

## MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT (“Agreement”) is dated as of December 16, 2021, for reference purposes only, and is made by and between The Smith Family Trust (50% owner of 7015 Rough & Ready Drive, San Jose), and the Pearl Family Trust (50% owner of 7015 Rough & Ready Drive, San Jose) collectively “Owner or Owners” and ESQPMG, Inc., dba Esquire Property Management Group, a California Corporation, (“Manager”) with reference to the following facts and circumstances. Owner and Manager are hereinafter referred to as the “Parties.”

- A. Owners own those improved real properties commonly known and referred to as of 7015 Rough & Ready Drive, San Jose, CA 95119 as described above (the “Properties”); and
- B. Owner desires to employ Manager to supervise and to manage the buildings and grounds conditions of the Properties in accordance with the terms hereof, and Manager desires to perform such services for Owner in consideration of the compensation set forth herein.
- C. Manager is a duly licensed property manager under the laws of the State of California and is in the business of managing and operating real property comprised of the Properties.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. ENGAGEMENT OF MANAGER

Owner hereby engages Manager under the terms and conditions of this Agreement as the general manager of the Properties. Manager hereby accepts such engagement and agrees to use all commercially reasonable efforts in the performance of its duties hereunder.

2. TERM

2..1. Basic Term. The term of this Agreement shall commence January 1, 2022 and shall continue for a period of one year, unless this Agreement is sooner terminated in accordance with Paragraph 2.2. This Agreement shall, be extended by mutual agreement between the Parties at least sixty (60) days prior to the expiration of the initial or any subsequent extended term. Owner shall give the other written notice of termination as of the expiration of the then current term. Notwithstanding the foregoing, this Agreement may be terminated by Owner for any reason by providing thirty (30) days’ written notice to the Manager. Manager must give 60 days’ written notice. The Agreement will automatically terminate in the event Owner sells the Properties.

2..2. Default. In the event that Owner or Manager materially defaults in the performance of its covenants, obligations and duties hereunder and such default has not been cured within fifteen (15) days after the other party has given the defaulting party notice thereof, (or such longer period as may reasonably be required to cure such default

so long as a cure is promptly commenced and diligently completed at the earliest date reasonably possible), then the non-defaulting party shall have the right to terminate this Agreement, effective immediately, by giving notice thereof to the defaulting party, which notice will include a statement of the grounds for such termination.

2..3. Termination. Within thirty (30) days after the termination of this Agreement, pursuant to Section 2.1 or 2.2, Manager shall deliver to Owner the following:

- A. an up-to-date accounting reflecting the balance of fees due the Manager for the Properties work as of the date of termination.
- B. Any balance or monies of manager or Tenant security deposits, or both, held by Manager with respect to each such Property to be delivered immediately upon such termination.
- C. All original records, contracts, leases, receipts for deposits, unpaid bills and other papers or documents which pertain to each such Property in Manager's possession to be delivered immediately upon such termination. Upon such termination Owner will assume responsibility for payment of all approved or authorized unpaid bills.
- D. If Manager has entered into any contracts for any such Properties in accordance with the terms hereof, Manager shall assign and/or deliver, as appropriate, such contracts to Owner or the Manager's designee and Owner or Manager's designee shall assume Manger's obligations thereunder as of such termination. Manager shall not enter into contracts not terminable within 30 days' prior notice without Owner's consent.

Upon delivery of such, Owner shall promptly pay to the Manager all amounts due under the terms of this Agreement. Upon termination of this Agreement and delivery of the funds and items described herein, neither Owner nor Manager shall have any further claim or right against the other, except as otherwise expressly provided herein.

### 3. DUTIES OF MANAGER

Manager shall operate, manage and maintain the Properties as an independent contractor for Owner in accordance with sound property management practices. Manager's responsibilities hereunder shall include the following specific duties.

- Collect rents; assess and collect late fees as needed
- Pay monthly recurring bills such as trash and water (and others as Owners will address)
- Pay other recurring bills such as property taxes and property insurance
- Act as the tenants' point of contact for all matters related to the building and leases
- Respond to emergency and non-emergency repairs
- Act as point of contact for Bay Alarm fire and burglar alarm events
- Inspect exterior of property and respond as necessary including cleaning up litter or other trash, cleaning up or painting over graffiti, monitoring the condition of the buildings and landscaping, at least 4 times per month

3..1. Legal Requirements. Manager shall take such action as may be necessary to comply with any and all orders or requirements affecting the Properties by any federal, state, county or municipal authority having jurisdiction, prior to the date such action is required by such authority to be taken. Manager shall prepare, execute and, after obtaining the approval of Owner, file any reports or documents as may be required by any local, state or federal authority. Any fees, or out-of-pocket expenses in connection with such legal compliance shall be borne by Owner.

3..2 Enforcement. Manager shall take all reasonable actions to enforce the terms of tenant leases including, but not limited to, all actions and proceedings to notify Owner of any default under any tenant lease, prepare tenant invoices and receive reimbursement from tenant in accordance with lease terms, and at the direction of Owner, or otherwise enforce the tenant leases. All such actions or proceedings shall be through legal counsel approved by, and the fees and costs of which shall be borne by Owner. Manager shall comply with the obligations of Owner under the tenant leases to maintain and repair the Properties, and furnish to the tenants or occupants of the Properties such services as are required to be furnished by the Landlord under any tenant lease. Manager shall notify Owner of any additional services from time to time provided by Manager to tenants at their expense.

3..3. Repairs and Maintenance Contracts. Manager shall, on behalf of the owner and at the Owner's expense, make or contract for all repairs, replacements, renovations and capital improvements on the Properties as approved by Owner, provided that Owner's prior approval shall be required for execution of any contract on behalf of Owner. It is understood and agreed that whenever possible two bids shall be obtained for any contract estimated to cost in excess of \$1,000. In the event any contract is estimated to cost in excess of \$5,000, every effort will be made to obtain three bids. Manager shall obtain from all independent contractors working in or about the Properties certificates of insurance, evidencing property damage, liability and workmen's compensation insurance in amounts in compliance with federal and state statutes. Manager shall not mark up the cost of outside services and materials. Manager shall obtain and maintain records and enforce any guarantees or warranties that may concern Owner's real or personal property included within the Project. Written approval of the Owner must be obtained before pursuing any legal remedies to enforce such guarantees or warranties. Manager shall notify Owner within three (3) business days of any emergency that has occurred and the estimated costs to repair.

3..4. Manager's Employees. Manager shall pay, at Manager's cost and expense: (a) all the wages, salaries and employee benefits of all full or part-time on-site employees of Manager (except as otherwise provided herein), and all other taxes now in force or hereafter imposed with respect to Manager's employees. All parties engaged by Manager in the performance of Manager's duties hereunder shall be employees of Manager and not Owner. All matters pertaining to the employment, supervision, compensation, promotion and discharge of such employees shall be the responsibility of Manager and Owner shall not have any rights or obligations with respect thereto.

3..5. Other Actions. Manager shall take such action from time to time as Manager deems advisable for the efficient and economic management, leasing, operation and maintenance of the Project, subject to the terms and conditions hereof.

3..7. Tenant Defaults. Manager shall advise Owner promptly of any claim of default under any tenant lease, and prepare and serve timely legal notices to defaulting tenants.

3..8. Property Inspections. Manager shall periodically inspect the Properties (at least two times per calendar month) to determine that tenants are complying with the requirements of their leases and any laws relating to the Properties. Manager is not technically qualified and shall not be responsible for inspecting the operations of any tenant to determine whether or not the operations of such tenants are in compliance with all laws regulating hazardous materials. However, if Owner so requires, Manager shall, at Owner's expense, engage the services of an environmental consulting firm to conduct such periodic inspections with the assistance of Manager as are reasonably necessary to monitor the operations of any tenant on the Properties concerning hazardous materials. Manager shall advise owner of the results of all such inspections. Owner shall approve any such consultant and consulting agreement prior to any consultant being retained.

3..9. Claims and Awards. When requested by Owner, Manager shall, without charge, except for out-of-pocket expenses, render advice and assistance to Owner in the negotiation and prosecution of all claims under any property or liability insurance policy.

3..10. Estoppel Certificates. If, during the term of this contract, Owner requires estoppel certificates or subordination agreements from the tenants of the Properties, Manager shall use reasonable efforts to obtain such estoppel certificates or subordination agreements.

3..11. Construction Management. Manager shall have the right, duty, and responsibility to manage all construction on or in the Properties, including construction of tenant improvements.

4. BUDGET.

4.1 Omitted

5. BANKING.

5..1. Trust Funds and Owner Distribution. Manager will hold rents collected in Manager's operating trust fund account at First Republic Bank which is subject to audit by California Department of Real Estate. All operating funds are reviewable and transparent by Owner at any time. Owner is provided access to an Owner portal for viewing and examining any and all transactions between Manager and Tenants. Owner is paid by the 15<sup>th</sup> (subject to the 15<sup>th</sup> following on a weekend or holiday) of each month via eCheck to Owner's checking account. Owner statements are published and distributed to Owner by the 20<sup>th</sup> of each month (subject to the 20<sup>th</sup> following on a weekend or holiday.) Owner will receive a PnL and 1099 by January 30 of each year for the prior year accounting.

5..2. Owner's Duty to Pay Expenses. Owner shall from time to time provide Manager with funds with which Manager may satisfy the payment obligations of this Agreement. Owner shall at all times provide sufficient funds to enable Manager to

pay on behalf of Owner as and when due all obligations required to be paid hereunder, including, without limitations, all compensation payable to Manager hereunder. In the event that additional funds are required at any time for any expenditures which Manager is to make pursuant to this Agreement, Manager shall request such funds accompanied by a statement of the necessity therefor. Manager shall not be required to take any action or incur any expense hereunder at any time when Manager, in its reasonable judgment, does not believe sufficient funds are available or will be available to pay therefor.

6. INSURANCE, LIABILITY AND INDEMNITY.

6..1. Owner's Insurance. Manager shall assist Owner agrees to carry and at all times maintain comprehensive general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Without limiting the foregoing, such insurance shall specifically insure the indemnity provisions contained herein. Owner also agrees to name Manager, specifically, Silicon Valley Property Management Group as an additional insured on its insurance policies in effect at the Properties during the term of this Agreement.

6..2. Manager's Insurance. Manager agrees to carry and at all times maintain errors and omissions insurance in the amount of \$1,000,000.

6..3 Contractors' Insurance. Manager shall require that all contractors brought onto any Property have insurance, at the contractor's expense, in the following minimum amounts:

- a) Worker's Compensation – statutory amount;
- b) Employer's Liability – minimum of \$500,000 each accident; \$500,000 disease, policy limit; \$500,000 disease, per employee;
- c) Commercial General Liability (naming Owner and Managers as additional insureds.) - \$1,000,000 per occurrence Combined Single Limit; \$2,000,000 aggregate (i.e., such insurance shall include contractual liability, personal injury protection and completed operations coverage.);
- d) Auto Liability (if deemed appropriate by Sub-Manager) - \$1,000,000 minimum; and
- e) Property Insurance coverage for tools and equipment brought onto and/or used on any Properties by the contractor – an amount equal to the replacement costs of all such tools and equipment.

Manager must obtain the Owner's prior permission to waive any of the above requirements or to accept lower limits. Manager shall obtain and keep on file a certificate of insurance for each contractor, which shows that such contractor currently so insured.

6...4. Indemnification. Owner shall indemnify, defend and hold harmless the Manager, its agents and employees from and against any loss, claim, liability or cost (including reasonable attorney's fees and costs of suit) which may be made against or incurred by the Manager, its agents or employees arising out of any acts of the Manager within the Manager's authority authorized or ratified by Owner or by this Agreement. Manager shall indemnify, defend and hold harmless the Owner from and against any loss, claim, liability or cost (including reasonable attorney's fees and costs of suit) which may be made against or incurred by the Owner, its agents or employees arising out of any acts of the Manager within the Manager's authority authorized or ratified by Owner or by this Agreement.

6..5. General Insurance Provisions. All insurance provided by either party pursuant to this Agreement shall be maintained in effect throughout the term of this Agreement. The carrier and the amount of coverage in each policy shall be decided upon by each party, subject to the provisions of Section 6.1 and 6.2. Such insurance policies may be included in blanket policies provided that the Project is named separately. Each party's policies shall name the other party as an additional insured if possible, or in not possible, include a waiver of subrogation against the other party, its affiliates and authorized agents. If available, each policy shall provide that it shall not be canceled, amended or reduced without thirty (30) days prior written notice to both parties and that it shall not be invalidated or reduced by any act of either party, their affiliates, authorized agents or any other entity having an interest in the Properties.

6..6. Intent. It is the intent of the Parties to look first and primarily to the insurance coverages set forth herein for recovery of any amounts payable pursuant to the indemnity obligations set forth in Section 6.3 above, with the insurers having no right of subrogation against either party or any affiliate or authorized agent thereof. The parties shall be liable to each other for such indemnity obligations only to the extent that insurance proceeds are not available.

6..7. No Obligations to Third Parties. Unless otherwise provided herein, none of the obligations and duties of Manager under this Agreement shall in any manner be deemed to create any obligation of Manager to, or any rights in, any person or entity other than Owner (including without limitation, any tenant or occupant of the Project or any lender having an interest in the Project).

6..8. Survival. The indemnities provided in Paragraph 6.4 shall survive the expiration or termination of this Agreement.

## 7. COMPENSATION OF MANAGER AND REIMBURSEMENT OF EXPENSES.

7..1. Management Fee. Manager or Owner shall pay Manager a management fixed fee 4% of gross rents received but in any event no less than \$500/month. The management fee shall be payable monthly commencing on the first day of the month next succeeding the effective day of this Agreement and on the first day of each month

thereafter during the term of this Agreement. The payment is due at the end of the month for which services were satisfactorily provided. The Management fee shall be prorated during any partial months and will be collected from rents received prior to Owner distribution of rents.

7..2. Additional Services. Owner acknowledges that the services to be performed by Manager hereunder are normal and customary general management services without any accounting duties or responsibilities. If Manager is required or called upon by Owner to perform services beyond the scope of this Agreement (such as, by way of illustration only, leasing services, supervising reconstruction after major fire damage, complying with new and burdensome governmental regulations affecting the Project which require substantial additional administrative duties, supervising major building renovation or remodeling or participating in union negotiations), then Manager shall be paid additional compensation as then agreed in writing between Owner and Manager.

7..3. Construction Management Fee. In return for its services as a construction manager, Manager shall receive, in addition to all other compensation provided hereunder, a sum up to five percent (5%), or as mutually agreed upon by Manager and Manager, of all hard construction costs expended by Owner for tenant improvements and capital expenditures.

7..4. Brokerage Fees. If so directed by Owner to provide its services in handling and managing renewal and expansion leases ("Transactions") on the Properties, Manager shall receive on each such Transaction, in addition to all other compensation provided hereunder; a sum equal which will be determined on a case-by-case basis.

7..5. Manager's Overhead. Owner shall not additionally compensate Manager for Manager's overhead expenses, including, but not limited to, payroll and other employee costs, transportation, office rental, supplies and expenses, general accounting and administrative expenses, except as otherwise provided herein.

## 8. OTHER ACTIVITIES OF MANAGER.

During the term of this Agreement, Manager and its shareholders, officers, directors and employees may render services identical or similar to those required of Manager hereunder to other owners of real property and manager and such shareholders, officers, directors and employees may engage in the acquisition, development, leasing, rental, management, operation, sale and exploitation of real property (whether improved or not) for their own accounts and benefit without any accountability or liability whatsoever to Owner even though such services or business activities compete with or are enhanced by the business activity of Owner, including Owner's ownership of the Properties.

## 9. ASSIGNMENT.

Manager may assign any of its rights or delegate any of its duties under this Agreement with the prior written consent of Owner.

## 10. NATURE OF AGREEMENT.

The rights and duties hereby granted to and assumed by Manager are those of an independent contractor only. Nothing contained herein shall be construed to constitute the relationship hereby created between Manager and Owner as an employment, a partnership, a joint venture or a general agency, notwithstanding anything contained herein to the contrary.

11. GENERAL PROVISIONS.

11..1. Owner Cooperation. Owner shall cooperate with and assist Manager in the performance of Manager’s duties hereunder. Without limiting the foregoing, Owner shall at all times make itself or its authorized agent available promptly to execute contracts and review documents whenever requested by Manager.

11..2. Consents and Approvals. Owner’s consents or approvals may be given only by representatives of Owner designated in writing by Owner’s representatives located at the address provided in or pursuant to Section 11..4

11..2. Modifications/Waivers. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any term or condition, unless such change, modification or waiver shall be in writing and signed by the parties hereto.

11..3. Binding Effect/Interpretation. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their legal representatives, permitted transferees, successors and assigns. This Agreement contains the entire agreement of the parties hereto regarding the subject matter hereof and supersedes all representations and agreements previously made. The validity, effect, construction, performance and enforcement of this Agreement shall be governed in all respects by the laws of the State of California. The titles of the sections and paragraphs herein have been inserted as a matter of convenience or reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. Any rule of construction that ambiguities are to be construed against the drafting party shall not apply to the interpretation of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

11..4. Notices. Any and all notices or other communications required by this agreement or by law shall be in writing and shall be deemed properly delivered, given or served when (a) personally delivered against acknowledge copy; or (b) deposited in the United States Mail, registered or certified, return receipt requested, addressed to the other party at the following addresses:

If to Manager:  
**SVPMG, Inc.**  
Attn: David Roberson, Esq.  
236 N. Santa Cruz Ave.  
Los Gatos, CA 95030  
Tel. No. (408) 838-5113

If to Owner:  
Smith Family Trust  
Attn: Pete & Suzanne Smith  
\_\_\_\_\_  
\_\_\_\_\_  
Tel No. \_\_\_\_\_



All mailed notices shall be deemed received as of the date shown on the return receipt. Either party hereto may change its address for the purpose of this Paragraph by giving five (5) days advance written notice of such change to the other party in the manner provided in this Paragraph.

11.5. Attorneys' and Experts' Fees. If any party brings any action or arbitration proceeding with respect to this Agreement, each party shall bear their own attorneys' fees and experts' fees and costs.

Owner and Manager understand and agree to all the terms and conditions as described in the above Agreement.

OWNER

Smith Family Trust

By: \_\_\_\_\_  
Suzanne Smith

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

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

MANAGER

ESQPMG, **Inc.**  
a California **corporation**

By: \_\_\_\_\_  
David Roberson, Esq.  
**Shareholder**

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