

# **Exhibit 17**

**GROUND LEASE**

**by and between**

**THE BOARD OF TRUSTEES OF THE  
LELAND STANFORD JUNIOR UNIVERSITY**

**and**

**CC-PALO ALTO, INC.**

**August 1, 2000**

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## GROUND LEASE

THIS GROUND LEASE ("Lease") is made and entered into as of August 1, 2000 (the "Effective Date"), by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California ("Lessor"), and CC-PALO ALTO, INC., a Delaware corporation ("Lessee").

## RECITALS

A. Lessor operates The Leland Stanford Junior University (commonly known as Stanford University). Lessor owns approximately 22.4 acres of unimproved real property, being a portion of the lands of Stanford University, located in the City of Palo Alto, County of Santa Clara, State of California, and more particularly described in Exhibit A attached (the "Premises").

B. Lessee desires to lease the Premises from Lessor, and to develop, market and operate on the Premises an upscale licensed senior citizen continuing care retirement community (as more particularly described and defined below, the "Project"). Lessor desires to lease the Premises to Lessee for these purposes, subject to and in accordance with each and all of the terms and conditions set forth in this Lease.

C. Certain capitalized terms have the meanings set forth in Exhibit B attached.

NOW THEREFORE, in consideration of these premises, and of the agreements, covenants and conditions contained herein, the parties agree as follows:

## ARTICLE 1

### LEASE OF PREMISES

1.1 Lease of Premises. Lessor hereby leases the Premises to Lessee, and Lessee hereby hires the Premises from Lessor, subject to each and all of the terms, conditions and reservations contained in this Lease, all Entitlements and other Applicable Laws, and all liens easements, encumbrances, restrictions, rights and conditions: (a) of record; or (b) otherwise

actually known to Lessee; or (c) reasonably ascertainable by survey or investigation to the extent provided in Section 1.2(a) below.

**1.2 Acceptance of the Premises.** Subject only to Lessor's obligations under the Project Development Rider attached as Exhibit C and except as expressly provided otherwise in this Section 1.2, Lessee accepts the Premises "as-is," in its existing condition, with all faults, and assumes the risk of any and all latent or patent defects in the condition of the Premises. Lessee expressly acknowledges and agrees that except as set forth in Section 1.4(b) of the Project Development Rider with respect to the Development Agreement, Lessor has not made any express or implied representations or warranties, and that Lessor has disclaimed any warranties that otherwise may be implied by law, as to any matters relating to the Premises or the Project, including without limitation the suitability of the soils or subsoils; the presence, absence, location or character of any archaeological resources; the characteristics of the Premises or any Improvements thereon; the suitability of the Premises for Lessee's intended use; the likelihood of deriving business from (or any other characteristics of) Stanford University; the validity or enforceability of the Development Agreement or any other currently-existing Entitlements; the economic feasibility of the Project; the condition of title to the Premises; or the presence, absence, location or character of any Hazardous Materials on, under, about or in the vicinity of the Premises; provided that the foregoing shall not be construed to relieve Lessor from its obligations under this Lease. Lessee represents and warrants that in determining to enter into this Lease, Lessee performed all investigations of the Premises and the Project that Lessee deemed were necessary or appropriate, including without limitation soils and environmental studies; zoning, utilities and drainage studies; physical site inspections and investigations; a thorough review of the Development Agreement (including without limitation the Conditions of Approval), other existing Entitlements, and Development Materials; appraisals; market and economic feasibility studies; and discussions with the City, County, State and other public agencies with jurisdiction over the Premises or the Project, and has satisfied itself as to suitability, feasibility and all other matters relating to the Premises or the Project based solely on its own investigations and analyses and not, except as set forth in Section 1.4(b) of the Project Development Rider with respect to the Development Agreement, in reliance on the accuracy or completeness of any information provided by Lessor or any of its agents, consultants or contractors. Without limiting the generality of the foregoing: (a) Lessee assumes the risk of any

liens, easements, encumbrances or other restrictions, rights or conditions affecting the Premises that would materially and adversely affect the development, financing, marketing or operation of the Project, except to the extent of any unrecorded liens, easements, encumbrances or other restrictions, rights or conditions affecting the Premises which: (i) were created or consented to in writing by Lessor; (ii) were not disclosed by Lessor to Lessee prior to the Effective Date; and (iii) were not otherwise actually known to Lessee or reasonably ascertainable by survey, physical investigation of the surface of the Premises or other prudent and appropriate due diligence investigation; and (b) if any remedial or restoration work is required in order to conform the Premises to the requirements of Applicable Laws, Lessee shall be solely responsible for all such work, except only to the extent expressly provided to be Lessor's responsibility pursuant to Article 6 of the Project Development Rider.

**1.3 Quiet Enjoyment.** Upon full and timely payment of all Rent due hereunder, and upon keeping and observing all of the other covenants, agreements and provisions of this Lease on its part to be kept and observed, Lessee shall lawfully and quietly hold, occupy and enjoy the Premises during the Term, subject to the terms, conditions and reservations contained in this Lease, without hindrance or molestation by anyone claiming by, through or under Lessor.

**1.4 Water and Mineral Rights.** Lessor reserves the sole and exclusive right to mine or otherwise produce or extract by any means whatsoever, whether by slant drilling or otherwise, all water, oil, gas, hydrocarbons and other minerals (of whatsoever character) in, under or from the Premises. Such mining, production or extraction shall be for the sole benefit of Lessor without any obligation to pay Lessee for any or all of the substances so mined, produced or extracted; provided, however, that Lessor shall have no right of entry on the surface of the Premises for such purposes, and any operations for such mining, production or extraction shall not be conducted from the surface of the Premises, but only at such depth beneath such land surface so as not to interfere with the use or stability of any Improvements within the Premises.

**1.5 Lessor's Reservation of Access and Utility Rights.**

(a) Lessor reserves the right to enter upon and use the Premises, and to grant licenses, permits or easements to the City, the County, the Santa Clara Valley Water District and any other governmental bodies, public or private utilities and other Persons (collectively, "Recipient Agencies") to enter upon and use the Premises, at no cost to Lessee, for the following

purposes (provided, however, that Lessor shall have no obligation to exercise such right of entry, grant such licenses, permits or easements, or conduct any such activities, except to the extent expressly provided elsewhere in this Lease): (i) operating the Marguerite Shuttle (or any successor local shuttle service), including without limitation a drive-through and shuttle stop within the Premises at a reasonably appropriate location designated from time to time by Lessee, subject to approval by the Stanford University Transportation Department (which approval shall not be unreasonably withheld or delayed) and the City; (ii) the construction, use, operation, maintenance, renewal, relocation and replacement of that certain private road commonly known as Clark Way in a new alignment located partially on the Premises and partially on portions of the adjoining lands as shown on the Final Map (or in another appropriate alignment reasonably approved by Lessee and the City); (iii) access to San Francisquito Creek; (iv) flood control; and (v) the installation, use, operation, maintenance, renewal, relocation and replacement of permanent or temporary water, natural gas, steam, storm, sewer and sanitary sewer lines, and underground telephone, electric power and other lines, conduits and facilities as may be reasonably necessary in connection with the development, use or operation of any property owned by Lessor (whether or not leased to third parties) in the vicinity of the Premises. Lessor's exercise of its rights of entry pursuant to clauses (ii)-(v) above (but not the exercise of their rights of entry by any governmental or utility Recipient Agency, or any Persons using Clark Way or any other public access, utility, recreation or other easement) shall be subject to the notice and other requirements set forth in Section 1.6 below.

(b) The location of all such pipelines, lines, conduits, facilities and easements on, under or across the Premises (collectively "Facilities") that are not within easements or rights of way established pursuant to the Final Map shall be subject to Lessee's prior approval, which shall not be unreasonably withheld or delayed so long as: (i) the Facilities are not located under the footprint of any then-existing or then-planned Buildings, and do not interfere with the use or stability of any then-existing or then-planned Buildings or other Improvements on the Premises (and if any Buildings or other Improvements thereafter are proposed for a location that may be incompatible with the location of any Facilities, Lessee shall be solely responsible for relocating the Facilities as provided in Section 1.5(c) below); and (ii) neither the Facilities nor the exercise of Lessor's rights hereunder with respect thereto would materially interfere with or disrupt Lessee's (or any Resident's) use, occupancy and enjoyment of the Premises or the Project or



otherwise materially and adversely affect the initial construction, operation, marketing or financing of the Project by Lessee. Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, damages, liabilities, losses and costs (including reasonable attorneys' fees, costs and disbursements) to the extent resulting from the entry onto and use of the Premises pursuant to this Section 1.5 by Lessor or Lessor's agents, employees, contractors, guests or invitees (but not any Recipient Agencies or their agents, employees, contractors, guests or invitees, or any Persons using Clark Way or any other public access, utility, recreation or other easement); provided, however, that in no event shall Lessor be liable to Lessee for any punitive, consequential or other speculative damages.

(c) Lessee may relocate the Facilities from time to time at its sole cost, subject to the prior written approval of Lessor (which approval shall not be unreasonably withheld or delayed), the City (but only to the extent the Facilities are within easements or rights of way established pursuant to the Final Map) and the applicable Recipient Agency, if any. Subject to the foregoing indemnification obligations of Lessor, Lessee hereby waives and releases any claims against Lessor or any Lessor Indemnitee (but not against any Recipient Agency) for damages for any injury or inconvenience to, or interference with Lessee's quiet enjoyment of the Premises, operation of the Project or any other loss, damage, liability or cost occasioned by the proper exercise of the rights reserved to Lessor under, or granted by Lessor pursuant to, this Section 1.5.

**1.6 Lessor's Entry.** In connection with any entry on or use of the Premises by Lessor pursuant to Section 1.4 or Section 1.5 occurring on or after the Term Commencement Date, and without limiting the provisions of Section 1.4 or Section 1.5(b), Lessor shall, at no cost to Lessee but subject to the requirements of the City, any other public agencies with jurisdiction and Applicable Laws: (a) first provide Lessee with two business days prior written notice (except that no such notice shall be required in the event of imminent threat or danger to persons or property on or near the Premises), which notice shall contain a reasonably detailed description of the activities to be undertaken; (b) minimize to the greatest extent practicable any significant visual, odor or noise impact on the Project; (c) maintain any operations on the Premises in a safe, neat and orderly condition, including the placement of barriers that are designed to protect the safety of persons on the Premises while being reasonably unobtrusive in appearance; (d) not damage or obstruct the use of any Improvements on the Premises, or otherwise interfere in any

material respect with the construction of the Initial Improvements or operation of the Project; and (e) upon completion of such activities, restore the surface of the Premises to its pre-existing condition as near as practicable.

#### 1.7 RMH Lease and Grant of Easement.

(a) As of the Effective Date, a portion of the Premises along the northeast border is subject to that certain Lease and Grant of Easement dated November 29, 1990, a Memorandum of which was recorded in the Official Records of the County on January 16, 1991 as Instrument No. 10780627, as amended pursuant to that certain First Amendment to Lease and Grant of Easement (collectively, as amended, the "RMH Lease and Grant of Easement"), for the benefit of Ronald McDonald House at Stanford (formerly known as Children's Hospital at Stanford Family Center, and referred to herein as "RMH") as lessee and grantee. A copy of the RMH Lease and Grant of Easement is attached as Exhibit D-1. Lessor may hereafter agree with RMH to extend the term of the RMH Lease and Grant of Easement. Lessor also may hereafter agree with RMH to otherwise amend the RMH Lease and Grant of Easement; provided, however, that the provisions of any such amendment that would: (i) expand the road access and parking easements granted to RMH pursuant to the RMH Lease and Grant of Easement (the "Easements"); or (ii) change the permitted uses of the Easements, modify or affect the terms of the RMH Partial Assignment or Lessee-RMH Cooperation Agreement (as those terms are defined below), or otherwise impose any new burdens on the Premises or affect Lessee's use or occupancy of the Premises, shall be subject to Lessee's prior written consent, which may be granted or withheld in Lessee's sole discretion, except that Lessee shall not unreasonably withhold or delay its consent to any change, modification or new burden referred to in clause (ii) above if the same would have no more than a *de minimis* effect on the Project, would not expose Lessee to any material cost or liability, and would not require the consent of any Lender.

(b) As of the Effective Date, Lessor and Lessee have entered into that certain Assignment and Assumption Agreement, a copy of which is attached as Exhibit D-2, pursuant to which Lessor has assigned to Lessee certain rights in the RMH Lease and Grant of Easement and Lessee has assumed and agreed to perform certain obligations in connection therewith (the "RMH Partial Assignment"). Lessee shall fully and timely perform its obligations under the RMH Partial Assignment. As of the Effective Date, Lessee and RMH have entered into that



certain Project Cooperation Agreement, a copy of which is attached as Exhibit E (the "Lessee-RMH Cooperation Agreement"), pursuant to which RMH has granted Lessee certain rights of entry, use and access upon and across the RMH premises and RMH and Lessee have otherwise agreed to cooperate in certain respects with respect to the Project and with respect to the activities of RMH. Lessor hereby expressly agrees that if the RMH Lease and Grant of Easement terminates before the Termination Date of this Lease, Lessee shall continue to enjoy the entry, use and access rights over the RMH Premises that are provided for in the Lessee-RMH Cooperation Agreement for the remainder of the Term of this Lease. Lessor further agrees that if Lessee and RMH desire to relocate one or both Easements pursuant to Section 1.3 of the Lessee-RMH Cooperation Agreement, Lessor shall not unreasonably withhold or condition its approval thereof so long as there would be no material adverse affect on Lessor (including, for example and not by way of limitation, any material adverse affect on Lessor's use of or ability to relet the RMH premises after expiration of the RMH Lease and Grant of Easement).

#### 1.8 CHC Lease.

(a) Lessor, as the lessor, and The Children's Health Council of the Mid-Peninsula ("CHC"), as the lessee, are parties to that certain Ground Lease dated October 1, 1995, a Memorandum of which was recorded in the Official Records of the County on March 24, 1998 as Document No. 14107339, as amended pursuant to that certain First Amendment to Ground Lease (collectively, the "CHC Lease"). Lessor may hereafter agree with CHC to extend the term of the CHC Lease. Lessor also may hereafter agree with CHC to otherwise amend the CHC Lease; provided, however, that the provisions of any such amendment that would impose any new burdens on the Premises, or affect Lessee's use or occupancy of the Premises, shall be subject to Lessee's prior written consent which consent shall not be unreasonably withheld or delayed if the amendment would have no more than a *de minimis* effect on the Project, would not expose Lessee to any material cost or liability, and would not require the consent of any Lender. The premises subject to the CHC Lease (the "CHC Premises") adjoin the northwest border of the Premises. A copy of the First Amendment to the CHC Lease is attached as Exhibit F (the "First CHC Lease Amendment").

(b) Section 4 of the First CHC Lease Amendment establishes a "Buffer Area" over a portion of the Premises and imposes certain restrictions with respect to the construction of Improvements within the Buffer Area with which Lessee shall comply.

(c) The Final Map created an approximately 22' wide easement, designated "S.C.V.W.D.," over a portion of the Premises for service road, emergency vehicle access and other purposes (the "Service Road Easement"). Lessor agrees that if at any time the City or any other public agency with jurisdiction requests that the Service Road Easement be extended onto and/or across the CHC Premises for any purpose (the "Easement Extension"), Lessor shall grant the Easement Extension, in form reasonably acceptable to the City or other public agency with jurisdiction, as and to the extent authorized by the CHC Lease.

## ARTICLE 2

### LEASE TERM

2.1 **Lease Term.** The term of this Lease (the "Term") shall commence on the Term Commencement Date and shall end at 11:59 p.m. on the Expiration Date, or such earlier date as this Lease may be terminated in accordance with its terms.

2.2 **Term Commencement Date.** The Term Commencement Date shall be the earlier of the outside date set forth therefor in Attachment H of the Project Development Rider (as such date may be extended for Force Majeure pursuant to Section 7.4 of the Project Development Rider), or the date the Leasehold Mortgage securing the financing for construction of the Initial Improvements (the "Initial Financing") is recorded in the Official Records of Santa Clara County. Commencing on the Term Commencement Date, Lessee shall have sole and exclusive possession of the Premises, subject to each and all of the terms, conditions and reservations contained in this Lease. Prior to the Term Commencement Date, Lessor shall have and retain sole and exclusive possession of the Premises, subject to Lessee's rights of entry as set forth in the Project Development Rider.

2.3 **Initial Occupancy Date; Expiration Date; Termination Date.** For purposes of this Lease:

(a) the "Initial Occupancy Date" shall be the earlier of the outside date set forth therefor in Attachment H of the Project Development Rider (as such date may be extended

for Force Majeure pursuant to Section 7.4 of the Project Development Rider), or the first day of the month immediately following the month in which the first Initial Resident takes occupancy at the Project;

(b) the "Expiration Date" shall be the day before the 75th anniversary of the Initial Occupancy Date; and

(c) the "Termination Date" shall be the Expiration Date, or such earlier date as this Lease may be terminated in accordance with its terms.

2.4 Memorandum of Lease and Addendum. Within five days after the Term Commencement Date, Lessor and Lessee shall execute, acknowledge and record (at Lessee's sole cost) a Memorandum of Lease in the form attached as Exhibit G (the "Memorandum of Lease"). Within 30 days after the Initial Occupancy Date, Lessor and Lessee shall execute, acknowledge and record (at Lessee's sole cost) an Addendum to the Memorandum of Lease, in the form attached as Exhibit H, memorializing the Initial Occupancy Date and Expiration Date.

### ARTICLE 3

#### RENT

3.1 Construction Period Rent. During the period commencing on the Term Commencement Date and continuing thereafter until the Initial Occupancy Date (the "Construction Period"), Lessee shall pay Lessor annual rent of One Million Five Hundred Thousand Dollars (\$1,500,000), as adjusted in the manner provided below ("Construction Period Rent"). Lessee shall pay Construction Period Rent in advance in equal monthly installments, commencing on the Term Commencement Date; provided, however, that Construction Period Rent for any partial month during the Construction Period shall be prorated on the basis of a 30-day month.

Construction Period Rent shall be adjusted on each anniversary of the Development Plan Modification Approval Date (each, an "Adjustment Date") by multiplying the then-current Construction Period Rent by the Construction Period Rent Adjustment Percentage. For purposes of this Section 3.1, the following terms shall have the following meanings:

(a) The "Construction Period Rent Adjustment Percentage" shall be the sum of 100% plus the increase (if any) in the Ending Index over the Beginning Index, expressed as a percentage.

(b) The Ending Index shall be the CPI for the second calendar month preceding the Adjustment Date. For example, if the Adjustment Date were January 15, 2002, the Ending Index would be the CPI for November, 2001.

(c) The Beginning Index shall be the same as the Ending Index used to calculate the previous adjustment (for example, if the Adjustment Date were January 15, 2003, the Beginning Index would be the CPI for November, 2001); except that, for purposes of calculating the first adjustment to the Construction Period Rent, the Beginning Index shall be the CPI for the second calendar month preceding the Development Plan Modification Approval Date (for example, if the Development Plan Modification Approval Date were January 15, 2001, the Beginning Index would be the CPI for November, 2000).

**3.2 Annual Base Rent.** During the period commencing on the Initial Occupancy Date and continuing thereafter until the Expiration Date (or the Termination Date, so long as the early termination is not due to an Event of Default by Lessee), Lessee shall pay Lessor annual base rent of One Million Five Hundred Thousand Dollars (\$1,500,000), adjusted in the manner provided below ("Annual Base Rent"). Lessee shall pay Annual Base Rent in advance in equal monthly installments, commencing on the Initial Occupancy Date; provided, however, that Annual Base Rent for any partial month during the period between the Initial Occupancy Date and the Expiration Date (or earlier Termination Date, so long as the early termination is not due to an Event of Default by Lessee) shall be prorated on the basis of a 30-day month.

Annual Base Rent shall be adjusted on the fifth anniversary of the Initial Occupancy Date, and every five years thereafter during the Term (each, an "Adjustment Date"), by multiplying the then-current Annual Base Rent by the "Annual Base Rent Adjustment Percentage" (as defined below). For example, if the then-current Annual Base Rent were \$1,500,000 and the Annual Base Rent Adjustment Percentage were 106.5%, the new Annual Base Rent would be \$1,597,500. For purposes of this Section 3.2, the following terms shall have the following meanings:

(a) The "Annual Base Rent Adjustment Percentage" shall be the sum of 100% plus the lesser of: (i) the increase (if any) in the Ending Index over the Beginning Index, expressed as a percentage; or (ii) 7%, it being the parties' intent that the Annual Base Rent Adjustment Percentage shall not under any circumstances exceed 107%.

(b) The Ending Index shall be the CPI for the second calendar month preceding the Adjustment Date. For example, if the Adjustment Date were July 30, 2014, the Ending Index would be the CPI for May, 2014.

(c) The Beginning Index shall be the same as the Ending Index used to calculate the previous adjustment (for example, if the Adjustment Date were July 30, 2014, the Beginning Index would be the CPI for May, 2009); except that, for purposes of calculating the first adjustment to the Annual Base Rent, the Beginning Index shall be the CPI for the second calendar month preceding the Initial Occupancy Date (for example, if the Initial Occupancy Date were July 30, 2004, the Beginning Index would be the CPI for May, 2004).

### 3.3 Participating Rent.

(a) Participating Rent Amount. Lessee shall pay Lessor participating rent ("Participating Rent") in the sum of the following amounts:

(i) Percentage of all Gross Receipts. Six percent (6%) of all Gross Receipts, whether received before, during or after the Term.

(ii) Additional Participating Rent During First 30 Years of Term. In addition to the Participating Rent provided in Section 3.3(a)(i) above, if Lessee enters into any arrangement during the period between the Initial Occupancy Date and the 30th anniversary of the Initial Occupancy Date that entitles any Resident to receive a Repayment in an amount that is less than 90% of the Entrance Fee paid by such Resident, Participating Rent also shall include an additional percentage of the Entrance Fee paid by the Resident, determined on a sliding scale starting at three percent (3%) if there is to be no Repayment and declining on a straight line to zero percent if there is to be a 90% Repayment (i.e., an additional .03333333333% of the Entrance Fee for each one percent

reduction in the Repayment below 90%). Expressed as a formula, the additional Participating Rent shall be:

$$.03 \times [(90 - \text{actual Repayment rate})/90] \times \text{Entrance Fee}$$

The following table illustrates how this formula would apply at various Repayment percentages if Lessee entered into an arrangement with a Resident at any time during the first 30 years after the Initial Occupancy Date pursuant to which the Resident paid a \$900,000 Entrance Fee:

<u>Repayment</u>	<u>Additional Participating Rent</u>
90%	\$0
80%	\$3,000 -- $.03 \times [(90-80)/90] \times \$900,000$
70%	\$6,000 -- $.03 \times [(90-70)/90] \times \$900,000$
65%	\$7,500 -- $.03 \times [(90-65)/90] \times \$900,000$
50%	\$12,000 -- $.03 \times [(90-50)/90] \times \$900,000$
40%	\$15,000 -- $.03 \times [(90-40)/90] \times \$900,000$
25%	\$19,500 -- $.03 \times [(90-25)/90] \times \$900,000$
20%	\$21,000 -- $.03 \times [(90-20)/90] \times \$900,000$
10%	\$24,000 -- $.03 \times [(90-10)/90] \times \$900,000$
0%	\$27,000 -- $.03 \times [(90-0)/90] \times \$900,000$

(iii) Additional Participating Rent During Years 31-45. In addition to the Participating Rent provided in Section 3.3(a)(i) above, if Lessee enters into any arrangement during the period between the 30th anniversary of the Initial Occupancy Date and the 45th anniversary of the Initial Occupancy Date that entitles any Resident to receive a Repayment in an amount that is less than 50% of the Entrance Fee paid by such Resident, Participating Rent also shall include an additional percentage of the Entrance Fee paid by the Resident, determined on a sliding scale starting at one and one-half percent (1.5%) if there is to be no Repayment and declining on a straight line to zero percent if there is to be a 50% Repayment (i.e., an additional .03% of the Entrance Fee for each one percent reduction in the Repayment below 50%). Expressed as a formula, the additional Participating Rent shall be:

$$.015 \times [(50 - \text{actual Repayment rate})/50] \times \text{Entrance Fee}$$

The following table illustrates how this formula would apply at various Repayment percentages if Lessee entered into an arrangement with a Resident at any time



during the period between the 30th and 45th anniversaries of the Initial Occupancy Date pursuant to which the Resident paid a \$1,500,000 Entrance Fee:

<u>Repayment</u>	<u>Additional Participating Rent</u>
50%	\$0
40%	$\$4,500 -- .015 \times [(50-40)/50] \times \$1,500,000$
30%	$\$9,000 -- .015 \times [(50-30)/50] \times \$1,500,000$
25%	$\$11,250 -- .015 \times [(50-25)/50] \times \$1,500,000$
10%	$\$18,000 -- .015 \times [(50-10)/50] \times \$1,500,000$
0%	$\$22,500 -- .015 \times [(50-0)/50] \times \$1,500,000$

(b) **Payment; Timing.** Participating Rent shall be payable monthly as follows: on or before the 20th day of each calendar month during the Term, Lessee shall provide Lessor with a Monthly Report (in the form prescribed by Section 7.9(b) below) stating the total Gross Receipts received during the previous month, and concurrently shall pay to Lessor the Participating Rent, calculated on the basis of the total Gross Receipts stated in the Monthly Report, except as follows: for purposes of calculating Participating Rent only, the total Gross Receipts stated in the Monthly Report shall be reduced by the amount of any Entrance Fees that were refunded to a prospective or actual Resident during such month if both of the following conditions are satisfied: (i) the refund was made within the 90-day period after the Resident first took occupancy or such longer cancellation or rescission period as may be provided by Applicable Law, if any (the "Refund Period"); and (ii) the refunded amount had been included in Gross Receipts prior to or during the Refund Period for purposes of calculating Participating Rent. In the event that refunded Entrance Fees satisfying the conditions of clauses (i) and (ii) of this Section 3.3(b) for any month exceed Gross Receipts for that same month, the amount of such refunded Entrance Fees that exceeds Gross Receipts for the same month shall be carried forward and offset against Gross Receipts for the following month or months until fully offset. In addition, to the extent any additional Participating Rent has been paid under Section 3.3(a)(ii) or 3.3(a)(iii) above with respect to Entrance Fees satisfying the conditions of clauses (i) and (ii) of this Section 3.3(b), then Participating Rent otherwise due hereunder shall be reduced by the amount of such additional Participating Rent so paid (the "Participating Rent Credit"), and if the amount of the Participating Rent Credit exceeds the amount of Participating Rent otherwise due hereunder, the amount of the Participating Rent Credit that is not so offset shall be carried

forward and offset against Participating Rent for the following month or months until fully offset.

Participating Rent shall be payable in the same manner with respect to all Gross Receipts received by Lessee before the Term Commencement Date or after the Termination Date. For purposes of this Lease, Gross Receipts shall be deemed "received" on the date control over any such amount passes from the payor, regardless of whether (or when) Lessee recognizes such amount as income, how the payment is characterized for tax, accounting or other purposes, whether (or when) Lessee is obligated to repay such amounts or whether there remain any conditions or other limitations on Lessee's use of such amounts; provided, however, that as the sole two exceptions to the foregoing: (1) refundable reservation fees, subscription deposits or other funds paid by Initial Residents that are required to be held in an escrow depository by Applicable Laws shall not be included in Gross Receipts until the date the DSS authorizes the release of such funds from escrow; and (2) security deposit amounts paid by Residents shall not be included in Gross Receipts until the date applied to amounts due and owing for items other than repairs to a Resident's Unit.

(c) **Adjustments.** Lessor's acceptance of any payment of Participating Rent shall not be deemed an acknowledgment or agreement that the amount paid is a correct calculation of the Participating Rent then due. Participating Rent shall be adjusted if the Annual Report (as defined in Section 7.9(d) below), or any audit of Lessee's books and records conducted pursuant to Section 7.9(g) below, indicates that Gross Receipts for the period in question were higher or lower than the aggregate amounts previously reported. Any underpayment shall be paid to Lessor within 30 days of determination, together with interest from the date payment was due at the Interest Rate; provided, however, that if the amount of the underpayment exceeds either two percent (if the period in question is before Project Stabilization) or five percent (if the period in question is after Project Stabilization) of the amount actually due for the period in question, the underpayment shall bear interest at the Penalty Interest Rate. Any overpayment to Lessor shall be credited against the next installment of Participating Rent due to Lessor.

**3.4 Rent and Additional Rent Defined.** For purposes of this Lease: (a) "Rent" shall mean and include all amounts and charges Lessee is obligated to pay to Lessor under this Lease,



including without limitation Construction Period Rent, Annual Base Rent, Participating Rent and Additional Rent; and (b) "Additional Rent" shall mean and include all Project Costs which may be incurred or paid by Lessor on behalf of Lessee pursuant to Section 5.2, and all other amounts and charges, except Construction Period Rent, Annual Base Rent and Participating Rent, which are payable by Lessee to Lessor under this Lease. Lessee shall pay Lessor any Additional Rent within ten days after receipt of Lessor's invoice therefor.

**3.5 Payment of Rent.** Lessee shall pay Rent to Lessor at the prescribed times by wire transfer of immediately available and lawful funds of the United States to such account or accounts located in the United States of America as Lessor may designate in writing from time to time. If Lessor fails to so designate an account for receipt of wire transfers of Rent, Lessee shall pay Rent to Lessor at the address provided in Section 19.1, or to such other person and/or at such other address as Lessor may designate in writing from time to time.

**3.6 Lessee's Obligations Unconditional.** To the maximum extent permissible under Applicable Laws, this Lease shall continue in full force and effect, and Lessee's obligations (including without limitation Lessee's obligation to pay Rent) shall not be released, discharged or otherwise affected (subject only to Section 3.7 below and Section 6.5 of the Project Development Rider), by reason of: (a) any Casualty or Appropriation affecting all or any portion of the Premises, the Improvements or the FF&E, except and solely to the extent expressly provided in Article 17 below; (b) any restriction on, prevention of or interference with any use of all or any portion of the Premises, the Improvements or the FF&E; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Lessor or Lessee, or any action taken with respect to this Lease by a court, trustee or receiver in any proceeding; (d) any claim which Lessee or any other Person has or might have against Lessor; (e) any failure by Lessor to comply with any of its obligations under this Lease (except for a breach of the covenant of quiet enjoyment) or any other agreement; (f) the failure by any Resident, Manager, Lender, Marketing Company, licensee, service provider, concessionaire, Transferee or other person or entity to perform or comply with any of the terms of any agreement with Lessee; or (g) the termination of any or all of the Operating Licenses, Entitlements, Residence and Services Agreements, Rental Leases, Management Contract, Marketing Contract, Loan, Service Contracts, license, concession or other agreement, whether voluntarily or by operation of law. The obligations of Lessee under this Lease shall be separate

and independent covenants; provided, however, that nothing in this Section 3.6 shall be construed to release Lessor from any liability or obligation that Lessor has to Lessee under this Lease or at law. Except to the extent expressly provided elsewhere in this Lease, Lessee hereby waives, to the maximum extent permitted by Applicable Laws, any rights that it may now or in the future have to quit or surrender the Premises, to terminate this Lease, or to any abatement (subject only to the provisions of Article 17 below and Section 6.5 of the Project Development Rider), diminution, offset (subject only to Section 3.7 below), reduction or suspension of Rent on account of any event or circumstance, including without limitation any rights it might otherwise have under the provisions of California Civil Code sections 1932 and 1933, or any amended, similar or successor laws. Nothing in this Section 3.6 shall be deemed to preclude, impair or otherwise affect Lessee's right to terminate this Lease prior to the Term Commencement Date pursuant to Section 8.1 of the Project Development Rider, Lessee's right to enforce any indemnification rights provided to Lessee by this Lease (or any other agreement between Lessee and Lessor with respect to the Project), or any remedy that Lessee might have for constructive eviction or breach of the covenant of quiet enjoyment.

**3.7 Rent Offset.** If Lessee obtains a monetary judgment or arbitration award against Lessor that arises out of a breach by Lessor of its obligations to Lessee under this Lease and is no longer subject to appeal or stay (a "Judgment"), Lessee shall have the right, in addition to the special recourse right provided in Section 19.3(a) below, to offset all amounts payable by Lessor to Lessee pursuant to the Judgment (including without limitation interest at the rate provided therein) against all Construction Period Rent, Annual Base Rent and Participating Rent amounts that Lessee otherwise would be obligated to pay to Lessor at any time on and after the date the Judgment is no longer subject to appeal or stay until the entire amount of the Judgment (including interest) has been satisfied in full. The offset right contained in this Section 3.7 shall be Lessee's sole right of offset, and the sole exception to the provisions of Section 3.6 above with respect to offset.

#### **ARTICLE 4**

#### **LESSOR LOAN**

An Affiliate of Lessee (the "Lessee Lender") shall make a nonrecourse loan ("Lessor Loan") to Lessor, which proceeds shall be disbursed in full to Lessor on the Initial Occupancy

Date, in the amount of Twenty Million Dollars (\$20,000,000). The Lessor Loan shall be evidenced by a Promissory Note, in the form attached as Exhibit I (the "Promissory Note"), which Lessor shall execute and deliver to Lessee as a condition to the Lessee Lender's obligation to fund the Lessor Loan. The Lessor Loan shall bear simple interest at a rate of 7.5% per annum and, subject to any provisions of the Promissory Note or this Lease relating to acceleration of the maturity of the Lessor Loan, shall be payable in installments in accordance with the schedule set forth in the Promissory Note, with the first payment due on the 30th day of the month following the first anniversary of the Initial Occupancy Date and subsequent payments due thereafter on each anniversary of the initial payment date (each a "Payment Date") until maturity. The Lessor Loan may be prepaid without premium or penalty, and except as otherwise expressly provided in the Promissory Note or this Lease, shall be secured by and payable from, and only to the extent of, Participating Rent received by Lessor for the 12-month period immediately preceding the month in which the applicable Payment Date occurs. To the extent Participating Rent paid to Lessor during such preceding 12-month period is insufficient to fund the entirety of any installment of the Lessor Loan, Lessor may elect in its sole discretion to defer payment of all or any portion of the shortfall, in which event the unpaid amount shall continue to accrue simple interest at 7.5% per annum and shall be payable (subject to the availability of sufficient Participating Rent) on the next succeeding Payment Date. Lessor shall collaterally assign its right, title and interest in the Participating Rent to the Lessee Lender, in the form attached as Exhibit J (the "Collateral Assignment"), as security for the Lessor Loan. In the event Lessor defaults in the payment of any amounts due under the Lessor Loan and fails to cure the default within the period of time, if any, expressly provided for cure in the Promissory Note or Collateral Assignment, Lessor hereby authorizes Lessee, upon 15 days' written notice of the default from the Lessee Lender, to pay Participating Rent directly to the Lessee Lender to the extent required to cure the default, but only if Lessor does not dispute the notice of default by written notice to the Lessee Lender and Lessee within the 15-day period. In the event this Lease is terminated before the maturity date of the Lessor Loan due to an Event of Default, or due to a Casualty that gives rise to a termination of this Lease by Lessee (but not Lessor), Lessor's obligations with respect to the Lessor Loan shall terminate, effective as of the Termination Date, and in such event, Lessor's sole obligation after the Termination Date with respect to the Lessor Loan shall be the payment (subject to the availability of sufficient Participating Rent) of amounts accruing

under the Promissory Note prior to the Termination Date. In the event this Lease is terminated before the maturity date of the Lessor Loan due to an Appropriation or a Casualty that gives rise to a termination of this Lease by Lessor, Lessor shall pay the amounts then outstanding under the Lessor Loan; provided, however, that in the case of an Appropriation, Lessor shall pay the amounts then outstanding under the Lessor Loan only from and to the extent of Award proceeds received by Lessor that are allocable to the Participating Rent that Lessor would have received over the remaining term of the Lessor Loan, and if the Award paid to Lessor for the value of the Participating Rent for such period has been discounted, the principal balance of the Lessor Loan shall be discounted appropriately. Lessor shall use commercially reasonable efforts to procure an Award for the value of the lost Participating Rent.

## ARTICLE 5

### NET LEASE; TAXES AND ASSESSMENTS

5.1 **Net Lease.** The Construction Period Rent, Annual Base Rent, Participating Rent and any Additional Rent payable to Lessor hereunder shall be absolutely net to Lessor and shall be paid without assertion of any counterclaim, setoff, deduction or defense and without any abatement, suspension, deferment or reduction, except if and solely to the extent expressly so provided elsewhere in this Lease. Under no circumstances or conditions, whether now existing or hereafter arising, and whether within or beyond the present contemplation of the parties, shall Lessor be expected or required to make any payment of any kind whatsoever with respect to the Premises or the Project, or have under any obligation or liability with respect to the Premises or the Project, except if and solely to the extent expressly so provided elsewhere in this Lease.

5.2 **Project Costs.** In addition to Construction Period Rent, Annual Base Rent and Participating Rent, Lessee shall pay or fund when due all Impositions (but subject to Lessee's right to contest pursuant to Section 5.3(c) below), insurance premiums and deductibles, debt service, Reserves, permit and license fees, costs of utilities, design, construction, maintenance, repair, replacement, rebuilding, restoration, management, marketing, services, operations and other costs of any type whatsoever accruing at any time during the Term or any holdover period in connection with the development, ownership, marketing, leasing, operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Premises or the Project (collectively, "Project Costs"); provided, however, that Project Costs shall not

include, and Lessee shall have no obligation with respect to, those costs that are expressly made the responsibility of Lessor pursuant to other provisions of this Lease. Lessee shall pay all Project Costs directly, and shall contract directly for all required services, utilities and other items described herein; provided, however, that Lessor shall have the right to contract for any such services, utilities or other items if Lessee has failed to do so, or has failed to make any payment of Project Costs which is due and owing, and: (a) such failure constitutes an uncured Event of Default; or (b) there is an imminent threat to the health or safety of persons or property on or about the Premises that Lessee is not taking steps to address. Lessee shall provide Lessor, upon written request, with copies of invoices, receipts, canceled checks and/or other documentation reasonably substantiating Lessee's payment of all Project Costs.

### 5.3 Payment of Taxes and Assessments.

(a) Lessee's Obligations to Pay. Without limiting the generality of Sections 5.1 and 5.2, but subject to Section 5.3(c) below, Lessee shall pay all Impositions allocable to the Premises during the Term or any holdover period on or before the date due, and in any event before delinquency and before any fine, interest or penalty may become due or be imposed by operation of law for nonpayment; provided, however, that: (i) any Impositions that are allocable to periods before or after the Term (and any holdover period) shall be paid by Lessor; and (ii) if any assessment is permitted by law to be paid in installments, Lessee may pay such assessments in installments. Lessor shall, at no cost to Lessee, take commercially reasonable actions to cause the Premises to be segregated for tax purposes from other properties owned by Lessor, and to be separately assessed and taxed. If for any reason the Premises are not separately assessed and taxed, the allocation of Impositions as between the Premises and other lands of Lessor shall be subject to agreement between Lessee and Lessor, and in the absence of agreement shall be determined pursuant to the provisions of Section 7.12 by an Arbitrator having at least ten years experience in property tax-related accounting matters. Notwithstanding anything in this Lease to the contrary: (x) Lessee shall take no actions that would cause the Premises to be reassessed for tax purposes at any time prior to the Term Commencement Date; and (y) if the Premises are reassessed for property tax purposes at any time between the Development Plan Modification Approval Date and the Term Commencement Date for any reason other than an action taken by Lessor that is inconsistent with the requirements of this Lease, Lessee shall pay the difference between the Impositions that would have been imposed if



not for the reassessment and the Impositions that are imposed as a consequence of the reassessment. This covenant shall survive the termination of this Lease.

(b) **Direct Payment.** Lessee shall pay all Impositions directly to the applicable taxing authority, and shall deliver to Lessor, within thirty days after payment, true and correct copies of the receipted bills or other reasonable evidence showing such payment. Lessor shall cooperate with Lessee to cause all bills for Impositions to be sent directly to Lessee, but if the tax collection agency will not so agree, then Lessor shall tender all bills to Lessee promptly upon Lessor's receipt.

(c) **Right to Contest.** Lessee shall have the right, at its sole cost, to contest the full or partial amount or validity of any Imposition by appropriate administrative and legal proceedings, either in its own name, in Lessor's name, or jointly with Lessor if Lessor so elects. Lessee may postpone payment of any contested Imposition pending prompt and diligent prosecution of any such proceedings and appeals, but only if Lessee takes such action as may be required pending a final determination in Lessee's contest, including without limitation the posting of a bond or other assurance of payment or performance with the court or administrative agency or other legal authority having jurisdiction over the contest, to suspend the collection of the contested Imposition and the sale of the Premises or any Improvements or FF&E to satisfy any lien(s) arising out of the nonpayment of such Imposition. Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, liabilities and costs, including without limitation penalties, interest and reasonable attorneys' fees, costs and disbursements, arising from or related to any such contest, noncompliance or postponed compliance; provided, however, that in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages.

(d) **Assessment Proceedings.** If at any time during the Term any public or quasi-public authority proposes to create an improvement, special assessment or other like district which would or could impose assessments or other Impositions on the Premises (an "Assessment District"), the boundaries of which would or could include the Premises, Lessor shall not cast any votes allocable to the Premises in favor of creation of such Assessment District (as distinguished from votes allocable to other property of Lessor, which Lessor may cast in any manner it deems appropriate in its sole discretion) without Lessee's prior written consent. In the

event Lessee requests that Lessor vote in favor of creation of an Assessment District which would include the Premises, Lessor shall be obligated to cast those votes that are allocable to the Premises in favor of creation of such Assessment District (as distinguished from those votes that are allocable to other property of Lessor, which Lessor may cast in any manner it deems appropriate in its sole discretion), but only in the event that the creation of the proposed Assessment District would not result in Impositions being assessed against the Premises following the Expiration Date. Lessee shall have the right (but not the obligation), regardless of Lessor's position, to participate in any proceeding relating to the creation of an Assessment District which would result in additional Impositions being assessed against the Premises and seek to have the Premises excluded from or included in any proposed Assessment District. The party receiving any notice or other information relating to the proposed creation of any Assessment District the proposed boundaries of which would or could include the Premises shall promptly provide the other party with copies of all such notices and other information.

## ARTICLE 6

### USE OF PREMISES

6.1 Permitted Use. The Premises shall be used at all times prior to the 60th anniversary of the Initial Occupancy Date for the development and operation of a First Class CCRC and, after the 60th anniversary of the Initial Occupancy Date, a First Class Rental Project, together with such other uses as are reasonably ancillary or incidental to or supportive of such uses as a First Class CCRC or First Class Rental Project, as herein provided, all in accordance with and subject to the terms and conditions of this Lease. Lessee shall not use or permit the Premises to be used for any other purpose without the prior written consent of Lessor, which Lessor may grant, condition or withhold in its sole discretion.

6.2 No Nuisance. Without limiting the applicability of Section 6.1 or any other provision of this Lease, Lessee shall not use or allow the Premises or the Project to be used for any unlawful purpose, nor shall Lessee cause, maintain or permit any nuisance, waste or dangerous condition in, on or about the Premises or the Project.

### 6.3 Applicable Requirements.

(a) Compliance with Applicable Requirements. Lessee shall comply with, and the development, construction, use, occupancy, operation, maintenance, repair, reconstruction, restoration, marketing and management of the Premises and the Project shall comply with: (i) all Applicable Laws, including without limitation the Development Agreement, Operating Licenses and other Entitlements to the extent applicable to Lessee, the Premises or the Project; (ii) the requirements of the Pacific Fire Rating Bureau, the American Insurance Association and any other insurer or insurance authority now or hereafter constituted to the extent required to obtain the insurance coverage required pursuant to the terms of this Lease; and (iii) the requirements of any liens, easements, encumbrances, restrictions, rights and conditions to which this Lease is subject as of the Effective Date, or which are created after the Effective Date with Lessee's written consent, including without limitation the RMH Lease and Grant of Easement and the restriction contained in Section 4 of the First CHC Lease Amendment. Lessee shall provide Lessor promptly with copies of any notices of violation or deficiency Lessee may receive respecting the Premises from any public agency with jurisdiction or insurance authority, and subject to its right to contest provided in Section 6.3(b) below, Lessee shall promptly and fully cure and correct at its sole cost any such violation or deficiency.

(b) Right to Contest. Lessee shall have the right, at its sole cost, to contest the application to the Project or the Premises of any law or legal requirement or other matter referred to in Section 6.3(a) above, Section 6.5(d) or Section 11.3(f) below, or Section 5.6 of the Project Development Rider, by appropriate administrative and legal proceedings, either in its own name or jointly with Lessor if Lessor so elects in its sole discretion. Lessee may postpone compliance with any contested law or legal requirement or other such matter pending prompt and diligent prosecution of any such proceedings and appeals, but only if Lessee takes such action as may be required pending a final determination in Lessee's contest, including without limitation the posting of a bond or other assurance of payment or performance with the court or administrative agency or other legal authority having jurisdiction over the contest, to suspend the application of the contested law or legal requirement or other such matter to the Project or the Premises. Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, liabilities and costs, including without limitation penalties, interest and reasonable attorneys' fees, costs and disbursements, arising from or related to any such contest,



noncompliance or postponed compliance; provided, however, that in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages. Notwithstanding anything in this Section 6.3(b) to the contrary, Lessee may contest the interpretation, application or enforcement of those provisions and requirements of the Development Agreement or Conditions of Approval with which Lessee is required to comply pursuant to this Lease, and may postpone compliance with any contested requirement imposed in connection therewith, but such contest shall be undertaken by Lessee only with the prior written consent of Lessor. Lessor's consent shall not be unreasonably withheld so long as the contest or postponed compliance will not give rise to a claim by the City or any other public agency with jurisdiction that there is a default under the Development Agreement or Conditions of Approval which entitles the City or such other public agency to order a halt in or cause the delay of any work or other activities being undertaken by Lessor, or to exercise any other remedy against Lessor that would increase Lessor's costs by more than a *de minimis* amount or otherwise have a material adverse effect on Lessor. If such contest or postponed compliance could give rise to such a claim by the City or any other public agency, Lessor's consent may be granted or withheld in its sole discretion.

6.4 **Lessor's Rights of Contest, Entry and Inspection.** Without limiting any of Lessor's other rights or remedies under this Lease:

(a) Lessor shall have the right to contest, at Lessor's sole cost, the interpretation, application or enforcement of the Development Agreement or Conditions of Approval, and may postpone compliance with any contested requirement imposed in connection therewith; provided, however, that if such contest would increase Lessee's costs by more than a *de minimis* amount, materially and adversely affect the construction or operation of the Project, delay completion of the Initial Improvements, or expose Lessee to the exercise by the City (or any other Person) of any rights or remedies under the Development Agreement Assignment and Assumption Agreement (unless such contest effectively forestalls the exercise of any such rights or remedies), the prior written consent of Lessee shall be required, which consent shall not be unreasonably withheld or delayed.

(b) Lessor shall have the right upon not less than two business days' prior written notice (except that no such notice shall be required in the event of imminent threat or danger to persons or property on or near the Premises), which notice shall contain a reasonably

detailed description of the purpose of the entry and the activities to be undertaken, to enter upon any part of the Premises or the Project during normal business hours for the purpose of ascertaining the condition of the Premises or the Project, performing its obligations or exercising its rights under this Lease (including without limitation its rights under Section 1.5(a), to the extent provided therein), posting notices of non-responsibility, ascertaining whether Lessee is complying with its obligations under this Lease or showing the Premises or the Project to prospective successors, lenders or underwriters. Lessor shall use reasonable efforts in exercising its entry rights to avoid or minimize interference with the construction and operation of the Project or disturbance of the Residents. Lessor shall have the right to use any and all means it deems reasonably necessary or appropriate under the circumstances in order to obtain entry to the Premises or the Project in case of an imminent threat or danger to persons or property, and such entry shall not be construed or deemed to be a forcible or unlawful entry into the Premises, or an actual or constructive eviction of Lessee from the Premises or any portion thereof.

**6.5 Archaeological Preserve Zone; Historical Resources.**

(a) **Use Restriction.** Notwithstanding any other provision of this Lease (except the last sentence of this Section 6.5(a)), the area designated in the Site Plan attached as Exhibit K-1 as the "Archaeological Preserve Zone" shall not be used for any purpose except open space; provided, however, that subject to the terms and conditions of this Section 6.5, the surface of the Archaeological Preserve Zone may be used by pedestrians for recreational purposes and Lessee may establish a paved service road within an alignment approved by Lessor and the City. Except for this service road, no Improvements (including without limitation landscaping, asphalt, concrete or other materials) shall be constructed, installed or placed on or within the Archaeological Preserve Zone without Lessor's prior written approval (which Lessor may grant, condition or withhold in its sole discretion). Existing pathways, streets and parking lots may be maintained in place provided that no excavation shall be permitted. Except in cases of imminent threat or danger to persons or property, no vehicles shall be parked on or driven across any portion of the Archaeological Preserve Zone other than the service road without Lessor's prior written approval (which Lessor may grant, condition or withhold in its sole discretion). Subject to all of the other terms and conditions of this Lease and the Project Development Rider (including without limitation Lessee's compliance with all Applicable Laws and Lessor's right to approve the design and construction of the Improvements proposed by

Lessee pursuant to the Project Development Rider and Article 11 of this Lease), Lessor hereby approves the construction, use, operation, maintenance, repair and replacement of Initial Improvements within those portions of the Archaeological Preserve Zone so designated in either Exhibit K-2 or Exhibit K-3 attached (as Lessee may elect in its sole discretion).

(b) **Historical Preservation.** The Premises contains other resources of historical value and interest to Stanford University and the City, including without limitation the original gates, artifacts from the original Stanford home, the mausoleum and the carriage house (collectively, "Historical Resources"). Lessee shall take all reasonable measures to preserve and maintain the Historical Resources in good, sound and attractive condition of repair at all times during the Term. Without limiting the generality of the foregoing, Lessee shall comply with all requirements of the Entitlements and Conditions of Approval pertaining to the Historical Resources, and shall take all measures reasonably necessary to protect the Historical Resources from damage during the construction of any Improvements or Alterations. Lessor acknowledges that Lessee's obligation to take "all reasonable measures" and "all measures reasonably necessary" does not require duplicative or inconsistent actions, and that Lessee will select from the universe of available actions those reasonable measures that are best suited to preserve, maintain and protect the Historical Resources in accordance with the standards set forth herein. Lessor or the City may require Lessee to limit or restrict access to the Historical Resources at any time or from time to time if Lessor or the City deems it necessary or advisable for the preservation of the Historical Resources; provided, however, that unless such limitation or restriction on access is required by Applicable Laws, Lessee shall be required to comply with such limitation or restriction only to the extent that it does not materially impair the construction or operation of the Project. Lessor may remove or relocate the Historical Resources at any time and from time to time; provided, however, that: (i) if the proposed relocation site is another location on the Premises, the relocation site shall be subject to Lessee's prior written approval, which Lessee may grant or deny in its sole discretion; and (ii) Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, damages, liabilities, losses and costs (including reasonable attorneys' fees, costs and disbursements) arising from or relating to any such relocation of the Historical Resources; provided, however, that in no event shall Lessor be liable to Lessee for any punitive, consequential or other speculative damages.

(c) **Reservation for Access and Use.** Lessor reserves the right to enter upon and across the Premises to conduct archaeological activities within the Archaeological Preserve Zone, and to access the Historical Resources, creek bank, utilities and other facilities of Lessor; provided, however, that Lessor shall use normal public or common access ways located on the Premises for such entry and access onto or through any area of the Premises which is not within the Archaeological Preserve Zone or part of the Historical Resources. In conducting archaeological activities, Lessor shall: (i) first provide Lessee with two business days prior written notice (except that no such notice shall be required in the event of imminent threat or danger to persons or property on or near the Premises), which notice shall contain a reasonably detailed description of the activities to be undertaken; (ii) minimize to the greatest extent practicable any significant visual, odor or noise impact on the Project; (iii) maintain any excavations in a safe, neat and orderly condition, including the placement of barriers that are designed to protect the safety of persons on the Premises while being reasonably unobtrusive in appearance; and (iv) upon completion of such activities, restore the surface of the land to its preexisting condition as near as practicable. Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, damages, liabilities, losses and costs (including reasonable attorneys' fees, costs and disbursements) arising from or relating to such entry or access or the performance of any archaeological activities within the Archaeological Preserve Zone; provided, however, that in no event shall Lessor be liable to Lessee for any punitive, consequential or other speculative damages. Lessee shall have no right, title or interest whatsoever with respect to any archaeological artifacts located on, under or about the Premises. In connection with such activities, or if reasonably deemed necessary or advisable by Lessor in connection with preservation of archaeological artifacts, Lessor may limit or restrict access to portions of the Archaeological Preserve Zone at any time and from time to time, upon reasonable prior written notice to Lessee, so long as the limitations or restrictions are not inconsistent with Applicable Laws and do not materially impair the construction or operation of the Project.

(d) **Creek Preservation.** Lessee shall take all reasonable measures to preserve and protect those portions of the San Francisquito Creek which are located on the Premises from erosion, runoff and other damage. Without limiting the generality of the foregoing, but subject to Lessee's right to contest pursuant to Section 6.3(b): (i) Lessee shall comply at its sole cost with all Applicable Laws, and with the requirements of any Entitlements

and the Conditions of Approval, that are in effect at any time during the Term and relate in any manner to the protection, preservation and maintenance of the portions of San Francisquito Creek that are located on the Premises; and (ii) Lessee acknowledges that such Applicable Laws and other requirements may apply generally to all owners or occupants of lands adjoining the San Francisquito Creek watershed and may not touch, be specific to or relate directly to those portions of San Francisquito Creek that are located within the Premises.

#### 6.6 Allocation of Development Agreement Obligations.

(a) Lessee's Obligations. Without limiting any other provision of this Lease, as between Lessor and Lessee, Lessee shall comply with all of the obligations of "Stanford" accruing on and after the Effective Date under the Development Agreement and Conditions of Approval that: (i) are specified in Exhibit L attached, or elsewhere in this Lease, to be Lessee's obligations; or (ii) are set forth in those provisions of the Development Agreement or Conditions of Approval that apply specifically to the senior housing project, to the extent allocable to the Premises or the Project, except if and to the extent otherwise expressly specified to be Lessor obligations in Exhibit L or elsewhere in this Lease; or (iii) directly or primarily relate to or arise out of the development, occupancy, use or operation of the Premises or the Project, except if and to the extent otherwise expressly specified to be Lessor obligations in Exhibit L or elsewhere in this Lease; or (iv) are performable on the Premises, in whole or in part, except if and to the extent otherwise expressly specified to be Lessor obligations in Exhibit L or elsewhere in this Lease. Without limiting the foregoing, Lessee shall take all commercially reasonable actions that may be necessary or appropriate from time to time (and which are not otherwise expressly made the obligation of Lessor elsewhere in this Lease) to maintain the Development Agreement in full force and effect and good standing with respect to the Premises and the Project, so long as such actions are applicable to the Premises or the Project, or are otherwise reasonably related to Lessee's obligations under this Section 6.6(a) (in which latter event Lessee shall be responsible therefor only to the extent that the same affect or are reasonably allocable to the Premises or the Project).

Upon any failure of Lessee to comply with Lessee's obligations set forth in this Section 6.6(a), Lessor shall have the right, but not the obligation, upon not less than five business days prior written notice to Lessee, to cure or remedy such failure by Lessee, if and to the extent



such failure could materially and adversely affect Lessor's rights or benefits under the Development Agreement or this Lease or impose any material liability or obligation on Lessor beyond those imposed by this Lease, if Lessee fails to correct or cure the failure within the five-business day period (or, if the failure is of a nature that would reasonably require more than five business days to correct or cure, if Lessee fails to commence the correction or cure within the five-business day period and thereafter diligently prosecute the correction or cure to completion). Lessee shall reimburse Lessor, as Additional Rent, for all costs reasonably incurred by Lessor in effecting any such cure or remedy.

Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, losses, liabilities and costs, including without limitation reasonable attorneys' and consultants' fees, costs and disbursements, to the extent resulting from any failure by Lessee to comply with Lessee's obligations set forth in this Section 6.6(a); provided, however, that in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages.

(b) **Lessor's Obligations.** Without limiting any other provision of this Lease, as between Lessor and Lessee, Lessor shall comply with all of the obligations of "Stanford" accruing on and after the Effective Date under the Development Agreement and Conditions of Approval that are directly or indirectly related to the Premises or the Project or that could in any manner affect the Premises or the Project, or the use, construction, operation or occupancy thereof, and that are not specified to be Lessee's obligations pursuant to Section 6.6(a) above, including without limitation those obligations that are specified to be Lessor obligations in Exhibit L or elsewhere in this Lease. Without limiting the foregoing, Lessor shall take all commercially reasonable actions that may be necessary or appropriate from time to time to maintain the Development Agreement in full force and effect and good standing with respect to the Premises and the Project, so long as such actions are not made the responsibility of Lessee pursuant to the provisions of Section 6.6(a) above.

Upon any failure of Lessor to comply with Lessor's obligations set forth in this Section 6.6(b), Lessee shall have the right, but not the obligation, upon not less than five business days prior written notice to Lessor, to cure or remedy such failure by Lessor, if and to the extent such failure could materially and adversely affect Lessee's rights or benefits under the

Development Agreement or this Lease, or could expose Lessee to any liability to the City (or any other Person) under the Development Agreement Assignment and Assumption Agreement, if Lessor fails to correct or cure the failure within the five-business day period (or, if the failure is of a nature that would reasonably require more than five business days to correct or cure, if Lessor fails to commence the correction or cure within the five-business day period and thereafter diligently prosecute the correction or cure to completion). Lessor shall reimburse Lessee promptly upon demand for all costs reasonably incurred by Lessee in effecting any such cure or remedy.

Lessor shall indemnify, defend and hold Lessee harmless from and against any and all claims, damages, losses, liabilities and costs, including without limitation reasonable attorneys' and consultants' fees, costs and disbursements, to the extent resulting from any failure by Lessor to comply with Lessor's obligations set forth in this Section 6.6(b); provided, however, that in no event shall Lessor be liable to Lessee for any punitive, consequential or other speculative damages.

(c) Assignment and Assumption Agreement. Lessor and Lessee have entered into that certain Development Agreement Assignment and Assumption Agreement, a copy of which is attached hereto as Exhibit M, pursuant to which Lessor has assigned to Lessee, and Lessee has assumed and agreed to perform, certain rights and obligations under the Development Agreement. This Lease contains a more precise and comprehensive allocation of the parties' obligations with respect to the Development Agreement than does the Development Agreement Assignment and Assumption Agreement, and a more comprehensive array of rights and remedies in the event either party fails to comply with its obligations with respect to the Development Agreement Assignment and Assumption Agreement. The parties intend that this Lease and the Development Agreement Assignment and Assumption Agreement shall be read together, as complementary, but to the extent that there are inconsistencies between this Lease and the Development Agreement Assignment and Assumption Agreement, the provisions of this Lease shall govern and control. For example: (i) to the extent the Development Agreement Assignment and Assumption Agreement imposes obligations on Lessee above and beyond the

obligations imposed by this Lease with respect to the Development Agreement, the provisions of this Lease shall govern and control; and (ii) to the extent this Lease imposes obligations on Lessee above and beyond those obligations assumed by Lessee under the Development Agreement Assignment and Assumption Agreement, or Lessee's obligations under the Development Agreement Assignment and Assumption Agreement terminate in accordance with the terms thereof, Lessee shall be and remain bound to perform the obligations set forth in this Lease.

6.7 **Lessee's Entry Over Adjoining Property.** Lessee shall have the right from time to time upon reasonable (in no event less than five days) advance written notice to Lessor to enter upon that certain property owned by Lessor adjoining the Premises described as Lots 3, 4 and 7 as shown on the Final Map (collectively, the "Adjoining Property"), to the extent such entry is reasonably necessary to enable Lessee to develop the Project and no reasonably practicable alternative exists, for the limited purpose of constructing, maintaining and (as necessary) replacing such sub-surface utilities or other sub-surface utility-related facilities (e.g., storm drainage and sanitary sewer facilities, and not open space, walkways, driveways or parking areas) as are necessary for the proper development of the Project, subject to the following terms and conditions: (a) Lessee shall not materially interfere with or disrupt the use, occupancy, enjoyment or operation by Lessor or any third party holding a leasehold, license, easement or other interest in any such Adjoining Property; (b) the right of entry shall be subject to the rights of any third parties holding any leasehold, license, easement or other interest in any such Adjoining Property, and shall be conditioned on their consent thereto (which Lessor shall make reasonable efforts to procure, but at no cost to Lessor); (c) the location of all such utilities or other related facilities shall be subject to Lessor's prior approval, which shall not be unreasonably withheld or delayed so long as the utilities or other facilities: (i) are not located under and do not interfere with the use or stability of any improvements; and (ii) do not materially interfere with or disrupt Lessor's (or any such third party's) use, occupancy and enjoyment of the Adjoining Property; and (d) Lessee shall be fully responsible for and shall indemnify, defend and hold Lessor and all such third parties harmless from and against any and all claims, damages, liabilities, losses and costs, including without limitation reasonable attorneys' fees, costs and disbursements, arising from or relating to: (i) any acts or omissions of



Lessee or its agents, employees, contractors, guests or invitees; or (ii) the construction, maintenance, replacement, existence, operation or condition of any such utilities or other related facilities, except if and to the extent that the City or any other public agency or utility accepts and assumes maintenance responsibility therefor; provided that in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages. Any leases for any Adjoining Property entered into after the Effective Date shall include a provision for the exercise of Lessee's rights under this Section 6.7, and Lessor shall make reasonable efforts to enforce such provision, at no cost to Lessor, but shall have no obligation to initiate or carry out any legal proceedings for the enforcement of such provision. At Lessee's request, Lessor shall assign to Lessee, without warranty, the right to enforce such provision (including without limitation by initiating and carrying out legal proceedings in Lessee's own name) if Lessor elects not to initiate or carry out any legal proceedings. The right of entry provided in this Section 6.7 shall expire automatically on the Termination Date.

**6.8 Utility Easements Over Premises.** Lessor shall cooperate with Lessee in granting licenses, permits or easements over, across or under the Premises to Recipient Agencies, to the extent such licenses, permits or easements are reasonably necessary to enable Lessee to develop and operate the Project and no reasonably practicable alternative exists, for the limited purpose of constructing, maintaining and (as necessary) replacing such sub-surface utilities or other sub-surface utility-related facilities (*e.g.*, storm drainage and sanitary sewer facilities, not open space, walkways, driveways, parking areas or public access) as are necessary for the proper development and operation of the Project, subject to the following terms and conditions: (a) the licenses, permits and easements shall not have any material adverse affect on the use, occupancy, enjoyment or operation by Lessor or any third party holding a leasehold, license, easement or other interest in any Adjoining Property; (b) the licenses, permits and easements shall not be inconsistent with any of the provisions of this Lease or any third party's leasehold, license, easement or other interest; and (c) the licenses, permits and easements shall be expressly limited to a term that does not extend past the Term of this Lease or the date the use of the Building(s) serviced by the licenses, permits and easements is permanently discontinued, whichever occurs first; except that if a utility will not agree to such an express limitation on the term despite Lessee's commercially reasonable efforts to cause such a limitation to be included, the form of utility license, permit or easement need not contain such a limitation. Notwithstanding anything

herein to the contrary; neither Lessee nor Lessor shall grant licenses, permits or easements over, across or under the Premises to Recipient Agencies for any non-utility-related facilities such as (but without limitation) open space, walkways, driveways, parking areas or public access.

## ARTICLE 7

### PROJECT OPERATION

7.1 **Initial Development of Project.** Lessee shall develop and finance the Project, construct the Initial Improvements and conduct the initial marketing of the Project in accordance with the terms and conditions of the Project Development Rider.

7.2 **Operation of Project.**

(a) **First Class Standard.** Upon completion of the Initial Improvements, Lessee shall continuously operate, maintain and improve the Project as necessary so that the Project will at all times be a First Class CCRC or First Class Rental Project, as applicable. Without limiting the generality of the foregoing: (i) the Project shall be maintained and operated at a First Class level of quality and service, and shall provide a range of facilities, amenities, care and other services that conforms to the First Class Standard; and (ii) the Improvements and FF&E, as they become worn or obsolete, shall be replaced and upgraded as necessary to maintain the First Class Standard. If the parties at any time are unable to agree as to whether any aspect of the Project, including without limitation the Improvements and the FF&E, is being operated, maintained or improved as a First Class CCRC or First Class Rental Project, as applicable, the matter(s) in dispute shall be resolved pursuant to the provisions of Section 7.12 by an Arbitrator having at least ten years experience in the operation and marketing of First Class CCRCs or First Class Rental Projects, as applicable.

(b) **Overview.** The Project will be comprised of two major components situated on the Premises: an approximately five-building residential complex (the "Residential Complex") and a combined licensed, certified and accredited skilled nursing facility and assisted living facility (the "Health Center"). Subject to reduction in accordance with the Development Plan Modification (as defined in Section 8.5 of the Project Development Rider), the Residential Complex will contain approximately 388 residential units (the "Units"). Subject to adjustment in accordance with the Development Plan Modification, the Health Center will contain an Assisted

Living Facility (or "ALF") containing approximately 66 assisted living units and a Skilled Nursing Facility (or "SNF") containing approximately 47 skilled nursing rooms. Subject to reduction in accordance with the Development Plan Modification, the total enclosed square footage for the Residential Complex and the Health Center will be approximately 740,282 gross square feet (excluding parking). Residents' parking shall be underground (there shall be at least one underground parking space per Unit), and there shall be adequate surface parking to accommodate visitors, employees and service providers in accordance with Applicable Laws, and to satisfy the requirements of the RMH Lease and Grant of Easement. In addition to the Unit count, square footage, parking, use and other Project parameters set forth above in this Section 7.2, the programmatic use and space requirements for the Project (collectively, the "Program") shall include facilities, services and amenities for Residents, and adequate levels of qualified medical professionals, administrative staff and other employees, as are required to operate the Project in accordance with the First Class Standard, including without limitation a central dining room, private dining room, library, arts and crafts room, lounges, wellness center, pool, fitness area, activity space, walking paths, appropriate landscaping and such other Improvements and amenities as are required to procure and maintain licensure, certification and accreditation of the SNF and the ALF. A more detailed description of the Program, and of the common areas and service areas supporting the Program (collectively, the "Common Areas"), is attached as Exhibit N. Lessee shall not eliminate or materially change any of the above described components of the Project (including without limitation the Program and the Common Areas), or make any other material change in the Project, without first notifying Lessor of the proposed change and providing Lessor with documentation reasonably establishing that: (i) the change is necessary or advisable in Lessee's good faith business judgment based upon then current practices in similar First Class CCRC projects, competitive conditions or changes in Applicable Laws; and (ii) the change will not have a material adverse effect on the amount of Participating Rent to be paid to Lessor or materially increase Lessor's risk. If Lessor approves any plans for the Initial Improvements or any Alterations that would eliminate or materially change any of the above described components of the Project (including without limitation the Program or the Common Areas) or make any other material change in the Project, these notice and documentation requirements shall be deemed to have been satisfied with respect to such change(s).

(c) **Residence and Services Agreements.** During the first 60 years following the Initial Occupancy Date, Lessee shall enter into a Residence and Services Agreement with each Resident of a Unit pursuant to which the Resident shall be provided, subject to payment of all required charges and fees and compliance with all the other requirements thereof, with the right to live in a designated Unit, access to services and accommodations in the Health Center as and for so long as needed (subject to possible short term unavailability from time to time), and such services and facilities as dining, laundry, housekeeping, recreation and the use of all Common Areas. Lessee shall charge Entrance Fees to Residents at market rates consistent with the First Class character of the Project, and subject to requirements set forth elsewhere in this Lease shall provide for such monthly service charges, transfer fees and other charges as are appropriate for similar First Class CCRC projects; provided, however, that except as expressly permitted below, Residents shall not be charged for debt service on any Loan. No promise shall be made to provide services to the Residents of the Project except upon payment by the Residents (individually or collectively) of the full cost of such services on an ongoing basis (subject to Applicable Laws). Without limiting the generality of the foregoing: (i) the Residents' monthly service charges shall be set at a level that will, upon stabilized occupancy, fully fund all costs (including prudent reserves) of operating the Health Center that are not borne by non-Resident users (subject to short term operating deficits); and (ii) there shall be no promises contained in any Residence and Services Agreement that would cause it to be deemed a "life care contract" as that term is currently defined in California Health and Safety Code Section 1771, or as that concept is reflected in or incorporated into any amended, similar or subsequent laws having a comparable definition and similar effect. Notwithstanding anything to the contrary in this Section 7.2(c), Lessee shall not be precluded from obtaining, and charging Residents debt service on, Short Term Loans, or from permitting periodic usage of the Health Center by non-Residents so long as such usage does not violate Applicable Laws or the provisions of any Residence and Services Agreements and priority for entry into available accommodations in the Health Center is at all times given to Residents over non-Residents.

If Lessee makes information available to the Residents offering or otherwise concerning any medical insurance plan that covers or offers services covered or offered by Stanford Health Services and/or any other provider of health care services associated or affiliated with Lessor, Lessee also shall provide information to the Residents concerning Stanford Health Services

and/or any other provider of health care services affiliated with Lessor if Lessor (or Stanford Health Services and/or other Affiliate) provides Lessee with such information.

Residents shall acquire no cooperative, condominium or other equity interest (other than their interests in the Repayments, if any) in the Premises or the Project. The Residence and Services Agreements may provide that this Lease is subject and subordinate to the rights of the Residents thereunder, and that the Residents' rights will continue to be honored until the Expiration Date in the event this Lease is terminated prior to the Expiration Date for any reason other than Casualty or Appropriation, all as provided more particularly in Section 8.5 below. All Residence and Services Agreements shall make provisions for Casualty and Appropriation that are consistent with the terms of this Lease. The Residence and Services Agreements shall provide that Lessor shall have no obligations whatsoever to any Residents at any time during the Term and any holdover period, except as expressly provided in Section 8.5 below.

(d) Health Center. The Assisted Living Facility shall at all times be operated as a facility licensed by the DSS as a Residential Care Facility for the Elderly/Nonambulatory, and/or by such other authority or authorities and/or under such other licensing designation(s) hereafter in effect as shall allow the operation of the Assisted Living Facility as a facility offering adult community care facilities and assistance to nonambulatory Residents in the basic activities of daily living, including without limitation three meals per day, full housekeeping, laundry, social activities, transportation and personal care (such as supervision of medications and assistance in bathing, grooming and dressing). The Assisted Living Facility shall contain its own dining facility.

The Skilled Nursing Facility shall at all times be operated as a skilled nursing facility licensed by the California Department of Health Services, or by such other authority and under such other licensing designation as shall allow the SNF to provide 24-hour private and semi-private skilled nursing or equivalent care, three meals per day, rehabilitation services, activities, transportation, housekeeping and laundry. The SNF shall be designed to contain a sufficient number of beds so as to be able to accommodate the reasonably projected needs of the Residential Complex at full occupancy (subject to possible short term unavailability from time to time), and priority for entry into available accommodations in the Health Center shall be given to Residents over non-Residents at all times. Lessee shall employ a professional nursing facility