

complete list of all Hazardous Materials which Lessee proposes to use, store or generate, or which may be contained in any products or materials which Lessee will use, store or generate, on or about the Premises (other than commonly used cleaning or office-related solutions or agents available for use in households and which can be purchased at retail establishments) (the "Hazardous Materials List"). The Hazardous Materials List shall contain the common name of each product or material, and both the scientific name and the CAS number of all chemical substances contained in such product or material. Lessee shall notify Lessor, by providing an updated Hazardous Materials List, if: (a) Lessee proposes to begin using, storing or generating any new Hazardous Material; or (b) Lessee determines that a product or material it is using, storing or generating contains a Hazardous Material which was not previously described in the Hazardous Materials List. Any Hazardous Materials contained in the Hazardous Materials List that are not disapproved in writing by Lessor within 30 days after receipt, together with all commonly used cleaning or office-related solutions or agents available for use in households and which can be purchased at retail establishments, shall be deemed "Permitted Materials." Lessee shall at all times comply with all applicable Environmental Laws. Each party shall promptly provide the other with copies of any notices that it may receive, whether or not from public agencies with jurisdiction or pursuant to any Environmental Law, concerning the presence or Release of any Hazardous Materials on, under, about or beneath the Premises or the Project.

**12.2 Releases.** Lessee shall not cause or knowingly permit to occur at any time before or during the Term or any holdover period any Release of a Hazardous Material or condition of pollution or nuisance on or about the Premises or the Project, whether affecting surface water or ground water, the air, the surface of the Premises or the subsurface environment. On or before the Surrender Date, Lessee shall have removed from the Premises and the Project all Hazardous Materials introduced onto or permitted on the Project by Lessee, except for those Permitted Materials that Lessee is required to deliver to Lessor pursuant to Section 8.4 above, if any, and except that Permitted Materials owned or used by Residents shall be removed only upon the Expiration Date, or upon a termination of this Lease pursuant to Article 17. Lessee shall promptly undertake, in accordance with the provisions set forth in Section 12.3 below, all remedial measures required to investigate, monitor, clean up, abate or otherwise respond to any Release of a Hazardous Material or condition of pollution or nuisance on, under, about or beneath the Premises or the Project that occurs or becomes known at any time after the Term

Commencement Date, regardless of the source or cause of origination, at no cost to Lessor and in strict accordance with all applicable Environmental Laws, except for the remediation of: (a) Hazardous Materials expressly made the responsibility of Lessor pursuant to Section 6.4 of the Project Development Rider; or (b) Hazardous Materials first introduced onto the Premises by Lessor, or Lessor's agents or contractors, in connection with any entry onto or activities on the Premises conducted by Lessor or its agents or contractors after the Term Commencement Date; provided, however, that Lessee shall bear the burden of proof if it asserts that the Hazardous Materials are the responsibility of Lessor pursuant to Section 6.4 of the Project Development Rider or were first introduced onto the Premises by Lessor, or Lessor's agents or contractors, in connection with any entry onto or activities on the Premises conducted by Lessor or its agents or contractors after the Term Commencement Date.

**12.3 Remediation.** If Lessee is obligated pursuant to Section 12.2 above to remediate any Hazardous Materials, the following additional provisions shall apply:

- (a) There shall be no cost to Lessor in connection with the remediation;
- (b) Lessee shall proceed with diligence and continuity to develop and carry out an appropriate response plan consistent with the requirements of this Article 12 (including obtaining approval of such response plan from all public agencies with jurisdiction);
- (c) The response plan: (i) shall be prepared by a licensed environmental consultant engaged by Lessee (such consultant to be subject to Lessor's approval, which shall not be unreasonably withheld and shall be deemed given if no reasonably detailed written notice of disapproval is given to Lessee within ten business days following Lessee's request for approval); (ii) shall satisfy the requirements of all applicable Environmental Laws and public agencies with jurisdiction; (iii) shall achieve a long-term solution for the Premises that will permit the use of the Premises for a First Class CCRC, a First Class Rental Project and all other residential uses (such as, but not limited to, student housing), without the imposition of restrictive covenants or other provisions that would restrict or limit the use of any portion of the Premises; and (iv) shall not require the retention of any monitoring or other facilities on the Premises past the end of the Term (except if and to the extent no other alternative is permitted by Environmental Law, and then such monitoring and other facilities shall be maintained and operated at Lessee's sole cost and expense for the shortest period reasonably allowed by

applicable Environmental Laws, and thereafter shall be removed, and the Premises restored to its original condition as expeditiously as is feasible, at Lessee's sole cost and expense), cause the imposition of any restriction on the use or occupancy of any of the Units or other Improvements on the Premises following completion of the remediation, or impose any material obligation or liability on Lessor;

(d) The remediation work shall be performed by a licensed environmental contractor (such contractor to be subject to Lessor's approval, which shall not be unreasonably withheld and shall be deemed given if no reasonably detailed written notice of disapproval is given to Lessee within ten business days following Lessee's request for approval) under the supervision of the environmental consultant, and shall be conducted and completed in accordance with all applicable Environmental Laws and the approved response plan;

(e) Lessor may engage, at Lessee's sole cost, an independent environmental consultant to observe the remediation work at any or all times (such consultant to be subject to Lessee's approval, which shall not be unreasonably withheld and shall be deemed given if no reasonably detailed written notice of disapproval is given to Lessor within ten business days following Lessor's request for approval), subject to all reasonable rules pertaining to visitor and job site safety, but such observation shall not interfere with or impede the remediation work; and

(f) Lessee shall be solely responsible for complying with all manifest and disposal requirements relating to any Hazardous Materials to be disposed of off-site.

**12.4 Lessee's Environmental Indemnity.** Without limiting the generality of the indemnity provided by Lessee pursuant to Section 10.3 above, Lessee shall indemnify, defend, and hold all Lessor Indemnitees harmless from and against any and all claims, suits, causes of action, demands, losses, damages, diminution of property value, liabilities, fines, penalties, costs, taxes, charges, administrative and judicial proceedings, orders, judgments, remedial actions and compliance requirements, including without limitation enforcement and clean-up actions, third-party tort and property claims, natural resource damages, additional costs of ownership, maintenance and development of the Premises (over and above those incurred for the ownership, maintenance and development of the Premises as tendered to Lessee) and other expenses (including without limitation reasonable attorneys' and consultants' and experts' fees and costs of defense) arising, directly or indirectly, in whole or in part, out of: (a) any non-compliance by

Lessee, its Affiliates or any of their officers, directors, employees, guests, invitees, agents or contractors, with any Environmental Laws or with any of Lessee's other obligations under this Article 12; (b) any use, storage, generation, production, Release, disposal or transportation by Lessee, its Affiliates, or any of their officers, directors, employees, Residents, guests, invitees, agents or contractors, of any Hazardous Materials at, on, in, about or under the Premises or the Project at any time during the Term or any holdover period; or (c) the presence of any Hazardous Materials on, under or about the Premises or the Project at any time during the Term or any holdover period, regardless of the source or cause of origination, except for: (i) Hazardous Materials expressly made the responsibility of Lessor pursuant to Section 6.4 of the Project Development Rider; and (ii) Hazardous Materials first introduced onto the Premises by Lessor, or Lessor's agents or contractors, in connection with any entry onto or activities on the Premises conducted by Lessor or its agents or contractors after the Term Commencement Date; provided, however, that Lessee shall bear the burden of proof if it asserts that the Hazardous Materials are the responsibility of Lessor pursuant to Section 6.4 of the Project Development Rider or were first introduced onto the Premises by Lessor, or Lessor's agents or contractors, in connection with any entry onto or activities on the Premises conducted by Lessor or its agents or contractors after the Term Commencement Date. Notwithstanding the foregoing, in no event shall Lessee be liable 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 Indemnitees 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 Indemnitees 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 12.4 shall survive any termination of this Lease. The provisions of Section 10.1 shall not limit in any way Lessee's obligations under this Section 12.4. The indemnification set forth in this Section 12.4 is in addition to, and shall not diminish, modify or substitute for, any common law, statutory or other rights that any Lessor Indemnitee may have against Lessee regarding environmental issues.

## ARTICLE 13

### ASSIGNMENT AND SUBLETTING

13.1 Lessor's Consent. Lessor is entering into this Lease under the terms and conditions stated herein based in large part on the specific characteristics of Lessee. Accordingly, Lessee shall not Transfer any of its rights under this Lease without Lessor's prior written consent, which consent may be granted or withheld in Lessor's sole discretion; provided, however, that Lessor's consent shall not be unreasonably withheld if the following conditions are satisfied:

- (a) There would be no change in the permitted use of the Premises as provided in Section 6.1; and either
- (b) The proposed Transferee is a Hyatt Affiliate; or
- (c) The Transfer would become effective on or after the Project Stabilization Date, and each of the following conditions is satisfied: (i) the proposed Transferee has at least five years of experience in the successful and profitable ownership, management, marketing and operation of large First Class CCRCs; (ii) immediately upon consummation of the proposed Transfer, the proposed Transferee will have an equity investment in the Project of at least \$10,000,000, and concurrently with the consummation of the proposed Transfer, the proposed Transferee will deliver to Lessor a replacement Letter of Credit in the amount of \$10,000,000 in substitution for the then existing \$6,000,000 Letter of Credit, which replacement Letter of Credit shall satisfy each of the requirements set forth in Section 9.2; (iii) the proposed Transferee has an excellent business reputation in the senior housing industry and is free of repeated or significant and unresolved complaints or claims (whether asserted by regulators, entities or individuals); (iv) no civil or administrative judgments involving fraud or dishonesty, or criminal convictions of any kind, have been entered against the proposed Transferee; (v) the proposed Transferee will have all necessary Operating Licenses on the date the proposed Transfer would become effective; and (vi) the proposed Manager and Marketing Company would be approved by Lessor pursuant to Sections 7.3 and 7.4, respectively.

Notwithstanding anything to the contrary elsewhere in this Lease, Lessee shall not be entitled under any circumstances to Transfer any partial interest in this Lease or the Project, or



any portion of the Premises or the Project (such as, for example and not by way of limitation, the Health Center) less than the entire Premises and Project, save the one exception set forth in Section 13.9 below. Any Transfer without Lessor's prior written consent shall be void at Lessor's sole option.

**13.2 Approval of Transfer Documentation.** Lessee shall provide Lessor with: (a) written notice of any proposed Transfer; (b) documentation regarding the proposed Transferee's experience and background, financial condition, reputation, references and capability; (c) the economic and other material terms of the proposed Transfer; (d) Lessee's current financial condition and capability; and (e) such other information as Lessor may reasonably request. Lessor's consent to any proposed Transfer shall be conditioned upon Lessor's review and approval of both the qualifications of the proposed Transferee and the form of Transfer documentation, which shall contain an assumption of all the obligations of the Lessee under the Lease, and Lessor's subsequent receipt of a fully executed copy thereof. Lessor's consent to one Transfer shall not waive the requirement of its consent to any subsequent Transfer.

**13.3 Administrative Costs.** If Lessee requests Lessor's consent to a Transfer, Lessee shall pay, as Additional Rent, all attorneys' fees and other costs reasonably incurred by Lessor in connection with its review of, and response to, Lessee's proposed Transfer.

**13.4 Continuing Responsibility.** Except in the case of a Transfer to Lessor pursuant to Section 13.6, no Transfer shall release Lessee from its obligations under this Lease and Lessee and the Transferee shall be and remain jointly and severally liable for the payment of Rent and due performance of all other obligations of the Lessee under this Lease, regardless of whether this Lease is subsequently terminated, except that Lessee shall not incur liability to the extent of any subsequent amendment to this Lease entered into by Lessor and any Transferee that materially and adversely affects Lessee's rights or obligations hereunder; provided, however, that upon an assignment of this Lease in accordance with Section 13.1 by any Lender (or Lender Affiliate) that has acquired its interest in this Lease through foreclosure or a deed or assignment in lieu thereof, the Lender (or Lender Affiliate, if applicable) shall be relieved from any further liability hereunder.

**13.5 Successors.** Each and every successor in interest to the Lessee herein named, including without limitation any purchaser of Lessee's leasehold interest pursuant to a foreclosure of any Leasehold Mortgage (who also shall be deemed a Transferee) but subject to the provisions of Section 15.6 below, shall be liable for the payment of Rent and due performance of all other obligations of the Lessee under this Lease from and after the date of the Transfer (subject to the proviso set forth in Section 13.4), with the same force and effect as though such Transferee were the Lessee named in this Lease.

**13.6 Right of First Offer.** If Lessee desires to enter into a Transfer (other than a Transfer described in clause (a) or clause (b) of the last paragraph of this Section 13.6), it shall first deliver to Lessor a written offer (the "Offer") setting forth the terms and conditions upon which Lessee proposes to Transfer its interest and offering to enter into a Transfer with Lessor on the same terms and conditions (except that if the terms and conditions include financing, Lessor shall have the option to acquire Lessee's interest for all cash). Lessor shall have 30 days to accept the Offer by written notice to Lessee, but Lessor shall use reasonable efforts to respond as expeditiously as practicable.

If Lessor does not give Lessee written notice accepting the Offer within the 30-day period, Lessee may at any time within the six-month period after the expiration of the 30-day period (the "Transfer Period"), subject to all of the terms and conditions of this Article 13, Transfer its interest to a third party without reoffering the interest to Lessor so long as the economic and other key terms and conditions of such Transfer are not more favorable to the proposed Transferee in any material respect than those contained in the Offer. With respect to consideration to Lessee for the Transfer, any change(s) in the transaction having an aggregate value to the proposed Transferee of more than one percent of such consideration or \$500,000 (which \$500,000 shall be adjusted on the fifth anniversary of the Initial Occupancy Date, and every five years thereafter during the Term until a final adjustment on the 35th anniversary of the Initial Occupancy Date, by a percentage equal to the percentage change in the CPI over the five-year period immediately preceding the date of the adjustment), whichever is less, shall be deemed a materially more favorable term.

If Lessee proposes to enter into a Transfer at any time after the expiration of the Transfer Period, or at any time within the Transfer Period but on economic or other key terms more

favorable to the proposed Transferee in any material respect than those contained in the Offer, Lessee shall again deliver to Lessor an Offer in accordance with this Section 13.6, offering the interest to Lessor on the more favorable terms, and Lessor shall have another period of 30 days after receipt of such Offer to accept such Offer.

If Lessor accepts the Offer, Lessor and Lessee shall consummate the Transfer in accordance with the terms and conditions set forth in the Offer and, to the extent not inconsistent therewith, the terms and conditions applicable to the surrender of the Premises and the Project set forth in Section 8.4 (including, for example and not by way of limitation, the indemnities set forth in Sections 8.4(f) and 8.4(g)). In such event, the date the Transfer to Lessor closes shall be deemed the Termination Date.

This right of first offer shall be ongoing, and shall apply to all Transfers proposed at any time during the Term, other than: (a) a Transfer to (but not from) a Hyatt Affiliate; and (b) a Transfer made pursuant to and in accordance with the requirements of Section 15.6 by a Lender (or Lender Affiliate, if applicable) that has acquired its interest in the Lease through foreclosure or a deed or assignment in lieu thereof. The terms of this Section 13.6 shall have priority over the terms of Article 18; except that: (x) if a Transfer is not consummated within the Transfer Period, Lessor may exercise the purchase right set forth in Article 18 at any time during the six months immediately following expiration of such Transfer Period even if Lessee delivers a new Offer to Lessor during such six-month period; and (y) once Lessor has exercised the purchase right set forth in Article 18, Lessee may not thereafter deliver an Offer or seek to Transfer its interest to a third party unless and until the transactions contemplated by Article 18 have been terminated or concluded.

**13.7 Right to Collect Rent.** If this Lease is Transferred without first procuring Lessor's consent in accordance with Section 13.1, Lessor shall have the right, but not the obligation, to collect the Rent provided for in this Lease from the Transferee. In such event, Lessor may apply the amount received by it to the Rent due hereunder, but no such collection or application of proceeds shall be deemed: (a) a waiver of the restriction against Transfer; (b) Lessor's consent to the purported Transfer or acceptance of the purported Transferee as Lessee under this Lease; or (c) a release of Lessee from any of its obligations under this Lease.



**13.8 Lessor's Right to Mortgage or Encumber.** Lessor may pledge, assign, transfer, mortgage or encumber its interest in this Lease and/or its fee estate in the Premises (collectively a "Lessor Transfer") at any time; provided, however, that: (a) any such transaction shall be subject to this Lease and Lessee's leasehold estate in the Premises, and any loan encumbering Lessor's interest in this Lease or fee interest in the Premises shall be subordinate to this Lease and Lessee's leasehold estate in the Premises unless Lessee in its sole discretion agrees otherwise; (b) Lessee's right of quiet possession of the Premises and other rights arising out of this Lease shall not be materially and adversely affected thereby; (c) any lender under a loan encumbering Lessor's interest in this Lease or fee interest in the Premises shall provide Lessee with written notice of an event of default under such loan and an opportunity (without any obligation) to cure the default prior to the completion of foreclosure or other transfer of Lessor's interest in this Lease or fee interest in the Premises; (d) the maximum aggregate principal amount of any loan encumbering Lessor's fee title to the Premises and/or interest in this Lease, the Improvements and the FF&E shall not exceed 75% of the value of such interests; (e) any party acquiring Lessor's fee interest in the Premises shall assume and agree to perform Lessor's obligations under this Lease and the Lessor Loan arising on and after the date it acquires Lessor's interest in the Premises; and (f) Lessor shall promptly deliver to Lessee written notice of the consummation of such Lessor Transfer, and until Lessee receives such notice Lessee shall be fully protected in making all payments and tendering all performance required of Lessee under this Lease to Lessor and not to Lessor's transferee, and in relying on all consents and approvals given by Lessor pursuant to this Lease.

**13.9 Health Center Sublease.** Notwithstanding any provisions of Section 13.1 to the contrary, Lessee may sublease the Health Center to a Hyatt Affiliate (the "Health Center Sublease"), subject to the following terms and conditions: (a) all of the terms and conditions set forth in Sections 13.3 and 13.4 shall apply to the Health Center Sublease; (b) the form of the Health Center Sublease shall be subject to Lessor's prior written approval, which shall not be unreasonably withheld or delayed; (c) Lessee's rights, title and interest in the Health Center Sublease shall not be assigned or otherwise transferred separate and apart from Lessee's rights, title and interest in this Lease, whether voluntarily by Lessee, pursuant to a trustee's sale, foreclosure proceeding or other action taken by any Lender, or otherwise; (d) the Health Center Sublease shall be absolutely non-assignable, except to another Hyatt Affiliate or to a Transferee

(or Affiliate thereof) of all of Lessee's rights, title and interest in this Lease pursuant to an assignment that does not constitute a "Transfer" within the meaning of this Lease, or pursuant to a Transfer which is either approved by Lessor in accordance with Section 13.1 above or which does not require approval by Lessor pursuant to any other express provision of this Lease; (e) there shall be no subleases of the Health Center Sublease; and (f) the Health Center Sublease shall not be pledged or encumbered, except to a Lender in connection with a Leasehold Mortgage.

## ARTICLE 14

### EVENTS OF DEFAULT; LESSOR'S REMEDIES

14.1 Events of Default. The occurrence of any one or more of the following shall constitute an event of default ("Event of Default") and breach of this Lease by Lessee:

(a) If Lessee fails to make any payment of Rent when due, and such failure continues for five business days after Lessor gives written notice to Lessee of such non-payment;

(b) If Lessee fails to timely and properly perform any of its other obligations under this Lease, and such failure continues for 30 days after Lessor gives written notice to Lessee of non-performance (which notice shall be deemed the notice required under California Code of Civil Procedure Section 1161 and any amended, similar or successor laws); provided, however, that if the obligation is such that more than 30 days is required for its proper performance, Lessee shall not be deemed in default if it commences performance within the 30-day period and thereafter diligently prosecutes such cure to completion. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in the notice;

(c) If any material Operating License is suspended, rescinded or revoked and not reinstated within 90 days after the date of the suspension, rescission or revocation (provided, however, that if more than 90 days is required for reinstatement of the Operating License, Lessee" shall not be deemed in default if it commences, within 15 days after the date of the suspension, rescission or revocation, taking all steps that are necessary for reinstatement and can lawfully and reasonably be commenced within such 15-day period, and thereafter promptly commences and diligently prosecutes all necessary steps to completion); or if any conditions identified in any notices of violation issued by any public or quasi-public agency with jurisdiction over the

Premises or the Project are not corrected to the satisfaction of the public or quasi-public agency within 60 days after Lessee's receipt of the notice (provided, however, that if more than 60 days is required to correct the conditions, Lessee shall not be deemed in default if it commences correction within 15 days after Lessee's receipt of the notice and thereafter diligently prosecutes such cure to completion);

(d) If any material representation, warranty, report or certification made by Lessee in or pursuant to this Lease is knowingly false or misleading in any material respect;

(e) If any petition is filed against Lessee in any court, whether or not under any statute of the United States of America or of any state, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and Lessee is thereafter adjudicated bankrupt, or if such proceedings are not dismissed within 90 days after the institution of same, or if any such petition is so filed by Lessee or a liquidator;

(f) If, in any proceedings, a receiver, receiver and manager, trustee or liquidator is appointed for all or any substantial portion of Lessee's property, and such receiver, receiver and manager, trustee or liquidator is not discharged within 90 days after the appointment of such receiver, receiver and manager, trustee or liquidator; and

(g) If Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or hereafter in effect, make any assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

**14.2 Lessor's Remedies.** In addition to such other remedies as may be available to Lessor under this Lease, at law or in equity (including without limitation the right to enforce indemnities and recover damages), but subject to the provisions of Section 15.6 below, Lessor shall have right, upon the occurrence of an Event of Default, to exercise any or all of the following remedies:

(a) **Termination.** Lessor may elect to terminate this Lease immediately, or at any time thereafter while the Event of Default remains uncured. If Lessor terminates the Lease, Lessor shall have the right to recover from Lessee:

(i) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(ii) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such unpaid Rent which Lessee proves reasonably could have been avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such unpaid Rent which Lessee proves reasonably could be avoided; plus

(iv) Any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom, including without limitation attorneys' fees and costs, brokers' commissions, the costs of refurbishment, alterations, renovation and repair of the Premises and the Project and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Lessee's FF&E and other personal property.

As used in Sections 14.2(a)(i) and (ii), the "worth at the time of award" shall be computed by allowing interest at the Interest Rate. As used in Section 14.2(a)(iii), the "worth at the time of award" shall be computed by discounting such amount at a rate equal to the sum of the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

(b) **Re-Entry.** Lessor may re-enter the Premises, with or without terminating this Lease, and remove any or all persons and property from the Premises (but subject to the rights of all Residents under Residence and Services Agreements or Rental Leases). Without limiting the generality of the foregoing, Lessor shall have the remedy described in Civil Code Section 1951.4 and any amended, similar or successor laws. Lessee's personal property may be

removed and stored in a public warehouse or elsewhere, and may be disposed of at Lessee's cost in accordance with any procedures permitted by law. No re-entry or taking possession of the Premises by Lessor pursuant to this Section 14.2(b) shall be construed as an election to terminate this Lease unless Lessor delivers a written notice of such termination to Lessee; provided however, that if Lessor elects to exercise its remedies described in this Section 14.2(b) and Lessor does not terminate this Lease, and if Lessee requests Lessor's consent to a Transfer of this Lease at such time as Lessee is in default, Lessor shall not unreasonably withhold its consent to such Transfer if the requirements of Section 13.1(c) are satisfied. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver at Lessor's initiative to protect its interest under this Lease shall not constitute a termination of Lessee's right to possession. Lessee shall reimburse Lessor for all costs and expenses incurred in connection with such actions, including without limitation reasonable consultants', contractors' and attorneys' fees and costs, within ten days after receipt of Lessor's invoice. If Lessee fails to do so, Lessor shall have the right, in addition to such other remedies as may be available at law or in equity, to offset all amounts so due against any amounts that otherwise would be payable under the Lessor Loan.

(c) **Re-Letting.** Lessor shall have the right, without terminating this Lease, to either recover all Rent from Lessee as it becomes due or relet the Premises and the Project or any part thereof to third parties for the account and at the expense of Lessee for all or any part of the Term. Lessor may re-let on such terms and conditions as Lessor in its sole discretion may deem advisable, and Lessor shall have the right, but not the obligation, to make any necessary or appropriate alterations and repairs to the Premises and the Project. If Lessor elects to so relet, rents received by Lessor from such reletting shall be applied as follows: (i) first, to the payment of any indebtedness, other than Rent due hereunder, from Lessee to Lessor; (ii) second, to the payment of any cost of such reletting; (iii) third, to the payment of the cost of any alterations and repairs to the Premises or the Project; (iv) fourth, to the payment of Rent due and unpaid hereunder; and (v) the residue, if any, shall be held by Lessor and applied to payment of future Rent as the same may become due and payable. Should that portion of the rents received from any reletting and applied to the payment of Rent be less than the Rent then due and payable by Lessee, Lessee shall pay the deficiency to Lessor within ten days after receipt of Lessor's invoice. Lessee also shall reimburse Lessor for any costs and expenses incurred by Lessor in



such reletting or in making any alterations and repairs not covered by the rents received from such reletting, including without limitation reasonable consultants', contractors' and attorneys' fees and costs, within ten days after receipt of Lessor's invoice. If Lessee fails to do so, Lessor shall have the right, in addition to such other remedies as may be available at law or in equity, to offset all amounts so due against any amounts that otherwise would be payable under the Lessor Loan.

(d) Performance for Lessee. To the extent permitted by Applicable Laws, Lessor shall have the right, without waiving or releasing Lessee from any of its obligations, to make any payment or perform any other obligation on Lessee's behalf and at Lessee's expense. Without limiting the generality of the foregoing, upon and during the continuance of an Event of Default, Lessor may, but shall not be required to, pay any Imposition payable by Lessee hereunder, discharge any Lien, take out, pay for and maintain any insurance required under Article 10, make Repayments to Residents, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Lessee on account thereof. Lessor may act upon shorter notice or no notice at all if necessary in Lessor's reasonable judgment to meet an emergency situation or governmental or municipal time limitation or to protect Lessor's interest in the Premises. Lessor shall not be required to inquire into the correctness of the amount or validity of any Imposition or Lien or other amount which may be paid by Lessor and Lessor shall be duly protected in paying the full amount of any such Imposition or Lien claimed and in such event Lessor shall also have the full authority, in Lessor's sole judgment and discretion and without prior notice to or approval by Lessee, to settle or compromise any such Lien or Imposition. Any act or thing done by Lessor pursuant to the provisions of this Section 14.2(d) shall not be or be construed as a waiver of any Event of Default by Lessee, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof. If Lessor cures a failure to perform on behalf of Lessee, Lessee shall reimburse Lessor for all costs incurred in connection with such cure, including without limitation reasonable consultants', contractors' and attorneys' fees and costs, within ten days after receipt of Lessor's invoice. If Lessee fails to do so, Lessor shall have the right, in addition to such other remedies as

may be available at law or in equity, to offset all amounts so due against any amounts that otherwise would be payable under the Lessor Loan.

(e) **Replace Management.** Subject to the rights of any Lender under a Leasehold Mortgage and the requirements of Applicable Laws, Lessor shall have the right to require Lessee to terminate the Management Contract and/or the Marketing Contract, and to enter into a new Management Contract and/or a new Marketing Contract with a Manager and/or Marketing Company approved by Lessor pursuant to Section 7.3 or Section 7.4, as applicable. This remedy shall not be available to Lessor so long as the Lessee is either the initial Lessee that is the actual signatory to this Lease or another Hyatt Affiliate.

(f) **Security.** Lessor shall have the right, but not the obligation, to draw on and apply the proceeds of the Security Deposit and/or the Letter of Credit against any Rents, damages or other amounts that Lessor would be entitled to recover pursuant to this Lease.

(g) **Receivership.** Lessor may have a receiver appointed, upon application, to take possession of the Project and to collect the rents or profits therefrom and to exercise all other rights and remedies available to Lessor pursuant to this Article 14.

(h) **Injunctive Relief.** Lessor may seek to enjoin any breach of this Lease, seek specific performance of any obligation under this Lease, or pursue any other remedy or right now or hereafter available to a lessor against a defaulting lessee under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein. Notwithstanding anything to the contrary in this Article 14, in no event shall Lessor be entitled to recover punitive, consequential or other speculative damages from Lessee.

**14.3 Right to Appoint Manager.** If at any time during the Term there is no Manager on the Premises actively managing and operating the entire Project as required hereunder, and/or no Marketing Company actively marketing the Project as required hereunder, Lessor shall have the right, and Lessee hereby appoints Lessor, with full power of substitution and resubstitution, as its true and lawful attorney-in-fact, with full power and authority, but with absolutely no obligation whatsoever, after giving no less than 15 days written notice to Lessee and to the extent permitted by Applicable Laws, to engage a Manager and/or Marketing Company upon such terms and conditions as Lessor in Lessor's sole discretion deems advisable, to operate and manage and/or market and lease the Project as required under this Lease, and to take any further

actions, and incur any costs and expenses, which Lessor 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 all prospective Managers and Marketing Companies, 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. Lessee shall pay to such Manager and/or Marketing Company all reasonable costs, expenses, fees and commissions earned pursuant to such agreement. Lessee also shall reimburse Lessor for all costs and expenses incurred in connection with its actions under this Section 14.3, including without limitation reasonable consultants' and attorneys' fees and costs, within ten days after receipt of Lessor's invoice. If Lessee fails to do so, Lessor shall have the right, in addition to such other remedies as may be available at law or in equity, to offset all amounts so due against any amounts that otherwise would be payable under the Lessor Loan.

**14.4 Late Payment.** In the event Lessee fails to make any payment to Lessor when due, and such failure continues for five business days after Lessor gives notice of such nonpayment, Lessee shall pay Lessor interest on the unpaid amount from the date due until the date paid at the Penalty Interest Rate. The parties agree that the Penalty Interest Rate represents a fair and reasonable estimate of the detriment that Lessor will suffer by reason of late payment by Lessee. Acceptance of any such interest shall not constitute a waiver of Lessee's default with respect to the overdue amount, or preclude Lessor from exercising any of its other rights and remedies.

**14.5 Waiver of Notice and Redemption.** Except as otherwise expressly provided in Section 14.1, Lessee hereby expressly waives, to the maximum extent permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Lessee, for and on behalf of itself and all persons claiming through or under Lessee, also waives any right of redemption if Lessee is evicted or Lessor takes possession of the Premises by reason of any Event of Default.

**14.6 Rights Cumulative.** The various rights and remedies reserved to Lessor, including those not specifically described herein, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in

equity. The exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Lessor of any or all other rights or remedies.

**14.7 Lessor's Default.** If Lessor fails to timely and properly perform any of its obligations under this Lease, and such failure continues for 30 days after Lessee gives written notice to Lessor of non-performance (which notice shall state in reasonable detail the nature of the non-performance and the steps required to cure the non-performance), Lessor shall be in default under this Lease (a "Lessor Default"); provided, however, that if the obligation is such that more than 30 days is reasonably required for its proper performance, it shall not be a Lessor Default if Lessor commences performance or cure within the 30-day period and thereafter diligently prosecutes the performance or cure to completion. In the event of a Lessor Default, Lessee's sole remedies shall be to seek equitable relief (e.g., an injunction) or recovery of its actual damages and under no circumstances shall Lessee be entitled to terminate this Lease; provided, however, that the foregoing shall not be deemed to preclude, impair or otherwise affect Lessee's rights under Section 3.7, Lessee's right to enforce any indemnification rights provided to Lessee by this Lease, or any remedy that Lessee might have for constructive eviction or breach of the covenant of quiet enjoyment. Notwithstanding anything to the contrary in this Section 14.7, in no event shall Lessee be entitled to recover punitive, consequential or other speculative damages from Lessor.

## ARTICLE 15

### IMPAIRMENT OF LESSOR'S TITLE; LEASEHOLD MORTGAGE

**15.1 No Encumbrance on Lessor's Title.** Lessor and Lessee expressly agree that in no event shall Lessor's fee title to the Premises, or its interest as Lessor under this Lease (including without limitation its right to receive Rents), be encumbered, impaired or subordinated for the benefit of Lessee or any Lender or Resident (except to the extent expressly provided by Section 8.5 above), and Lessee shall not enter into (and Lessor shall have no obligation to approve or consent to) any agreement or transaction that would, could or might deprive Lessor of its fee title to the Premises or impair any of Lessor's rights and remedies under this Lease. Nothing contained in this Lease, and no action or inaction by Lessor (other than a separate agreement in writing signed by Lessor), shall be deemed or construed to mean that

Lessor has granted to Lessee any right, power or permission to do any act or to make any agreement which may create, give rise to, or be the foundation for, any right, title, interest, lien, charge or other encumbrance upon the estate of Lessor in the Premises or its interest in this Lease or the Project; provided, however, that the foregoing shall not be construed to relieve Lessor from its obligations under Section 8.5 with respect to the recognition of the rights of Residents under Residence and Services Agreements and Rental Leases.

**15.2 Adverse Claims.** In amplification and not in limitation of the provisions of Section 15.1 above, Lessee shall not permit any portion of the Premises to be used by any person or persons, or by the public, as such, at any time or times during the Term or any holdover period in such manner as might reasonably tend to impair Lessor's title to or interest in the Premises or any portion thereof, or in such manner as might reasonably make possible a claim or claims of adverse use, adverse possession, prescription, dedication or other similar claims of, in, to or with respect to the Premises or any part thereof.

**15.3 Lessor's Notice of Nonresponsibility.** Notice is hereby given that Lessor shall not be liable for any labor or materials furnished or to be furnished to Lessee, or to any Resident, and that no mechanic's, materialmen's or other liens, stop notices or encumbrances (collectively, "Liens") for any such labor or materials shall attach to or affect the estate or interest of Lessor in and to the Premises. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or furnishing of any materials in connection with the construction, repair or replacement of the Improvements, or as giving Lessee any right, power or authority to contract for or to permit, on Lessor's behalf or as to Lessor's interest, the rendering of any services or the furnishing of any materials. Lessor shall have no obligation to Lessee or to any contractor, subcontractor, supplier, materialman, worker or other Person who engages in or participates in any construction of any work unless Lessor expressly undertakes such obligation in writing.

**15.4 Mechanics' and Other Liens.** Lessee shall not permit or suffer any Lien against all or any part of the Premises. If any claim or notice of Lien is filed, Lessee shall have the right to contest the Lien in accordance with Applicable Law, but at Lessor's written request, Lessee shall promptly cause the Lien to be bonded over, at no cost to Lessor, so that the Lien shall have



no further effect on the Premises. If Lessee fails to so remove the effect of the claim or notice of Lien within 20 days after receiving Lessor's written request, Lessor shall have the right, but not the obligation, without waiving any other rights and remedies it may have against Lessee and without further notice to Lessee, to cause the Lien to be removed from record by any means Lessor deems proper in its sole discretion, including without limitation making full payment to the Lien claimant without regard to the validity of its claim. In the event Lessor causes a Lien to be removed from record, Lessee shall pay Lessor, as Additional Rent, all costs and expenses incurred in connection therewith, including without limitation reasonable attorneys' fees, costs and disbursements. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

**15.5 Leasehold Financing.** Lessee shall obtain Lessor's written consent before procuring any loan and/or entering into any other arrangement (singly or collectively, a "Loan") which would have the effect of creating any deed of trust, mortgage, assignment, security interest, lien or other encumbrance in or against Lessee's interest in this Lease, the Improvements and/or the FF&E (singly or collectively, a "Leasehold Mortgage"). Such consent may be granted or withheld by Lessor in its sole and absolute discretion; except that, Lessor shall consent to a Loan which, in the case of the Initial Financing, meets the criteria set forth in the Project Development Rider, and in all other cases, meets each of the following requirements:

(a) The Loan shall be with a commercial bank or other institutional or private lender ("Lender") with assets of over \$500,000,000;

(b) The Loan shall be for a maximum aggregate principal amount (including any optional or mandatory advances) that does not exceed the following:

(i) If the Loan is funded and the Leasehold Mortgage recorded prior to the 45th anniversary of the Initial Occupancy Date, the maximum aggregate principal amount shall not exceed the lesser of 75% of the Full Insurable Replacement Value or 75% of the value of Lessee's leasehold interest in this Lease at the time of Loan closing (inclusive of Lessee's ownership interest in the Improvements and FF&E); and

(ii) If the Loan is funded and the Leasehold Mortgage recorded on or after the 45th anniversary of the Initial Occupancy Date, the maximum aggregate principal amount shall not exceed the lesser of 50% of the Full Insurable Replacement

Value or 50% of the value of Lessee's leasehold interest in this Lease at the time of Loan closing (inclusive of Lessee's ownership interest in the Improvements and FF&E);

(c) The Loan shall have a maturity date not later than the 60th anniversary of the Initial Occupancy Date, and any principal balance outstanding after the 50th anniversary of the Initial Occupancy Date shall be fully and ratably amortized over the remaining term of the Loan (which shall mature no later than the 60th anniversary of the Initial Occupancy Date) without "balloon" payments;

(d) Notwithstanding anything to the contrary in Section 8.1(b) or Section 15.5(c) above, a Loan may have a maturity date that is later than the 60th anniversary of the Initial Occupancy Date so long as: (i) all of the proceeds of such Loan are used for Alterations and other capital expenditures of direct benefit to the Project; (ii) the Loan shall mature no later than the 70th anniversary of the Initial Occupancy Date; and (iii) the entire principal balance outstanding after the 60th anniversary of the Initial Occupancy Date shall be fully and ratably amortized over the remaining term of the Loan without "balloon" payments;

(e) Lessee shall provide reasonable assurance that the Debt Service Coverage Ratio, after Project Stabilization, will be at least 1.15 at the time of the initial funding of the Loan;

(f) The Leasehold Mortgage shall encumber Lessee's entire leasehold interest in the Premises, including without limitation its interest as sublessor under the Health Center Sublease, and ownership interest in the Improvements, and the Lender shall expressly agree for the benefit of Lessor that the Premises and the Project are a single integrated project and there shall be no partial foreclosure, deed in lieu or other Transfer of anything less than Lessee's entire leasehold interest in the Premises and ownership interest in the Improvements and, to the extent encumbered as collateral security for the Loan, the FF&E; and

(g) The Loan shall not be cross-defaulted with the obligations of any Affiliate of Lessee, except for any guaranty or other credit enhancement that may be provided by such an Affiliate to the Lender in consideration of the Loan.

Lessee may encumber its leasehold interest in this Lease and its ownership interest in the Improvements and FF&E only in accordance with this Section 15.5; provided, however, that the

foregoing provisions shall not restrict Lessee from financing the acquisition of items of equipment and other personal property with vendors or third party lenders so long as the security interest provided to such vendors or third party lenders is limited to the items of equipment or personal property so financed and does not constitute a lien on the leasehold estate of Lessee, or Lessee's ownership interest in the Improvements or any other items of FF&E. Any other purported encumbrance shall be void and of no effect. There shall be no modification of a Loan or Leasehold Mortgage that would be inconsistent with any of the requirements of this Lease without Lessor's prior written consent, which may be granted or withheld in Lessor's sole discretion.

**15.6 Lender Protections.** Lessor and Lessee expressly agree that a Lender making a Loan secured by a Leasehold Mortgage shall have the following rights and protections:

(a) Lessor shall give the Lender a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee pursuant to this Lease, such duplicate copy to be given concurrently with the notice given to or served on Lessee, so long as Lessee or the Lender shall at all times keep Lessor informed, in writing, of the name and mailing address of the Lender and any changes in the Lender's mailing address. Lessor shall have no liability to the Lender for any failure to give any such notices to the Lender, but the Lender shall not be deprived of any of its rights hereunder on account of any such failure, and as between Lessor and the Lender only, no notice of default shall be effective as against the Lender, or operate to activate any periods of time within which the Lender may be required or elect to act hereunder, unless and until Lessor gives the Lender a copy of such notice. Any notices or other communications required or permitted by this or any other provision of this Lease or by law to be served on or given to the Lender by Lessor may be delivered in the manner specified in Section 19.1. Lessee shall deliver to Lessor, promptly after execution, true and complete copies of the Leasehold Mortgage and all other documents given to evidence or secure the Loan, and any subsequent amendments, modifications or extensions thereof.

(b) Lessee and Lessor shall not modify or consensually terminate this Lease without the Lender's prior written consent and any modification of the Lease without the Lender's consent shall not be binding upon the Lender. If the proposed modification of this Lease will not limit or impair the rights or security of the Lender, then the Lender shall not

arbitrarily or unreasonably withhold its consent to such modification. No voluntary termination or surrender of this Lease by Lessee shall be effective without the written consent of the Lender. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of the Lender.

(c) Lessor agrees that, to the extent agreed by Lessee and the Lender, the Lender shall have the right at any time during the Term to:

(i) do any act or thing required of Lessee under this Lease, and any such act or thing done and performed by such Lender shall be as effective to prevent a termination of this Lease and a forfeiture of Lessee's rights under this Lease as if done by Lessee itself; and/or

(ii) realize on the security afforded by the leasehold estate by exercising foreclosure proceedings or power of sale or other remedy afforded at law or in equity, or under any Leasehold Mortgage, and pursuant to such proceedings to: (A) transfer, convey or assign Lessee's leasehold interest to any purchaser at any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the Leasehold Mortgage; or (B) acquire and succeed to the interest of Lessee under this Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to court order or pursuant to a power of sale contained in the Leasehold Mortgage, or by assignment or other conveyance in lieu of foreclosure.

Foreclosure of a Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or pursuant to any power of sale contained therein, or any assignment or other conveyance in lieu of foreclosure, shall not require the consent of Lessor or constitute an Event of Default under this Lease. Upon any such foreclosure, sale, assignment or other conveyance, Lessor shall recognize Lender, any grantee of a conveyance in lieu of foreclosure, or any foreclosure sale purchaser, as the Lessee hereunder.

(d) Before Lessor may terminate this Lease because of any default by Lessee, Lessor shall give written notice of the default to the Lender (which notice of default may be given at the same time as the notice of default given to Lessee) and afford the Lender the

opportunity after service of the notice to: (i) cure any default in connection with nonpayment of Rent or any other sum to be paid hereunder within 15 days after receipt of notice of default from Lessor; or (ii) cure any non-monetary breach or default within 60 days after receipt of Lessor's notice of default, or within such longer period of time as may be reasonably required to cure such default, provided that Lender commences such cure within 60 days after receipt of notice from Lessor and thereafter diligently prosecutes such cure to completion. The foregoing provisions of this subsection (d) shall not be construed to impose any personal liability on the Lender for any failure to cure, or election not to cure, any monetary or non-monetary default of Lessee.

(e) Lessor agrees that, to the extent agreed by Lessee and the Lender, the Lender may forestall termination of this Lease by Lessor by commencing foreclosure proceedings (whether judicially or by exercise of a power of sale) within 60 days after Lessor gives Lender a notice of default, so long as: (i) Lender, following commencement of such foreclosure proceedings, diligently pursues such proceedings to completion (subject to normal and customary postponements and compliance with any judicial or statutory stays or orders, including without limitation any stays or orders arising in connection with any bankruptcy or insolvency proceedings affecting Lessee, relating to the timing of or the right to conduct foreclosure or other lien enforcement proceedings); and (ii) Lender performs all of the terms and conditions of this Lease requiring payment or expenditure of money by Lessee, including the payment of all unpaid Rent due hereunder, until the foreclosure proceedings are complete or are discharged by redemption, satisfaction, payment or conveyance of the leasehold estate to Lender or to any other person or party.

(f) The Lender (or Lender Affiliate, if applicable) shall not be liable to Lessor as Transferee of Lessee's interest under this Lease unless and until such time as the Lender (or Lender Affiliate, if applicable) acquires all rights of Lessee under this Lease through foreclosure or other proceedings in the nature of foreclosure, by deed or voluntary assignment in lieu thereof, or as a result of some other action or remedy provided by law or by any Leasehold Mortgage. Subject to compliance with the provisions of Section 15.6(e)(ii), at no time shall the Lender (or Lender Affiliate, if applicable) be liable for any breach or default by Lessee prior to the time the Lender (or Lender Affiliate, if applicable) acquires all rights of Lessee hereunder. Subject to compliance with the provisions of Section 13.1 relating to a subsequent Transfer by the Lender (or Lender Affiliate, if applicable), in its capacity as a successor Lessee, of its interest in this



Lease (provided that the provisions of Section 13.1(b), and any provisions limiting the applicability of Section 13.1(c) to a Transfer occurring after Project Stabilization, shall not apply to a Lender which is financing construction of the Initial Improvements (or the Lender Affiliate of such Lender, if applicable) but shall apply to any subsequent Transfer by the Transferee of such Lender (or Lender Affiliate, if applicable)), the Lender (or Lender Affiliate, if applicable) shall remain liable to Lessor for the obligations of the Lessee under this Lease only so long as the Lender (or Lender Affiliate, if applicable) remains the owner of the leasehold estate, and following such Transfer by the Lender (or Lender Affiliate, if applicable), the Lender or Lender Affiliate shall have no further obligation or liability to Lessor except solely for obligations and liabilities arising or accruing prior to the effective date of the Transfer. Notwithstanding anything in this Lease to the contrary, in no event shall any Lender which is financing construction of the Initial Improvements (or any Lender Affiliate thereof, if applicable) incur or be deemed to assume any personal liability to Lessor or any third party for the commencement, prosecution or completion of construction of the Initial Improvements, or for payment of the costs thereof, notwithstanding the acquisition by the Lender (or Lender Affiliate, if applicable) of any rights of Lessee under this Lease, unless and until the Lender (or Lender Affiliate, if applicable) expressly assumes such liability in writing, and then only under the terms and conditions and in favor of such Persons as shall be specified by the Lender (or Lender Affiliate, if applicable) in such written instrument of assumption (a "Lender Assumption Agreement"); provided, however, that the foregoing provisions of this sentence shall not be deemed or construed as a waiver by Lessor of any obligations of the Lessee under this Lease with respect to the commencement, prosecution or completion of construction of the Initial Improvements, and Lessor shall have the right to exercise any and all remedies against the Lender (or Lender Affiliate, if applicable) and any successor Lessee, including without limitation the right to terminate this Lease and excluding only the right to recover monetary damages from the Lender (or Lender Affiliate, if applicable) unless it has entered into a Lender Assumption Agreement on terms and conditions reasonably acceptable to Lessor, on account of any failure to commence, prosecute or complete construction of the Initial Improvements in accordance with and as required by this Lease. In the event that the Lender (or Lender Affiliate, if applicable) subsequently Transfers its interest under this Lease after acquiring all rights of Lessee hereunder and in connection with any such Transfer the Lender takes back a mortgage, deed of trust,

security agreement, lien or other encumbrance in or against the Lessee's interest in this Lease, the Improvements and/or the FF&E to secure a portion of the purchase price payable to Lender for such Transfer, then such mortgage, deed of trust, security agreement, lien or other encumbrance shall also constitute a Leasehold Mortgage and the Lender shall be entitled to the benefits of this Lease intended for the benefit of the holder of a Leasehold Mortgage.

(g) If this Lease is terminated prior to the Expiration Date for any reason other than a termination pursuant to Section 13.6, Article 17 or Article 18, including without limitation the termination by Lessor on account of an Event of Default or the rejection by a trustee of Lessee in bankruptcy or by Lessee as a debtor-in-possession, Lessor shall execute a new lease for the Premises with the Lender (or Lender Affiliate, if applicable) as Lessee, if so requested by the Lender, within 60 days following the date of the termination, subject to the following:

(i) the new lease shall: (A) be for a term beginning on the date this Lease was so terminated and ending on the same date the Term of this Lease would have ended had not this Lease been terminated; (B) provide for the payment of Rent at the same rate that would have been payable under this Lease during the remaining Term of this Lease had this Lease not been terminated; and (C) otherwise contain substantially the same terms and conditions as are contained in this Lease (except for any requirements or conditions which have been satisfied by Lessee prior to the termination);

(ii) upon execution of the new lease by Lessor, the Lender (or Lender Affiliate, if applicable) shall pay to Lessor any and all sums that would, at the time of the execution of the new lease, be due under this Lease if this Lease had not been terminated, and subject to the special provision in Section 15.6(f) above for the benefit of the Lender financing construction of the Initial Improvements (and any Lender Affiliate thereof, if applicable), the Lender also shall pay all sums and remedy, or agree in writing to remedy, as promptly as practicable, any other defaults under this Lease committed by the former Lessee that can be remedied by a party other than the former Lessee;

(iii) upon execution of the new lease, the Lender (or Lender Affiliate, if applicable) shall pay all reasonable costs and expenses, including without limitation attorney's fees and court costs, incurred by Lessor in preparing the new lease;

(iv) as between Lessor, Lessee and the Lender (or Lender Affiliate, if applicable), and with respect to all third parties having actual or constructive notice of the terms of this Lease, the new lease shall have the same priority as this Lease, shall be subject to all existing Residence and Services Agreements and Rental Leases, and shall be assignable by the Lender as provided in this Lease; and

(v) together with the execution and delivery of the new lease, Lessor shall confirm and acknowledge, by such means as is customary or may be reasonably required by a reputable title insurance company to insure the leasehold estate of Lender (or Lender Affiliate, if applicable) created by the new lease and Lender's (or Lender Affiliate's, if applicable) ownership of the Improvements for the term of the new lease, that as between the Lender (or Lender Affiliate, if applicable) and Lessor, and all Persons claiming by, through or under Lessor (including without limitation the holder of any mortgage or other encumbrance against Lessor's fee interest in the Premises), the Lender (or Lender Affiliate, if applicable) has title to the Improvements and FF&E for the term of the new lease; provided, however, that such confirmation and acknowledgment of title shall not negate or otherwise adversely affect Lessor's reversionary interest in the Improvements and FF&E.

The provisions of this Section 15.6(g) shall survive any termination of this Lease prior to the Expiration Date for any reason other than a termination pursuant to Section 13.6, Article 17 or Article 18, for a period of 60 days following the date of the termination, and shall constitute a separate agreement by Lessor for the benefit of and enforceable by the Lender.

(h) As used in this Lease, the term "Lender" shall mean not only the entity that loaned money to Lessee and is named as beneficiary, mortgagee, assignee, secured party or security holder in any Leasehold Mortgage, but also all subsequent assignees and holders of the security interest created by such instrument.

(i) Lessor and Lessee shall cooperate in including in this Lease by suitable amendment from time to time any provision which may be reasonably requested by any Lender in order to implement the provisions and intent of Section 15.5 and this Section 15.6; provided, however, that any such amendment shall not have any material effect on the amount of

Participating Rent to be paid to Lessor, materially increase Lessor's risk or in any other way affect adversely in any material respect any of Lessor's rights or obligations under this Lease.

(j) Any Leasehold Mortgage shall by its terms provide that all proceeds of any property insurance covering the Premises, the Improvements or the FF&E, and all Awards, shall be paid, held and applied in a manner consistent with the provisions of this Lease, and that the holder of the Leasehold Mortgage shall give Lessor written notice of any default of Lessee under such Leasehold Mortgage contemporaneously with the giving of such notice to Lessee; provided, however, that no failure by the Lender to give such notice shall deprive it of any rights or benefits provided by this Section 15.6 or elsewhere in this Lease. Lessee shall give Lessor a copy of any notice of default received from any Lender promptly after receipt thereof.

(k) If Lessor receives a notice of default from a Lender based on Lessee's failure to make payment when due on a Loan, and Lessee fails to cause the Lender to rescind the notice of default within ten business days after the date Lessor gives Lessee a copy of the notice of default, then Lessor shall have the right, but not the obligation, to cure such default of Lessee on the Loan by payment to the Lender of the amount in default, and in such event Lessee shall repay such amount to Lessor on demand, and until repayment is made the amount owing to Lessor shall bear interest at the Penalty Interest Rate; provided, however, that the failure by Lessee to make such repayment shall not entitle Lessor to terminate the Lease or exercise any other remedy that would require the Lender to return or otherwise pay over such amount to Lessor, but Lessor shall have all other remedies available at law or in equity in order to enforce Lessee's obligation to make such repayment to Lessor, including without limitation the right (but not the obligation) to draw on and apply the proceeds of the Security Deposit and/or the Letter of Credit for such purpose.

## ARTICLE 16

### REPRESENTATIONS, WARRANTIES AND LESSEE COVENANTS

16.1 Lessor's Representations and Warranties. Lessor hereby represents and warrants to Lessee as follows:

(a) Lessor is a body having corporate powers under the laws of the State of California and is duly organized, validly existing and in good standing under the laws of the State of California.

(b) Lessor has taken all necessary action to authorize the execution, delivery and performance of this Lease and all other agreements and instruments relating to the transactions contemplated by this Lease (collectively, the "Related Instruments"). This Lease, and the Related Instruments, constitute the legal, valid and binding obligations of Lessor.

(c) Lessor has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and the Related Instruments, and no approval or consent of any person is required in connection with Lessor's execution and performance of this Lease and the Related Instruments which has not been obtained. The execution and performance of this Lease and the Related Instruments will not result in or constitute any default or event that would be, or with notice or lapse of time or both would be, a default, breach or violation of the organizational instruments governing Lessor or any agreement or any deed restriction or order or decree of any court or other governmental authority to which Lessor is a party or to which it is subject.

**16.2 Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants to Lessor as follows:

(a) Lessee is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and all other Related Instruments. This Lease, and the Related Instruments, constitute the legal, valid and binding obligations of Lessee.

(c) Lessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and the Related Instruments, and no approval or consent of any Person is required in connection with Lessee's execution and performance of this Lease and the Related Instruments which has not been obtained (other than those Entitlements required to be obtained under this Lease). The execution and performance of this Lease and the Related Instruments will not result in or constitute any default or event that would be, or with notice or



lapse of time or both would be, a default, breach or violation of the organizational instruments governing Lessee or any agreement or any deed restriction or order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject.

(d) Lessee was established for the sole purposes of developing, marketing, owning and operating the Project, and has not conducted any activities other than activities reasonably related to the above-described purposes.

(e) Lessee is, and at all times between the Effective Date and the Termination Date (or, if Lessee holds over, the Surrender Date) will be: (i) adequately capitalized to conduct its business and affairs as a going concern, considering the size and nature of its business and intended purposes; (ii) solvent; (iii) able to pay its debts as they come due; and (iv) able to conduct its business as a stand alone entity.

**16.3 Lessee's Additional Covenants.** Lessee further agrees as follows:

(a) Lessee shall take all actions necessary to ensure that all of the representations, warranties and covenants contained in Section 16.2 above remain true and correct in all material respects at all times during the period between the Effective Date and the expiration of the Term and any holdover period.

(b) Lessee shall not conduct any business or other activities that are not reasonably related to the purposes for which it was established.

**ARTICLE 17**

**CASUALTY OR APPROPRIATION**

**17.1 No Termination; No Effect on Rental Obligation.** Except to the extent expressly provided in this Article 17, no Appropriation, loss, damage or destruction of the Premises, Improvements, FF&E or any other aspect of the Project shall relieve or discharge Lessee from the full and timely payment of Rent or performance of any of Lessee's other obligations under this Lease. Lessee hereby expressly waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, and any amended, similar or successor laws.

## 17.2 Evaluation of Extent and Effect of Casualty or Appropriation.

(a) Casualty. Upon the occurrence of any fire, flood, earthquake or other event or casualty adversely affecting the physical condition of the Premises, Improvements and/or FF&E (a "Casualty"), Lessee shall promptly engage an independent architect or engineer reasonably acceptable to Lessor (the "Engineer"), and Lessee and the Engineer shall prepare a detailed written report (the "Casualty Report") describing and addressing: (i) the extent of any damage or destruction to the Premises, Improvements and FF&E; (ii) the legal right, and the estimated cost and time required, to repair, replace, reconstruct and/or restore the Premises, Improvements and FF&E to a physical and operating condition consistent with the First Class Standard and other requirements of this Lease (collectively, "Restoration Work"); and (iii) the likely extent and availability of insurance proceeds. Lessee shall provide Lessor with the Casualty Report as soon as reasonably practicable, but not later than 120 days after the occurrence of the Casualty.

(b) Appropriation. Upon receipt of written notice that any Appropriation of less than the entire Premises is pending or contemplated, Lessee shall promptly engage an Engineer, and Lessee and the Engineer shall prepare a detailed written report (the "Appropriation Report") describing and addressing: (i) the effect of such pending or contemplated Appropriation on the remaining portion of the Premises and the functioning of the Project as a First Class CCRC or First Class Rental Project, as applicable; (ii) the legal right, and the estimated cost and time required, to perform all Restoration Work that may be necessary in order for the Project to be operated as an integral whole in accordance with the First Class Standard and all other applicable requirements of this Lease; and (iii) the likely extent and availability of an Award. Lessee shall provide Lessor with the Appropriation Report as soon as reasonably practicable, but not later than 120 days after receipt of written notice that the Appropriation is pending or contemplated.

## 17.3 Effect of Casualty.

(a) Partial Damage or Destruction; No Termination. If all or any portion of the Premises, Improvements or FF&E are damaged or destroyed at any time during the Term and this Lease is not terminated pursuant to Section 17.3(b) or 17.3(c) below, Lessee shall perform all Restoration Work that may be necessary to restore the Premises, Improvements and

FF&E to a First Class condition, and otherwise consistent with the requirements of this Lease, at no cost to Lessor regardless of the amount of insurance proceeds available, as promptly as reasonably practicable and with all commercially reasonable diligence. In the event the Casualty is caused by the gross negligence or willful misconduct of Lessor: (i) the Annual Base Rent shall be equitably abated, if appropriate, to reflect the diminution, if any, in Lessee's net revenues caused by the Casualty; and (ii) the Participating Rent owing for the period from the date of the Casualty until completion of the Restoration Work shall be determined solely in accordance with the provisions of Section 3.3, and the provisions of Sections 17.8(b)(ii) and 17.8(c) shall not apply.

(b) **Lessee's Right to Terminate.** Lessee shall have the right to terminate this Lease, in accordance with the procedures set forth in Section 17.6, in the event that any Casualty occurs and: (i) the reasonably estimated cost of the Restoration Work (as set forth in the Casualty Report) exceeds the Casualty Proceeds (as defined in Section 17.3(d) below) by more than five percent of the then-applicable Full Insurable Replacement Value; or (ii) then-existing laws would not permit the repair, replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E to substantially the same condition and use, consistent with the First Class Standard, as at the time immediately preceding the Casualty, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with the First Class Standard and all other applicable requirements of this Lease; or (iii) the time required to obtain all necessary governmental approvals required for the repair, replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E in accordance with clause (ii) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 18 months from the date of the Casualty; or (iv) the time required to complete the Restoration Work, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 36 months from the date of the Casualty; or (v) the Casualty occurs on or after the 60th anniversary of the Initial Occupancy Date and the cost of the Restoration Work (regardless of the availability of Casualty Proceeds) is reasonably estimated to exceed 50% of the then-applicable Full Insurable Replacement Value.

(c) **Lessor's Right to Terminate.** Lessor shall have the right to terminate this Lease, in accordance with the procedures set forth in Section 17.6, in the event that any

Casualty occurs and: (i) the reasonably estimated cost of the Restoration Work (as set forth in the Casualty Report) exceeds the Casualty Proceeds, if any, by more than five percent of the then-applicable Full Insurable Replacement Value and Lessee does not within 30 days after delivery of the Casualty Report provide Lessor with reasonable assurances that Lessee has available, or will be able to secure in a timely manner, a source of funds (including a reasonable contingency) with which to complete the Restoration Work; or (ii) then-existing laws would not permit the repair, replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E to substantially the same condition and use, consistent with the First Class Standard, as at the time immediately preceding the Casualty, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with the First Class Standard and all other applicable requirements of this Lease; or (iii) the time required to obtain all necessary governmental approvals required for the repair, replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E in accordance with clause (ii) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 24 months from the date of the Casualty; or (iv) the time required to complete the Restoration Work, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 48 months from the date of the Casualty, subject to Lessee's providing reasonable assurances to Lessor within 30 days after delivery of the Casualty Report that: (A) Lessee has procured 36 months of business interruption insurance coverage in the amounts and otherwise in accordance with the requirements set forth in Section 10.1(b) and elsewhere in this Lease; and (B) Lessee has available, or will be able to secure in a timely manner, a source of funds with which to pay all applicable Rent during the 12-month period immediately following the 36-month period for which business interruption insurance proceeds are available, and if Lessee is only able to provide such assurances covering a period shorter than 48 months, Lessor may terminate this Lease if the time required for Lessee (proceeding as promptly as reasonably practicable and using all commercially reasonable diligence) to complete the Restoration Work is reasonably estimated to exceed such shorter period; or (v) the Casualty occurs on or after the 60th anniversary of the Initial Occupancy Date and the cost of the Restoration Work (regardless of the availability of Casualty Proceeds) is reasonably estimated to exceed 50% of the then-applicable Full Insurable Replacement Value.

(d) **Disbursement of Casualty Proceeds Upon Termination.** If either party elects to terminate this Lease pursuant to this Section 17.3, then all insurance proceeds recovered by or payable on account of such Casualty under policies carried by Lessee pursuant to Article 10 (excluding any rental or business interruption insurance carried by Lessee, which shall be subject to the requirements of Section 17.8 below), and all amounts self-insured by Lessee (whether by virtue of deductibles or other express self-insurance mechanisms approved by Lessor, or by virtue of Lessee's failure to maintain any insurance required by this Lease) with respect to any coverage which Lessee is required by this Lease to maintain, which amounts Lessee shall be obligated to provide (collectively, "Casualty Proceeds"), shall be distributed in the following order of priority:

(i) first, to the payment of all out of pocket third party costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements, reasonably incurred in collecting the Casualty Proceeds;

(ii) second, to the repayment of all sums secured by any Leasehold Mortgage, as and to the extent required thereby;

(iii) third, to the reimbursement of Lessee for any out-of-pocket third party costs reasonably incurred by Lessee for demolition, restoration and removal work or emergency-related work undertaken pursuant to Section 17.6(b), Section 17.6(c) or Section 17.7 below; and

(iv) fourth, the balance of the Casualty Proceeds shall be divided *pari passu* between Lessor and Lessee in accordance with the ratio of Lessor's Percentage Interest to Lessee's Percentage Interest (as such terms are defined below); provided, however, that the division of the balance of the Casualty Proceeds between Lessor and Lessee pursuant to this Section 17.3(d)(iv) shall be determined as follows: (A) the amount of all Casualty Proceeds paid to a Lender pursuant to Section 17.3(d)(ii) above, if any, shall be added to the remaining balance of the Casualty Proceeds; and (B) Lessor's and Lessee's respective shares shall be determined by first multiplying each party's applicable Percentage Interest by the total amount of Casualty Proceeds determined under clause (A) above, and then by deducting from Lessee's "share" the amount of all Casualty Proceeds that have been paid to a Lender pursuant to Section 17.3(d)(ii), if any.



For example, if \$20,000,000 in Casualty Proceeds were distributed to a Lender pursuant to Section 17.3(d)(ii) above, the total amount of Casualty Proceeds available after making all of the distributions described in Sections 17.3(d)(i), (ii) and (iii) were \$100,000,000, and Lessor's Percentage Interest and Lessee's Percentage Interest each were 50%, Lessor's share of the balance of the Casualty Proceeds would be \$60,000,000  $[(\$100,000,000 + \$20,000,000) \times 50\%]$  and Lessee's share of the balance of the Casualty Proceeds would be \$40,000,000  $[(\{ \$100,000,000 + \$20,000,000 \} \times 50\%) - \$20,000,000]$ .

For purposes of this Lease: (1) "Lessor's Percentage Interest" shall mean the ratio, expressed as a percentage, that the value of Lessor's reversionary interest in the Improvements and FF&E (with such reversion to be based on the assumption that the Term would expire on the original scheduled Expiration Date) bears to the total then-current value of the Improvements and FF&E; and (2) "Lessee's Percentage Interest" shall mean the ratio, expressed as a percentage, that the value of Lessee's interest in the Improvements and FF&E for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the original scheduled Expiration Date) bears to the total then-current value of the Improvements and FF&E.

#### 17.4 Effect of Appropriation.

(a) Total Appropriation. If the entire Premises is Appropriated at any time during the Term (a "Total Appropriation"), this Lease shall terminate effective on the earlier of the date that title to the Premises is obtained by the Appropriating authority or the date that the Appropriating authority takes possession of the Premises, and the Award shall be divided between Lessor and Lessee in the manner provided by Section 17.4(d) below.

#### (b) Major Appropriation.

(i) Lessee's Right to Terminate. Lessee shall have the right to terminate this Lease, in accordance with the procedures set forth in Section 17.6, if at any time during the Term a substantial portion of the Premises or the Improvements is Appropriated, or any property adjacent to the Premises is Appropriated thereby depriving the Premises of necessary access to public streets or highways, and: (A) such Appropriation makes it economically infeasible for Lessee to continue to operate the remaining portion of the Project as a First Class CCRC or First Class Rental Project, as

applicable, and otherwise in accordance with the express requirements of this Lease (assuming for all purposes that the entire Award would be applied to reconstruct and restore the Project); or (B) the reasonably estimated cost of the Restoration Work (as set forth in the Appropriation Report) exceeds the portion of the Award available to Lessee for restoration by more than five percent of the reasonably estimated cost of the Restoration Work; or (C) then-existing laws would not permit the repair, replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E to substantially the same condition and use, consistent with the First Class Standard, as at the time immediately preceding the Appropriation, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with the First Class Standard and all other applicable requirements of this Lease; or (D) the time required to obtain all necessary governmental approvals required for the replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E in accordance with clause (C) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 18 months from the date of the Appropriation; or (E) the time required to complete the Restoration Work, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 36 months from the date of the Appropriation; or (F) the Appropriation occurs on or after the 60th anniversary of the Initial Occupancy Date and the cost of the Restoration Work (regardless of the availability of an Award for restoration) is reasonably estimated to exceed 50% of the then-applicable Full Insurable Replacement Value. The effective date of any such termination shall be the earlier of the date that the Appropriating authority obtains title to the Appropriated portion of the Premises or Improvements or the date that the Appropriating authority takes possession of the Appropriated portion of the Premises or Improvements.

(ii) **Lessor's Right to Terminate.** Lessor shall have the right to terminate this Lease, in accordance with the procedures set forth in Section 17.6, if at any time during the Term a substantial portion of the Premises or the Improvements is Appropriated, or any property adjacent to the Premises is Appropriated thereby depriving the Premises of necessary access to public streets or highways, and: (A) such

Appropriation makes it economically infeasible for Lessee to continue to operate the remaining portion of the Project as a First Class CCRC or First Class Rental Project, as applicable, and otherwise in accordance with the express requirements of this Lease (assuming for all purposes that the entire Award would be applied to reconstruct and restore the Project); or (B) the reasonably estimated cost of the Restoration Work (as set forth in the Appropriation Report) exceeds the portion of the Award available to Lessee for restoration by more than five percent of the reasonably estimated cost of the Restoration Work and Lessee does not within 30 days after delivery of the Appropriation Report provide Lessor with reasonable assurances that it has available, or will be able to secure in a timely manner, a source of funds (including a reasonable contingency) with which to complete the Restoration Work; or (C) then-existing laws would not permit the replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E to substantially the same condition and use, consistent with the First Class Standard, as at the time immediately preceding the Appropriation, or otherwise to a condition that would produce an economically feasible project of substantially the same use, consistent with the First Class Standard and all other applicable requirements of this Lease; or (D) the time required to obtain all necessary governmental approvals required for the replacement, reconstruction and/or restoration of the Premises, Improvements and FF&E in accordance with clause (C) above, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 24 months from the date of the Appropriation; or (E) the time required to complete the Restoration Work, proceeding as promptly as reasonably practicable and using all commercially reasonable diligence, is reasonably estimated to exceed 48 months from the date of the Appropriation (subject to Lessee's providing reasonable assurances to Lessor within 30 days after delivery of the Appropriation Report that Lessee has available, or will be able to secure in a timely manner, a source of funds with which to pay all applicable Rent owing during the period between the date of the Appropriation and the date the Restoration Work is Substantially Complete as required by this Lease, and if Lessee is only able to provide such assurances covering a period shorter than 48 months, Lessor may terminate this Lease if the time required for Lessee (proceeding as promptly as reasonably practicable and using all commercially reasonable diligence) to complete

the Restoration Work is reasonably estimated to exceed such shorter period); or (F) the Appropriation occurs on or after the 60th anniversary of the Initial Occupancy Date and the cost of the Restoration Work (regardless of the availability of an Award for restoration) is reasonably estimated to exceed 50% of the then-applicable Full Insurable Replacement Value. The effective date of any such termination shall be the earlier of the date that the Appropriating authority obtains title to the Appropriated portion of the Premises or Improvements or the date that the Appropriating authority takes possession of the Appropriated portion of the Premises or Improvements.

(c) **Partial Appropriation.** If less than the entire Premises or Improvements are Appropriated and this Lease is not terminated pursuant to Section 17.4(a) or 17.4(b) above: (i) this Lease shall be deemed amended, effective as of the earlier of the date that the Appropriating authority obtains title to the Appropriated portion of the Premises or Improvements or the date that the Appropriating authority takes possession of the Appropriated portion of the Premises or Improvements, such that the definition of the "Premises" shall include only that portion of the land described in Exhibit A attached that is not Appropriated; (ii) Lessee, as promptly as reasonably practicable and with all commercially reasonable diligence, shall perform all Restoration Work that may be necessary to restore the Project to a fully functioning whole as a First Class CCRC or First Class Rental Project, as applicable, consistent with the requirements of this Lease, to the maximum extent feasible; (iii) Annual Base Rent shall be equitably reduced as appropriate to reflect any diminution in Lessee's net revenues caused by the Appropriation; and (iv) the Alternative Minimum Participating Rent (as described and defined in Sections 17.8(b)(ii) and 17.8(c) below), but not the Participating Rent as determined pursuant to Section 3.3, shall be equitably reduced as appropriate to reflect any diminution in Lessee's Gross Receipts caused by the Appropriation.

(d) **Determination and Allocation of Award.** The rights of Lessor and Lessee in and to any Award shall be determined as follows:

(i) **Total or Major Appropriation.** In the event of any Appropriation of the nature covered by Section 17.4(a) or (b) above, all Awards therefor shall be payable in the following order of priority:

(A) Lessee and Lessor shall first be entitled to payment for all out of pocket third party costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements, reasonably incurred in collecting the Awards.

(B) Lessor shall next be entitled to payment for the value of the Appropriated land only, considered as unimproved and encumbered by this Lease (and subject to the uses expressly permitted by this Lease), taking into account the present value of the future Rent (including without limitation Participating Rent) to be received by Lessor pursuant to this Lease (subject, however, to the penultimate sentence of Article 4 above), but without reference to, or inclusion of, the value of Lessor's Percentage Interest in the Improvements and FF&E.

(C) Any Lender shall next be entitled to payment of all sums secured by its Leasehold Mortgage, as and to the extent required thereby.

(D) Lessee shall next be entitled to reimbursement for any out-of-pocket third party costs reasonably incurred by Lessee for demolition, restoration and removal work or emergency-related work undertaken pursuant to Section 17.6(b), Section 17.6(c) or Section 17.7 below.

(E) Lessee shall next be entitled to payment for the value of Lessee's leasehold interest in this Lease (exclusive of the value of Lessee's Percentage Interest in the Improvements and FF&E for the remaining unexpired portion of the original Term of this Lease), after deducting from such amount any Award amounts that were distributed to Lenders pursuant to Section 17.4(d)(i)(C) above.

(F) The balance of the Award shall be divided *pari passu* between Lessor and Lessee, with Lessor receiving the value of Lessor's Percentage Interest, plus the entire portion of the Award allocable to severance damages relating to the Premises, Improvements and FF&E (the "Severance Award"), and Lessee receiving the value of Lessee's Percentage Interest; provided, however, that the division of the balance of the Award pursuant to this Section 17.4(d)(i)(F) shall be determined as follows: (1) the entire amount of the



Severance Award shall be deducted from the remaining balance of the Award and paid to Lessor; (2) all amounts paid to any Lender pursuant to Section 17.4(d)(i)(C) above, if any, shall be added to the remaining balance of the Award; and (3) Lessor's and Lessee's respective shares shall be determined by first multiplying each party's applicable Percentage Interest by the total amount of the Award balance determined under clause (2) above, and then by deducting from Lessee's "share" the amount of all Award Proceeds that were paid to a Lender pursuant to Section 17.4(d)(i)(C) above and were not fully offset against the distribution to Lessee made pursuant to Section 17.4(d)(i)(E) above. For example, if \$20,000,000 of the Award were distributed to a Lender pursuant to Section 17.4(d)(i)(C) above, the total amount of the Award available after making all of the distributions described in Sections 17.4(d)(i)(A), (B), (C), (D) and (E) were \$100,000,000, and Lessor's Percentage Interest and Lessee's Percentage Interest each were 50%, Lessor's share of the balance of the Award would be \$60,000,000  $[(\$100,000,000 + \$20,000,000) \times 50\%]$  and Lessee's share of the balance of the Award would be \$40,000,000  $[(\$100,000,000 + \$20,000,000) \times 50\%] - \$20,000,000$ .

(ii) **Partial Appropriation.** In the event of any partial Appropriation of the nature covered by Section 17.4(c) above, the Award shall be applied first to the restoration, repair and replacement by Lessee of the Premises, Improvements and FF&E that were not Appropriated, with the Severance Award being applied in its entirety before any other portion of the Award is so applied, and the unexpended portion of the Award, if any, shall be divided between Lessor and Lessee in the manner provided by Section 17.4(d)(i) above, except that any remaining portion of the Severance Award shall be divided pro rata under Section 17.4(d)(i)(F) in accordance with each party's Percentage Interest and so clause (1) of Section 17.4(d)(i)(F) shall not apply.

(e) **Temporary Appropriation.** If the Premises or any portion thereof or any Improvements or FF&E thereon are Appropriated for a limited period ending no later than five years before the Expiration Date, this Lease shall not terminate and Lessee shall continue to perform and observe all of its obligations hereunder as though such Appropriation had not occurred, including without limitation the payment of all Annual Base Rent and Participating

Rent owing to Lessor for the period of such Appropriation as the same shall become due and payable under this Lease, except only to the extent that Lessee may be prevented or substantially impeded from performing such obligations by reason of such Appropriation. In the event of such a temporary Appropriation, subject to Section 17.8(b) and the rights of any Lender under a Leasehold Mortgage: (i) Lessee shall be entitled to receive the entire amount of any Award made for such Appropriation; and (ii) Lessor hereby assigns any and all of its interest in such Award to Lessee. Lessee agrees to use diligent commercially reasonable efforts to recover as part of the Award payable by the Appropriating authority on account of such Appropriation all Annual Base Rent and Participating Rent which under this Lease, including without limitation Section 17.8(b), would be payable to Lessor for the period of such Appropriation (herein, "Lessor's Share"); provided, however, that if for any reason the assignment by Lessor to Lessee of Lessor's interest in any Award made for such Appropriation is not fully effective or enforceable, Lessor shall have the right, upon written notice to Lessee, to elect to recover Lessor's Share directly from the Appropriating authority, in which event the assignment set forth in clause (ii) of this Section 17.4(e) shall be void and of no force or effect with respect to Lessor's interest in the Annual Base Rent and the Participating Rent, and Lessor shall have the right to seek Lessor's Share of any Award to be made for such Appropriation. Notwithstanding anything to the contrary in this Article 17, and irrespective of whether the Lessor's Share is recovered by Lessee or Lessor, in the event that the portion of the Lessor's Share which is attributable to the Participating Rent is less than the amount of the Alternative Minimum Participating Rent otherwise required to be paid to Lessor under this Lease for the period of such Appropriation pursuant to Section 17.8(b), Lessor agrees to accept such reduced amount as full payment of the Participating Rent owing for the period of such Appropriation. In the event that the Appropriation would or could end later than five years before the Expiration Date, then the Appropriation shall be deemed a Total Appropriation and all of the provisions of this Article 17 that are applicable to a Total Appropriation shall apply.

**17.5 Restoration Work; Disbursement of Proceeds.** The following provisions shall apply in the event of a Casualty or Appropriation that does not give rise to a termination of this Lease:

(a) All Restoration Work shall be subject to and performed in accordance with the requirements of Article 11 of this Lease.

(b) Subject to the provisions of any Leasehold Mortgage which may require that Casualty Proceeds and Awards (collectively, "Proceeds") be held by the Lender or an insurance trustee for application in accordance with the terms of this Lease, all Proceeds received by or payable to any party with respect to any Casualty or Appropriation (except proceeds of insurance carried by individual Residents covering loss of or damage to their personal property), less actual out of pocket third party costs and expenses incurred in connection with the collection thereof, shall be held in an interest-bearing escrow account (with any interest to be added to such Proceeds) maintained by an independent third party (the "Escrow Agent") with a federally insured financial institution if the aggregate amount thereof is more than two percent of the then-applicable Full Insurable Replacement Value, or may be held by Lessee if the aggregate amount thereof is less than two percent of the then-applicable Full Insurable Replacement Value, and shall in either case be applied to the costs of the Restoration Work (including without limitation the cost of any emergency repairs made by Lessee pursuant to Section 17.7) in accordance with the provisions of this Article 17. If Proceeds are held by Lessee, they shall be held in an interest-bearing account with a federally insured financial institution, and all interest thereon shall be added to and included within such Proceeds.

(c) All Proceeds shall be disbursed by Lessee or the Escrow Agent in accordance with standard construction loan practices as the Restoration Work progresses. If the Proceeds, less the costs and expenses incurred in connection with the collection thereof, are insufficient to pay the entire cost of the Restoration Work, Lessee shall pay the entire amount of the shortfall. If at any time the amount of the Proceeds held by Lessee or the Escrow Agent pursuant to this Section 17.5 shall be less than the total remaining unpaid cost of the Restoration Work, Lessee shall deposit the amount of the shortfall with the Escrow Agent or make other arrangements reasonably satisfactory to Lessor such as a letter of credit, to assure payment of the shortfall, and such deposit, letter of credit or other satisfactory arrangement shall be a condition to any subsequent disbursement of Proceeds to Lessee. \*

**17.6 Termination.** The following provisions shall apply in the event of a Casualty or Appropriation that gives rise to a right to terminate this Lease:

(a) Any party having a right to terminate this Lease pursuant to this Article 17 may exercise such right by giving written notice to the other (a "Notice of Election to

Terminate") within 60 days after completion and delivery to Lessor of the Casualty Report or Appropriation Report (as the case may be) required by Section 17.2. Failure to give a Notice of Election to Terminate within such 60-day period shall be deemed an election not to terminate this Lease.

(b) If Lessor so elects in a written notice ("Demolition Notice") given to Lessee within 30 days after the date a Notice of Election to Terminate is given, Lessee shall demolish and remove the damaged or destroyed Improvements and FF&E designated by Lessor, and any rubble and related debris, leaving the Premises in a safe, clean and orderly condition, all at Lessee's cost and expense. Such demolition, restoration and removal work shall be completed by Lessee within 90 days of Lessor's delivery of the Demolition Notice or, in the event such demolition, removal and restoration cannot reasonably be completed within such 90 day period, such later date as may reasonably be required to complete such work.

(c) In addition, if Lessor requests in the Demolition Notice that Lessee restore certain Improvements on the Premises to a usable condition in lieu of demolishing and removing them, Lessee shall perform such restoration work with respect to any such Improvements that are reasonably susceptible to restoration within a period of 90 days (exclusive of the time required to obtain all governmental permits and approvals required for such restoration); provided, however, that Lessor shall pay all costs of such restoration to the extent that such costs exceed the costs that Lessee would otherwise have paid to demolish and remove such Improvements from the Premises (instead of restoring them) and to leave the area of such Improvements in a clean, safe and orderly condition. Lessee shall use commercially reasonable efforts to complete any such restoration work within 90 days (exclusive of the time required to obtain all governmental permits and approvals required for such restoration) following Lessor's delivery of the Demolition Notice or, in the event such restoration cannot reasonably be completed within said 90-day period, such later date as may reasonably be required to complete such work.

(d) Notwithstanding any provision of this Lease to the contrary, the Premises shall be vacated and surrendered to Lessor in the condition described in Section 8.1(a) above. Without limiting the generality of the foregoing, as between Lessor and Lessee, upon vacating and surrendering the Premises pursuant to this Section 17.6, Lessee shall be and remain solely responsible, financially and otherwise, for the satisfaction of all rights and privileges held or

enjoyed by all Residents and other Persons that relate to the Premises or the Project, except as otherwise expressly provided in Section 8.1(a) with respect to the Permitted Exceptions, Applicable Laws and certain Entitlements.

(e) Except as otherwise provided in Sections 17.4(a), 17.4(b) and 17.4(c), the date on which Lessee surrenders the Premises to Lessor in the condition required by Sections 17.6(b), 17.6(c) (if applicable) and 17.6(d) above shall be the Termination Date, and shall fix the date after which Lessee shall no longer be obligated for the further payment of Rent; provided, however, that in the case of any restoration of Improvements undertaken by Lessee pursuant to Section 17.6(c) above, the Termination Date (and date after which Lessee shall no longer be obligated for the further payment of Rent) shall be the date which Lessee demonstrates by reasonable evidence would have been the Termination Date under Section 17.6(b) had Lessor not made the election described in Section 17.6(c).

**17.7 Emergency Repairs.** Notwithstanding any other provision of this Article 17, Lessee shall promptly undertake all such emergency repair work after a Casualty as is necessary or appropriate under the circumstances to eliminate, or provide adequate protection against loss, damage or injury due to, defective or dangerous conditions and to comply with Applicable Laws. Lessee shall be entitled to be reimbursed for all expenditures reasonably incurred for such purposes out of any Proceeds as provided in Sections 17.3(d) and 17.4(d) above.

**17.8 No Extension of Term; Rent Obligations Continue.** There shall be no extension of the Term on account of any Casualty or Appropriation. Following any Casualty or Appropriation, Lessor shall continue to receive Construction Period Rent or Annual Base Rent (as applicable), and Participating Rent, at all times prior to any termination of this Lease pursuant to this Article 17, in accordance with the following:

(a) subject to the last sentence of Section 17.3(a) and Section 17.4(c)(iii), Lessee shall continue to pay Construction Period Rent or Annual Base Rent (as applicable) to Lessor in monthly installments at the same times and in the same amounts as would be payable had there been no Casualty or Appropriation; and

(b) During the period between the date of the Casualty or Partial Appropriation, as the case may be (the date of the Partial Appropriation being the earlier of the date that the Appropriating authority obtains title to the Appropriated portion of the Premises or



Improvements, or the date that the Appropriating authority takes possession of the Appropriated portion of the Premises or Improvements), and the date the Restoration Work is Substantially Complete (the "Restoration Period"), Lessee shall continue to pay Participating Rent to Lessor in monthly installments, at the same times as would apply had there been no Casualty or Appropriation, in an amount that is the greater of: (i) the Participating Rent as calculated pursuant to Section 3.3 above; or (ii) the Alternative Minimum Participating Rent (as defined below) for such month; provided, however, that: (1) Lessee's obligation to pay Alternative Minimum Participating Rent if such amount is greater than the Participating Rent as calculated pursuant to Section 3.3 shall terminate upon the Substantial Completion of the Restoration Work in the case of either a Casualty or Partial Appropriation; (2) notwithstanding anything in Section 17.3(a) or this Section 17.8(b) to the contrary, if the total amount of insurance and/or other proceeds made available pursuant to the business interruption risk management program required by Sections 10.1(b) and/or 10.2(f) is less than the amount of the Alternative Minimum Participating Rent otherwise required to be paid to Lessor for the Restoration Period, Lessor agrees to accept such reduced amount as full payment of the Participating Rent owing for the Restoration Period; and (3) notwithstanding anything in Section 17.4(c) or this Section 17.8(b) to the contrary, if the portion of the Award received by Lessee that is attributable to Participating Rent and/or Alternative Minimum Participating Rent for the Restoration Period is less than the amount of the Alternative Minimum Participating Rent otherwise required to be paid to Lessor for the Restoration Period, Lessor agrees to accept such reduced amount as full payment of the Participating Rent owing for the Restoration Period.

(c) The "Alternative Minimum Participating Rent" shall be the amount of Participating Rent that is projected to be payable for the specified month(s), determined for each three year period during the Term (except with respect to the Initial Period) as follows:

(i) With respect to the Initial Period (defined as the period beginning with the Initial Occupancy Date and ending at the end of the second full Lease Year following the date in which the Initial Occupancy Date occurs), the parties shall meet no later than six months before the then-current scheduled Initial Occupancy Date, and shall endeavor to agree upon amounts that fairly represent the Participating Rent that is then projected to be payable by Lessee for each month during the Initial Period. In making