

# PAJARO VALLEY HEALTH CARE DISTRICT HOSPITAL CORPORATION

## BOARD OF DIRECTORS SPECIAL MEETING AGENDA

### Virtual/Teleconference

ZOOM LINK <https://zoom.us/j/93443061917>

TELEPHONE +1 669 900 9128 WEBINAR ID: 934 4306 1917

**September 29, 2022  
5:00 p.m.**

**Agenda documents** are available for review in person at the office of the Clerk of the Board, Watsonville Community Hospital, 75 Nielson Street, Hospital Main Lobby-Visitors Desk; and electronically on the Pajaro Valley Healthcare District's website, at: PVHCD.org and at PVHCDHospital.org

To view online, visit the Board's website at: PVHCD.org. or PVHCDHospital.org Select the meeting date to view the agenda and supporting documents.

Written comments must be received before 4:00 p.m. the day of the meeting to be included with agenda materials. Comments received after 4:00 p.m. on meeting day will be included in the minutes record. For additional information, call 831-763-6040 or email [info@pvhcdhospital.org](mailto:info@pvhcdhospital.org) or [info@pvhcd.org](mailto:info@pvhcd.org)

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#### **CONSENT AGENDA**

Consent items include routine business that does not call for discussion. One roll call vote is taken for all items. Only a Board Member may pull items from Consent to Regular Agenda. Members of the public must request that a Board Member pull an item from the Consent Agenda prior to the start of the meeting. Staff is available to address public concerns Monday through Friday, 8:00 a.m. to 5:00 p.m.

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#### **TRANSLATION SERVICES/SERVICIOS DE TRADUCCION**

*Spanish language translation is available on an as needed basis. Please call at least three business days in advance of the meeting at (831) 763-6040 or by email at [info@pvhcdhospital.org](mailto:info@pvhcdhospital.org) or [info@pvhcd.org](mailto:info@pvhcd.org)*  
*Las sesiones de la Mesa Directiva pueden ser traducidas del inglés al español y del español al inglés. Por favor llame por lo menos tres días hábiles antes de la reunión para solicitar interpretación al (831) 763-6040o envíe un correo electrónico a [info@pvhcdhospital.org](mailto:info@pvhcdhospital.org) or [info@pvhcd.org](mailto:info@pvhcd.org)*

#### **ACCOMMODATIONS FOR PERSONS WITH DISABILITIES**

*The Pajaro Valley Health Care District Hospital does not discriminate on the basis of disability, and no person shall, by reason of a disability, be denied the benefits of its services, programs, or activities. If you are a person with a disability and wish to participate in the meeting and require special assistance in order to participate, please call (831) 763-6040 or email at [info@pvhcdhospital.org](mailto:info@pvhcdhospital.org) or [info@pvhcd.org](mailto:info@pvhcd.org) at least three business days in advance of the meeting to make arrangements.*

*Persons with disabilities may request a copy of the agenda in an alternative format.*

**Pajaro Valley Health Care District Hospital Corporation– Board of Directors  
Public Participation Guidelines**

**PUBLIC COMMENT**

**Participating in Person:**

The meeting space is open with limited capacity. Face coverings are highly recommended in the meeting space, regardless of vaccination status. To address the Board, please line up at the podium when the Board Chair calls for general public comment or calls for public comment on the regular agenda item to which you would like to speak. Please state your name clearly for the record before making your comment and limit your remarks to the allotted time.

**Participating by Phone:**

To address the Board, dial the telephone number provided and you will be prompted to enter the meeting ID number. After that, you will be able to listen to the meeting and speak during public comment as announced by the Chair. The Clerk will call on people by the last four digits of their phone number.

The following commands can be entered via DTMF tones using your phone's dial pad while in a Zoom meeting:

- \*6 - Toggle mute/unmute
- \*9 - Raise hand

**Participating online via Zoom:**

You may download the Zoom client or connect to the meeting in-browser. If using your browser, make sure you are using a current, up-to-date browser: Chrome 30+, Firefox 27+, Microsoft Edge 12+, Safari 7+. Certain functionality may be disabled in older browsers including Internet Explorer.

You will be asked to enter an email address and name. **Please identify yourself by any name you choose (you are not required to state your real name to participate)** as this appears online and is how we notify you when it is your turn to speak.

When the Board Chair calls for the item on which you wish to speak, click on "raise hand." The Clerk will activate and unmute speakers in turn. Speakers will be notified shortly before they are called to speak.

When called, please limit your remarks to the time allotted.

**RELATED CORRESPONDENCE** 

Written comments on agenda items may also be submitted to the Board by email or US Mail

**Email:** [info@pvhcdhospital.org](mailto:info@pvhcdhospital.org) or [info@pvhcd.org](mailto:info@pvhcd.org)

- Emailed documents may take up to 24 hours to be posted
- Please include the agenda item number

**U.S. Mail:**

PVHCD Hospital Corporation  
Board of Directors  
75 Nielson Street,  
Watsonville, CA 95076

Comments received after 4 p.m. the day of the meeting and before the end of the meeting will be included with the minutes record. General comments not related to topics on the agenda will be included with the next Written Correspondence Listing.

For the latest COVID-19 updates,  
please visit the County Health  
Services Agency website at:  
<http://santacruzhealth.org>

\*Published in PDF, and available online at:  
PVHCD.org

**INTRODUCTORY ITEMS**

**1. CALL TO ORDER**

**2. CONSIDERATION OF LATE ADDITIONS TO THE AGENDA**

**3. PUBLIC COMMENT**

Any person may address the Board during its Public Comment period. Speakers must not exceed two (2) minutes in length, or the time limit established by the Chair, and individuals may speak only once during Public Comment. All Public Comments must be directed to an item listed on today's Consent Agenda, Closed Session Agenda, yet to be heard on Regular Agenda, or a topic not on the agenda that is within the jurisdiction of the Board. Board members will not take actions or respond immediately to any public communication presented regarding topics not on the agenda but may choose to follow up later, either individually, or on a subsequent Board of Director's Agenda. Public Comments will normally be received by the Board for a period not to exceed thirty (30) minutes. If, at the end of this period, additional persons wish to address the Board, the Public Comment period may be continued to the last item on the agenda.

**REGULAR AGENDA**

**4. CREDIT AGREEMENT WITH DAVID & LUCILE PACKARD FOUNDATION**

Recommended Action(s):

- a. Adopt a Resolution Approving Credit Agreement between the David and Lucile Packard Foundation, Pajaro Valley Health Care District Project, and the Pajaro Valley Health Care District Hospital Corporation to advance a \$6,347,767 loan.
- b. Authorize CEO Salyer to execute the attached Credit Agreement and all ancillary documents related to the Credit Agreement necessary complete the transaction.
- c. Authorize CEO Salyer, upon the advice of administrative staff and legal counsel, to make miscellaneous changes to the Credit Agreement to effectuate the will of the Board to the close the transaction, as necessary.

**5. ADJOURNMENT**

## Board Memo

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**Agenda Item:** Approve a Resolution Approving Credit Agreement with the David and Lucile Packard Foundation

**Executive Sponsor:** Steven Salyer, CEO

**Meeting Date:** September 29, 2022

### Recommended Action:

- a. Adopt a Resolution Approving Credit Agreement between the David and Lucile Packard Foundation, Pajaro Valley Health Care District Project, and the Pajaro Valley Health Care District Hospital Corporation to advance a \$6,347,767 loan.
- b. Authorize CEO Salyer to execute the attached Credit Agreement and all ancillary documents related to the Credit Agreement necessary complete the transaction.
- c. Authorize CEO Salyer, upon the advice of administrative staff and legal counsel, to make miscellaneous changes to the Credit Agreement to effectuate the will of the Board to the close the transaction, as necessary.

### Background:

The David and Lucile Packard Foundation (Packard Foundation) has a special loan program to advance funds to worthy community projects based on pledges for future-year gifts. It is called a Community Investment Loan (CIL). During the fundraising for the acquisition, many people and corporations were willing to donate to the effort to save the hospital but did not want or were not able to fulfill their gifts immediately. The Pajaro Valley Health Care District Hospital Corporation (PVHCDHC) and Pajaro Valley Healthcare District Project received \$6,347,767 in future year pledges that qualify under the CIL program. Therefore, in early October the Packard Foundation will advance this amount to the hospital. The pledges are scheduled to be fulfilled by the donors in 2023, 2024, 2025. The loan is collateralized based on these pledges.

PVHCDHC will be responsible for paying interest on this debt at the rate of .5% per annum. A principal payment schedule (based on pledge commitment dates) is set forth in the Credit Agreement and is summarized below.

The Packard Foundation Board of Directors has already approved this loan. Since the PVHCDHC does not have tax exemption status at this time, both the Pajaro Valley Health Care District and the PVHCDHC are identified as co-borrowers. The Packard Foundation can only issue the loan under the name of at least one organization that has a tax exemption. The tax exemption for PVHCDHC is currently pending.

**Financial Impact:**

Principal Loan Amount: \$6,347,767

Interest Rate: .5% per annum

Repayment Schedule:

<u>Principal Payment Date*</u>	<u>Principal Payment Amount</u>
March 31, 2023	\$1,641,400
March 31, 2024	\$1,912,932
March 31, 2025	\$1,890,932
January 31, 2026	\$902,503

\*The principal repayment schedule was specifically developed based on the dates that donors committed that they will fulfil their gifts.

Accrued interest shall be due and payable semi-annually, commencing on March 31, 2023, and on each September 30 and March 31 thereafter until all of the obligations are satisfied in full. The loan may be prepaid at any time without penalty.

**Attachments:**

- A. Resolution & Credit Agreement

**BEFORE THE BOARD OF DIRECTORS  
OF THE PAJARO VALLEY HEALTH CARE DISTRICT HOSPITAL CORPORATION**

**RESOLUTION NO. \_\_\_\_**

On the motion of Director  
Duly seconded by Director  
The following resolution is adopted.

**RESOLUTION APPROVING THE PACKARD FOUNDATION CREDIT AGREEMENT**

The Board of Directors (the “**Board**”) of the **PAJARO VALLEY HEALTH CARE DISTRICT HOSPITAL CORPORATION**, a California nonprofit public benefit corporation (the “**Corporation**”), required to approve the matters set forth herein, does hereby consent to the adoption of the following resolutions.

**I. Background of the Hospital Acquisition**

**WHEREAS**, Pajaro Valley Health Care District Project, a California nonprofit public benefit corporation (the “**Project**”), was organized for the specific purpose to raise funds for and take all necessary steps to acquire Watsonville Community Hospital (the “**Hospital**”).

**WHEREAS**, the Corporation (as successor by assignment from the Project) entered into that certain Asset Purchase Agreement, dated as of December 27, 2021 (as amended, the “**Asset Purchase Agreement**”), as the “**Buyer**” described therein, with Halsen Healthcare LLC, Watsonville Hospital Holdings, Inc., Watsonville Healthcare Management, LLC, and Watsonville Hospital Corporation, as the “**Sellers**” described therein (collectively, the “**Sellers**”), pursuant to which the Corporation purchased from the Sellers specified assets and liabilities that comprise the business of the Hospital (the “**Acquisition**”). The Acquisition was consummated on August 31, 2022.

**II. Packard Foundation Credit Agreement**

**WHEREAS**, The David and Lucile Packard Foundation (the “**Foundation**”) has a special community investment loan program to advance funds to worthy community projects based on pledges for future-year gifts. During the fundraising for the Acquisition, many individuals and corporations were willing to donate to the efforts to purchase the Hospital but were not able or willing to fulfill their gifts immediately. The Corporation and the Project received Six Million Three Hundred Forty-Seven Thousand Seven Hundred Sixty-Seven Dollars (\$6,347,767) in future year pledges (the “**Pledged Funds**”) that qualify under the community investment loan program. The Pledged Funds are scheduled to be fulfilled by their respective donors in 2023, 2024 and 2025.

**WHEREAS**, the Foundation wishes to advance an amount equal to the Pledged Funds to the Hospital, and the Project and the Corporation wish to loan such amount from the Foundation as joint and several co-borrowers, on the terms and conditions set forth in that certain Credit Agreement, in substantially in the form attached hereto as **Exhibit A**. The loan will be

collateralized by the Pledged Funds and as Pledged Funds are received by the Hospital, the outstanding balance of the loan will be paid down.

**WHEREAS**, the Board has reviewed and considered the terms of the Credit Agreement, and such other agreements, instruments or documents contemplated therein, in the forms previously submitted to the Board (collectively, the “**Credit Documents**”).

**WHEREAS**, in connection with the transactions contemplated by the foregoing, the Board deems it fair, advisable and in the best interest of the Corporation to execute and deliver each of the Credit Documents and to complete the transactions contemplated thereby.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board hereby authorizes, adopts and approves the form, terms and provisions and the execution and delivery by the Corporation each of the Credit Documents in all respects.

**FURTHER RESOLVED**, that the Corporation be, and it hereby is, authorized to enter into each of the Credit Documents, and that any director or officer of the Corporation and his or her designees be, and each of them hereby is, authorized in the name and on behalf of the Corporation, to execute and deliver each of the Credit Documents, with such changes therein as may be deemed necessary, appropriate or advisable by the directors or officers executing the same, the execution thereof by such director or officer to be conclusive evidence of such approval; and that the Corporation be, and it hereby is, authorized and empowered to perform its obligations under each of the Credit Documents, including the transactions contemplated thereby.

### **III. General Authorization and Ratification**

**RESOLVED**, that the directors and officers of the Corporation be, and each of them hereby is, authorized and directed to do or cause to be done all such acts or things and to sign and deliver, or cause to be signed and delivered, in the name and on behalf of the Corporation, all such documents, instruments, and certificates (including, without limitation, all notices and certificates required or permitted to be given or made under the terms of any of the Credit Documents), as such director or officer may deem necessary or appropriate to carry out the purposes and intent of the foregoing resolutions and to perform the obligations of the Corporation under the agreements and instruments in connection with any of the Credit Documents or otherwise referred to in the foregoing resolutions.

**FURTHER RESOLVED**, that all actions taken by the directors and officers on behalf of the Corporation in connection with the matters described in the foregoing resolutions are hereby ratified and confirmed in all respects.

*(Remainder of page intentionally left blank)*

*(Signature page follows)*



**PASSED AND ADOPTED** by the Board of Directors of the Pajaro Valley Health Care District Hospital Corporation, this 29th day of September, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
**Chair, Board of Directors**

**ATTEST:** \_\_\_\_\_  
**Clerk of the Board**

**Approved as to Form:**

\_\_\_\_\_  
**Attorney for the Corporation Board**

**Exhibit A**

Credit Agreement

(Attached)

*Draft For Discussion Only – 9/28/2022*

## CREDIT AGREEMENT

This CREDIT AGREEMENT (the “**Agreement**”), dated September \_\_, 2022 (“**Effective Date**”) for reference purposes only, is by and between **THE DAVID AND LUCILE PACKARD FOUNDATION**, a California nonprofit public benefit corporation (“**Foundation**”), with its offices located at 343 Second Street, Los Altos, California 94022, as lender, and **PAJARO VALLEY HEALTHCARE DISTRICT PROJECT**, a California nonprofit public benefit corporation (“**PVHDP**”), with its chief executive office located at 23 East Beach, Suite 214, Watsonville, California 95076, as a co-borrower, and **PAJARO VALLEY HEALTH CARE DISTRICT HOSPITAL CORPORATION**, a California nonprofit public benefit corporation (“**PVHDHC**”), with its chief executive office located at 75 Nielson Street, Watsonville, California 95076, as a co-borrower.

## RECITALS

**A.** Foundation has determined that it will be able to accomplish one or more of its charitable, scientific, and educational purposes by providing a program-related investment (as such term is defined in the Internal Revenue Code of 1986, as amended (“**Code**”)), for the benefit of Borrower upon the terms and conditions set forth in this Agreement.

**B.** PVHDP is a nonprofit corporation exempt from federal income taxation under Code Section 501(c)(3). PVHDP is organized and operated for the specific charitable purpose of raising funds for and take all necessary steps to acquire Watsonville Community Hospital directly or through a health care district formed for the benefit of the County of Santa Cruz under California law that provides a responsive system of care with a range of services that are well-functioning and focused on the health outcomes of the district’s residents.

**C.** PVHDHC is a nonprofit corporation organized and operated for the specific charitable purpose of (1) aiding, assisting, and acting on behalf of the Pajaro Valley Health Care District, a political subdivision of the state of California, in the performance of its essential government function of operating Watsonville Community Hospital and other related ancillary services and outpatient clinics; (2) promoting the health and welfare of the general public, particularly those individuals residing in the Pajaro Valley community; (3) engaging in any other activities in furtherance of the purposes for which PVHDHC is formed; and (4) receiving, investing, and utilizing funds, property, and in-kind materials or service acquired through the solicitation of contributions, donations, grants, gifts, and bequests and the like for the purposes for which PVHDHC is formed. PVHDHC is in the process of completing, and plans to submit to the Internal Revenue Service (“**IRS**”) by October 31, 2022, a Form 1023 seeking an exemption from federal income taxation under Code Section 501(c)(3).

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants

*Watsonville Community Hospital*

*Draft For Discussion Only – 9/28/2022*

and agreements herein contained, Foundation and Borrower agree as follows:

## ARTICLE 1 -- THE LOAN

**1.1 The Loan.** Subject to the terms and conditions of this Agreement and in reliance on the representations and warranties contained herein (and contained directly or by reference in those documents incorporated herein by reference), Foundation agrees to advance to PVHDP and PVHDHC (collectively, “**Borrower**”) a term loan in the principal amount of Six Million Three Hundred Forty-Seven Thousand Seven Hundred Sixty-Seven Dollars (\$6,347,767) (the “**Loan**”), and PVHDP and PVHDHC shall be joint and severally obligated, committed, and liable to repay the Loan in accordance with the terms of this Agreement and to satisfy all of the Obligations (as defined in **Section 1.7.4** below). Borrower may not re-borrow all or any portion of the principal amount of the Loan after repayment or prepayment thereof.

**1.2 Use of Loan Proceeds.** Borrower shall use the proceeds of the Loan and any interest or earnings thereon to bridge finance the written pledges set forth in **Attachment A** attached hereto and incorporated herein by reference (the “**Pledge Schedule**”) that have committed payments to PVHDP to support the acquisition and operation of Watsonville Community Hospital (collectively, the “**Pledges**”), as more fully described in the loan application for the Loan submitted to Foundation by Borrower on July 22, 2022 (“**Borrower’s Loan Application**”).

**1.3 Interest Rate and Interest Payments.** Borrower shall pay interest on the unpaid principal amount of the Loan commencing upon the date the Loan funds are released to Borrower in accordance with **Section 1.8** below (“**Closing Date**”) and through the date that the entire principal amount of the Loan has been repaid in full, at an interest rate equal to one-half percent (0.5%) per annum, simple interest. All computations of interest shall be based on a three hundred sixty (360) day year, a thirty (30) day month, and the actual number of days elapsed in any period of less than one calendar month.

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**1.4 Principal Payments, Interest Payments, and Maturity Date.**

**1.4.1 Interest Payments.** Accrued interest shall be due and payable semi-annually, commencing on March 31, 2023, and on each September 30 and March 31 thereafter until all of the Obligations are satisfied in full.

**1.4.2 Principal Payments.** On or before the dates set forth below (each, a “**Principal Payment Date**”) and in addition to the interest payments due in accordance with **Section 1.4.1** above, Borrower shall pay to Foundation a principal payment in the amount set forth beside such **Principal Payment Date**:

<b><u>Principal Payment Date</u></b>	<b><u>Principal Payment Amount</u></b>
March 31, 2023	\$1,641,400
March 31, 2024	\$1,912,932
March 31, 2025	\$1,890,932
January 31, 2026	\$902,503

**1.4.3 Maturity Date.** Borrower shall pay to Foundation all amounts due under this Agreement, including, without limitation, all unpaid accrued interest and all unpaid principal, on or before October 31, 2025 (the “**Maturity Date**”).

**1.5 Prepayments.** At Borrower’s option, Borrower may prepay the Loan, in whole or in part and from time to time, without premium or penalty, upon three (3) business days’ notice to Foundation. All prepayments made under this **Section 1.5** shall be applied in the following order: (a) first, to unpaid fees, costs, and expenses then due and payable under this Agreement and/or any other documents, instruments, and agreements signed by Borrower and delivered to Foundation to evidence the Loan under this Agreement (collectively, the “**Credit Documents**”); (b) second, to the next principal payment due under **Section 1.4.2** above; provided that, in no event shall such application relieve Borrower from making any interest payment due under **Section 1.4.1** above on or before the due date for such interest payment; (c) third, to accrued and unpaid interest on the Loan; and (d) fourth, to any other amounts payable under any Credit Document.

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## **1.6 Payment Terms.**

**1.6.1 Place and Manner.** Borrower shall make all payments hereunder by check or wire transfer at the office of Foundation as set forth above, or at such other place as Foundation shall specify to Borrower from time to time, in United States currency. Checks constitute payment only when cleared and paid to Foundation.

**1.6.2 Date.** Whenever any payment due hereunder shall fall due on a day other than a Business Day (as defined below), such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of interest or fees, as the case may be. For purposes of this Agreement, “**Business Day**” shall mean any day other than a Saturday, a Sunday or a scheduled holiday of Foundation.

**1.6.3 Late Payments.** If any amounts required to be paid by Borrower under any Credit Document are not paid within ten (10) days of when due, then Borrower shall pay Foundation the following: (a) a late payment fee equal to two percent (2%) of the amount not paid when due, and (b) interest on the aggregate, outstanding balance of such amounts from the eleventh (11<sup>th</sup>) day after the date due until those amounts are paid in full at a *per annum* rate of two percent (2%) greater than the rate which would otherwise apply, or the maximum rate permitted by applicable law, whichever is less.

**1.7 Full Recourse.** Repayment of the Loan and performance of the obligations arising under this Agreement are provided for hereunder by full recourse to each of PVHDP and PVHDHC as follows:

**1.7.1 Recourse Obligation.** Foundation shall have full recourse to each of PVHDP and PVHDHC, and each of PVHDP and PVHDHC shall have liability to Foundation, for all unpaid amounts due and payable under this Agreement and any other Credit Document if an Event of Default (as defined in **Section 6.1** below) occurs. The terms governing Foundation’s recourse to Borrower are further set forth in **Section 6.2** below. In no event shall any trustee, director, officer, employee, volunteer, agent or representative of Borrower have any personal liability hereunder or under any other Credit Document.

**1.7.2 Name and State.** Borrower warrants and represents that Borrower’s exact legal name, state of incorporation, and chief executive offices are as set forth in the first paragraph of this Agreement.

**1.7.3 Obligations Assured.** This Agreement is meant to provide for repayment of the Obligations (as defined in **Section 1.7.4** below) and any amounts or obligations

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that arise after filing of a petition by or against Borrower under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay provisions under the Bankruptcy Code or otherwise.

**1.7.4 Definition of Obligations.** For purposes of this Agreement, “**Obligations**” shall mean all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by Borrower to Foundation of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of any Credit Document.

**1.8 Loan Funding.** Upon satisfaction of all of the conditions precedent set forth in **Article 2** below, as determined in the sole and absolute discretion of Foundation, Foundation shall fund the Loan, and the proceeds thereof shall be accepted by Borrower, on or before October 7, 2022, or upon such later date as Foundation and Borrower may mutually agree. Foundation shall forward the Loan funds directly to Borrower’s bank account in accordance with wire transfer instructions delivered to Foundation by Borrower using Foundation’s Request for Wire Transfer form at least seven Business Days in advance of the date of Loan funding.

**1.9 Funding Not a Waiver.** Any language in any section of this Agreement to the contrary notwithstanding, the funding of the Loan by Foundation shall not be deemed to be a waiver by Foundation of any rights, conditions, agreements, warranties or representations in Foundation’s favor or for Foundation’s benefit.

## **ARTICLE 2 -- CONDITIONS PRECEDENT TO CLOSING**

Foundation's obligation to make the Loan to Borrower shall be subject to the satisfaction, or waiver by Foundation in writing, of each of the following conditions precedent on or prior to the Closing Date, as determined in Foundation’s sole and absolute discretion (collectively, the “**Conditions Precedent**”):

**2.1 No Violation of Law or Regulation; No Liability or Penalty.** The Loan, including Borrower’s permitted use of the Loan proceeds as set forth in **Section 1.2**, shall not violate any applicable law or governmental regulation or subject Foundation to any liability, penalty or onerous condition.

**2.2 Execution and Delivery of Credit Documents.** Borrower shall execute and deliver to Foundation each of the Credit Documents, each of which shall be in form and substance satisfactory to Foundation. Borrower’s delivery of the Credit Documents to Foundation shall be accomplished as follows: (a) the Credit Agreement shall be executed and

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delivered via digital signature instructions provided to Borrower by Foundation; and (b) each of the other original Credit Documents shall be delivered to Resources Law Group, as outside legal counsel for Foundation, either digitally or in hard copy, as requested, to 555 Capitol Mall, Suite 1090, Sacramento, California 95814, (Attention: Julie Turrini) or [jturrini@resourceslawgroup.com](mailto:jturrini@resourceslawgroup.com).

**2.3 Closing Fees and Costs.** Borrower shall pay all closing, escrow, and other costs, fees, and expenses, if any, relating to the closing of the Loan. Foundation shall not be responsible for paying any closing, escrow, or other costs, fees, and expenses relating to the closing of the Loan or the acquisition or operation of Watsonville Community Hospital (the “Project”).

**2.4 Borrower’s Corporate Authorizations.** Foundation shall have received satisfactory evidence that each of PVHDP and PVHDHC has duly authorized the following: (a) such party’s acceptance of the Loan as provided for in this Agreement and the other Credit Documents; and (b) such party’s execution and delivery of the Credit Documents and the performance of the Obligations.

**2.5 Borrower’s Organization and Status.** Foundation shall have received, reviewed, and approved all of the documents relating to the formation and organization of each of PVHDP and PVHDHC, including, without limitation, the following (collectively, the “Charter Documents”): (a) the Articles of Incorporation of each of PVHDP and PVHDHC, certified by the Secretary of State of the State of California within a period of time immediately preceding the Closing Date reasonably acceptable to Foundation; (b) a copy of the current Bylaws of each of PVHDP and PVHDHC; (c) a good standing certificate for each of PVHDP and PVHDHC issued by the Secretary of State of the State of California within a period of time immediately preceding the Closing Date reasonably acceptable to Foundation; and (d) a copy of the most recent determination letter issued to PVHDP by the Internal Revenue Service confirming PVHDP’s status as a public charity exempt from federal income tax under Code Section 501(c)(3).

**2.6 Project Information.** Foundation shall have received from Borrower, and shall have reviewed and approved, all documents and information reasonably requested by Foundation relating to Borrower and the Project.

**2.7 Representations and Warranties True; Compliance with Covenants.** The representations and warranties of Borrower contained in this Agreement shall be true and correct when made, and shall continue to be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made at and as of such time, and Borrower shall have performed or complied with all covenants, agreements, and conditions on its part required to be performed or complied with hereunder at or prior to the Closing Date.

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Additionally, so long as any of the Obligations remain outstanding, Borrower warrants that upon discovery, Borrower shall promptly disclose to Foundation in writing any material fact or circumstance known to or subsequently learned by Borrower which would have a Material Adverse Effect (as defined in **Section 3.1** below) or would make any representation materially untrue or misleading.

**2.8 Documents and Certificates Delivered.** Each of PVHDP and PVHDHC shall have delivered to Foundation on the Closing Date such certificates of principal officers of each such party, including, without limitation, a certificate as to the correctness of such party's representations and warranties and non-occurrence of any Event of Default, a certificate of incumbency of such party's principal officers, and such evidence of the fulfillment of the Conditions Precedent, as Foundation may reasonably request.

**2.9 Legal Matters in Order.** All legal matters in connection with this Agreement and the transactions contemplated hereby shall be resolved satisfactorily to Foundation, and Foundation shall have received copies of all other documents reasonably requested by Foundation in connection with this Agreement and the Loan.

**2.10 No Change in Business or Financial Condition.** There shall have been no change in the business, property or financial condition of either of PVHDP or PVHDHC since the date of this Agreement, which has had or will have a Material Adverse Effect (as defined in **Section 3.1** below).

**2.11 Pledge Schedule and Written Pledges.** Foundation shall have received, reviewed, and approved copies of the written Pledges that are set forth on the Pledge Schedule that is attached hereto as **Attachment A**, each signed by the pledger and providing for the payment to PVHDHC of Pledges in the amounts and on dates set forth on the Pledge Schedule.

### **ARTICLE 3 -- BORROWER'S REPRESENTATIONS AND WARRANTIES**

Each of PVHDP and PVHDHC represents and warrants to Foundation as follows, subject to the exceptions described in the disclosure schedule attached hereto as **Attachment B** and incorporated herein by reference (the "**Disclosure Schedule**"):

**3.1 Corporate Organization and Exempt Status.** Each of PVHDP and PVHDHC is (a) a nonprofit public benefit corporation duly organized, validly existing, and in good standing under the laws of the State of California; (b) has the power and authority to own, lease, and operate its properties and carry on its business as now conducted and to execute and deliver each of the Credit Documents and to perform the Obligations; and (c) is duly qualified, licensed to do business, and in good standing as a foreign corporation in each jurisdiction, if any, where the failure to be so qualified or licensed might have a Material Adverse Effect (as defined

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below). In addition, PVHDP is a charitable organization exempt from income tax under Code Section 501(c)(3), and is classified as a public charity (not a "private foundation") under Code Section 509(a)(1) and Code Section 170(b)(1)(A)(vi). Neither PVHDP nor PVHDHC is authorized to issue any shares of capital stock, or owns twenty percent (20%) or more of the shares of any class of capital stock of any publicly-held corporation. For purposes of this Agreement, "**Material Adverse Effect**" shall mean a material adverse effect on (a) the business, assets, operations, prospects or other condition (financial or otherwise) of PVHDP or PVHDHC, as applicable; (b) the tax exempt, non-private foundation status, of PVHDP or PVHDHC, as applicable; (c) the ability of PVHDP or PVHDHC, as applicable, to pay or perform any of the Obligations under any of the Credit Documents; or (d) the rights and remedies of Foundation under any of the Credit Documents.

**3.2 Due Authorization; Binding Obligation.** The execution, delivery, and performance by each of PVHDP and PVHDHC of each of the Credit Documents, and the contemplated use of the proceeds of the Loan, have been duly authorized by the Board of Directors of each of PVHDP and PVHDHC by all requisite corporate action. Upon execution and delivery by each of PVHDP and PVHDHC, each of the Credit Documents will constitute the legal, valid, and binding obligations of each of PVHDP and PVHDHC under applicable law, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of the rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies, including, without limitation, specific performance and injunctive relief.

**3.3 Title to Assets.** Except as set forth in Borrower's Financial Statements (as defined in **Section 3.7** below), Borrower has good title to its assets and properties free and clear of any lien, charge, encumbrance or security interest which could have a Material Adverse Effect. Neither PVHDP nor PVHDHC has any legal obligation, absolute or contingent, to any individual or other legal entity to sell its assets (other than sales in the ordinary course of business), or to effect any merger, consolidation or other reorganization of such party or to enter into any agreement with respect thereto.

**3.4 Patents and Other Rights.** To the best of Borrower's knowledge, each of PVHDP and PVHDHC owns, and has the full right to license without the consent of any other individual or other legal entity, all patents, licenses, trademarks, trade names, trade secrets, service marks, copyrights and all rights with respect thereto, which are required to conduct its business as now conducted. Each of PVHDP and PVHDHC possesses all permits, franchises and licenses, if any, necessary to enable such party to conduct its business in compliance with any applicable statute, law, ordinance, rule, regulation, code, order, guideline or other restriction or requirement which has been enacted or otherwise promulgated by any federal, state, county, municipal or other governmental or quasi-governmental agency, board, bureau, commission,

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court, department, panel or other official body (whether legislative, administrative or judicial), or by any competent official of any of the foregoing.

**3.5 No Actions, Proceedings or Judgments.** Except as reflected or provided for in the Disclosure Schedule, to the best of Borrower’s knowledge, there is no action, suit, investigation or proceeding pending or threatened, by or before any court or governmental or administrative body or agency which could have a Material Adverse Effect. Neither PVHDP nor PVHDHC is nor will be on the Closing Date in default or alleged to be in default with respect to any judgment, writ, injunction, decree, order, rule or regulation of any court or any governmental or administrative body or agency by which such party or its assets or properties are bound which default or alleged default could have a Material Adverse Effect.

**3.6 No Violation of Existing Agreements.** Neither the execution and delivery of the Credit Documents by either PVHDP or PVHDHC, nor the performance by either PVHDP or PVHDHC of the Obligations under the Credit Documents, nor either PVHDP or PVHDHC use of proceeds of the Loan contemplated hereunder, will violate any provision of law, any order, rule or regulation of any court or governmental or regulatory body, the Charter Documents of such party, or any indenture, agreement or instrument to which such party is a party or by which such party or its assets or properties are bound, or conflict with, result in a breach of, or constitute (with notice or lapse of time, or both) a default under any such indenture, agreement or instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the assets or properties of such party. Neither PVHDP nor PVHDHC is a party to any indenture, agreement or instrument or subject to any restriction which prohibits such party from performing, or, assuming there is no default thereunder, adversely affects the ability of such party to perform the Obligations under the Credit Documents, or to utilize the proceeds of the Loan as contemplated hereunder. Neither PVHDP nor PVHDHC is nor will by such party’s execution of any of the Credit Documents be or become in default or alleged to be in default under any indenture, agreement or instrument for borrowed money or under any indenture, agreement or instrument which, if in default, could have a Material Adverse Effect.

**3.7 Borrower’s Financial Statements.** Borrower has furnished Foundation with copies of PVHDP’s unaudited balance sheet as of July 19, 2022 and PVHDP’s unaudited profit and loss statement for the period ending July 19, 2022, which is the latest reporting period for which Borrower has prepared unaudited financial statements (collectively, the “**Financial Statements**”). The Financial Statements are (a) in accordance with the books and records of PVHDP, which have been maintained in accordance with good business practice; (b) have been prepared in conformity with generally accepted accounting principles and practices as in effect in the United States from time to time, consistently applied (“GAAP”); and (c) are true and correct in all material respects, and fairly present the financial position of PVHDP as well as the results of PVHDP’s operations for the periods indicated therein.

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Except as reflected or provided for in the Financial Statements or in the Disclosure Schedule and except in the ordinary course of business, (a) Borrower has no material indebtedness outstanding; (b) Borrower has not made any material investments in, advances to or guaranties of the obligations of, any person or entity; and (c) Borrower has no material liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise.

**3.8 Tax Matters.** Each of PVHDP and PVHDHC has either filed all tax returns required to be filed in any jurisdiction, or timely secured appropriate extensions of time in which to so file, and has paid all taxes, assessments, fees or other governmental charges which have become due and payable, except for any taxes which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established. There are no tax audits of either of PVHDP or PVHDHC presently being conducted or threatened.

**3.9 No Other Consent Required.** No consent, approval or authorization of, nor any notice or declaration to or filing with, any governmental or administrative body or agency by or on the part of either PVHDP or PVHDHC is required for the valid execution, delivery, and performance by such party of the Credit Documents, or for compliance with the terms and provisions thereof, including, but not limited to, the use of the proceeds of the Loan as contemplated hereunder.

**3.10 Insurance Coverage; Foundation's Legal Advice or Promises to Borrower.** Each of PVHDP and PVHDHC has, in full force and effect, such insurance coverage and in such amounts as such party believes to be prudent for an organization of such party's size and nature. Neither PVHDP nor PVHDHC has received any legal or tax advice or opinions from Foundation concerning any of the transactions contemplated by the Credit Documents or the use of the proceeds of the Loan. Neither PVHDP nor PVHDHC has received any promises or assurances of extensions or forbearance by Foundation which are not contained in the Credit Documents.

**3.11 Compliance with Laws and Regulations.** To the best of Borrower's knowledge, each of PVHDP and PVHDHC is in compliance with all federal, state and local laws, rules, regulations, orders, writs or decrees, the violation of which would have a Material Adverse Effect.

**3.12 Disclosures of Material Changes in Assets or Business.** Except as contemplated by this Agreement or disclosed in the Financial Statements, neither PVHDP nor PVHDHC has:

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**3.12.1** Mortgaged, pledged, or subjected to lien, charge, security interest or to any other encumbrance, any of its assets or properties, except for a fair consideration or in the ordinary course of business;

**3.12.2** Sold, assigned, transferred, leased or otherwise disposed of any of its assets or properties, or acquired any assets or properties, except for a fair consideration or in the ordinary course of business; or

**3.12.3** Suffered or expects to suffer any Material Adverse Effect.

**3.13 No Commitments with or Loans to Officers, Directors or Related Parties.** Neither PVHDP nor PVHDHC is a party to any agreement, lease or commitment with any executive officer or director of such party, their family members or any business in which they have a greater than ten percent (10%) debt or equity interest, nor are there now any loans outstanding from such party to any of such persons.

**3.14 Key Personnel.** To the best of Borrower's knowledge, no officer or employee of either PVHDP or PVHDHC bearing significant responsibility for the operations of such party or the Project, has a present intent to leave his or her position.

**3.15 Project Information.** Borrower has delivered to Foundation, true, correct, and complete copies of all agreements and reports, including any amendments thereto, currently in effect or proposed with respect to the Project, which are in the possession or control of either PVHDP or PVHDHC or any authorized representative of such party and have been requested by Foundation, and Borrower has no knowledge of the existence of any other agreement or report relating to the Project which is not in the possession or control of either PVHDP or PVHDHC or any authorized representative of such party and provided to Foundation.

**3.16 Pledge Schedule.** The Pledge Schedule attached hereto as **Attachment A** sets forth all of the written pledge commitments that PVHDP and PVHDHC has obtained that are to be available to repay the Loan during the Loan term. Borrower has delivered to Foundation a true, correct, and complete copy of each written pledge documentation received to document each of the Pledges identified on the Pledge Schedule. None of the pledgers identified on the Pledge Schedule have notified Borrower of any intention not to honor such Pledges in accordance with the timing set forth in the Pledge Schedule; nor has Borrower obtained any other information from any other source that would lead Borrower to believe that any of the pledgers identified on the Pledge Schedule may be unable to timely honor such Pledges.

**3.17 No Misstatement of Material Fact.** To the best of Borrower's knowledge, none of the information and documents furnished or to be furnished by Borrower to Foundation in connection with the execution and delivery of any of the Credit Documents and consummation

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of the transactions contemplated thereby, contained or will contain any misstatement of material fact or omitted or will omit to state any material fact required to be stated to make the statements therein not misleading.

**3.18 No Rights or Privileges Granted Third Parties.** Borrower's execution and delivery of the Credit Documents will not confer any rights or privileges upon any person or entity not a party to this Agreement.

**3.19 Borrower's Unimpaired Right to Receive Loan Proceeds.** Borrower has the absolute right to receive, and will receive, the entire proceeds of this Loan free and clear of any liens, charges, encumbrances, or security interests whatsoever, and none of the proceeds of this Loan, or any interest or earnings on it, have been or will be pledged, assigned, hypothecated, or otherwise posted or stand as security or collateral for or in connection with any loan, borrowing, note, obligation, guaranty, purchase, sale, or other transaction whatsoever.

**3.20 Bankruptcy.** None of the following has occurred and is continuing: (a) the filing of a petition by or against either PVHDP or PVHDHC under the United States Bankruptcy Code, as amended from time to time, or any similar federal, state, or local law; (b) the appointment of a receiver, trustee, custodian, or liquidator of or for any part of the assets or property of either PVHDP or PVHDHC; (c) the insolvency of either PVHDP or PVHDHC; (d) the making by PVHDP or PVHDHC of any general assignment for the benefit of creditors; or (e) any general failure by either PVHDP or PVHDHC to pay its debts as they become due.

**3.21 No Private Inurement.** The Loan is not intended to benefit and will not benefit, any person having a personal or private interest in either PVHDP or PVHDHC, including, without limitation, such party's trustees, directors, founders, descendants of the founders of such party, or persons related to or controlled by, directly or indirectly, such individuals.

**3.22 No Conflict of Interest.** To the best of Borrower's knowledge after diligent inquiry, neither the Loan nor the Project creates a conflict of interest between any party and either PVHDP or PVHDHC, or Foundation.

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## **ARTICLE 4 -- FOUNDATION'S REPRESENTATIONS AND WARRANTIES**

Foundation represents and warrants to Borrower as follows:

**4.1 No Private Inurement.** The Loan is not intended to benefit, and will not benefit, any person having a personal or private interest in Foundation, including, without limitation, Foundation trustees, directors, descendants of the founders of Foundation, or persons related to or controlled by, directly or indirectly, said individuals.

**4.2 Corporate Organization and Exempt Status; Validity of Obligation.** Foundation (a) is a California nonprofit public benefit corporation, and (b) is an organization described in Code Section 501(c)(3) and is classified as a private foundation under Code Section 509(a). The execution and delivery of this Agreement by Foundation and Foundation's performance of its obligations hereunder have been duly authorized by all requisite corporate action. Upon execution and delivery by Foundation, this Agreement will constitute the legal, valid and binding obligation of Foundation enforceable in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium or similar laws at the time in effect affecting the enforceability of rights of creditors generally and to the discretion of courts of applicable jurisdiction to enforce equitable remedies including, without limitation, specific performance and injunctive relief.

## **ARTICLE 5 -- COVENANTS OF BORROWER**

Borrower covenants and agrees that so long as any of the Obligations remain outstanding:

**5.1 Use of Loan Proceeds.** Borrower shall use the proceeds of the Loan and any interest or earnings thereon solely in the manner required pursuant to **Section 1.2** above. Borrower shall promptly repay any portion of the Loan proceeds used for purposes other than those set forth in **Section 1.2**.

**5.2 Program-Related Purpose.** Borrower understands that Foundation is providing the Loan funds under this Agreement to Borrower as a "program-related investment," as such term is defined in the Code. In furtherance of the charitable goal of Foundation in making the Loan to Borrower and for so long as any of the Obligations remain outstanding, PVHDHC shall ensure operation of the Watsonville Community Hospital in accordance with the description of the Project included in Borrower's Loan Application and PVHDHC shall exercise reasonable good faith efforts to collect the Pledges on or before the due dates set forth for payments in the pledge documents. PVHDHC shall use commercially reasonable efforts to complete and submit to the Internal Revenue Service by October 31, 2022, a Form 1023 seeking an exemption from federal income taxation under Code Section 501(c)(3), and shall provide a copy of the

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determination letter issued to PVHDHC by the IRS promptly upon receipt.

**5.3 Reports.** Borrower shall provide to Foundation the following written reports, at the following times, in reasonable form and detail:

**5.3.1 Audited Annual Financial Statements.** Beginning with the fiscal year of PVHDP and PVHDHC (“**Fiscal Year**”) ending December 31, 2022, and thereafter for every Fiscal Year during the Loan term, on or before the date which shall be one hundred fifty (150) days immediately following completion of such Fiscal Year, a copy of the audited financial statements of each of PVHDP and PVHDHC for such Fiscal Year, together with the report of its independent auditors thereon;

**5.3.2 Unaudited Annual Financial Statements.** Beginning with the Fiscal Year ending December 31, 2022, and thereafter for each Fiscal Year during the Loan term, on or before the date which shall be sixty (60) days immediately following completion of such Fiscal Year, a copy of each of PVHDP and PVHDHC’s unaudited financial statements for such Fiscal Year, certified by the President of each such party;

**5.3.3 Unaudited Semi-Annual Financial Statements.** Beginning with the six month period ending March 31, 2023, and thereafter for each six month period ending September 30 during the Loan term, on or before the date which shall be sixty (60) days immediately following completion of such six month period, a copy of each of PVHDP and PVHDHC’s unaudited financial statements for such six month period, certified by the President of each such party;

**5.3.4 Semi-Annual Narrative Reports.** Beginning with the period ending June 30, 2023, and thereafter for each consecutive six month period ending December 31 and June 30 during the Loan term, on or before the date which shall be sixty (60) days immediately following completion of such reporting period, a written narrative report (each, a “**Narrative Report**”), certified by the President of PVHDP and PVHDHC, providing an update on the status of the Project and Borrower’s progress in satisfying the Obligations in accordance with the Credit Documents. Each Narrative Report shall address the specific items set forth on **Attachment C** attached hereto and incorporated herein by reference, together with any other relevant updates regarding the status of the Project and the Obligations (collectively, the “**Reporting Metrics**”);

**5.3.5 Certificates of Compliance.** With each Narrative Report, a written certification, signed by the President of PVHDP and PVHDHC, confirming that PVHDP and PVHDHC have complied with the terms of the Credit Documents and that no Event of Default, nor any event which upon notice or lapse of time, or both, would constitute an



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Event of Default, has occurred, or, if any Event of Default or such other event has occurred, describing the Event of Default or such other event;

**5.3.6 Final Narrative Report.** Upon repayment of the Loan and satisfaction of the Obligations, a written narrative report discussing the status of the Project, including (a) final Reporting Metrics and other program outcomes achieved; and (b) updated photographs of the Project and copies of representative print media discussing the Project; and

**5.3.7 Additional Reports.** Such other instruments, agreements, certificates, opinions, statements, documents, and information relating to the operations or condition (financial or otherwise) of Borrower, the Project, and compliance by Borrower with the Credit Documents, as Foundation may from time to time reasonably request.

**5.3.8 Delivery of Reports.** Borrower shall deliver all reports and documents required pursuant to **Sections 5.3.1** through **5.3.7** above electronically via email in digital form to the following: (a) Foundation's mission investing site at [mi.packard.org](http://mi.packard.org); and (b) Julie Turrini of Resources Law Group, at [jturrini@resourceslawgroup.com](mailto:jturrini@resourceslawgroup.com). Questions regarding reporting requirements can be directed to [mi@packard.org](mailto:mi@packard.org).

**5.4 Status Preservation.** Each of PVHDP and PVHDC shall do all things necessary to:

**5.4.1** Obtain, preserve, renew, and keep in full force and effect the corporate existence, tax-exempt status under Code Section 501(c)(3), public charity tax status described in Code Sections 509(a)(1) and 170(b)(1)(A)(vi), and all material rights, licenses, permits, franchises and qualifications of such party;

**5.4.2** Avoid becoming a "private foundation" as defined in Code Section 509(a), or a change in its non-private foundation status;

**5.4.3** Comply with all laws and regulations applicable to such party, the violation of which would have a Material Adverse Effect;

**5.4.4** Obtain and maintain in full force and effect all authorizations, qualifications, consents, approvals, exemptions, permits and licenses of, and filings with, governments or governmental or administrative bodies or agencies necessary for the carrying on of any material activity of such party's business;

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**5.4.5** Not change the state where such party's principal offices are located without providing thirty (30) days prior written notice to Foundation; and

**5.4.6** Not change such party's corporate name without providing thirty (30) days prior written notice to Foundation.

**5.5 Notice of Changes in Status or Condition.** Each of PVHDP and PVHDHC shall promptly advise Foundation in writing in reasonable detail of the occurrence of any of the following events:

**5.5.1** Any change in the President or any other key staff of such party who is primarily responsible for the Project;

**5.5.2** Any proceeding instituted or commenced against such party in, by or before any court, governmental or administrative body, department or agency, which proceeding could have a Material Adverse Effect;

**5.5.3** The loss of such party's tax exemption under Code Section 501(c)(3) or such party's public charity tax status described in Code Sections 509(a)(1) and 170(b)(1)(A)(vi);

**5.5.4** Any change in such party's Fiscal Year;

**5.5.5** Any change in such party's operations or condition (financial or otherwise) that causes a Material Adverse Effect;

**5.5.6** Any substantial change in such party's business or any contracts or commitments made by such party not in the ordinary course of such party's business;

**5.5.7** The occurrence of any Event of Default (as defined in **Section 6.1** below) or any event which upon notice or lapse of time, or both, would constitute an Event of Default;

**5.5.8** Any change of address of such party's principal offices;

**5.5.9** Any fact or circumstance known to or subsequently learned by such party which would constitute a material change in a fact or circumstance which is the subject of a representation or warranty made by such party in this Agreement or any certificate delivered to Foundation by such party in connection with the Loan or would make any such representation or warranty untrue or misleading; and

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**5.5.10** The termination or replacement of such party's outside, independent auditor.

**5.6 Maintenance of Records.** Each of PVHDP and PVHDHC shall:

**5.6.1** Maintain books and records adequate to document this Agreement, Borrower's use of the proceeds of the Loan, and to provide the information ordinarily required by commercial lenders and charitable funders under similar circumstances;

**5.6.2** Make such books and records available for inspection and copying by Foundation and its agents and representatives at reasonable times and on reasonable notice; and

**5.6.3** Retain such books and records for a period of at least four (4) years after the Obligations have been fully paid and satisfied.

Borrower's obligations under this **Section 5.6** shall survive the expiration of this Agreement or the termination hereof for any reason whatsoever.

**5.7 Forbidden Uses of Loan Proceeds.** PVHDHC shall not use any of the proceeds of the Loan, nor any interest or earnings thereon or therefrom:

**5.7.1** To engage, directly or indirectly, in any activity described in Code Section 170(c)(2)(D);

**5.7.2** In a manner that would constitute a "taxable expenditure" within the meaning of Code Section 4945(d) if such proceeds, or any earnings thereon or therefrom, were so applied by a "private foundation" described in Code Section 509(a);

**5.7.3** To carry on propaganda, or otherwise attempt, to influence legislation (within the meaning of Code Section 4945(d)(1));

**5.7.4** To influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of Code Section 4945(d)(2));

**5.7.5** To participate in or intervene in (including the publishing or distributing of any statements) any political campaign on behalf of (or in opposition to) any candidate for public office;

**5.7.6** To make any grant which does not comply with the requirements of Code

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Section 4945(d)(3) or 4945(d)(4);

**5.7.7** For or to further, directly or indirectly, any purpose which is not for charitable, scientific, or educational purposes within the meaning of Code Section 170(c)(2)(B);

**5.7.8** For personal, family or household purposes; nor

**5.7.9** For any purpose other than specifically authorized in **Section 1.2** of this Agreement.

Borrower's obligations under this **Section 5.7** shall survive the expiration of this Agreement or the termination hereof for any reason whatsoever.

**5.8 Pledging of Loan Proceeds.** Except as reflected or provided for in the Disclosure Schedule, neither PVHDP nor PVHDHC shall pledge, assign, hypothecate or otherwise post or place any of the proceeds of the Loan, nor any of the proceeds, avails or products of or attributable to the Loan, nor any interest or earnings thereon, as security or collateral for or in connection with any loan, borrowing, note, obligation, guaranty, purchase, sale or other transaction whatsoever (except as may be provided in **Section 1.2**).

**5.9 Acquisition of Business; Merger or Consolidation; Disposal of Assets.** Except as reflected or provided for in the Disclosure Schedule, neither PVHDP nor PVHDHC shall, in one transaction or a series of transactions, (a) acquire all or substantially all the assets or properties of any other entity except by gift, bequest, or other donation or pursuant to the enforcement of a loan or security interest, except in the ordinary course of its activities; (b) sell, lease, transfer, or otherwise dispose of any substantial part of its assets or properties, except in the ordinary course of its activities; or (c) dissolve, liquidate, merge, or consolidate with or into any other person, firm, corporation, or other business entity; provided, however, that either party may merge or consolidate if (i) such party is the entity that survives the merger or consolidation, and (ii) immediately after the consummation of the merger or consolidation such party is in compliance with all provisions of this Agreement.

**5.10 Debt.** Except as reflected or provided for in the Financial Statements or in the Disclosure Schedule and except in the ordinary course of business, neither PVHDP nor PVHDHC shall incur, create, assume or permit to exist any Debt (as defined below) except: (a) the Loan; (b) existing Debt as described in the Financial Statements; and (c) existing Debt of PVHCHD as of the Effective Date. For purposes of this Agreement, "**Debt**" shall mean (a) all items of debt and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of such party's statement of financial position, (b) all debt and liabilities of other individuals or entities assumed or guaranteed by such party or

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in respect to which such party is secondarily or contingently liable, and (c) all debt and liabilities of other individuals or entities secured by a security interest, pledge, lien, charge or other encumbrance in or on any of such party's property.

## **ARTICLE 6 -- DEFAULT AND REMEDIES**

**6.1 Events of Default.** Borrower shall be deemed to be in default under this Agreement if any one or more of the following events (each of which is herein sometimes called an “**Event of Default**”) shall occur and is continuing:

**6.1.1** Borrower fails to make any principal payment under the Credit Documents when due and payable, whether at the stated maturity therefore, the occurrence of any event requiring payment, by declaration of acceleration or otherwise, and such default shall continue unremedied for ten (10) days after written demand;

**6.1.2** Borrower fails to make any payment of interest under the Credit Documents on or before the date such payment is due and such default shall continue unremedied for ten (10) days after written demand;

**6.1.3** Borrower uses any portion of the proceeds of the Loan, or any interest or earnings thereon, other than in a manner specifically authorized in **Section 1.2** of this Agreement;

**6.1.4** Any representation, warranty, certificate or other statement (financial or otherwise) made or furnished by or on behalf of Borrower to Foundation in or in connection with any Credit Document, or as an inducement to Foundation to enter into this Agreement, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished;

**6.1.5** Borrower violates or fails to observe or perform any covenant contained in **Section 5.6** or **Section 5.8** in any material respect, or any covenant contained in **Section 5.7**;

**6.1.6** Borrower violates or fails to observe or perform any covenants in any material respect contained herein, or any agreement on the part of Borrower to be observed or performed pursuant to this Agreement, other than those referred to above in clauses 6.1.1 through 6.1.6 of this **Section 6.1**, and such default shall continue unremedied for thirty (30) days after such default shall first become actually known to any one of the following: the Chairperson of the Board, Vice Chairperson, President, Chief Operating Officer, Secretary, Chief Financial Officer, or Treasurer of either

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PVHDP or PVHDHC (to the extent such party has such officers), or to the persons holding offices of PVHDP or PVHDHC with similar functions and responsibilities;

**6.1.7** The maturity of any obligation of either PVHDP or PVHDHC for the payment of borrowed money (other than a non-recourse borrowing) in excess of Fifty Thousand Dollars (\$50,000) is accelerated (other than by a so-called “due on sale” clause in the case of a mortgage loan secured by real estate) so that the obligation or any portion thereof becomes due and payable prior to its stated maturity date that causes a Material Adverse Effect;

**6.1.8** Either PVHDP or PVHDHC shall be adjudicated as bankrupt or insolvent, and such adjudication shall continue undischarged or unstayed for a period of sixty (60) days; or either PVHDP or PVHDHC shall admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors, or either PVHDP or PVHDHC shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of such party, as the case may be, and such appointment shall continue undischarged for a period of sixty (60) days; or either PVHDP or PVHDHC shall institute or consent to (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it; or any such proceeding shall be instituted (by petition, application or otherwise) against such party and shall remain undischarged or unstayed for a period of sixty (60) days;

**6.1.9** A judgment or judgments for the payment of money (other than any judgment for which indemnity is provided under an existing, valid insurance policy) in excess of Fifty Thousand Dollars (\$50,000) shall be rendered against either PVHDP or PVHDHC, and the same shall remain undischarged for a period of sixty (60) consecutive days, during which period execution shall not be effectively stayed nor an action commenced by PVHDP or PVHDHC to contest such judgment or judgments that causes a Material Adverse Effect;

**6.1.10** The occurrence of any attachment or attachments of any property of either PVHDP or PVHDHC (other than real estate taxes) which shall not be discharged within sixty (60) days of the date of such attachment or attachments nor an action commenced to contest such attachment or attachments during said sixty (60) day period that causes a Material Adverse Effect; or

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**6.1.11** The Internal Revenue Service revokes or suspends either PVHDP's or PVHDHC's (a) status as a tax-exempt organization under Code Section 501(c)(3); or (b) public charity tax status described in Code Sections 509(a)(1) and 170(b)(1)(A)(vi).

**6.2 Foundation's Options upon Borrower's Default.** If an Event of Default exists:

**6.2.1** At the option of Foundation, Foundation may (a) by written notice to Borrower, accelerate and declare all of the Obligations payable by Borrower under the Credit Documents immediately due and payable, and (b) exercise any right, power or remedy permitted to it under any Credit Document or by law, either by suit in equity or by action at law, or both. Borrower waives presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein to the contrary notwithstanding.

**6.2.2** Foundation may pursue, in any order or sequence, jointly or singly, in any combination or simultaneously, any and all remedies available at law or in equity, or both, for the enforcement of the provisions hereof.

**6.2.3** As provided above in **Section 1.7.1**, Foundation shall have joint and several recourse to each of PVHDP and PVHDHC, and PVHDP and PVHDHC shall each have liability to Foundation, for all Obligations payable by Borrower under the Credit Documents.

**6.2.4** No course of dealing on the part of Foundation or any delay or failure on the part of Foundation to exercise any rights under any of the Credit Documents shall operate as a waiver of such right or otherwise prejudice Foundation's rights, powers and remedies under the Credit Documents.

**6.2.5** No election or choice of remedies by Foundation shall constitute a waiver, exoneration, forbearance or compromise of any duty owed Foundation by any other party.

## **ARTICLE 7 -- MISCELLANEOUS**

**7.1 Survival of Representations, Warranties, Covenants and Obligations.** The respective representations, warranties, obligations and agreements contained herein shall survive the Closing Date.

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**7.2 Additional Actions and Documents.** The parties shall execute and deliver such further documents and instruments and shall take such further actions as may be required or appropriate to carry out the intent and purposes of this Agreement.

**7.3 Successors and Assigns.** This Agreement and the other Credit Documents shall be binding upon and inure to the benefit of Borrower, Foundation, and their respective successors and permitted assigns. However, in no event may Borrower assign or transfer any of its rights or obligations under any Credit Document without the prior written consent of Foundation. All references in this Agreement to any individual or entity shall be deemed to include all successors and assigns of such individual or entity. Foundation may at any time and without the consent of Borrower, sell, assign, grant participations in, or otherwise transfer to any other individual or entity all or part of the Obligations under any Credit Document. Foundation may disclose the Credit Documents and any financial or other information relating to Borrower to any potential assignee.

**7.4 No Third-Party Beneficiaries.** Nothing expressed in or to be implied from any Credit Document is intended to give, or shall be construed to give, any individual or entity, other than the parties hereto and their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of such Credit Document or under or by virtue of any provision herein or therein.

**7.5 Amendments, Waivers, and Consents.** Any term, covenant, agreement or condition of any Credit Document may be amended or waived if such amendment or waiver is in writing and is signed by Borrower and Foundation. No failure or delay by Foundation in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

**7.6 Extend Performance; Waive Conditions; Reduce Performance.** Either Borrower or Foundation may, by written notice to the other, or upon mutual written agreement, (a) extend the time for the performance of any of the obligations or other actions of the other parties under this Agreement; (b) waive compliance with any of the conditions or covenants of the other parties contained in this Agreement; or (c) waive or reduce the required performance of any of the obligations of the other parties under this Agreement. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party, shall be deemed to constitute a waiver by any party taking such action of compliance by the other parties with any representations, warranties, covenants, conditions or agreements contained in this Agreement. The waiver by any party



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hereto of another party's breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**7.7 Notice.** All notices, requests, demands, consents, waivers and other communications required or desired to be given under any of the provisions of this Agreement shall be in writing and shall be (a) served in person, (b) sent by special courier (e.g., Federal Express), fully prepaid or billed to sender, or (c) mailed by U.S. registered or certified mail, fully postage prepaid, return receipt requested, addressed as follows:

If to Foundation: The David and Lucile Packard Foundation  
Attention: Craig Neyman, Vice President and Chief Financial Officer  
343 Second Street  
Los Altos, California 94022  
Telephone: (650) 917-7119

With a copy to: The David and Lucile Packard Foundation  
Attention: Susan Phinney Silver, Mission Investing Director  
343 Second Street  
Los Altos, California 94022  
Telephone: (650) 917-7104

With a copy to: Resources Law Group, LLP  
Attention: Julie Turrini  
555 Capitol Mall, Suite 1090  
Sacramento, California 95814  
Telephone: (916) 442-4880

If to PVHDP: Pajaro Valley Healthcare District Project  
Attention: Dori Rose Inda, Treasurer, CFO  
23 East Beach Street, No. 214  
Watsonville, California 950756  
Telephone: \_\_\_\_\_

If to PVHDHC: Pajaro Valley Health Care District Hospital Corporation  
Attention: Chief Executive Officer  
75 Nielson Street  
Watsonville, California 95076  
Fax: (831) 728-4758

or to such other address as the addressee may have specified in a written notice duly given to the sender in the manner above provided. Any notice, request, demand, consent, waiver or other

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communication given in accordance with the provisions of this **Section 7.7** shall be presumed to have been given or received on the earlier to occur of (a) the date of actual receipt thereof, (b) the third business day following the date of mailing same by U.S. registered or certified mail, or (c) the third business day following delivery thereof to the special courier, as shown on the courier's records, as appropriate. The delivery to or receipt of copies of any such notice, request, demand, consent, waiver or other communication by any persons other than and in addition to Foundation or Borrower, is merely an accommodation and is not necessary or required to make effective the giving or receipt thereof by or to Foundation or Borrower.

**7.8 Remedies Cumulative.** All remedies, whether under this Agreement, provided by law, or otherwise, shall be cumulative and not alternative.

**7.9 Attorneys' Fees.** The prevailing party in any suit, action, counterclaim, or arbitration arising out of this Agreement (including, without limitation, enforcement of any award or judgment obtained with respect to this Agreement) shall be entitled to recover a reasonable allowance for attorneys' fees, litigation expenses, and the cost of arbitration in addition to court costs. "**Prevailing party**" within the meaning of this section means a party who obtains an award or judgment in excess of the amount offered by the other party, and includes, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it. Notwithstanding the foregoing, a party who obtains an award or judgment substantially less than an amount offered by the other party shall not be entitled to recover attorneys' fees or litigation expenses incurred after the date of the offer, or the cost of any arbitration or court costs. The parties shall bear their own court costs, litigation expenses, and attorneys' fees in any other matter.

**7.10 Governing Law.** The rights, duties, and obligations of the parties shall be governed by, and this Agreement shall be construed and enforced in accordance with, the laws of the State of California, excluding any rules that would apply to the law of another jurisdiction.

**7.11 Jurisdiction and Venue.** The parties hereto consent and agree to submit to the personal jurisdiction of all federal and state courts in the State of California, and agree that venue shall lie exclusively in Santa Clara County, California.

**7.12 Entire Agreement.** This Agreement and each of the other Credit Documents dated as of the date hereof, taken together, constitute and contain the entire agreement of Borrower and Foundation and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof and thereof.

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Neither Foundation's funding of the principal amount of the Loan, as set forth in **Section 1.1**, nor Foundation's execution and delivery of this Agreement, nor Foundation's performance of its obligations under this Agreement, nor any of these singly or in combination, constitute a commitment or agreement by Foundation to make or negotiate any new, future, or additional grant, loan or advance to Borrower for the Project or to provide Borrower with funds to repay the Loan or for any other project or purpose. Foundation has not committed or agreed to make any such new, future, or additional grant, loan or advance to Borrower for any such purpose, and, unless approved in advance by Foundation, Borrower shall not repay the Loan from any grant or other funds made available to Borrower, whether previously or in the future, by Foundation. Notwithstanding any representation or course of dealing by Foundation or Foundation's employees or agents, now or in the future, no such commitment or agreement shall be effective unless it shall be made expressly in writing, having been duly authorized by all requisite corporate action and signed by an authorized officer of Foundation.

**7.13 Severability.** If any provision of this Agreement, or the application of such provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall continue in full force without being impaired or invalidated.

**7.14 Time of Essence.** Time is of the essence in this Agreement and the time periods set forth in this Agreement are to be strictly construed and enforced. Where no definite time for performance is specified, however, a delay or omission to exercise any right, power, or remedy hereunder upon any breach or default under this Agreement shall not impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach or default, or of any similar breach or default thereafter occurring, or an acquiescence therein.

**7.15 No Partnership, Etc.** This Agreement does not make the parties partners or joint venturers with each other, nor does it create any principal and agent or trustee and beneficiary relationship or other association between any of the parties, except as expressly stated otherwise. No action taken by any party pursuant to this Agreement shall create any such relationship in the absence of express language in this Agreement to the contrary. The relationship of the parties to each other is solely that of borrower and lender.

**7.16 Construction of Agreement.** Each Credit Document is the result of negotiations among, and has been reviewed by, Borrower, Foundation and their respective counsel. Accordingly, each Credit Document shall be deemed to be the product of Borrower and Foundation, and no ambiguity shall be construed in favor of or against either party.

**7.17 Execution of Agreement.** Each party has been represented by counsel in the negotiation and execution of this Agreement. This Agreement is executed voluntarily without

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any duress or undue influence on the part of or on behalf of the parties hereto. The parties acknowledge that they have read and understood this Agreement and its legal effect.

**7.18 Authority of Executing Parties.** The undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective parties hereto. Each party has relied upon the authority of the other in executing and delivering this Agreement.

**7.19 Titles, Captions, and Recitals.** Article, section, and subsection titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any of its provisions. If there is any conflict between the Recitals at the beginning of this Agreement and the substantive provisions of this Agreement, the substantive provisions shall control.

**7.20 Attachments.** All attachments hereto shall be deemed to be a part of this Agreement and are fully incorporated in this Agreement by this reference.

**7.21 Indemnity.** Borrower shall defend, indemnify, protect and hold harmless the Foundation Group (as defined below) from and against any claim, loss, damage, cost, expense or liability directly or indirectly arising out of: (a) the Credit Documents; (b) the performance of any act required or permitted under any Credit Document or by law; (c) any failure of Borrower to perform its obligations under any Credit Document; (d) the Project, or any act or omission by Borrower or any contractor, agent, employee or representative of Borrower with respect to the Project; or (e) any claim, loss, damage, cost, expense, or liability directly or indirectly arising out of the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials which are found in, on, under or about the Project (including underground contamination). However, this indemnity shall not include any claim by a particular member of the Foundation Group arising out of the negligence, gross negligence or willful misconduct of such member of the Foundation Group, as applicable. Borrower shall pay immediately upon Foundation's demand any amounts owing under this indemnity together with interest from the date such indebtedness arises until paid at the rate of interest applicable to the principal amount of the Loan as specified in this Agreement. Borrower shall use legal counsel reasonably acceptable to the affected indemnitee in any action or proceeding arising under this indemnity.

For purposes of this Agreement, "**Foundation Group**" shall mean (a) Foundation, (b) Foundation's affiliates and entities in which Foundation has a controlling interest, (c) the directors, trustees, officers, employees and agents of Foundation and such other entities, and (d) the successors, heirs and assigns of any of the foregoing.

**7.22 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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**IN WITNESS WHEREOF**, the undersigned have executed this CREDIT AGREEMENT as of the date first referenced above.

**FOUNDATION:**

THE DAVID AND LUCILE PACKARD FOUNDATION, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Craig Neyman  
Its: Vice President and Chief Financial Officer

**BORROWER:**

PAJARO VALLEY HEALTHCARE DISTRICT PROJECT, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

PAJARO VALLEY HEALTH CARE DISTRICT HOSPITAL CORPORATION, a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Name: Steven Salyer  
Its: Chief Executive Officer

**ATTACHMENT A**

**PLEDGE SCHEDULE**

[Schedule to come]

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**ATTACHMENT B**

**DISCLOSURE SCHEDULE**

**Schedule 3.5 - No Actions, Proceedings or Judgments**

On August 31, 2022, SEIU United Healthcare Workers (SEIU UHW) filed a charge against the seller of the hospital with the National Labor Relations Board alleging that the seller “when in concert with the [PVHCDHC], it unilaterally made changes to the terms and conditions of employment of bargaining unit members by requiring bargaining unit members to re-bid on their positions prior to the closing of the sale of the hospital.” SEIU represents two units at the hospital, 155 employees in the Service and Maintenance employees and 16 employees in the Professionals Unit. This charge is against the seller of the hospital, Halsen Healthcare, however, the Implementation Addendum to the Asset Purchase Agreement between the PVHCDHC and the seller sets forth an indemnity obligation that relates back to actions which the seller’s staff may have taken prior to the close specifically related to the PVHCDHC’s hiring of staff. The seller is represented by Bartko Zankel Bunzel Miller for this charge.

On September 14, 2022, California Nurses Association (CNA) filed an Unfair Practice Charge with the California Public Employment Relations Board alleging that PVHCDHC is the successor to the seller, had an obligation to meet and confer with the CNA, failed to meet and confer with the CAN on the decision or impacts of the offers of employment, an unilaterally changed employees schedules and full-time equivalency status. CNA represents the hospitals 255 registered nurses. PVHCDHC is represented by Sloan Sakai LLP for this charge.

**Schedule 5.8 - Pledging of Loan Proceeds**

[Description to come]

**Schedule 5.9 - Acquisition of Business; Merger or Consolidation; Disposal of Assets**

[Description to come]

**Schedule 5.10 - Debt**

[Description to come]

**ATTACHMENT C**

**SUMMARY MATRIX OF REPORTING METRICS**

[To be completed]

<b>Performance Measures</b>	<b>Projected Outcomes</b>	<b>Information to be Included in Narrative Reports</b>
Project	<ul style="list-style-type: none"><li>•</li></ul>	<ul style="list-style-type: none"><li>•</li></ul>
Pledge Schedule	<ul style="list-style-type: none"><li>• Receipt of Project Pledges in amounts and at times set forth in the Pledge Schedule</li></ul>	<ul style="list-style-type: none"><li>• Updated Pledge Schedule detailing all pledges received during the reporting period</li></ul>

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