

## FACILITY USE AGREEMENT

THIS AGREEMENT is for the use of certain real property by license ("**Agreement**") made this 29th day of January, 2021 by and between Harper Aging Dept ("**Owner**") and HERMES HEALTHCARE, INC ("**Hermes**").

### RECITALS:

WHEREAS, Owner owns and operates a facility located at 821 Central St Harper, KS 67058, (Property).

WHEREAS, Hermes is engaged in the business of providing certain medical services related to the care of feet and desires to utilize the of a portion of the Property for the purpose of operating a foot care clinic.

WHEREAS, this Agreement creates a license to temporarily use a portion of the Property, does not create a landlord-tenant relationship as defined under Kansas law;

WHEREAS, the parties understand and acknowledge that they fully understand the difference between a license and a lease of real property and that such representation of understanding is a **MATERIAL INDUCEMENT**, each to the other, to entering into this Agreement; and

WHEREAS, the parties intend by this Agreement to set forth the terms under which Hermes may make use the Property.

NOW, THEREFORE, in consideration of the foregoing promises and other good and valuable consideration and upon the terms and conditions of the Contract and the mutual covenants and agreements contained herein, the parties agree as follows:

**1. Hermes's Use.** Owner permits Hermes to use a designated portion of the Property, which is agreeable to both parties for the purpose of hosting a foot care clinic. Hermes shall be solely responsible for the manner of performing medical services at the clinic and shall provide such services in accordance with currently approved methods and practices in Hermes' area of expertise and applicable governing laws. Likewise, Hermes shall be solely responsible for the scheduling of patients, maintenance of patient records, and billing patients and or their insurance providers and/or Medicare.

Clinics shall be scheduled every nine (9) weeks. The time of each clinic will be determined by the number of patients seen during the scheduled visit.

The designated portion of the Property must be large enough to accommodate nurses and patients. Owner will provide reasonable access to warm running water for use during the clinic. At the conclusion of the clinic, Hermes will sweep/vacuum the designated space, unless otherwise directed by the Owner. The Owner will Hermes and/or its agents access to the necessary supplies to sweep/vacuum the designated space.

**2. Term.** The Agreement shall be in effect for one year from the date of Agreement. After such time the Agreement shall be extended from year to year unless either party gives thirty (30) days written notice of cancellation.

**3. Licensee Relationship Created.** This Agreement is not intended to be a lease under Kansas law, and the terms of this Agreement do not create and shall not be construed to create a landlord-tenant relationship. Hermes shall use the Property as a licensee and it is expressly understood that neither party shall have any of the rights that exist at law arising out of a landlord-tenant relationship, including without limitation, any rights provided under Kansas law. The parties acknowledge and agree that their individual understanding of the foregoing is to be deemed, construed, and interpreted as a **MATERIAL INDUCEMENT** to entering into this Agreement, and that without such an understanding, this Agreement would not have been entered into by the parties.

**4. Damage or Destruction.** In the event of any destruction or damage of any kind whatsoever to the Property or any portion thereof, other than due to Hermes's sole negligence, during the period of Hermes' use pursuant to this Agreement, shall be the responsibility of and paid for by Owner.

**5. Insurance.** Hermes agrees to obtain and maintain throughout the term of the Agreement comprehensive general liability insurance and malpractice insurance. Coverage shall be in the amount of at least one million dollars (\$1,000,000.00) per occurrence or claim three million dollars (\$3,000,000) in the annual aggregate for the acts and omissions of Hermes.

Hermes shall maintain Workers Compensation as required by law.

**6. Indemnification.** Hermes shall indemnify and hold Owner harmless from and against any and all damage to the Property or personal property, or injury or death to persons, and from and against any and all costs, claims, damages, causes of action, liabilities, and expenses of any nature whatsoever (including reasonable attorney's fees) arising out of, related to, or in connection with Hermes's acts or omissions during the use of the Property pursuant to this Agreement, except to the extent caused by acts, omissions, or negligence of Owner or its agents, invitees, licensees, and guests.

**7. Assignment.** Hermes shall not assign any of its rights hereunder and shall not permit any person other than Hermes and its agents to use the Property. Should Hermes assign, attempt to assign, or otherwise transfer its interest in this Agreement, the Agreement shall immediately become void and have no legal effect, thereby requiring no further action of the non-assigning party.

**8. Records and Reports.** Hermes agrees to keep and maintain such records on the services rendered by Hermes to consumers of the Owner as may be required by any fiscal intermediary, federal, state or local government agency, or other party to whom billings for Hermes' services are rendered. A copy of all patient documentation will be placed in the patient's medical chart, including evaluation report, progress notes, plan of care and other observations

Hermes agrees to abide by federal privacy law in managing Protected Health Information (PHI) of Owner's consumers. Hermes agrees to provide a copy of active Health Insurance Portability and Accountability (HIPPA) standards to all patients seen at the Owner's facility.

**9. Civil Rights.** Hermes shall not exclude from participation, deny benefits, or discriminate on the grounds of race, color, age, sex, handicap or national origin.

**10. Notices.** Notices shall be given to the parties to this Agreement in writing by hand delivery, registered mail, overnight delivery, facsimile, or email. A party's refusal to accept delivery of any notice or communication sent by the other party shall not render such notice ineffective.

**11. Binding on Successors.** The terms, covenants, and conditions contained in this Agreement shall be binding on the parties, their successors, assigns, heirs, administrators, or executors.

**12. Entire Agreement.** This Agreement contains the entire agreement of the parties and shall not be modified, altered, or changed unless in a writing signed by the parties. The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms as are included in this Agreement and may not be contradicted by evidence of any prior or contemporaneous agreement, arrangement, understanding, or negotiation (whether oral or written).

Owner and Hermes sign below giving their consent to this Agreement the day and year first above written.

**HERMES:**

\_\_\_\_\_  
[HERMES SIGNATURE]

\_\_\_\_\_  
Jayne Hermes, President of Hermes Healthcare

**OWNER: Representative**

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[OWNER SIGNATURE]

\_\_\_\_\_  
[OWNER NAME]