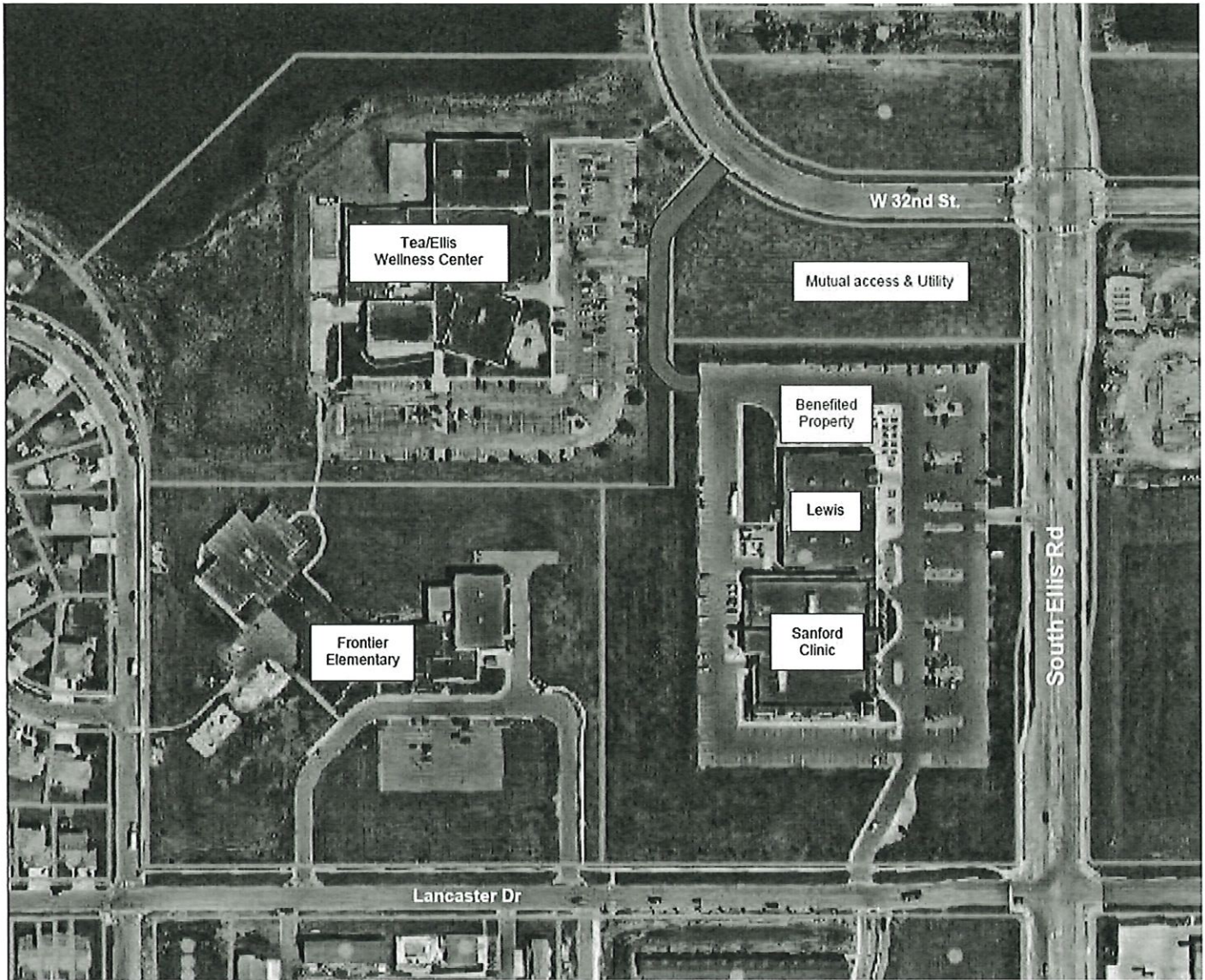
EXHIBIT F

Assumed Agreements

To be inserted administratively post execution of this Agreement.

EXHIBIT G

Right of Access



## FACILITY LEASE AGREEMENT

This FACILITY LEASE AGREEMENT (this "Lease") is entered into effective \_\_\_\_\_, 2024 (the "Effective Date"), by and between CITY OF SIOUX FALLS ("Landlord") and SANFORD MEDICAL CENTER ("Tenant").

### RECITALS:

**WHEREAS**, Tenant is the former owner and operator of the Sanford Wellness Center located at 8701 W 32<sup>nd</sup> St Sioux Falls, South Dakota;

**WHEREAS**, Tenant sold to Landlord and Landlord purchased from Tenant the Property and substantially all Assets used to operate the Sanford Wellness Center pursuant to an Offer to Purchase Commercial Real Estate and Asset Agreement dated July \_\_\_\_\_, 2024 (the "Purchase Agreement");

**WHEREAS**, the Parties desire for Tenant continue to operate the Sanford Wellness Center for a period of time beginning on the Commencement Date and ending on the Operations Transfer Date, pursuant to the terms and conditions set forth in this Facility Lease.

**NOW, THEREFORE**, the parties agree as follows:

1. Defined Terms. Terms capitalized in this Lease but not defined herein will have the meanings ascribed to the in the Purchase Agreement.

2. Premises. Tenant hereby leases from Landlord the Property and Assets (collectively, the "Leased Premises") effective as of the Commencement Date. The Leased Premises shall only be used for its existing uses, which include a wellness center, outpatient physical therapy clinic and similar or related uses.

3. Term and Termination. This Lease shall commence on the Closing Date (as defined therein) of the Purchase Agreement ("Commencement Date") and remain in full force and effect for a period from the Closing Date through and until December 31, 2024 (the "Term"). This Lease may only be extended by a signed written agreement between the parties. Landlord may terminate this Agreement upon thirty (30) days' notice at any time.

4. Rent. As compensation for the use of the Leased Premises, Tenant agrees to pay to Landlord one dollar (\$1.00) for the Term.

5. Utilities. From and after the Commencement Date, Tenant shall be responsible for and pay all utilities servicing the Leased Premises and provide all reasonable lawn and landscaping care and maintenance, together with snow removal from the sidewalks and parking lot(s) servicing the Leased Premises.

6. Maintenance. Except as required to be performed by Tenant pursuant to this Lease, Landlord shall be responsible for all capital improvements and the repair and replacement of all structural elements to the Leased Premises, exterior surfaces, including, but not limited to, the roof, roof membrane, roof covering, exterior walls, slab floors, footings, parking areas, grounds and

sidewalks of the Property, and replacement of any part of the HVAC system costing more than \$5,000 per event or occurrence. . Tenant shall be responsible for routine maintenance and minor repairs to the interior of the Leased Premises costing less than \$5,000, per event or occurrence, which shall be deemed to include, but not be limited to, the exterior and interior portions of all windows and window frames, doors and door frames, plate glass, storefront, fixtures, plumbing fixtures, lighting fixtures (excluding exterior lighting fixtures), electrical and sewage equipment, interior walls, partitions, floors, floor coverings and ceilings. If any repair, maintenance, or replacement shall exceed or shall reasonably be expected to exceed \$5,000 during the Term, Landlord shall be notified of such repair, required maintenance, or replacement provided, however, Landlord shall be under no obligation to make the repair, required maintenance, or replacement until funds are sufficiently appropriated by the City Council. In the event the City Council does not fund the repair, required maintenance, or replacement, the Tenant shall have no liability for any claims, costs, or damages arising out of a failure by the Landlord to make any requested repair, required maintenance, or replacement that were determined to be necessary for the safety, health, and welfare of the people.

7. Right of Entry. The Landlord shall have the right to enter into the leased area at all reasonable times to inspect the premises and/or to take such actions as may, in the opinion of the Landlord, be deemed necessary. Except for emergency situations, the Landlord will make every reasonable effort to timely notify the Tenant of any pending work and to coordinate such work so as to minimize any disruption to the Tenant's delivery of services. Nothing in this section will impose or may be construed to impose upon the Landlord any independent obligation to construct or maintain or make repairs, replacements, alterations, additions, or improvements nor create any independent liability for any failure to do so.

8. Insurance.

a. Property Insurance. The Landlord, at its own expense, shall procure and maintain property insurance for the Property. The Landlord shall, at its own option, either obtain replacement value insurance for damage by fire or casualty to the Property or self-insure for an equivalent amount.

b. Liability Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain commercial general liability insurance providing occurrence form contractual personal injury, bodily injury, and property damage liability coverage with total available limits not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. Each Party's commercial general liability insurance policy shall include the other Party, its elected and appointed officials, officers, and employees as additional insured as their interests may appear under this Lease for any covered liability, caused, in whole or in part, by such Party's performance or nonperformance under the Lease. The above additional insured status shall not extend to claims arising out of the gross negligence or willful misconduct of the insured Party, its employees, agents, or independent contractor.

c. Personal Property Insurance. Both Landlord and Tenant, at their own respective expense, shall procure and maintain personal property insurance for their own respective betterments and property stored on the premises.

d. Workers' Compensation Insurance. Tenant shall at all times secure worker's compensation providing the statutory limits required by South Dakota law. In addition, it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.

e. Insurance Requirement. Each insurance policy required under this Lease shall be obtained from insurance companies, or pools licensed or authorized to do business in the State of South Dakota, or through a program of self-insurance.

f. Notice of Intent to Cancel or Renew. Each Party will provide the other Party with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. The parties agree to hold each other harmless from any liability, including additional premium due, because of the failure to maintain the coverage limits required.

g. Evidence of Renewal. Each Party will deliver to the other, at least 15 days prior to expiration of each policy, satisfactory evidence of renewal to the extent any policy expires and requires renewal during the term of this Lease. Evidence of renewal may be provided less than 15 days prior to the expiration of each policy with prior written consent by the other Party but shall never be later than one business day prior to the expiration of the policy. Upon request, each Party will provide to the other a complete copy of all insurance policies required under the Lease. This section shall survive the termination of this Lease.

h. Validity of Insurance Not Assumed. Each Party's approval or acceptance of certificates of insurance does not constitute the Party's assumption of responsibility for the validity of any insurance policies nor does either represent that the above coverages and limits are adequate to protect any individual/group/business, its consultants' or subcontractors' interests, and assumes no liability therefore.

9. No Limitation of Liability. These insurance provisions are separate and apart from any indemnification obligation and should not be interpreted as a limitation of liability.

10. Waiver of Subrogation. The parties to this Lease mutually waive all rights of recovery for losses caused by fire or extended coverage even though caused by the negligence of the other party, its employees, agents or representatives and further waive any rights of recovery from other perils covered by insurance to the extent of such insurance coverage, provided that this waiver does not prejudice the rights of the party in recovering from its insurance company. This waiver shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this waiver shall not affect the rights of the insured to recover under such policies.

11. Parking. Tenant is hereby granted the right to use the parking lot(s) associated with the Leased Premises.

12. Signage. Tenant shall be allowed to maintain existing signage on and around the Leased Premises in accordance with the Code of Ordinances of Sioux Falls, SD. All costs associated with said signage shall be borne by the Tenant. At the end of the Term or upon termination, Landlord shall be responsible and pay for all signage removal at its sole cost and

expense. The parties shall mutually agree on the signage to be removed and the timelines associated therewith.

13. Taxes and Special Assessments. Tenant shall be responsible for and pay all real property taxes and special assessments (if any) directly to the taxing authority.

14. Incidental PHI. The parties agree that all information regarding patients, as well as all information with respect to the operations and business of the other party gained during this negotiations leading up to this Agreement, and from the performance of this Lease, will be held in confidence and will not be divulged to any unauthorized person without prior written consent of the other, except for access required by law, regulation, and third party reimbursement agreements. Provider and Sanford agree that each is a "covered entity" as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and HIPAA's implementing privacy regulations, 45 C.F.R. § 165.500, et seq. ("Privacy Regulations") and each party shall comply with all requirements with respect to protected health information ("PHI") as defined in HIPAA. The provisions of this paragraph shall survive the termination of this Agreement.

15. Indemnity. Tenant agrees to defend, indemnify, and hold Landlord harmless from any and all claims, lawsuits and damages (including reasonable attorneys' fees) arising in connection with the management of Tenant's Services at or from the Leased Premises, or which may at any time be asserted against Landlord by any reason of Tenant's, its agents', invitees', licensees', employees' or clients' use of the Leased Premises, negligence or willful misconduct or resulting from any breach or default on the part of Tenant of its obligations hereunder.

16. Force Majeure. Neither Landlord or Tenant shall be liable for delay or failure to perform hereunder, despite best efforts to perform. If such delay or failure is the result of force majeure. "Force majeure" shall mean causes beyond the reasonable control of a Party such as, but not limited to, pandemics or epidemics, weather conditions, acts of God or of public enemy, terrorism, war, national or local calamity, sabotage, strikes, fire or other casualty, or action of the government authorities. Written notice of any claim of a Party's inability to perform or comply due to force majeure must be promptly given to the other Parties.

17. Damage or Destruction-Repair and Restoration.

a. If the Property or any portion is damaged or destroyed during the term of this Lease by fire, casualty, or any other cause, the Landlord shall, to the extent of insurance proceeds and at the Landlord's sole election, including any applicable deductible, or self-insurance, with due diligence, repair, rebuild, or replace the Property so that after repairing, rebuilding, or replacing, it shall be substantially the same, to the extent of insurance proceeds or self-insurance, as prior to such damage or destruction.

b. Notwithstanding anything to the contrary contained herein, to the extent such loss is not covered by insurance, the Landlord shall not have any obligations for repair, rebuilding, or replacing the Property in the event of all or a substantial part of the facility shall be destroyed or damaged by fire or casualty.



c. In the event of total destruction of the Property or if the Landlord shall not elect within ninety (90) days after such damage to rebuild, or restore the Property, then this Lease shall terminate, and all rights and obligations of the Landlord and Tenant shall cease and terminate.

d. If the damage or destruction to the leased Premises is caused by the negligence or the willful acts of the Tenant, its employees, agents, invitees and customers, or servants, Landlord shall not be responsible for any costs of repair or rebuilding the leased Premises or any other portion of the building which is so damaged to the extent the laws in effect at the time so permit. As permitted by law, Tenant shall pay all such amounts to Landlord upon demand.

e. If the damage or destruction to the Leased Premises is caused by the negligence or the willful acts of Landlord, its employees, agents, invitees and customers, or servants, Landlord shall be responsible for any costs of repair or replacement of Tenant's betterments and personal property, including without limitation all equipment and stored property, to the extent the laws in effect at the time so permit. As permitted by law, Landlord shall pay all such amounts to Tenant upon demand.

18. No Personal Liability. No official, director, officer, agent, or employee of the Landlord shall be charged personally or held contractually liable by or to the Tenant under any term or provision of this Lease or because of any breach thereof or because of its or their execution, approval, or attempted execution of this Lease.

19. Discrimination. During the performance of the Lease, the Tenant agrees that it will comply with all applicable provisions of federal, state, and local laws, including Chapter 98 of the Code of Ordinance of Sioux Falls, South Dakota and regulations prohibiting discrimination. Without limiting this, Tenant warrants that it will fully comply with Title VI and VII of the Civil Rights Act of 1964, as amended, the Americans of Disabilities Act (ADA) and all other regulations promulgated thereunder. Tenant will not discriminate against any employee or Applicant for employment because of race, religion, color, disability, national origin, sex, sexual orientation, or age. Tenant will take affirmative action to ensure that employment is offered and that employees are treated during employment without regard to their race, religion, color, disability, national origin, sex, sexual orientation, or age. Such action shall include, but is not limited to, the following: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection, including apprenticeship. The Tenant shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD, as in effect at any given time. It is declared to be discrimination for the Tenant, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment. Tenant will not discriminate or permit discrimination in violation of federal or state laws or local ordinances because of race, color, sex, age, political, or religious opinions, affiliations, or national origin.

20. Human Relations. If the Tenant is found to have engaged in discrimination by the Commission on Human Relations (Commission), this Lease may be terminated in whole or in part by the Landlord. The Tenant shall permit the Commission reasonable access to any and all records pertaining to hiring and employment and to other pertinent data and records as are reasonably

necessary for the sole purpose of enabling the Commission, its agencies, or representatives, to ascertain compliance with the above provisions. The Landlord and Commission agree to keep any employee and personnel records confidential. This section shall be binding on all subcontractors and suppliers of the Lessee.

21. Waiver. This failure to enforce or to require the performance at any time of any of the provisions of this Lease shall in no way be constructed to be a waiver of such provisions, and shall not affect either the validity of this Lease or any part hereof or the right of any party thereafter to enforce each and every provision in accordance with the terms of this Lease.

22. Severability. If any term, provision, covenant, or condition of this Lease is found to be invalid, void, or unenforceable, the remainder of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

23. Notices. Any notice required to be given by either party pursuant to this Lease, will be in writing and will be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Priority Mail Express or other comparable mail delivery service, addressed to the other party at the addresses set forth below, and will be deemed to have been given, rendered or made on the earlier of the day so delivered or on the first business day after having been deposited with the courier service:

If to Tenant:            Sanford Medical Center  
                                  Attn: Legal Department  
                                  2301 E. 60<sup>th</sup> St. N.  
                                  Sioux Falls, SD 57104

If to Landlord:         City of Sioux Falls  
                                  224 W. Ninth St.  
                                  Sioux Falls, SD 57104

24. Amendment. This Lease shall not be supplemented, amended, or modified except by an express written agreement signed by both parties.

25. Binding Effect. Landlord and Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their heirs and their successors and assigns.

26. Assignment. Tenant shall not assign or in any manner transfer this Lease or any interest therein, nor sublet said Leased Premises or any part or parts thereof, nor permit occupancy by anyone.

27. Successors in Interest. Except as otherwise provided in this Lease, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, personal representatives, successors, and assigns of each party to this Lease.

28. Governing Law, Venue. This Lease shall be construed and enforced in accordance with the laws of the State of South Dakota, without regard to applicable conflict of laws principles. Venue for any legal action relating to this Lease shall lie in Second Judicial Circuit Court, Minnehaha County, SD.

29. Counterparts. This Lease may be executed in counterparts.

30. Entire Agreement. This Lease sets forth the entire agreement of the parties and supersedes and is in lieu of all pre-existing agreements or arrangements between the parties relating to the subject matter thereof.

**Signature Page Follows**

IN WITNESS WHEREOF, this Lease has been executed as of the above date.

**CITY OF SIOUX FALLS**

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

Its \_\_\_\_\_  
LANDLORD

ATTEST:

\_\_\_\_\_  
City Clerk

**SANFORD MEDICAL CENTER**

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

Its \_\_\_\_\_  
TENANT

1st Reading: \_\_\_\_\_  
 2nd Reading: \_\_\_\_\_  
 Date Adopted: \_\_\_\_\_  
 Date Published: \_\_\_\_\_  
 Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY REVISING CHAPTER 90: ANIMALS AND FOWL TO ALLOW HOBBY BEEKEEPING AT THE ZOO.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

*Section 1. That Section 90.100 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:*

**§ 90.100 PERMIT REQUIRED.**

(a) No person shall establish or maintain any hive or colony unless the city issues a permit allowing the applicant to establish and maintain a colony on the property he/she owns. Exception: If the principal use of the property is a college, university, post high school, middle school, high school, or zoo, the application shall require authorization from the property owner or authorized agent. The permit will be valid for one year.

(b) Permits are nontransferable and do not run with the land.

(c) By signing the permit, the applicant acknowledges that he or she shall defend and indemnify the city against any and all claims arising from his/her hobby beekeeping. If the principal use of the property is a college, university, post high school, middle school, high school, or zoo, the property owner or authorized agent shall also acknowledge that they shall defend and indemnify the city against any and all claims arising from the hobby beekeeping on the subject property.

(d) The fee for the initial permit shall be \$50. For each subsequent permit, there shall be a \$25 renewal fee. The Sioux Falls Zoo & Aquarium shall not be required to pay for the initial permit or any subsequent permit.

(e) No permit shall be issued unless the applicant has registered his or her apiaries with the state as required by SDCL ch. 38-18, and complies with the applicable provisions of this code and SDCL ch. 38-18.

(f) The applicant must show proof of having successfully completed a beekeeping class not more than one year prior to the initial application. The beekeeping class must be from an organization approved by the city.

(g) Hobby beekeeping shall only be allowed on property that meets one of the following zoning classifications:

- (1) A DD or AD1 form in any eligible zoning district.
- (2) A OPEN2 form in the REC or S-2 Institutional Campus zoning district.

(3) A OPEN3 form in the AG zoning district.

(4) A BCF1 or BCF3 form in the S-1 General Institutional or S-2 Institutional Campus zoning district whose principal use is a college, university, post high school, middle school, or high school.

(5) A property in the S-2 Institutional Campus zoning district with no form established that is located within the boundaries of a school campus.

(h) If the property is a DD or AD1 form, the initial application must be accompanied by a written consent of 80% of property owners of all property situated within 100 feet of the applicant's property, and 100% of all property owners abutting the applicant's property. In all other forms, the hive(s) must be located at least 100 feet from any property not owned or controlled by the applicant or authorized agent.

(i) Beekeepers are subject to annual inspections conducted by animal control.

*Section 2. That Section 90.101 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:*

**§ 90.101 STANDARDS OF PRACTICE.**

(a) Honeybee colonies shall be kept in hives with removable frames, which must be kept in sound and usable conditions.

(b) Each beekeeper must ensure that a convenient source of water is available within ten feet of each colony at all times that the colonies remain active outside the hive, and the water shall be maintained so as not to become stagnant.

(c) Each beekeeper must ensure that no wax comb or other material that might encourage robbing by other honeybees is left upon the grounds of the apiary lot. Such materials once removed from the site shall be handled and stored in sealed containers, or placed within a building or other vermin-proof container.

(d) Each beekeeper shall maintain his or her beekeeping equipment in good condition, including keeping the hives painted if they have been painted but are peeling or flaking, and securing unused equipment from weather, potential theft or vandalism, and occupancy by swarms.

(e) A sign provided by animal control shall be displayed on a place clearly visible from the closest sidewalk, circulation area, parking lot or right-of-way to the hive(s), or in a location designated by the city. Said sign must warn the public as follows: BEE HIVE ON THIS PROPERTY. REPORT VIOLATIONS TO SIOUX FALLS ANIMAL CONTROL (605-367-7000). Hives located at the Sioux Falls Zoo & Aquarium are exempt from this requirement.

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

\_\_\_\_\_  
Paul TenHaken, Mayor

ATTEST:

\_\_\_\_\_  
Jermery J. Washington, City Clerk

1st Reading: \_\_\_\_\_  
 2nd Reading: \_\_\_\_\_  
 Date Adopted: \_\_\_\_\_  
 Date Published: \_\_\_\_\_  
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(3) A OPEN3 form in the AG zoning district.

(4) A BCF1 or BCF3 form in the S-1 General Institutional or S-2 Institutional Campus zoning district whose principal use is a college, university, post high school, middle school, or high school.

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

\_\_\_\_\_  
Paul TenHaken, Mayor

ATTEST:

\_\_\_\_\_  
Jermery J. Washington, City Clerk





**A CONDITIONAL GIFTING AGREEMENT OF STAGING  
FOR THE MIDCO® AQUATIC CENTER**

Agreement made May , 2024, between the City of Sioux Falls, SD (the "City"), and the Sioux Falls Swim Team (the "Swim Team").

The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

**Section One**

The Swim Team hereby agrees to gift to the City, and City conditionally agrees to accept the gift of Staging which consists of four 3' X 6' platforms, steps and supports (the "Staging") to be used at the Midco® Aquatic Center.

**Section Two**

The City's acceptance of the gift described above is conditioned upon the following:

1. The Staging total cost is \$5,371.76. The cost shall be split between the City and the Swim Team as follows: the City shall contribute \$2,500 and the Swim Team will pay the remaining balance of \$2,871.76.
2. The Staging will not be accepted as City property until received and verified that they meet all product specifications as determined by the City.
3. All product warranties shall be transferred to the City, along with maintenance manuals and parts lists, if any, when the City accepts the Staging.
4. Care and maintenance of the Staging will be the responsibility of the City.
5. The City agrees to be responsible for replacement as necessary.
6. The City will set up, tear down and store staging when requested.
7. The Swim Team agrees to abide by all terms and conditions of the Title Sponsorship Agreement between Midco and the City (the "Agreement") as it relates to the Staging.

**Section Three**

The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have the opportunity to be represented and advised by counsel in the negotiations resulting in this Agreement, that they have ascertained and weighed all the facts and circumstances likely to influence their judgment, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.

**Section Four**

This instrument contains the entire Agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be

Agreement No. \_\_\_\_\_

enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

**Section Five**

This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, assignees, and successors of the respective parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SIOUX FALLS

SIOUX FALLS SYMIM TEAM

BY: \_\_\_\_\_

BY: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ Mayor \_\_\_\_\_

TITLE: \_\_\_\_\_

FEDERAL TAX ID NO. \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK  
PRINTED NAME: \_\_\_\_\_

**2024**  
**MIDCO AQUATIC CENTER OPERATING DASHBOARD**  
(Unaudited)

Jan                  Feb                  Mar                  YTD Total

**Statistics**

<u>Attendance</u>				
Daily Attendance	3,852	5,878	7,198	16,928
Swim Pass Attendance	4,571	5,823	6,165	16,559
Swim Lesson Attendance	3,621	2,282	3,925	9,828
Swim Team Attendance	2,398	1,910	624	4,932
Swim Meet Attendance	4,113	5,526	-	9,639
Other Attendance	681	3,206	1,226	5,113
<b>Total Attendance</b>	<b>19,236</b>	<b>24,625</b>	<b>19,138</b>	<b>62,999</b>
Average Daily Attendance	641	879	617	708
<u>Passes</u>				
Fall, Winter, Spring Passes Sold	-	-	-	-
Annual Passes Sold	170	160	157	487
<b>Total Passes Sold</b>	<b>170</b>	<b>160</b>	<b>157</b>	<b>487</b>
<u>Other</u>				
Lesson Registrations	25	2	105	132
Class/Event Registrations	72	17	79	168
Meeting Room Reservations	20	25	42	87
Meeting Room Hours Reserved	31	38	78	147
Swim Lane Hours Reserved	1,393	919	413	2,724

**Revenue**

Daily Admission	\$ 16,999	\$ 26,222	\$ 32,181	\$ 75,402
Passes	28,306	23,928	26,707	78,941
Programming Registrations	10,908	29,438	8,744	49,090
Meeting Room Reservations	1,400	1,888	3,975	7,263
Swim Lane Reservations	8,083	3,844	3,069	14,996
Other	22,023	105	62	22,191
<b>Total Revenue</b>	<b>\$ 87,720</b>	<b>\$ 85,425</b>	<b>\$ 74,738</b>	<b>\$ 247,882</b>

**Expenses**

Personnel*	\$ 82,436	\$ 134,630	\$ 133,163	\$ 541,807
Building R&M	733	16,959	12,818	58,262
Supplies & Materials	-	20,795	15,741	75,208
Utilities	23,110	33,844	38,874	96,047
Other	1,431	2,725	14,670	23,203
<b>Total Expenses</b>	<b>\$ 107,710</b>	<b>\$ 208,953</b>	<b>\$ 215,267</b>	<b>\$ 531,929</b>

\*May and Nov have 3 pay periods                  2                  2                  2

**Summary**

Total Revenue	\$ 87,720	\$ 85,425	\$ 74,738	\$ 247,882
Total Expenses	107,710	208,953	215,267	531,929
<b>Operating Surplus/(Loss)</b>	<b>\$ (19,990)</b>	<b>\$ (123,528)</b>	<b>\$ (140,529)</b>	<b>\$ (284,047)</b>

**City of Sioux Falls Golf Courses  
Income Statement  
March 31, 2024**

----- Current Month -----						----- Year To Date -----					
Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year	Prairie Green	Elmwood	Kuehn Park	Consolidated	Budget	Prior Year
-	1,590	-	1,590	-	-	-	2,262	-	2,262	-	-
<b>Rounds Played</b>						<b>Rounds Played</b>					
-	19,038	-	19,038	-	-	-	28,707	-	28,707	-	-
<b>Revenues</b>						<b>Revenues</b>					
4,134	9,011	-	13,145	16,300	7,431	6,636	13,028	-	19,664	28,235	11,887
-	4,166	-	4,166	-	-	-	6,966	-	6,966	-	24
-	10,314	-	10,314	-	-	-	15,517	-	15,517	-	-
450	6,089	-	6,540	9,585	6,631	7,790	9,842	-	17,632	16,512	12,703
-	-	-	-	-	-	-	-	-	-	-	-
<b>4,585</b>	<b>48,619</b>	<b>-</b>	<b>53,204</b>	<b>25,885</b>	<b>14,062</b>	<b>14,426</b>	<b>74,060</b>	<b>-</b>	<b>88,486</b>	<b>44,747</b>	<b>24,614</b>
<b>Total Revenues</b>						<b>Total Revenues</b>					
1,453	1,857	595	3,905	10,890	2,589	2,649	3,542	896	7,087	17,715	3,736
<b>Cost of Goods Sold</b>						<b>Cost of Goods Sold</b>					
588	1,852	-	2,440	3,173	1,182	2,715	3,179	-	5,894	5,153	3,298
2,041	3,709	595	6,345	14,063	3,771	5,364	6,721	896	12,981	22,868	7,034
<b>2,544</b>	<b>44,910</b>	<b>(595)</b>	<b>46,859</b>	<b>11,822</b>	<b>10,291</b>	<b>9,063</b>	<b>67,339</b>	<b>(896)</b>	<b>75,506</b>	<b>21,879</b>	<b>17,580</b>
<b>Gross Profit</b>						<b>Gross Profit</b>					
12,875	13,934	1,688	28,497	39,327	33,672	36,607	35,680	8,845	81,132	96,398	83,912
<b>Operating Expenses</b>						<b>Operating Expenses</b>					
242	-	-	242	6,350	6,645	2,558	2,136	4,244	8,938	6,600	6,885
2,148	462	398	3,007	5,396	2,860	5,916	4,733	470	11,120	14,373	10,138
37,658	26,760	7,053	71,471	66,759	63,684	89,323	86,362	22,289	197,974	192,669	175,854
4,678	9,941	-	14,619	14,819	14,076	8,259	21,184	(700)	28,742	38,454	35,364
36,259	33,313	11,720	81,292	93,175	81,864	110,080	88,505	27,718	226,302	229,366	198,172
-	-	-	-	-	-	-	-	-	-	-	-
<b>93,860</b>	<b>84,410</b>	<b>20,860</b>	<b>199,129</b>	<b>225,826</b>	<b>202,801</b>	<b>252,742</b>	<b>238,600</b>	<b>62,866</b>	<b>554,208</b>	<b>577,860</b>	<b>510,325</b>
<b>Total Operating Expenses</b>						<b>Total Operating Expenses</b>					
<b>(91,315)</b>	<b>(39,500)</b>	<b>(21,455)</b>	<b>(152,270)</b>	<b>(214,004)</b>	<b>(192,510)</b>	<b>(243,680)</b>	<b>(171,261)</b>	<b>(63,762)</b>	<b>(478,702)</b>	<b>(555,981)</b>	<b>(492,745)</b>
<b>EBITDA</b>						<b>EBITDA</b>					
-	-	-	-	-	-	-	-	-	-	-	-
-	6,213	-	6,213	5,008	5,076	-	14,223	-	14,223	9,833	11,364
4,214	-	-	4,214	2,400	-	11,496	-	-	11,496	7,200	-
(5,855)	(4,524)	(1,825)	(12,204)	(11,900)	(19,921)	(17,708)	(13,571)	(5,476)	(36,755)	(36,300)	(64,112)
-	-	-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	3,152	-	-	-	-	-	3,152
-	-	-	-	-	-	-	-	-	-	-	-
<b>(92,956)</b>	<b>(37,810)</b>	<b>(23,280)</b>	<b>(154,047)</b>	<b>(218,496)</b>	<b>(204,203)</b>	<b>(249,892)</b>	<b>(170,609)</b>	<b>(69,238)</b>	<b>(489,739)</b>	<b>(575,248)</b>	<b>(542,341)</b>
<b>Net Income</b>						<b>Net Income</b>					