

administrator with appropriate experience in the administration of skilled nursing facilities to be the Chief Administrator for the SNF. All health care practitioners who have privileges with or are otherwise affiliated with Stanford Health Services and/or any other provider of health care services associated or affiliated with Lessor shall be entitled, but shall have no obligation, to treat patients at the SNF, subject to compliance with Applicable Laws and the terms of all Operating Licenses, and to such reasonable procedures relating to the operations of the SNF as may be adopted by Lessee from time to time and applied uniformly to all health care practitioners who are treating patients at the SNF.

(e) **Resident Satisfaction.** Lessee shall design and implement a survey program that will provide Residents with the regular opportunity and encouragement to express their views, in confidence if desired, concerning their level of satisfaction with the Project. Lessee shall take commercially reasonable steps to resolve in a timely manner any Resident complaints that are made in good faith and raise legitimate concerns.

(f) **Utilities, Services, Maintenance and Repairs.** At all times during the Term and any holdover period, Lessee shall: (i) procure all utilities and other services which may be necessary or desirable in connection with Lessee's use, occupancy and enjoyment of the Premises and the Project, operation of the Project as a First Class CCRC or First Class Rental Project, as applicable, and performance of its obligations under this Lease (including without limitation, to the extent appropriate for a First Class CCRC or First Class Rental Project, as applicable, water, gas, electricity, telephone, communications, cable, janitorial, trash removal, security and landscaping); (ii) keep, maintain and preserve the Premises and the Project in good, safe condition and repair in accordance with the First Class Standard; and (iii) make all necessary repairs, replacements and Alterations (whether structural or nonstructural, foreseen or unforeseen, ordinary or extraordinary) in order to maintain the Project in accordance with the First Class Standard and comply with all Applicable Laws. Lessor shall not be obligated to make any repairs, replacements or Alterations of any kind, nature or description whatsoever, and Lessee hereby expressly waives any right to terminate this Lease (except as otherwise provided in Article 17 below) or make repairs at Lessor's expense pursuant to California Civil Code Sections 1932(l), 1941, 1942, or any amended, similar or successor laws. If Lessee fails to maintain or repair the Premises or the Project as required by this Lease and such failure constitutes an uncured Event of Default, Lessor shall have the right, but not the obligation, to

enter onto the Premises and perform such maintenance or repair for the account of Lessee, and in such event Lessor shall have no liability to Lessee for any loss or damage to Lessee's FF&E or other personal property, or interference with the operation of the Project, except in the case of Lessor's gross negligence or willful misconduct. If Lessor performs such repairs or maintenance, Lessee shall pay all reasonable costs thereof to Lessor as Additional Rent.

**7.3 Management.** At all times during the Term and any holdover period, Lessee shall contract for the operation and management of the Project with a professional management company (the "Manager"). The selection of the Manager shall be subject to Lessor's prior written approval. The Manager shall be licensed, have a national reputation for high-quality professional management services, be free of repeated or significant and unresolved complaints or claims (whether asserted by regulators, entities or individuals), and have an established record of experience managing First Class CCRCs. Lessor's approval shall not be unreasonably withheld or delayed if the Manager meets these requirements. Lessor hereby approves the selection as Manager of Classic Residence Management Limited Partnership. The contract with the Manager ("Management Contract") shall require the Manager to operate the Project in accordance with the First Class Standard, and in accordance with all of the terms and conditions of this Lease and Applicable Laws. The Management Contract shall be terminable without penalty upon not more than 120 days' prior written notice, or assumable by Lessor if it so elects in its sole discretion, in the event this Lease is terminated for any reason; provided, however, that: (a) Lessor shall make such election by written notice to the Manager within 30 days following termination of this Lease; (b) the Management Contract shall not be assumable in the event of a termination pursuant to Article 18 below if the Manager is a Hyatt Affiliate; and (c) the Management Contract shall not be assumable in the event that Lessor acquires the Project pursuant to the right of first offer set forth in Section 13.6 below and the terms of the Offer do not provide for an assumption of the Management Contract by the Transferee. Lessee shall provide Lessor with reasonably detailed documentation concerning the record, experience and qualifications of any proposed Manager, and/or a copy of any proposed Management Contract, not less than 30 days before the Management Contract is proposed to take effect. Any dispute concerning the selection of the Manager shall be resolved pursuant to the provisions of Section 7.12 by an Arbitrator having at least five years of experience in the operation and marketing of First Class CCRCs.

#### 7.4 Marketing.

(a) Marketing Company. At all times during the Term and any holdover period, Lessee shall contract for the marketing of the Project with a professional marketing company (the "Marketing Company"). The selection of the Marketing Company shall be subject to Lessor's prior written approval. The Marketing Company shall be licensed, have a national reputation for high-quality professional marketing services, be free of repeated or significant and unresolved complaints or claims (whether asserted by regulators, entities or individuals), and have an established record of experience marketing First Class CCRCs. Lessor's approval shall not be unreasonably withheld or delayed if the Marketing Company meets these requirements. Lessor hereby approves the selection of Classic Residence Management Limited Partnership as the Marketing Company. The contract with the Marketing Company ("Marketing Contract") shall require the Marketing Company to market the Project in accordance with the First Class Standard and in accordance with all of the terms and conditions of this Lease and Applicable Laws, and to use diligent good faith efforts to reach and maintain full occupancy levels. The Marketing Contract shall be terminable without penalty upon not more than 120 days' notice, or assumable by Lessor if it so elects in its sole discretion, in the event this Lease is terminated for any reason; provided, however, that: (i) Lessor shall make such election by written notice to the Marketing Company within 30 days following termination of this Lease; (ii) the Marketing Contract shall not be assumable in the event of a termination pursuant to Article 18 below if the Marketing Company is a Hyatt Affiliate; and (iii) the Marketing Contract shall not be assumable in the event that Lessor acquires the Project pursuant to the right of first offer set forth in Section 13.6 below and the terms of the Offer do not provide for an assumption of the Management Contract by the Transferee. Lessee shall provide Lessor with reasonably detailed documentation concerning the record, experience and qualifications of any proposed Marketing Company, and/or a copy of any proposed Marketing Contract, not less than 30 days before the Marketing Contract is proposed to take effect. Any dispute concerning the selection of the Marketing Company shall be resolved pursuant to the provisions of Section 7.12 by an Arbitrator having at least five years of experience in the operation and marketing of First Class CCRCs.

(b) Entrance Fees; Residents Loans. Lessee shall use diligent, good faith commercially reasonable efforts to maximize Participating Rent payable to Lessor, subject to the terms of this Lease (including without limitation the permitted variability of Repayment levels

contemplated by Section 3.2(a) above) and prevailing market conditions and circumstances. Initial payments from Residents of Entrance Fees may be received in cash, or Lessee may elect in its sole discretion to cause initial payments from Residents to be structured as loans ("Residents Loans") made either to Lessee or to a trust established by Lessee ("Master Trust"), subject to the following terms and conditions:

(i) the trustee of the Master Trust, if any, shall be First Union National Bank, a national banking association, or another commercial lending institution licensed to conduct trust and lending operations in California;

(ii) Lessee shall be unconditionally liable for the repayment of all Residents Loans, and shall timely and faithfully perform all of its obligations, as trustor, borrower or otherwise, under all agreements and other documents relating to the Master Trust (if any) and Residents Loans (collectively, "Residents Loan Documents"); and

(iii) Lessee shall cease making Residents Loans, and discontinue use of the Master Trust, if any, no later than the first to occur of: (A) the date that all of the Units have each been occupied by an Initial Resident; or (B) the fifth anniversary of the Initial Occupancy Date.

(c) **Promotional Materials.** Lessee shall provide Lessor with copies of all promotional, marketing and sales materials relating to the Project that are targeted at or made available to more than one potential Resident, whether consisting of brochures, electronic, print or broadcast advertising materials, mass mailings or other like public solicitations, but specifically excluding individual responses to inquiries by potential Residents (collectively, "Promotional Materials"), in advance of circulation, so that Lessor may review them for compliance with this Lease if Lessor so elects. If Lessor provides comments on any Promotional Materials, Lessee shall give them good faith consideration; provided, however, that no comment (or failure to comment) by Lessor shall be deemed a waiver by Lessor of any of its rights, or any of Lessee's obligations, under this Lease. All Promotional Materials shall be accurate and not misleading in all material respects.

(d) **Lessor Disclaimers.** If requested by Lessor (which request, in the case of Promotional Materials, shall be made promptly following delivery to Lessor of advance copies of the Promotional Materials as contemplated in Section 7.4(c) above): (i) all Project Documents

and Promotional Materials shall contain appropriate and prominent disclosures, in form reasonably satisfactory to Lessor, to the effect that the Project is not sponsored by or otherwise affiliated with Stanford University, and that Lessor is only the ground lessor; and (ii) all Project Documents and, at all times after the 45th anniversary of the Initial Occupancy Date, any Promotional Materials which contain sufficient space, shall contain appropriate and prominent disclosures, in form reasonably satisfactory to Lessor, to the effect that: (A) this Lease will terminate 75 years after the Initial Occupancy Date, and the Premises will be vacated at such time; (B) the Project will convert to a year-to-year residential community on the 60th anniversary of the Initial Occupancy Date, and no Residence and Services Agreements, continuing care contracts or other agreements to provide housing, care or other services for a period longer than one year will be entered into at any time after the 60th anniversary of the Initial Occupancy Date; and (C) the rights of all Residents occupying Units under Residence and Services Agreements entered into before the 60th anniversary of the Initial Occupancy Date will continue to be honored, and all such Residents will be permanently relocated to equivalent accommodations at facilities other than the Project on or before the Expiration Date. No claim or statement shall be made or implied in any Promotional Materials, or in any other communications with Residents or prospective Residents, that Lessor has or in the future will have any responsibility for, relationship with or obligation with respect to the Project or the Residents thereof, except as expressly provided in Section 8.5 below.

(e) **Admissions Criteria.** Lessee shall adopt, and may modify from time to time, an admissions assessment tool that uses prudent and objective criteria appropriate to and typical of other First Class CCRCs to screen prospective Residents for admission to the Project. This assessment tool shall include, without limitation, criteria for evaluating an applicant's capability to live independently, financial capability and health, and a list of conditions that would automatically preclude admission to the Project. Lessee shall in all material respects apply the admission criteria uniformly to all applicants, and shall make exceptions only for commercially prudent reasons and otherwise within industry norms applicable to First Class CCRCs.

(f) **Preference for Stanford Seniors.** Subject to Applicable Laws and the terms of any Operating License which would prohibit or restrict such treatment, Lessee shall give preference to Stanford Seniors who otherwise meet the requirements for admission over



applicants who are not Stanford Seniors at all times during the Term of the Lease, both in admission to the Project and in the selection of unreserved Units, in accordance with the preference program attached as Exhibit O.

**7.5 Reserves.** Lessee shall maintain adequate start-up, operating and capital reserves, and the Project Closeout Reserve described in Section 8.1(d) below (collectively, "Reserves"), including without limitation all operating and Entrance Fee Repayment reserves and other security required from time to time by Applicable Laws, if any.

**7.6 Project Documents.** The forms of the Residence and Services Agreement, Residents Loan Documents and Rental Leases, and such other Project-related documents as may serve the same function as these documents (collectively, "Project Documents"), and any material modifications or variations of any Project Documents, shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld or delayed so long as such Project Documents, or modifications or variations thereof, do not conflict with any provision of this Lease. The Project Documents shall not state or imply that Lessor may have any relationship with the Project (other than as the ground lessor under this Lease) or possible obligations to Residents or prospective Residents (other than as expressly provided in this Lease).

All Project Documents shall be submitted in duplicate to Lessor, and any proposed modifications or variations from a previously-approved form shall be clearly marked. The Project Documents attached as Exhibit P are hereby approved by Lessor. Lessor's approval of any Project Document (or modification or variation thereof) shall be deemed given if Lessor does not notify Lessee of Lessor's disapproval, stating the ground(s) therefor in reasonable detail, within ten business days after receipt; provided, however, that Lessor's approval (or deemed approval) shall not be deemed given as to any Project Document (or modification or variation thereof) that conflicts with an express provision of this Lease, and shall not be deemed a waiver by Lessor of any of its rights, or any of Lessee's obligations, under this Lease. Lessor shall use good faith efforts to respond to any reasonable need by Lessee (so long as the need is communicated in writing) for a quicker response, and Lessee shall use good faith efforts to provide Lessor with Project Documents on a timely basis and, at Lessor's request, shall extend the time for Lessor's review when reasonably practicable.

Lessee may make or approve limited financial accommodations in favor of a particular Resident or Residents from time to time on a case by case basis, but only if the accommodation is made for commercially prudent reasons, is otherwise within industry norms applicable to First Class CCRCs, does not cause any applicable Project Document to be inconsistent with this Lease (provided, however, that the financial accommodation may be inconsistent with the requirements of the second and third sentences of the first paragraph of Section 7.2(c) above, and the first sentence of Section 7.4(b) above, if it otherwise satisfies all the requirements of this paragraph), does not have a material adverse effect on the amount of Participating Rent to be paid to Lessor and does not materially increase Lessor's risk. Without limiting the generality of the foregoing, Lessee may not make or approve a financial accommodation that would have the effect of: (a) creating a "life care contract" or equity interest (other than an interest in the Repayment, if any); (b) waiving any Entrance Fee; (c) stating or implying that Lessor has any relationship with Lessee or the Project other than that of ground lessor; (d) stating or implying that the Term of the Lease will be extended beyond the 75th anniversary of the Initial Occupancy Date; (e) providing any Resident with the right to remain on the Premises after the Expiration Date; or (f) providing any Resident with the right to remain on the Premises after the Termination Date in the event of a termination pursuant to Article 17.

Any dispute between the parties as to whether Lessor's approval of any Project Document (or modification or variation thereof) has been unreasonably withheld shall be resolved through arbitration in the manner prescribed in Section 7.12, such arbitration to be conducted by a single Arbitrator having at least ten years experience with First Class CCRCs. Lessee shall provide Lessor with copies of all Project Documents when finalized.

**7.7 Stanford Name, Marks and Images.** The name of the Project shall be subject to Lessor's approval. This approval shall not be unreasonably withheld, subject to the following: the names "The Leland Stanford, Jr. University," "Stanford," "Stanford University" and "Stanford Health Services," and all variations thereof, are proprietary to Lessor, and Lessee may not use any such name or variation, make or use any photographs, videos, drawings, images or other representations of the Stanford University Campus or any other buildings or other properties owned by Lessor except for the Premises, or use any trademark, service mark, trade name or symbol of Stanford University, without Lessor's prior written consent, which may be

granted or withheld in Lessor's sole discretion. Lessor hereby approves the name "Classic Residence by Hyatt at Palo Alto."

**7.8 Competition.** During the period between the Effective Date and the 15th anniversary of the date of Project Stabilization, and provided that this Lease has not been terminated, neither Lessee nor any Affiliate of Lessee shall own, operate, provide management or marketing services for, hold a controlling interest in or engage in any competitive activities relating to any senior residential project within the Project Market Area (which area encompasses and is limited to the lands within Palo Alto, Menlo Park, Atherton, Woodside, Portola Valley and Los Altos), except for a Noncompeting Rental Project. For purposes of this Section 7.8: (a) "Affiliate" shall have the special definition set forth in Exhibit B attached; and (b) "Noncompeting Rental Project" shall mean any senior residential project which charges its residents a monthly rental, provides housing for terms no longer than five years, and does not require or charge any equity, entrance fee, loan or other payment in excess of six month's rental, except as direct compensation for previously-provided services and provided that such prepayment does not constitute a prepaid healthcare fee.

**7.9 Recordkeeping and Reporting.**

(a) **Books and Records.** Lessee shall keep true, accurate and complete accounts, records and double-entry books, in which full and correct entries of all business and affairs of Lessee shall be made in accordance with generally accepted accounting principles and practices, so that Lessee will be able at all times to provide Lessor with the financial statements and other information required under this Lease. Without limiting the foregoing, such records shall show all transactions relating to the operation of the Project or generation of Gross Receipts, and such transactions shall be supported by documents of original entry. Lessee shall keep and make available to Lessor for inspection, review and copying such books and records at all reasonable times, upon reasonable prior notice during normal business hours, at a location within the limits of Santa Clara County, California for a period of three years after the Lease Year to which they relate, and thereafter in the event of an arbitration or litigation concerning the same until such arbitration or litigation is dismissed or terminates in a final award or judgment. Lessor shall keep all information obtained in connection with any inspection or review of such accounts, records, books, financial statements and other information provided by Lessee to



Lessor under this Lease strictly confidential, and shall not disclose, publish or communicate to any Person other than Lessor's trustees, officers, employees, staff and professional advisors any information obtained from such inspection or review except: (i) in response to any lawful process requiring disclosure of the same; (ii) to the extent necessary to take any actions authorized by this Lease (including without limitation the resolution of any disputes arising under this Lease); (iii) to Lessor's financial or other consultants or contractors, provided that Lessor's contracts with such consultants and contractors specifically prohibit their disclosure of such information to the extent prohibited by this Section 7.9(a); or (iv) with Lessee's prior written consent. Any inspection, review or copying of Lessee's accounts, books and records shall be conducted in a manner designed to minimize interference with the conduct of Lessee's business, and shall be at Lessor's sole cost and expense unless there is an uncured Event of Default at the time of the inspection or review, or the costs are to be borne by Lessee pursuant to Section 7.9(g) below.

(b) **Monthly Reports.** On or before the 20th day of each month during the Term and any holdover period, Lessee shall provide Lessor with a monthly report (the "Monthly Report"), in reasonable detail consistent with Lessee's standard reporting format, containing at a minimum the following data and information: (i) Gross Receipts for the immediately preceding month for each of the SNF, the ALF (with SNF and ALF revenues broken out between Residents and non-Residents) and the Residential Complex (broken out between Entrance Fees and other revenues), together with a comparison against the Gross Receipts projected for each such component in the applicable Annual Budget for such preceding month; (ii) a current census report showing occupancy rates, number of Units sold, sales/resales rates, the Entrance Fee and Repayment arrangement for each Unit sold during the month, monthly service charges and/or rents; and (iii) the Debt Service Coverage Ratio as of the end of such immediately preceding month. The Monthly Report also shall contain such additional Project-related information reasonably related to Lessor's interests in and under this Lease as Lessor may reasonably request from time to time; provided that: (1) such additional reporting requirements shall not impose a material financial burden on Lessee (it being acknowledged that without limitation having to hire a full-time employee to meet such additional reporting requirements would impose a material financial burden on Lessee); (2) Lessee shall have a reasonable time in which to adapt its reporting format and system to any such new requirements; and (3) Lessee is not obligated to

keep the information requested confidential under Applicable Law, or under any contract or agreement entered into by Lessee in the ordinary course of business. Lessee shall certify in each Monthly Report that to its best knowledge after due inquiry, Lessee is in substantial compliance with all material terms of the Lease and the Monthly Report is materially complete and accurate and not misleading in any material respect. The format of the Monthly Report attached hereto as Exhibit Q-1 is hereby approved by Lessor, and Lessor acknowledges that such format satisfies the requirements of this Section 7.9(b). Any changes in the format of the Monthly Report shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld or delayed. Lessee also shall provide Lessor each month with copies of the reports identified on Exhibit Q-2 attached, and shall provide Lessor upon request with copies of any other formal reports relating to the Project that Lessee may prepare or cause to be prepared for Lessee's senior management so long as Lessee is not obligated to keep such reports confidential under Applicable Law, or under any contract or agreement entered into by Lessee in the ordinary course of business.

(c) Quarterly Reports. On or before the last day of the month following the end of each calendar quarter during the Term and any holdover period, Lessee shall provide Lessor with a quarterly report (the "Quarterly Report"), in reasonable detail consistent with Lessee's standard reporting format, containing at a minimum the following data and information: (i) a report showing Gross Receipts on a cumulative basis for the calendar quarter and year-to-date, with a breakdown of Gross Receipts for each of the SNF, the ALF (with SNF and ALF revenues broken out between Residents and non-Residents) and the Residential Complex (broken out between Entrance Fees and other revenues); (ii) income statements and balance sheets; (iii) an aging report with respect to receivables; (iv) a current census report showing occupancy rates, number of Units sold, Entrance Fees and Repayment arrangements, monthly service charges and/or rents; (v) the Debt Service Coverage Ratio as of the end of such immediately preceding calendar quarter; (vi) the balances in each Reserve account, and any activity with respect thereto; and (vii) a report on the status of any capital improvements undertaken during that Lease Year. The Quarterly Report also shall contain such additional Project-related information as Lessor may reasonably request from time to time; provided that (1) such additional reporting requirements shall not impose a material financial burden on Lessee (it being acknowledged that without limitation having to hire a full-time employee to meet such

additional reporting requirements would impose a material financial burden on Lessee); (2) Lessee shall have a reasonable time in which to adapt its reporting format and system to any such new requirements; and (3) Lessee is not obligated to keep the information requested confidential under Applicable Law, or under any contract or agreement entered into by Lessee in the ordinary course of business.

Lessee shall certify in each Quarterly Report that to its best knowledge after due inquiry, the Quarterly Report is materially complete and accurate and not misleading in any material respect. The format of the Quarterly Report attached hereto as Exhibit Q-3 is hereby approved by Lessor, and Lessor acknowledges that such format satisfies the requirements of this Section 7.9(b). Any changes in format shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld or delayed.

(d) **Annual Report.** Lessee shall provide Lessor by May 1 of each year during the Term and any holdover period with an audited annual report, certified by an Independent Accountant (the "Annual Report") for the preceding Lease Year, in reasonable detail consistent with Lessee's standard reporting format and containing at a minimum the following data and information: (i) audited financial statements for the Project; (ii) a supplemental "agreed-upon procedures" letter (which "agreed-upon procedures" shall be subject to Lessor's reasonable approval) from the Independent Accountant verifying that the payments made by Lessee to Lessor during the preceding Lease Year satisfied in full Lessee's payment obligations under this Lease, to the extent such supplemental letter can be obtained from an Independent Accountant at a reasonable cost; and (iii) the data contained in the Quarterly Report, prepared on an annualized basis, showing such items for the preceding Lease Year and the status as of the end of such Lease Year. Lessee shall certify in each Annual Report that to its best knowledge after due inquiry, the Annual Report is materially complete and accurate and not misleading in any material respect.

(e) **Annual Budget.** No later than 30 days prior to the expiration of each Lease Year, Lessee shall provide Lessor for informational purposes only with an annual budget for the following Lease Year showing in reasonable detail, on a month to month basis and for the Lease Year as a whole, all Gross Receipts, costs and expenses relating to the Project as projected

by Lessee (the "Annual Budget"), together with a report describing any capital improvements anticipated to occur within such following Lease Year.

(f) **Permits, As-Builts and Other Items.** Lessee shall maintain and make available for Lessor's review, inspection and copying at the Premises during regular business hours, upon two business days prior written notice and at Lessor's cost and expense, copies of all Operating Licenses and other Entitlements, as-built plans for the Improvements (accurate in all material respects), a current inventory of the FF&E, a Residents' Directory, copies of all Project Documents, and such other items relating to the operation of the Project as may be reasonably desirable to confirm Lessee's compliance with the terms of this Lease.

(g) **Lessor's Right to Audit.** Upon two weeks prior written notice, Lessee shall provide Lessor with access during normal business hours to all books, records and accounts relating to the Premises or the Project for the purpose of conducting, at Lessor's cost and expense except as provided below, a review and/or audit by Lessor and/or an Independent Accountant of such records for any or all of the three preceding Lease Years. The Independent Accountant shall consult with both parties during the audit process. If a deficiency in the payment of any Participating Rent is determined for any Lease Year, the underpayment shall be due and payable and shall bear interest as prescribed in Section 3.3(c) above. If 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 of Participating Rent actually due for the applicable period, Lessee also shall reimburse Lessor for the reasonable costs of the audit. If it is determined that there has been an overpayment of Participating Rent, the overpayment shall be credited against the next installment of Participating Rent as prescribed in Section 3.3(c) above.

(h) **Reports Furnished to Other Parties.** Lessee shall provide Lessor each Fiscal Quarter with a list of any and all reports and financial statements relating to the Premises or the Project that have been provided to any: (i) Lender; (ii) public agency with jurisdiction (including without limitation the California Department of Health Services or DSS); or (iii) other third party (but excluding confidential communications with attorneys and accountants, and confidential communications with doctors and other third parties with respect to health and other private matters concerning individuals such as Residents, employees and non-Resident patients

in the Health Center), and shall provide copies of any such reports and statements to Lessor promptly upon request.

#### **7.10 Improvements, Alterations and FF&E.**

(a) **Initial Improvements.** The Initial Improvements shall be designed and constructed in accordance with the terms and conditions set forth in the Project Development Rider.

(b) **Alterations.** Alterations shall be designed and constructed in accordance with the terms and conditions set forth in Article 11 below.

(c) **Title to Improvements and FF&E.** Title to the Improvements and FF&E shall be and remain in Lessee until the Termination Date, at which time title shall automatically pass to Lessor as provided in Section 8.4(a) below. The Improvements shall continue to have the character of real property notwithstanding that they are separate in title from the Premises, and the Improvements and, subject to the provisions of Section 15.5(f), the FF&E shall not be transferred separate and apart from a Transfer of Lessee's entire interest in the Premises and the Project pursuant to Article 13 or Section 15.6 (other than replacements or dispositions of FF&E in the ordinary course of business consistent with this Lease). Any other purported Transfer shall be void and of no effect. Lessee may not remove any of the Improvements from the Property except in accordance with Section 7.2(a), this Section 7.10 and Articles 11 and 17. The FF&E shall at all times: (i) be of a kind, quality and quantity sufficient to support the Program and satisfy the First Class Standard; and (ii) satisfy the requirements set forth in Section 7.2(a). Lessee may replace FF&E from time to time with items of equivalent or better value and quality.

(d) **Depreciation of Improvements and FF&E.** During the Term of this Lease, Lessee shall have the sole right to claim any available depreciation and other tax benefits with regard to the Improvements and FF&E and the operation of the Project.

#### **7.11 Dispute Resolution.**

(a) **Meet and Confer.** The parties shall endeavor to resolve any disputes relating to this Lease through reasonable business-like dispute resolution procedures without resort to litigation. Accordingly, if a dispute arises that is not elsewhere in this Lease expressly made subject to the arbitration procedure set forth in Section 7.12, either party may call a special



meeting of the parties by written request specifying the nature of the matter to be addressed. The meeting shall be held at the Premises, and shall be attended by representatives of Lessor and Lessee who have authority to resolve the dispute. Such representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both parties concludes that the dispute will not be resolved through one or more special meetings.

(b) **Mediation.** If a matter in dispute is not resolved through the special meeting process, either party may initiate mediation by delivering written notice to the other. Both parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any party may have. Unless the parties agree otherwise, the mediation proceeding shall be conducted in San Francisco, California, by an independent mediator from the offices of the American Arbitration Association (or any successor or mutually acceptable alternative, referred to hereafter as the "AAA") in accordance with AAA procedures, within 30 days after the notice initiating mediation is delivered. The costs of the mediation shall be shared equally by both parties to the mediation, except that each party shall pay the fees, costs and expenses of its own legal counsel and consultants in connection with such mediation. Any voluntary settlement reached as a result of the mediation proceeding shall be reduced to writing. All mediation proceedings shall be subject to the provisions of California Evidence Code sections 1152 and 1152.5, and any amended, similar or successor laws.

(c) **General.** This dispute resolution procedure shall not in any way affect any statutes of limitation relating to any dispute relating to this Lease. This dispute resolution procedure may be conducted before or during the pendency of any other legal proceedings, and either party shall be entitled to bring any legal or judicial action to enjoin an act or proposed act by the other party which is in dispute, or seek any other ancillary relief to preserve the status quo or protect the rights of either party, pending the commencement or completion of any mediation process.

#### 7.12 **Arbitration of Specified Disputes.**

(a) **Scope of Obligation to Arbitrate.** Those disputes which the parties are expressly required or authorized to resolve through arbitration shall be subject to the procedures prescribed in this Section 7.12. This arbitration provision is expressly limited to those matters as to which arbitration is expressly required or authorized elsewhere in this Lease and no other

matter shall be subject to arbitration unless the parties, each in the exercise of its sole discretion, mutually agree in writing. The Arbitrator (as defined in Section 7.12(b)) shall dismiss any matter submitted to it for determination if such determination is not expressly required or authorized elsewhere in this Lease or in another written agreement executed by both parties.

(b) **Arbitration Procedure.** A party shall initiate arbitration by written notice to the other. The date such notice is given shall be the "Initiation Date." Except as expressly modified herein, the arbitration proceeding shall be conducted by a single neutral arbitrator (the "Arbitrator") in accordance with the provisions of Section 1280 *et seq.* of the California Code of Civil Procedure (including without limitation the provisions of Section 1283.05 concerning discovery), as amended or replaced by any successor laws.

Unless the parties mutually agree otherwise, the Arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the AAA, and if the parties fail to agree within 15 days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Santa Clara County Superior Court for the appointment of the Arbitrator. The date on which the Arbitrator is selected or appointed is referred to as the "Selection Date." The Arbitrator shall set the matter for hearing within 30 days after the Selection Date, and shall try any and all issues of law or fact that are the subject of the arbitration, and report a statement of decision upon them, if possible, within 45 days of the Selection Date or as soon thereafter as is practicable. The following time periods set forth in the California Code of Civil Procedure shall be shortened as follows: Section 1288 - four years to 90 days, and 100 days to 30 days; Section 1288.2 - 100 days to 30 days.

The Arbitrator shall be empowered, subject to any limitations on the availability of any particular remedies or relief expressly set forth in this Lease, to: (i) enter equitable as well as legal relief; (ii) provide all temporary and/or provisional remedies; and (iii) enter equitable orders that will be binding upon the parties. The costs of the arbitration, including the fees and charges of the Arbitrator, shall be shared equally by Lessor and Lessee; provided, however, that each party shall pay the fees and charges of its own legal counsel and any other experts or consultants retained by such party for or in connection with the arbitration unless the Arbitrator concludes that the position taken in the arbitration by one of the parties has been substantially

upheld in the arbitration award and the position of the other party has been substantially rejected in the arbitration award, in which event the Arbitrator shall be empowered, in the discretion of the Arbitrator and as part of the arbitration award, to make an award of attorneys', experts', and/or consultants' fees and costs to the party whose position has been substantially upheld in the arbitration. The Arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are the subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The parties expressly reserve their appeal rights under California Code of Civil Procedure Sections 1294(b), (c) and (d), and any amended, similar or successor laws.

(c) **Notice.** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF SPECIFIED DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF SPECIFIED DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF SPECIFIED DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

LESSEE: PS LESSOR: LRH

**ARTICLE 8**  
**PROJECT CLOSEOUT: SURRENDER**

**8.1 Project Closeout.**

(a) **Premises to be Vacant on Expiration Date.** On the Expiration Date, the Premises, the Improvements and the FF&E shall be surrendered to Lessor free and clear of all tenancies, occupancies and other rights of third parties, including without limitation any rights in, or obligations to, any Residents or other Persons under any Residence and Services Agreements, Rental Leases or other written or oral agreements of any nature (except those rights and obligations contained in or created by the Permitted Exceptions), any public agencies with jurisdiction (except those rights and obligations contained in or created by the Permitted Exceptions, or that arise under Applicable Laws or under any Entitlements that are consented to by Lessor), the Manager, the Marketing Company, any Lenders, suppliers or equipment lessors, and any service providers or other third parties.

(b) **Implementation.** Without limiting the generality of Section 8.1(a) in any manner, without Lessor's prior written consent, which Lessor may grant or withhold in its sole discretion: (i) no Residence and Services Agreements entered into after the 30th anniversary of the Initial Occupancy Date shall provide for a Repayment greater than 50% of the Entrance Fee; (ii) no Residence and Services Agreements entered into after the 45th anniversary of the Initial Occupancy Date shall provide for any Repayment of the Entrance Fee; (iii) after the 60th anniversary of the Initial Occupancy Date, Lessee shall not enter into any new Residence and Services Agreements (but all Residence and Services Agreements entered into before the 60th anniversary of the Initial Occupancy Date shall continue to be honored in accordance with their terms), and shall not enter into any other agreements to provide housing, care or other services for a term longer than one year, but Lessee may offer new Residents under Rental Leases a service and amenity package similar to that which Lessee formerly offered to new Residents under Residence and Services Agreements, except that the package shall be for a term

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no longer than one year, and services and care in the Health Center shall be available only on a separate, private pay rate basis; (iv) all debt encumbering the Premises, the Improvements, the FF&E or any other aspect of the Project (including without limitation this Lease) shall be fully satisfied and discharged by the 60th anniversary of the Initial Occupancy Date, and no Leasehold Mortgages, liens or other monetary encumbrances shall encumber the Premises, the Project or this Lease at any time thereafter during the Term, except for the Permitted Exceptions and such Loans as are expressly permitted by Section 15.5(d); (v) except as expressly provided otherwise in Section 8.1(c) below, Lessee shall be and remain solely responsible, financially and otherwise, for the satisfaction of all rights and privileges, if any, held or enjoyed by any Residents under any such Residence and Services Agreements that may be in effect on the Expiration Date; and (vi) Lessee shall have caused all Residents occupying Units under Rental Agreements to have vacated the Premises on or before the Expiration Date.

(c) Relocation. Without limiting the generality of Section 8.1(a) in any manner, Lessee shall permanently relocate all Residents occupying Units under Residence and Services Agreements entered into before the 60th anniversary of the Initial Occupancy Date to equivalent accommodations at facilities other than the Project on or before the Expiration Date. Lessor and Lessee shall share equally in all relocation costs; provided, however, that Lessor's share of such costs shall be payable from, and only to the extent of, the capital and FF&E Reserves that otherwise would be delivered to Lessor on the Expiration Date pursuant to Section 8.4(c)(iv), and any shortfall therein shall be borne by Lessee. Lessee shall establish and fund a reasonable relocation reserve no later than the 55th anniversary of the Initial Occupancy Date, based on actuarial principles applicable to the existing population, to fund Lessee's share of the relocation costs. When the Project Closeout Reserve is established pursuant to Section 8.1(d) below, the relocation reserve shall be used to fund the Project Closeout Reserve, to the extent required, and Lessee shall thereafter be free to use without restriction any moneys in the relocation reserve that are not so applied to fund the Project Closeout Reserve.



(d) Project Closeout Reserve. At least five years before the Expiration Date, Lessee shall establish a Project closeout reserve ("Project Closeout Reserve") in an amount reasonably sufficient to fund all obligations or liabilities of Lessee under this Lease (other than the payment of Annual Base Rent and Participating Rent) that may not be fully satisfied prior to the Expiration Date, including, for example and not by way of limitation, the payment of Impositions and other Project Costs which have accrued as of the Expiration Date and Lessee's share of the costs of relocating or making alternative arrangements for Residents under any Residence and Services Agreements which expressly require Lessee to provide relocation or other alternative arrangements; provided, however, that establishment of the Project Closeout Reserve shall in no way limit Lessee's obligations or liabilities under this Lease. The amount of the Project Closeout Reserve shall be established by mutual agreement of the parties or, if the parties fail to agree, then pursuant to the provisions of Section 7.12 by an Arbitrator having at least ten years of experience in the operation and management of congregate care and retirement rental communities. The amount of the Project Closeout Reserve, once determined, shall be reviewed in accordance with the process set forth above annually thereafter, and for a last time six months before the Expiration Date, and shall be increased or decreased as necessary. Lessee shall deliver the Project Closeout Reserve to an independent third party escrow holder reasonably acceptable to Lessor at least 90 days before the Expiration Date, together with irrevocable written instructions, in form reasonably acceptable to Lessor, to the effect that the escrow holder shall disburse funds from the Project Closeout Reserve to Lessor for the purposes described in this Section 8.1(d), and to pay such other Project closeout-related costs as Lessee shall reasonably approve in writing, upon Lessor's written certification that such funds are to be used to pay Lessee approved Project closeout-related costs. Any funds that remain undisbursed on the second anniversary of the Expiration Date (or the second anniversary of the date any holdover period terminates) shall be returned to Lessee, but the return of such funds shall not release Lessee from any closeout-related obligations or liabilities that have not been fully performed or discharged.

**8.2 Rental Project.** At all times on and after the 60th anniversary of the Initial Occupancy Date, Lessee shall operate the Project as a First Class senior citizen rental project ("Rental Project") and shall enter into Rental Leases with new Residents; provided, however, that at all times after the 60th anniversary of the Initial Occupancy Date, Lessee shall continue to honor, satisfy and provide for all Residents' rights and privileges under any Residence and Services Agreements that were entered into prior to the 60th anniversary of the Initial Occupancy Date. For purposes of this Lease, "Rental Lease" shall mean a short term lease or occupancy agreement, in form and substance approved by Lessor in its reasonable discretion as provided below, that provides Residents with occupancy and other rights consistent with the requirements of Section 8.1(b)(iii), this Section 8.2 and all other applicable provisions of this Lease. Before entering into any Rental Lease for a Unit in the Rental Project, Lessee shall have submitted proposed Leasing Guidelines to Lessor and received Lessor's approval thereof. Such approval shall not be unreasonably withheld so long as the proposed Leasing Guidelines do not conflict with any provision of this Lease. The Leasing Guidelines shall provide for: (a) payment of fair value for the provision of housing and congregate care type services; (b) rental terms of no longer than one year, with no renewal or extension rights and an absolute and automatic termination of the Rental Lease on or before the Expiration Date; (c) an approved form of Rental Lease; (d) reasonable preferential leasing opportunities for Stanford Seniors; and (e) admission standards designed to assure that new Residents of the Units are physically and financially capable of living independently. If Lessor disapproves any aspect of the proposed Leasing Guidelines, Lessor shall give Lessee written notice of such disapproval within 30 days after receipt of the proposed Leasing Guidelines. The parties then shall meet and confer, and attempt in good faith to negotiate a resolution to the dispute regarding the proposed Leasing Guidelines. Any disputes the parties are unable to resolve through negotiations shall be resolved through arbitration in the manner prescribed in Section 7.12, such arbitration to be conducted by a single Arbitrator having at least ten years experience in retirement community leasing. All Rental Leases shall comply with the approved Leasing Guidelines applicable to the Residential Complex or Health Center, as the case may be, and with this Lease. Lessee shall not amend or modify any Rental Lease in a manner that would render the Rental Lease inconsistent with the Leasing Guidelines without Lessor's prior written consent, which consent shall not be unreasonably withheld so long as the amendment or modification does not conflict with any

provision of this Lease and would not materially increase Lessor's risk or have a material adverse effect on the amount of Participating Rent to be paid to Lessor. All promotional and marketing materials relating to the leasing of Units in the Rental Project shall be subject to Section 7.4.

**8.3 Project Conversion Plan.** At least 12 months before the 60th anniversary of the Initial Occupancy Date, Lessee shall present to Lessor for its approval a detailed written plan for the conversion of the Project to a Rental Project that incorporates and is consistent with the requirements of this Lease (the "Conversion Plan"). Lessee and Lessor shall meet and confer to review the Conversion Plan, and at Lessee's request shall attempt in good faith to identify alternatives to the Conversion Plan that may provide potential opportunities that benefit both parties. Lessor's approval of any aspect of the Conversion Plan that is not fully consistent with the requirements of this Lease may be granted or withheld in its sole discretion, and may be conditioned upon a Rent adjustment satisfactory to Lessor in its sole discretion. If Lessor determines that the approval of its Board of Trustees is required because the proposed Conversion Plan would be inconsistent with this Lease, Lessor shall meet with the Board of Trustees within six months after reviewing the Conversion Plan, and shall have until the date five business days after meeting with the Board of Trustees to notify Lessee of Lessor's approval or disapproval of the proposed Conversion Plan.

**8.4 Surrender.**

**(a) Condition of Premises on Surrender.** On the Termination Date, Lessee shall peaceably quit and surrender the Premises and the Project to Lessor. Lessee shall leave the Premises, Improvements and FF&E in First Class condition and repair, except for reasonable wear and tear and the effect of any Casualty or Appropriation which Lessee is not obligated to repair, reconstruct or restore. Without limiting the requirements of Section 8.1(a) that apply to the surrender of the Premises, Improvements and FF&E on the Expiration Date, or the requirements of Section 17.6(d), if applicable, Lessee shall deliver the Premises, Improvements and FF&E to Lessor free of all liens created or suffered by Lessee, excepting only the Permitted Exceptions and the rights of any Lender pursuant to Section 15.6. On the Termination Date, all of Lessee's rights, title and interest in and to the Premises, Improvements and FF&E shall, to the extent not prohibited by Applicable Laws and subject to the rights of any Lender pursuant to

Section 15.6, automatically be deemed transferred to and shall vest in Lessor, without payment of any additional consideration therefor by Lessor (unless expressly provided otherwise in Section 13.6 or Article 18 of this Lease), free of any right, title, claim or interest therein on the part of Lessee or any other Persons claiming by, through or under Lessee.

(b) **Delivery of Documents, etc.** Subject to Section 8.4(e) and the rights of any Lender pursuant to Section 15.6, not later than 30 days before the Expiration Date, or not later than ten days after Lessor delivers to Lessee or Lessee delivers to Lessor a notice of any earlier termination of this Lease, Lessee shall deliver to an independent third party escrow holder reasonably acceptable to Lessor the following, together with written escrow instructions to deliver such items to Lessor on the Termination Date:

(i) Such documents, assignments, instruments and conveyances as Lessor may reasonably request, and which are not inconsistent with the terms of this Lease, to confirm and implement the termination of all of Lessee's right, title and interest in and to the Premises and the Project, and the transfer of full, lien-free title to the Improvements (subject to the Permitted Exceptions), FF&E and the Reserves (if and to the extent provided by Section 8.4(c)), to Lessor as provided herein;

(ii) All books, records, advertising literature, Entitlements, Plans, surveys and other documents, and all keys, operations manuals and other items of personal property in Lessee's possession or control, that relate to or are necessary for the operation of the Premises or the Project, and, in the case of an early termination of this Lease due to an Event of Default or pursuant to Section 13.6 or Article 18, all Residence and Services Agreements, Rental Leases, if any, and Service Contracts; and

(iii) An amount equal to the Impositions, amounts due under the Service Contracts with respect to the Premises and other Project Costs which have accrued as of the Termination Date, prorated to the Termination Date.

If this Lease is terminated early due to an Event of Default or pursuant to Section 13.6 or Article 18, Lessee also shall deliver:

(iv) An assignment of Lessee's interest in all Residence and Services Agreements, Rental Leases, Reserve accounts (if and to the extent provided by

Section 8.4(c)), and such other assignable contracts and property rights as may be designated by Lessor in its sole discretion, relating to the Premises or the ownership, operation, management, maintenance or leasing of the Project or any part thereof (subject, in the case of any Management Contract or Marketing Contract, to the provisions of Sections 7.3 and 7.4(a) above), which assignment shall include: (A) Lessor's assumption of all obligations of Lessee thereunder accruing on and after the Termination Date (or, if Lessee holds over, the Surrender Date); and (B) Lessee's agreement that Lessor shall not be obligated for the performance of any obligations of Lessee thereunder accruing prior to the Termination Date (or, if Lessee holds over, the Surrender Date); and

(v) All Entrance Fees, deposits, prepaid rents and other amounts held by Lessee under or pursuant to the Residence and Services Agreements and/or Rental Leases, and assignments of Lessee's interest in all such items held by others for Lessee, which amounts shall be equitably prorated between Lessor and Lessee as of the Termination Date (or, if Lessee holds over, the Surrender Date), and the Reserves, if and to the extent provided by Section 8.4(c).

Without limiting the generality of the foregoing, all documents required to be delivered by Lessee to Lessor hereunder shall be in form reasonably satisfactory to Lessor and Lessee such that, upon any termination of this Lease prior to the Expiration Date for any cause other than a termination pursuant to Article 17, Lessor shall succeed to a fully operable residential project, complete with all real and personal property with which it was being operated by Lessee, and if the Lease is terminated due to an Event of Default or pursuant to Section 13.6 or Article 18, Lessor shall succeed to a fully operable First Class CCRC or Rental Project, as applicable; provided, however, that no delivery by Lessee made under this Section 8.4(b) or pursuant to Section 8.4(d) shall be construed as a representation or warranty by Lessee that Lessee has the legal right to assign to Lessor any rights, interests or agreements which are not assignable pursuant to Applicable Laws, or that Lessor will have the right under Applicable Laws to operate the Project.

(c) **Reserves.** With respect to the Reserves (except only for the Project Closeout Reserve, which shall be disbursed in accordance with Section 8.1(d) above), the



following shall apply: (i) in the case of a termination pursuant to Section 13.6 or Article 18, Lessee shall be entitled to retain all of the Reserves (and to the extent Applicable Law precludes Lessee's retention of any Reserves, Lessor shall reimburse Lessee therefor); (ii) in the case of a termination pursuant to Article 17, Lessor and Lessee shall divide and share in all Reserves in accordance with their respective interests in the Improvements and FF&E, calculated in accordance with the formula set forth in Section 17.3(d)(iv) below; (iii) in the case of a termination due to an Event of Default, Lessor shall be entitled to receive all of the Reserves; (iv) in the case of a termination on the Expiration Date, Lessor shall be entitled to receive all capital and FF&E Reserves, and Lessee shall be entitled to retain all other Reserves; and (v) notwithstanding anything to the contrary in clauses (ii) through (iv) of this Section 8.4(c), the parties' respective rights to receive or retain the Reserves shall be subject and subordinate to: (1) any contrary requirements of Applicable Laws with respect to disposition of the Reserves; and (2) the rights of any Lender which has a perfected security interest in such Reserves and which, in the case of clause (ii) of this Section, has not been fully paid out of any Casualty Proceeds or Awards, as applicable, or in the case of clause (iii) of this Section, has entered into a new lease with Lessor pursuant to the provisions of Section 15.6(g).

(d) **Lessor as Lessee's Attorney in Fact.** Lessee hereby constitutes and appoints Lessor as its true and lawful attorney-in-fact, with full power of substitution and resubstitution, and with full power and authority to execute, acknowledge and deliver any instruments referred to in this Section 8.4 in the name and on behalf of Lessee which the attorney-in-fact shall reasonably deem necessary to transfer and convey to Lessor all of Lessee's right, title and interest in and to the Premises and the Project in accordance with this Section 8.4, and Lessee hereby further authorizes such attorney-in-fact to take any further action which the attorney-in-fact may consider necessary or advisable in connection with the foregoing. The power of attorney granted pursuant to the immediately preceding sentence is a special power of attorney, coupled with an interest, and shall be irrevocable. All parties dealing with the attorney-in-fact, including without limitation any title company insuring title to the Premises or the Project and any bank, depository, trustee or other financial institution holding Reserves, Entrance

Fees, deposits, rents or other funds described in this Section 8.4, may fully rely on the power and authority of the attorney-in-fact to do any and all things described in this power of attorney; provided, however, that such appointment shall be effective if and only if Lessee fails or refuses, after written notice and opportunity to cure, to execute, acknowledge and deliver any such instruments or take any other necessary or advisable actions.

(e) Marked Personal Property; Confidentiality; Trade Secrets.

Notwithstanding any contrary provisions of Section 8.4(b), in no event shall Lessee be required to deliver to Lessor: (i) any Marked Personal Property, or any replacements or substitutions therefor, upon surrender on or after the Expiration Date or in the case of a termination pursuant to Article 17; or (ii) any books, records or other documents or portions thereof which reveal, contain or are comprised of any trade secrets or other proprietary information concerning the operating, marketing or developing methods or processes used by Lessee in its business, including any employee training manuals, internal marketing processes, operating manuals, diet and nutrition programs and product cost lists (collectively, "Lessee's Proprietary Materials"); provided, however, that Lessee shall make available to Lessor any information contained in any Proprietary Materials which is not otherwise available to Lessor and which may be necessary for the ongoing lawful and proper operation of the Project following the Termination Date, but in such event Lessor shall keep all such information confidential to the extent such information is not otherwise in the public domain.

(f) Lessee Indemnity. 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' fees, costs and disbursements) arising directly or indirectly, in whole or in part, out of any obligations or liabilities relating to the Premises or the Project accruing after the Term Commencement Date and prior to the Termination Date (or, if Lessee holds over, the Surrender Date); provided, however, that: (i) this indemnification expressly excludes any liabilities of Lessor to third parties which Lessor has created or entered into in its capacity as the fee owner of the Premises or which are expressly made the responsibility of Lessor pursuant to any provision of this Lease; and (ii) in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages. As of the

Termination Date, neither Lessor, the Premises nor the Project shall have any obligations or liabilities with respect to any contracts, agreements or other obligations of Lessee or anyone claiming under Lessee except as and to the extent assigned by Lessee to Lessor pursuant to Section 8.4(b)(iv), and Lessee shall have the sole and unilateral right and obligation to terminate or settle any and all contracts, agreements or other obligations that are not so assigned on such terms and conditions as Lessee may elect in its sole and absolute discretion.

(g) **Lessor Indemnity.** 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' fees, costs and disbursements) arising directly or indirectly, in whole or in part, out of any obligations or liabilities relating to the Premises or the Project accruing on or after the Termination Date (or, if Lessee holds over, the Surrender Date), except to the extent attributable to a failure by Lessee to perform any obligation which arose or accrued prior to the Termination Date (or, if Lessee holds over, the Surrender Date) and subject to a right of offset in Lessor for any costs incurred or damages suffered as a result of a failure by Lessee to perform any of its obligations under this Lease; provided, however, that in no event shall Lessee be entitled to recover from Lessor any punitive, consequential or other speculative damages.

8.5 **Recognition of Residents' Rights.** In the event this Lease is terminated prior to the Expiration Date for any reason other than a termination pursuant to Article 17 on account of a Casualty or Appropriation, Lessor expressly agrees to recognize the rights of all Residents under Residence and Services Agreements and Rental Leases, if any, that are in effect on the Termination Date, provided that such Residence and Services Agreements and Rental Leases, if any, were entered into by Lessee in compliance with the provisions and requirements of this Lease, including without limitation the provisions of Sections 8.1 and 8.2.

8.6 **Holding Over.** If Lessee remains in possession of all or any part of the Premises or the Project after the Termination Date with Lessor's prior written consent: (a) Lessee's occupancy of the Premises shall be deemed a month-to-month tenancy (not a renewal or extension of the Term), terminable by either party upon 30 days' written notice to the other; (b) unless otherwise hereafter agreed in writing by Lessor and Lessee, the Annual Base Rent and

Participating Rent during the holdover period shall be 150% of the respective Annual Base Rent and Participating Rent in effect during the last month of the Term (and Lessor's acceptance of Rent without all or any part of the 50% increase shall not be deemed or construed as a waiver by Lessor of its right to collect the entire 50% increase in Rent); and (c) Lessee's use of the Premises otherwise shall be subject to all applicable terms and conditions of this Lease as if the Term had not expired or this Lease had not been terminated, as the case may be. Nothing in this Section 8.6 shall be deemed or construed as a consent by Lessor to any holding over by Lessee. If Lessee remains in possession of all or any part of the Premises or the Project after the Termination Date without Lessor's written consent: (i) all Gross Receipts allocable to such period shall be the sole property of Lessor; (ii) Lessee's occupancy of the Premises shall be solely as a tenant at sufferance and no notice of termination shall be necessary in order to recover possession; (iii) Lessee's use of the Premises otherwise shall be subject to all applicable terms and conditions of this Lease; and (iv) in addition to such other remedies as may be available to Lessor at law or in equity, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all claims, damages, losses, liabilities and costs arising from or related to Lessee's continued possession, including without limitation reasonable attorneys', brokers' and consultants' fees, costs and expenses. Notwithstanding the foregoing, under no circumstances shall Lessor be entitled to recover from Lessee punitive, consequential or other speculative damages.

## ARTICLE 9

### SECURITY FOR PERFORMANCE OF LEASE OBLIGATIONS

9.1 Security Deposit. Lessee shall deliver to Lessor on the Development Plan Modification Approval Date the sum of \$1,000,000 as a security deposit (the "Security Deposit") for the full and faithful performance of Lessee's obligations under this Lease. If there is an Event of Default at any time during the Term or any holdover period, Lessor shall have the right, but not the obligation, to use all or any part of the Security Deposit in order to cure or partially cure the Event of Default, or to pay itself any Rents, damages or other amounts that Lessor would be entitled to recover from Lessee on account of the Event of Default. In such event, Lessee shall upon demand restore the Security Deposit to its previous amount. Lessee may not use the Security Deposit to pay Rent or otherwise cause Lessor to offset any amounts payable by

Lessee against the Security Deposit. The Security Deposit shall be returned to Lessee promptly following the Termination Date (or, if Lessee holds over, the Surrender Date) in accordance with Applicable Laws, less such amounts as may have been used to cure or partially cure any Event of Default by Lessee. Lessor shall hold the Security Deposit in a separate interest bearing account, and interest accrued thereon shall be added to and become part of the Security Deposit. Lessor shall provide Lessee with an annual accounting of the amount of the Security Deposit.

**9.2 Letter of Credit.** As further security for the performance of its obligations under this Lease, Lessee shall provide a letter of credit ("Letter of Credit") to Lessor on the Term Commencement Date in the amount of \$6,000,000. The Letter of Credit shall be an irrevocable, transferable and automatically renewable standby Letter of Credit, in form reasonably satisfactory to Lessor, which shall provide by its terms that the Letter of Credit may be drawn down upon satisfaction of the following sole condition: Lessor's delivery to the issuing financial institution of a written certification that Lessor is entitled to payment in the amount stated due to the existence of an Event of Default. Lessor shall not make any such drawing unless and until there is an Event of Default which is continuing at the time of Lessor's draw. The proceeds of any such drawing on the Letter of Credit may be applied by Lessor against any Rents, damages or other amounts that Lessor would be entitled to recover from Lessee on account of the Event of Default, and any proceeds not applied for such purposes shall be promptly added to and be made a part of the Security Deposit (subject to Lessee's right to obtain the release of such excess proceeds by delivering to Lessor a replacement Letter of Credit that meets the requirements of this Section 9.2). The issuing financial institution shall have a minimum capital and earned surplus of \$500,000,000, and Lessor shall have the right to require Lessee to replace the Letter of Credit with a letter of credit issued by another issuer which meets this requirement if the issuer's minimum capital and earned surplus falls below 90% of this amount. If Lessee fails to so replace the Letter of Credit, Lessor shall have the unconditional right to draw down the Letter of Credit and add the proceeds to the Security Deposit until a replacement Letter of Credit is delivered to Lessor that meets the requirements of this Section 9.2, in which event such proceeds shall be paid over by Lessor to Lessee concurrently with the delivery to Lessor of such replacement Letter of Credit. The Letter of Credit shall provide for Lessor to be given 60 days' prior written notice if the issuer does not intend to renew the Letter of Credit, and Lessee shall cause the issuer to confirm periodically at Lessor's request that the Letter of Credit is then in full force and effect.



In the event the issuer gives Lessor notice that it does not intend to renew the Letter of Credit, Lessee shall replace the Letter of Credit with another letter of credit meeting the requirements of this Section 9.2 not less than 30 days prior to the expiration of the Letter of Credit, and if Lessee fails to do so, Lessor shall have the unconditional right to draw down the Letter of Credit and add the proceeds to the Security Deposit until a replacement Letter of Credit is delivered to Lessor as provided above. The Letter of Credit shall be returned to Lessee promptly following the Termination Date (or, if Lessee holds over, the Surrender Date) in accordance with Applicable Laws, subject to such drawings as may have made against the Letter of Credit in accordance with this Lease.

## ARTICLE 10

### INSURANCE AND INDEMNITY

**10.1 Required Insurance.** At all times during the Term and any holdover period, at its sole cost and expense, Lessee shall obtain and keep in force for the benefit of Lessee and Lessor insurance against such risks and in such amounts as is prudent and appropriate for projects such as the Project. Without limiting the generality of the foregoing, Lessor shall obtain and keep in force the following minimum levels of insurance:

(a) **Property Insurance.** Lessee shall maintain property insurance for the perils covered by a standard fire insurance policy, extended coverage perils, smoke damage, vandalism, malicious mischief, sprinkler leakage, boiler, machinery and pressure vessel, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke and earthquake (subject to Section 10.2(e) below), at all times during the Term, in an amount equal to the then-applicable Full Insurable Replacement Value. Lessee shall determine the proper deductible under each property insurance policy consistent with the First Class Standard and Lessee's prudent business judgment. All such policies shall specify that proceeds shall be payable whether or not any Improvements are actually rebuilt, and shall include a "guaranteed amount" or "stipulated amount" endorsement of coverage in lieu of a coinsurance provision under the policy.

"Full Insurable Replacement Value" means 100% of the actual cost to replace the Improvements (without deduction for depreciation but with standard exclusions such as

foundations, excavations, paving and landscaping, as applicable to specific perils), including the costs of demolition and debris removal, an increased cost of construction endorsement and, in the case of builders risk insurance, materials and equipment not in place but in transit to or delivered to the Premises. The Full Insurable Replacement Value initially shall be determined at Lessee's expense by an appraiser selected by Lessee and reasonably approved by the insurer(s) and Lessor. At each annual renewal, the Full Insurable Replacement Value shall be raised by an amount not less than the percentage increase in construction costs in the region for the previous 12 month period as reflected in the Marshall & Swift West Coast Cost Index (or a successor index reasonably acceptable to Lessor and Lessee) using the Trend Multiplier for the San Francisco Area. Lessor or Lessee may at any time, but not more frequently than once in any three year period by written notice to the other, require the Full Insurable Replacement Value to be redetermined, at Lessee's expense, by an appraiser selected by Lessee and reasonably approved by the insurer(s) and Lessor.

(b) **Business Interruption Insurance.** Subject to Section 10.2(f) below, Lessee shall maintain insurance against loss of income, including loss of rental income from the Project, under a business interruption and extra expense policy covering risk of loss due to the perils insured against under Section 10.1(a) above, in an amount sufficient to cover: (i) at least 36 months of Rent that would be payable to Lessor pursuant to Article 3 or Article 17; plus (ii) such additional amounts as are reasonably determined from time to time by Lessee and its insurer to be sufficient to pay the reasonable costs of providing alternative living arrangements for existing Residents in the event of a Casualty or Appropriation that does not give rise to a termination of this Lease. If Lessor so elects in writing, the amounts of business interruption insurance carried by Lessee pursuant to clause (ii) shall be certified from time to time (but not more often than annually) as sufficient by an Insurance Consultant (as defined in Section 10.2(e) below) engaged by Lessee pursuant to Section 10.2(f) below.

(c) **Worker's Compensation and Employer's Liability Insurance.** Lessee shall maintain worker's compensation insurance in the amounts and coverages required under worker's compensation, disability and similar employee benefit laws applicable to Lessee or the Project, and employer's liability insurance, with limits of not less than \$1,000,000 for bodily injury by accident and \$1,000,000 for bodily injury by disease, or such higher amounts as may be required by law.

(d) **General Liability.** Lessee shall maintain comprehensive or commercial general liability insurance, through one or more primary and umbrella or excess coverage liability policies as determined by Lessee, insuring against claims for bodily injury or property damage occurring on or about the Premises or the Project, or the streets, curbs or sidewalks adjoining the Premises, with coverage limits of not less than \$50,000,000, combined single limit and annual aggregate for the Project.

The general liability insurance shall: (i) delete any employee exclusion on personal injury coverage; (ii) include employees as additional insureds; (iii) provide for broad form blanket contractual coverage, including without limitation coverage for Lessee's indemnification obligations under this Lease for bodily injury, death and/or property damage; (iv) provide Products and Completed Operations and Independent Contractors coverage and Broad Form Property Damage liability coverage without exclusions for collapse, explosion, demolition, underground coverage and excavating, including blasting; (v) provide liability coverage on all mobile equipment used by Lessee; and (vi) include a cross-liability endorsement (or provision) permitting recovery with respect to claims of one insured against another. The general liability insurance coverage shall insure against any and all claims for bodily injury, including death resulting therefrom, and damage to or destruction of property of any kind whatsoever and to whomever belonging and arising from Lessee's operations hereunder, and whether arising from acts or omissions of Lessee, any of Lessee's officers, directors, partners, members, agents or employees, contractors, subcontractors, any other person or entity for whom Lessee may be responsible, or any additional insureds.

(e) **Automobile Liability.** Lessee shall maintain automobile liability insurance, through one or more primary and umbrella policies, providing aircraft liability coverage, if applicable, and automobile liability coverage for owned, non-owned and hired vehicles, with coverage limits of not less than \$15,000,000, combined single limit and annual aggregate.

(f) **Professional Liability Insurance.** Lessee shall maintain professional liability insurance insuring against liability for death, injury, loss or damage resulting from the rendering of or failure to render healthcare-related services, including without limitation the examination, diagnosis, treatment or care of any Resident or non-Resident user of the Health

Center, in the minimum amount of \$5,000,000 per occurrence and \$25,000,000 annual aggregate.

(g) **Builder's Risk.** During the course of construction of any Alterations, Lessee shall maintain or cause the construction manager or general contractor to maintain comprehensive "all risk" builder's risk insurance, including vandalism and malicious mischief, covering all Improvements in place on the Premises, all materials and equipment stored at the Premises or an off-site storage facility and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises or an off-site storage facility when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors (excluding any construction managers', contractors' and subcontractors' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor), such insurance to be written on a completed value basis in an amount not less than the full estimated replacement value of the Alterations.

(h) **Required Coverage.** Lessee shall maintain all other insurance that Lessee is required to maintain under Applicable Laws or the terms of any Leasehold Mortgage.

## 10.2 **Policy Form and General Requirements.**

(a) All of the insurance required under this Lease, and all renewals thereof, shall be issued by one or more companies of recognized responsibility admitted to sell insurance in California with a financial rating of at least Class A -- X (or its equivalent successor) in the most recent edition of *Best's Insurance Reports* (or its equivalent successor, or, if there is no equivalent successor, an insurance rating service otherwise reasonably acceptable to Lessor). The proceeds of property and builder's risk policies of insurance required hereunder shall be payable in accordance with and subject to the terms of Article 17 below, and any loss adjustment or disposition of insurance proceeds by the insurer shall require the written consent of both Lessor and Lessee for losses which exceed the threshold set forth in Section 17.9 below. To the extent that any proceeds are held at any time by Lessor, they shall be held in an interest-bearing account and all interest accrued thereon shall be deemed proceeds of insurance for purposes of this Lease. All property insurance hereunder shall name Lessor as a loss payee, as its interests

may appear, and all liability insurance policies shall name as additional insureds, with respect to any liability arising out of or relating to the ownership, maintenance, operation, occupancy or use of the Premises or the Project, all Lessor Indemnitees and such other parties as Lessor may reasonably request. Any deductibles or self-insurance retentions for insurance required to be carried by Lessee pursuant to this Article 10 shall be subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. All deductibles and self-insurance retentions shall be paid by Lessee. All insurance of Lessee shall be primary coverage, and any insurance carried by Lessor shall be excess and non-contributory with Lessee's insurance.

(b) All policies provided for herein shall provide expressly that such policies shall not be canceled, terminated or altered without 30 days' prior written notice to Lessor. Each policy, or a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect, shall be deposited with Lessor on or before the Term Commencement Date, shall be maintained throughout the Term and any holdover period, and shall be renewed at least 30 days before the expiration of the term of the policy. Except for specific provisions described herein, no exclusion shall be permitted in any policy if it conflicts with any coverage required hereby, and, in addition, no policy shall contain any exclusion from liability for personal injury or sickness, disease or death or which in any way impairs coverage under the contractual liability coverage described above.

(c) Lessee waives all rights of subrogation and recovery against all Lessor Indemnitees on account of any loss or damage arising from any cause to the extent covered by any insurance (or self-insurance) required to be carried by Lessee pursuant to this Article 10. Lessee shall give notice to its insurance carrier or carriers that the foregoing waiver is contained in this Lease, and shall procure waiver of subrogation endorsements to all policies described in Section 10.1.

The parties acknowledge that Lessor has no obligation under this Lease to carry or provide any insurance, and that Lessor currently self-insures; provided, however, that the foregoing shall not be construed to relieve Lessor from any obligation it may have under any agreement with the City (including without limitation the Development Agreement) to obtain or maintain liability insurance coverage with respect to the Sand Hill Road Projects, and Lessor



shall name Lessee as an additional insured under any such required insurance policies (but not any bonds or other security) that relate to the Premises or the Project. If Lessor otherwise elects in its sole discretion to carry any insurance coverage through an independent third party commercial insurer and such insurance is applicable to the Premises or the Project, such insurance shall be excess and non-contributory with Lessee's insurance. Subject to the foregoing, and to Lessee's compliance with its obligations to carry insurance as set forth in this Article 10, Lessor hereby waives all rights of subrogation and recovery against Lessee on account of any loss or damage arising from any cause to the extent covered by insurance procured by Lessor through an independent third party commercial insurer. Lessor shall give notice to its independent third party insurance carrier or carriers, if any, that the foregoing waiver is contained in this Lease, and shall procure waiver of subrogation endorsements to any such policies described in this subparagraph.

(d) If either party shall at any time believe that the limits or extent of coverage or deductibles with respect to any of the insurance required in this Article 10 then carried are either excessive or insufficient for a prudent owner and operator of a project like the Project, the parties shall endeavor to agree upon the proper and commercially reasonable limits and extent of coverage and deductibles for such insurance, and upon doing so shall execute an addendum to this Lease, letter agreement or other writing memorializing their agreement. If the parties at any time are unable to agree on the proper and commercially reasonable limits and extent of coverage and deductibles for such insurance, the matter(s) in dispute shall be resolved pursuant to the provisions of Section 7.12 by an Arbitrator having at least ten years of experience in insurance coverage matters. The expenses of such determination shall be borne equally between Lessor and Lessee. Notwithstanding any of the foregoing to the contrary: (i) the limits of property insurance coverage shall be determined as provided in Section 10.1(a); and (ii) the limits of liability insurance required under Sections 10.1(d), 10.1(e) and 10.1(f) shall not be reduced under any circumstances, and shall be increased on the fifth anniversary of the Development Plan Modification Approval Date, and every five years thereafter during the Term, by a percentage at least equal to the percentage change in the CPI over the five-year period immediately preceding the date of the adjustment.

(e) If at any time the earthquake casualty insurance required by Section 10.1(a) is not available on commercially reasonable terms (either as to the amount of

coverage, the deductibility provisions or the covered risks), the requirements of this Lease with respect thereto may be modified in accordance with the following procedure: Lessee may at its sole cost engage an independent insurance consultant who has an excellent national reputation and is knowledgeable in California insurance matters (the "Insurance Consultant"). The selection of the Insurance Consultant shall be subject to Lessor's approval, which shall not be unreasonably withheld or delayed. The Insurance Consultant shall review the then-current insurance coverage and insurance requirements under this Lease, and shall make recommendations with respect to the types, amounts and provisions of earthquake casualty insurance that should be carried, or can be carried on commercially reasonable terms, or shall make recommendations with respect to a program of self-insurance, with respect to Lessee and the Project. If the Insurance Consultant concludes that the earthquake casualty insurance requirements specified in this Lease should be modified due to market conditions, it shall recommend modifications that provide the maximum feasible protection under the circumstances, including, for example and not by way of limitation, the establishment and funding of an ongoing earthquake damage reserve using amounts that Lessee would expend on insurance premiums and deductibles if earthquake insurance were available on commercially reasonable terms. The Insurance Consultant's recommendations shall be subject to Lessor's approval, which shall not be unreasonably withheld or delayed and shall be deemed given if Lessor has not provided Lessee with a reasonably detailed written statement of the grounds for its disapproval within 15 days after receipt of the Insurance Consultant's recommendations. Once the recommendations are approved or deemed approved, Lessee may elect to follow the recommendations of the Insurance Consultant in lieu of the requirements of this Lease with respect to earthquake insurance for a maximum period of one year. After expiration of this period, Lessee shall resume compliance with the earthquake casualty insurance requirements set forth in Section 10.1(a) above unless it has received Lessor's approval (or deemed approval) to follow new recommendations of the Insurance Consultant pursuant to the provisions of this Section 10.2(e).

(f) If at any time the business interruption insurance required by Section 10.1(b) is not available on commercially reasonable terms (either as to the amount of coverage, the deductibility provisions or the covered risks), the requirements of this Lease with respect thereto may be modified in accordance with the following procedure: Lessee may at its

sole cost engage an Insurance Consultant, subject to Lessor's approval which shall not be unreasonably withheld or delayed. The Insurance Consultant shall review the then-current business interruption insurance coverage, business interruption insurance requirements and obligations to be funded from the proceeds of business interruption insurance under this Lease, and shall make recommendations with respect to the types, amounts and provisions of business interruption insurance that should be carried, or can be carried on commercially reasonable terms, or shall make recommendations with respect to a program of self-insurance, with respect to Lessee and the Project. If the Insurance Consultant concludes that the business interruption insurance requirements specified in this Lease should be modified due to market conditions, it shall recommend modifications that provide the maximum feasible protection under the circumstances, including, for example and not by way of limitation, the establishment and funding of an ongoing business interruption reserve using amounts that Lessee would expend on insurance premiums and deductibles if business interruption insurance were available on commercially reasonable terms. Such business interruption reserve shall remain in place once business interruption insurance again becomes available, accrue interest, and be increased, if and when business interruption insurance again becomes unavailable on commercially reasonable terms, using amounts that Lessee would expend on insurance premiums and deductibles if business interruption insurance were available on commercially reasonable terms. The Insurance Consultant's recommendations shall be subject to Lessor's approval, which shall not be unreasonably withheld or delayed and shall be deemed given if Lessor has not provided Lessee with a reasonably detailed written statement of the grounds for its disapproval within 15 days after receipt of the Insurance Consultant's recommendations. Once the recommendations are approved or deemed approved, Lessee may elect to follow the recommendations of the Insurance Consultant in lieu of the requirements of this Lease with respect to business interruption insurance for a maximum period of one year. After expiration of this period, Lessee shall resume compliance with the business interruption insurance requirements set forth in Section 10.1(b) above unless it has received Lessor's approval (or deemed approval) to follow new recommendations of the Insurance Consultant pursuant to the provisions of this Section 10.2(f).

(g) On or before the Term Commencement Date, and on each anniversary of the Term Commencement Date thereafter during the Term, Lessee shall provide Lessor with the

certificate of a person knowledgeable in insurance matters (who may be an officer or employee of Lessee) stating that all insurance policies required by this Lease are in full force and effect and that such policies, and the insurance provided thereby, comply with the requirements of Sections 10.1 and 10.2.

(h) No approval by Lessor of any insurer, the terms or conditions of any policy, or any coverage or amount of insurance or any deductible amount, shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. Lessor's approval shall only constitute Lessor's acknowledgment that, as to Lessor, the item or matter so approved satisfies the requirements of this Lease.

**10.3 Lessee's Indemnity.** Lessee shall indemnify, defend and hold Lessor and all other Lessor Indemnitees harmless from and against any and all claims, damages, losses, liabilities and costs (including without limitation reasonable attorneys' fees, costs and disbursements) relating in any manner, directly or indirectly, in whole or in part, to: (a) any failure by Lessee to timely and properly perform each of its obligations under this Lease, including without limitation its obligations under the Development Agreement (subject to the provisions of Section 8.3(e) of the Project Development Rider), Operating Licenses and all other Applicable Laws; (b) any acts or omissions of Lessee, any Affiliate of Lessee, or any officers, directors, employees, guests, invitees, agents or contractors of any of them, prior to the Term Commencement Date (or, if earlier, the Termination Date) in connection with the development, financing, design, construction, marketing and management of the Project (provided that the foregoing shall not be construed to impose any liability on Lessee with respect to any obligations arising under the Development Agreement if this Lease is terminated by Lessee prior to the Term Commencement Date pursuant to the provisions of Article 8 of the Project Development Rider, except solely to the extent specifically provided in Section 8.3(e)(ii) of the Project Development Rider); (c) the development, financing, design, construction, marketing, operation, management, use, occupancy, maintenance, repair and improvement of the Premises or the Project at any time during the Term or any holdover period (including without limitation the design, construction, maintenance and repair of any Improvements, Alterations or FF&E, and any liability to any federal, state or local taxing authority); (d) any accident occurring or other circumstance existing

on or about the Premises at any time during the Term or any holdover period due to any cause whatsoever, including without limitation the rendering of (or failure to render) services to Resident or non-Resident users of the Health Center; and (e) any negligence or willful misconduct on the part of Lessee, any Affiliates of Lessee, or any officers, directors, employees, Residents, guests, invitees, agents or contractors of any of them; provided, however, that: (i) the foregoing indemnification obligations of Lessee shall not apply to the extent of any claim, damage, loss, liability or cost for which Lessor has agreed to indemnify Lessee pursuant to the provisions of Section 10.5 below; and (ii) in no event shall Lessee be liable to Lessor for any punitive, consequential or other speculative damages.

Lessee shall promptly assume its defense and indemnification obligations upon written notice from any Lessor Indemnitee. Lessor Indemnities may participate in, but not control, the defense of any such claim at their own expense. Lessee shall not settle any claim without the consent of all Lessor Indemnities who would incur any liability for such claim under or following such a settlement, which consent shall not be unreasonably withheld. The provisions of this Section 10.3 shall survive the expiration or earlier termination of this Lease. The provisions of Section 10.1 shall not limit in any way Lessee's obligations under this Section 10.3.

**10.4 Lessee's Assumption of Risk and Waiver.** As a material part of the consideration to Lessor for entering into this Lease, Lessee agrees that except as expressly provided otherwise in this Section 10.4, no Lessor Indemnitee shall be liable to Lessee for, and Lessee expressly assumes the risk of and waives, releases and discharges all Lessor Indemnities from, any and all claims, damages, losses, liabilities, costs and expenses of any kind or nature relating in any manner, directly or indirectly, in whole or in part, to the Premises, the Project or this Lease, whether resulting from any act or omission of Lessor or from any other cause, including without limitation: (a) the performance of any public or quasi-public works on or near the Premises; (b) any act or omission of Children's Health Council, Ronald McDonald House, or the officers, employees, agents, guests, invitees or contractors of any of them; (c) any loss or theft of, or damage to, any Improvements, FF&E or other personal property; (d) all matters described or referred to in Section 1.2 above; and (e) any act or omission of any Recipient Agency, or any member of the public accessing the Premises pursuant to an easement or right of entry reserved under this Lease; provided, however, that this assumption of risk and waiver and



release shall not apply to the gross negligence or willful misconduct of Lessor or any Lessor Indemnitee, or the failure by Lessor to comply with any of its express obligations under this Lease. Without limiting the generality of the foregoing provisions of this Section 10.4, and notwithstanding anything to the contrary elsewhere in this Lease, Lessor shall not under any circumstances whatsoever be liable to Lessee for: (i) punitive, consequential or other speculative damages; or (ii) interference with light or other incorporeal hereditaments. The provisions of this Section 10.4 shall survive the expiration or earlier termination of this Lease.

**10.5 Lessor Indemnity.** 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' fees, costs and disbursements) relating in any manner, directly or indirectly, in whole or in part, to: (a) any failure by Lessor to timely and properly perform each of its obligations under this Lease; and (b) any gross negligence or willful misconduct on the part of Lessor or any Lessor Indemnitee. Notwithstanding the foregoing, in no event shall Lessor be liable for any punitive, consequential or other speculative damages. The provisions of this Section 10.5 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE 11**

### **ALTERATIONS**

**11.1 Permitted Alterations.** Lessee may make any Alterations which will not: (a) materially and adversely affect the appearance, character, structure, equipment, services or systems of any Building; (b) materially impair Lessee's capability to operate and maintain the Project as a First Class CCRC or First Class Rental Project, as applicable; (c) have a material adverse impact on the Participating Rent earned by Lessor; or (d) violate, or cause or require a modification in: (i) the permitted use prescribed in Section 6.1; (ii) any other provision of this Lease; or (iii) any Entitlements. If Lessee desires to make any Alterations which could have any of the effects described in clauses (a) through (d) of the immediately preceding sentence, Lessee shall first obtain Lessor's prior written consent. Such consent shall not be unreasonably withheld if the proposed Alteration would have only the effects described in clause (a); in all other cases, such consent may be granted or withheld in Lessor's sole discretion; provided, however, that Lessor shall not unreasonably withhold its consent to an Alteration if Lessee can establish that competitive conditions, changes in Applicable Laws or changes in the marketplace warrant the

Alteration, and that the Alteration would not materially increase Lessor's risk or have a material adverse effect on the amount of Participating Rent to be paid to Lessor or any of Lessor's other rights or obligations under this Lease.

## 11.2 Design of Alterations.

(a) General Requirements. The design of all Alterations shall: (i) provide for the construction of Improvements and installation of FF&E that are First Class in quality and appearance; (ii) satisfy the requirements of the Operating Licenses, the Entitlements applicable to the Premises or the Project and all other Applicable Laws; and (iii) not require or give rise to any modifications of, or otherwise materially and adversely affect, any other properties owned by Lessor (for example, the design shall not give rise to the imposition of any restrictions that would survive the permitted use of the Premises or run with any lands of Lessor, except and only to the extent permitted by Section 1.5, Section 6.7 or Section 6.8) or any existing Entitlements relating to the Premises or any other properties owned by Lessor.

(b) Architects' Qualifications. Lessee shall engage only design professionals who are licensed, reputable, financially capable, experienced in the design of First Class projects similar to the Project and, if applicable, experienced in making effective public presentations for high-profile projects. Any design professionals engaged by Lessee for Alterations that will either modify the exterior appearance, have a total cost of over \$5,000,000 or affect the structural system of any Building (a "Major Alteration") shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld or delayed if the standards set forth in the first sentence of this Section 11.2(b) are satisfied. Such approval shall be deemed given if Lessor does not give Lessee written notice of its disapproval, stating the grounds therefor in reasonable detail, within ten business days after receipt of the information describing the design professional's qualifications. Lessee shall provide Lessor with copies of all contracts with design professionals upon execution.

(c) Lessor's Review and Approval. Prior to making any application or submittal to the City, State or any other public agency with jurisdiction for any architectural review, design or site review, building permit or any other governmental approval concerning any Alteration for which Lessor's approval is required pursuant to Section 11.1 above, Lessee shall submit to Lessor: (i) four duplicate sets of all plans, drawings, specifications, studies,

renderings and related design documents that are required by the public agency as a part of such application or submittal ("Design Documents"); and (ii) copies of the application and any other items to be submitted to the public agency with the application. Lessee shall not submit the application until after obtaining Lessor's written approval of the Design Documents. Lessor shall review and approve or disapprove such Design Documents within 30 days after receipt of the complete package, and all materials necessary to evaluate the package.

Copies of all submittals to the City, State or any other public agency with jurisdiction concerning the design of any Alteration for which Lessor's approval is required pursuant to Section 11.1 above shall be submitted concurrently to Lessor for its information. Subsequent Design Documents shall be submitted to Lessor in two duplicate sets upon which any material change from design elements previously approved (including without limitation any material design element not shown in previously approved documents) shall be indicated, and Lessor shall review and approve or disapprove such modified Design Documents within ten business days; except that Lessor shall have at least 15 business days to review the final submittal for any building permit, all such time periods being subject to Lessor's receipt of at least 15 days' advance written notice from Lessee that a package will be submitted for approval so that Lessor can schedule its consultants.

Lessor's approval shall not be unreasonably withheld or delayed; provided, however, that Lessor's approval may be granted or withheld in Lessor's sole discretion if the Design Document or related submittal would violate any of the requirements set forth in this Lease. If Lessor disapproves any aspect of the Design Documents or related submittals, Lessor shall specify in reasonable detail the reasons for such disapproval and Lessee shall take such steps as may reasonably be necessary to correct any objections by Lessor made in accordance with the applicable standards set forth in this Lease. Lessor shall review and respond to any resubmittal that addresses Lessor's objections within a Reasonable Review Period. Any disputes shall be resolved by arbitration in accordance with Section 7.12 of this Lease by an Arbitrator having at least ten years of professional design experience, at least half of which shall be in the design of continuing care retirement communities.

Lessee shall pay all commercially reasonable third party costs incurred by Lessor in reviewing any request for approval of a proposed Alteration or the Design Documents for any

Alteration for which Lessor's approval is required pursuant to Section 11.1 above. No Lessor approval shall be deemed a representation of any sort with respect to the quality of the design, or a waiver of any rights Lessor may have other than with respect to Lessee's obligation to seek approval of the Alteration.

### **11.3 Construction of Alterations.**

(a) **Preconditions.** Before commencing construction of any Alterations, Lessee shall: (i) procure all Entitlements that may be required by Applicable Laws as a condition to the start of construction; (ii) obtain the consent of the City, State and any other public agencies with jurisdiction from whom consent is required, if any; and (iii) provide Lessor with certified copies of all insurance policies required by Section 11.3(d) below. Lessee shall give Lessor at least 15 days' written notice before commencing construction of any Alterations so that Lessor may post and record one or more notices of non-responsibility, and Lessee shall maintain the notice(s) in the location(s) reasonably designated by Lessor.

(b) **General Requirements.** All Alterations shall be constructed in a First Class manner, substantially in accordance with and without material deviation from the approved Design Documents, and subject to the requirements of all Entitlements applicable to the Premises or the Project and all other requirements of Applicable Laws and this Lease, using workmanship and materials of a quality consistent with the First Class nature of the Project, all at no cost or liability to Lessor. Once construction is commenced, Lessee shall prosecute the work diligently and continuously to Substantial Completion, subject to Force Majeure. Lessee shall at no cost to Lessor correct, or cause its contractor to correct, any material defects in any construction work performed in connection with the Alterations.

(c) **Approval of Contractor and Contracts.** Lessee shall engage only contractors who are licensed, reputable, have strong financial capability and are experienced in the construction of projects similar to the Alterations. Any contractor engaged by Lessee to perform all or any part of a Major Alteration (a "Major Contractor") shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld if the standards set forth in the first sentence of this Section 11.3(c) are satisfied. Such approval shall be deemed given if Lessor does not give Lessee written notice of its disapproval, stating the grounds therefor in reasonable detail, within ten business days after receipt of the information describing the Major Contractor's

qualifications. All contractors shall be required to: (i) carry worker's compensation, general liability insurance naming all Lessor Indemnitees as additional insureds with minimum coverage limits of at least \$5,000,000, and automobile and employer's liability insurance; and (ii) comply with all applicable requirements of the approved Design Documents, Entitlements and Applicable Laws. Lessee shall provide Lessor with copies of all contracts upon execution.

(d) **Insurance and Bonds.** Without limiting any of the provisions of Article 10 above, Lessee shall maintain the builder's risk insurance described in Section 10.1(g) above at all times during the construction of any Alterations. All Major Contractors shall be bondable, and if Lessee requires performance and/or payment bonds from any contractor, such bonds shall name Lessor as an additional obligee.

(e) **Observation.** Lessee shall provide Lessor with copies of all Major Contractors' regular progress reports, by facsimile, e-mail or other similarly timely means, immediately upon receipt. Lessee may satisfy this obligation by contractually requiring its Major Contractors to provide Lessor with such reports at the same time and in the same manner that such reports are provided to Lessee, and by taking reasonable steps to enforce these contractual requirements if Lessee becomes aware that any Major Contractor is not complying with such requirements. If any Lender requires independent third party construction oversight, Lessee shall request that the construction monitor provide Lessor with copies of all reports and other materials he or she generates. If no such independent oversight is implemented by the Lender, or if the Lender refuses to provide copies of its oversight reports, Lessor shall have the right (but not the obligation) to engage at Lessor's cost an independent third party construction monitor to provide periodic observation of any construction-related activities, but such observation shall not interfere with or impede the construction work. In addition, Lessor shall have the right, but not the obligation, upon reasonable advance written notice to Lessee and subject to all reasonable rules pertaining to visitor and job site safety, to be present at the Premises and observe all aspects of construction at any time during construction of the Alterations, provided that such observation shall not interfere with or impede the construction work. No observation by a third party or by Lessor, whether performed or not performed, shall: (i) impose upon or be deemed to impose upon Lessor any responsibility or liability with respect to the design or construction of the Alterations; (ii) be construed as an approval or acceptance of



the design or construction of the Alterations; or (iii) constitute or be deemed to constitute a waiver of any rights Lessor may have.

(f) **Archaeologist.** Lessee shall give Lessor not less than one month's prior written notice of the scheduled commencement of any material excavation on any portion of the Premises. If the City or any other public agency with jurisdiction requires oversight by a qualified archaeological consultant, Lessee shall request that Lessor be provided with copies of all reports he or she generates. If no such independent oversight is required, Lessor may engage an archaeological consultant (which consultant may be an independent contractor or an employee of Lessor), at Lessor's sole cost, to oversee those aspects of the excavation and construction that may affect archaeological resources. Lessee acknowledges that if, pursuant to Applicable Laws, the archaeological consultant deems it necessary to investigate the possible presence of or to protect archaeological artifacts, the archaeological consultant shall have the authority, to the extent provided under Applicable Laws, the Entitlements or the Conditions of Approval, to halt the excavation work in the area subject to such investigation. Lessee shall comply, at its own expense, with the archaeological consultant's requirements regarding the protection, removal or reburial of human remains and archaeological artifacts, provided that they are reasonable under the circumstances or are mandated by Applicable Law, and provided further that Lessee shall have the right to contest the imposition of such requirements to the extent provided in Section 6.3(b) of this Lease. Lessee shall have no rights, title or interest whatsoever with respect to any archaeological artifacts discovered on the Premises, and Lessor retains the right to act as landowner under Applicable Law; provided, however, that the foregoing rights so retained by Lessor shall not be construed to interfere with Lessee's rights under this Lease. Lessor and its archaeological consultant shall not be liable for any damages or other liability that may result from cessation of excavation or construction, or other compliance with the provisions of this Section 11.3(f) or with any Applicable Laws.

(g) **Completion Requirements.** Upon Substantial Completion of any Alterations, Lessee shall: (i) record a notice of completion in the Official Records of the County; (ii) provide Lessor with reasonable evidence (e.g., a title policy endorsement) that no Liens have resulted from the construction work, subject to Lessee's right to contest such Liens pursuant to Section 15.4 below; (iii) provide Lessor with a certificate of occupancy; and (iv) provide Lessor with a complete set of as-built drawings for the Alterations showing (to the extent customarily

included in as-built drawings for comparable projects) all field changes, substitutions and other deviations from the approved Design Documents, on a CAD electronic file and on mylar or another high quality reproducible medium.

(h) **Import or Export of Soil.** The following requirements shall apply to any dirt, earth, rocks, gravel or other like materials (collectively, "Soil") being imported to or exported from the Premises in connection with any Alterations: (i) Lessee shall be responsible for causing the appropriate sampling and analysis to be conducted in accordance with Applicable Laws and good engineering practices prior to any Soil being moved; (ii) Lessee or its contractor shall notify Lessor in writing describing the proposed source or destination of the Soil and the testing protocol and agency to be used, and all shall be subject to Lessor's written approval, which shall not be unreasonably withheld or delayed; (iii) without limiting any provision of clause (i) above, the sampling and analysis shall meet the following minimum requirements: random sampling shall be conducted at least every 250 cubic yards; and no more than four of those samples may be composited into one sample, which shall be analyzed for the following (one analysis per 1000 cubic yards of Soil, which frequency may vary depending on prior uses): (A) volatile organic compounds by EPA Method 8260; (B) CAM 17 Metals by EPA Method 6000/7000 series; and (C) extractable Petroleum Hydrocarbons by EPA Method 8015M for diesel and motor oil with silica gel cleanup (providing chromatograms if there are detections); and (iv) Lessor shall be provided with a letter report from a qualified environmental engineer containing the data described above, and an assessment of whether or not any Soil to be imported onto the Premises is acceptable for its intended use. No Soil shall be imported onto the Premises unless the letter report indicates that the Soil is acceptable for its intended use, and no Soil shall be exported from the Premises unless the letter report indicates that the proposed disposal site is properly licensed and otherwise acceptable for disposal of the Soil.

## ARTICLE 12

### **HAZARDOUS MATERIALS**

12.1 **Use of Hazardous Materials; Compliance with Environmental Laws.** Lessee may use, store and generate Hazardous Materials at the Premises only to the extent reasonably required in connection with its operation of the Project in accordance with this Lease. No later than 30 days before the Initial Occupancy Date, Lessee shall provide Lessor with a full and